

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

August 28, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Richard Clark

ROLL CALL

MINUTES – August 14, 2006 Special Meeting; August 14, 2006 Regular Meeting

COURTESIES

PROCLAMATIONS

- Sept 25: Family Day – A Day to Eat Dinner with Your Children

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #11 and #12 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

### **CONSENT AGENDA:**

**1. A. Bid Awards:**

(1) **W.O. 06-03, Contact #3: 2006 Street Maintenance.** (Opened 8/15/06). Recommend Hardrives Construction, Inc., \$108,350.00.  
([Corresponding Staff Memo A1](#))

(2) **W.O. 06-13: 2006 Accessibility Ramps.** (Opened 8/15/06). Recommend delaying award to 9/11/06.  
([Corresponding Staff Memo A2](#))

**B. Grant Application** submittal for the Fannie Mae *American Dream* Fund, \$2500.00.

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

**C. Approval** of Semi-Annual Investment Report.  
[\(Corresponding Staff Memo C\)](#)

**D. Acceptance of donations:**  
(1) 32 ornamental trees for Centennial, Harvest and Olympic Parks; donor: Billings Hardware, value: \$1,024.00.

[\(Corresponding Staff Memo D1\)](#)

(2) Education Shelter in Swords Park; donor: Yellowstone Conservation District, value: \$40,785.00.

[\(Corresponding Staff Memo D2\)](#)

**E. Street Closures:**  
(1) YMCA 2006 *Montana Marathon*, Sept 17, 2006; route: Molt Rd to Daylis Stadium.

[\(Corresponding Staff Memo E1\)](#)

(2) Billings Central High School *Homecoming Parade*, Sept 29, 2006; route: Wyoming St. to Division St., west on Broadwater Ave. to 5<sup>th</sup> St. W, north on 5<sup>th</sup> St. W through Grand Ave., and disbanding at Senior High School back parking entrance.

[\(Corresponding Staff Memo E2\)](#)

**F. Acknowledging receipt of petition to vacate** portions of 9<sup>th</sup> Ave. N, 8<sup>th</sup> Ave. N and the alley between 7<sup>th</sup> Ave. N. and 8<sup>th</sup> Ave. N., Billings Clinic, petitioner; and setting a public hearing date for 9/25/06, \$891,250.00 to the City.

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

**G. Acknowledging receipt of petition for street name change**, changing the name of Broadview Drive to Twin Oaks Drive, and setting a public hearing date for 9/25/06.

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

**H. Acceptance** of a *Public Access Computer Hardware Upgrade Grant* from the Bill and Melinda Gates Foundation for sustainability of high quality public access at Parmly Billings Library, \$5,725.00.

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

**I. Second/final reading ordinance** expanding the boundaries of Ward II to include recently annexed property in 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.

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

**J. Second/final 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.  
([Corresponding Staff Memo J](#))

**K. Bills and payroll.**

(1) July 28, 2006

([Corresponding Staff Memo K1](#))

July 1 - 31, 2006 – Municipal Court

([Corresponding Staff Memo K2](#))

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

**REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION** approving and adopting a budget amendment for FY05-06 for the spray ground construction at Castle Rock Park and the Cobb Field Stadium Design and Feasibility Study Consultant Contract – Amendment #1. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

([Corresponding Staff Memo 2](#))

3. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #787:** An ordinance providing that the BMCC be amended by revising Section 27-1404 through 1406 and Section 27-1431 through 1433, adopting the revisions as an amendment to the Zoning Regulations and setting a time period for the regulation to be effective. Zoning Commission recommends approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

([Corresponding Staff Memo 3](#))

4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #789:** A zone change from Residential-9,600 to Neighborhood Commercial on Lots 8 & 9, Block 2 of Central Acres Subdivision, located at 3525 Central Avenue, Betty Larsen, owner. Zoning Commission recommends approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

([Corresponding Staff Memo 4](#))

5. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annex #06-11: a 36-acre parcel described as Tract 1, C/S 3273, generally located on the west side of 46<sup>th</sup> St. W, south of Rimrock Rd., Jim Boyer and Paul Bromenshenk, petitioners.. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

([Corresponding Staff Memo 5](#))

6. **PUBLIC HEARING AND FIRST READING ORDINANCE** providing that the BMCC be amended by revising Sections 24-1007 through 1009 and Section 24-1011; providing for vehicle immobilization when outstanding parking fines exceed \$50.00; updating the procedure; and increasing certain fines. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND RESOLUTION** annexing a 14.077 acre tract located near the southwest corner of the intersection of Central Ave. and Shiloh Rd. and described as: C/S 1648, Tract 1 of Corrected Amendment of Tracts 1 and 3 and Remainder Tract 2 to be Amendment of Tracts 1 – 3, along with the adjoining rights-of-way in Bell Avenue and Central Avenue, adding 0.472 acres, (Annex #06-12). Bell Family Trust, owners. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 7\)](#)
8. **PUBLIC HEARING AND RESOLUTION** naming the new street section through the Peter Yegen, Jr. Golf Course between Grand Ave. and Broadwater Ave. as Zimmerman Trail. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 8\)](#)
9. **PUBLIC HEARING AND RESOLUTION** authorizing the sale of real property at 4<sup>th</sup> and Broadway described as Lots 1-6, Block 53, Fosters Addition to Stockman Bank for \$900,000.00. Staff and the 4<sup>th</sup> and Broadway Ad Hoc Committee recommend approval. **(Action:** approval or disapproval of the Staff and 4<sup>th</sup> and Broadway Ad Hoc Committee recommendation.)  
[\(Corresponding Staff Memo 9\)](#)
10. **PUBLIC HEARING AND TERMINATION OF NEGOTIATIONS** with Downtown Billings Investors for redevelopment of property located near 4<sup>th</sup> Ave. N and Broadway. Staff and the 4<sup>th</sup> and Broadway Ad Hoc Committee recommend approval of the termination of negotiations. **(Action:** approval or disapproval of the Staff and 4<sup>th</sup> and Broadway Ad Hoc Committee recommendation.)  
[\(Corresponding Staff Memo 10\)](#)
11. **RESOLUTION** relating to \$380,000.00 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006; creating Special Sidewalk, Curb, Gutter and Alley Approach Fund and prescribing covenants of the City for the security of the holders of the bonds. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)  
[\(Corresponding Staff Memo 11\)](#)
12. **CITY ADMINISTRATOR RECRUITMENT.** **(Action:** Direction to Staff.)  
[\(Corresponding Staff Memo 12\)](#)

- 13. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
(Restricted to ONLY items not on 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)**

### **AUGUST:**

8/28/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
8/30/2006	Housing Authority	NOON	2415 1 <sup>st</sup> Avenue North

### **SEPTEMBER:**

9/04/2006	LABOR DAY – CITY OFFICES CLOSED		
9/05/2006	Community Development Board	3:00 p.m.	4 <sup>th</sup> Floor Library
	Zoning Commission	4:30 p.m.	Council Chambers
	Aviation & Transit Commission	5:30 p.m.	Airport Terminal
	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
9/06/2006	Policy Coordinating Committee	8:00 a.m.	4 <sup>th</sup> Floor Library
	Board of Adjustment	6:00 p.m.	Council Chambers
9/07/2006	Human Relations Commission	12:15 p.m.	CH Conference Room
9/11/2006	Parking Advisory Board	4:00 p.m.	CH Conference Room
	REGULAR Council Meeting	6:30 p.m.	Council Chambers

9/12/2006	Planning Board	6:00 p.m.	4 <sup>th</sup> Floor Library
9/13/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 <sup>rd</sup> St.
9/14/2006	Library Board	NOON	Library
9/18/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 <sup>rd</sup> St
9/19/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 <sup>th</sup> Floor Library
9/25/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
9/26/2006	Planning Board Traffic Control Board	6:00 p.m. NOON	4 <sup>th</sup> Floor Library 4 <sup>th</sup> Floor Library
9/27/2006	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 <sup>st</sup> Avenue North CH Conference Room
9/28/2006	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 <sup>th</sup> Street

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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TITLE: Work Order 06-03, 2006 Street Maintenance Contract No. 3  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for the 2006 Street Maintenance Contract No. 3 on August 15, 2006. This project will crack seal approximately 22 miles of various streets throughout the city. Attached is a map of the streets that will be crack sealed.

**ALTERNATIVES ANALYZED:**

1. Award Work Order 06-03, Contract No. 3, to Hardrives Construction, Inc. in the amount of \$108,350.00; or
2. Not award Work Order 06-03, Contract No. 3.

**FINANCIAL IMPACT:** Funding for the 2006 Street Maintenance Program, Contract No. 3, will be provided from Gas Tax and Street Maintenance Funds. We received one bid for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 125,000.00
Hardrives Construction, Inc.	\$ 108,350.00

<u>CIP Project #ENG98</u>	
CIP Budgeted Amount	\$960,000.00
Previous Encumbrances	\$518,848.89
Bid Award Amount	<u>\$108,350.00</u>
Budget Fund Balance (after this award)	\$332,801.11

**RECOMMENDATION**

Staff recommends that Council approve the construction contract for the Street Crack Seal Maintenance Project with Hardrives Construction, Inc. in the amount of \$108,350.00.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

#### **ATTACHMENT**

A.        Map of Streets to be Crack Sealed.

#### **INTRODUCTION**

Bids were received for the Street Maintenance Crack Seal Project on August 15, 2006. Hardrives Construction, Inc. is the apparent low bidder.

#### **PROCEDURAL HISTORY**

If City Council chooses to award the crack seal contract, the project will move forward and be completed by June 30, 2007.

#### **BACKGROUND**

This project is part of the ongoing Street Preventative Maintenance Program supported by the City Council since 1985. Annually, staff identifies streets proposed for preventative maintenance. Staff proposes to bid this work in three contracts. The first contract is for chip seal resurfacing, the second contract is for overlay resurfacing, and the third contract is for crack seal. This contract will provide a crack seal on approximately 22 miles of various streets throughout the city.

#### **ALTERNATIVES ANALYSIS**

Bids were received on August 15, 2006, with Hardrives Construction, Inc. being the low bidder in the amount of \$108,350.00. Hardrives was approximately 13.3% below the Engineer's Estimate.

#### **RECOMMENDATION**

Staff recommends that Council approve the construction contract for the Street Crack Seal Maintenance Project with Hardrives Construction, Inc. in the amount of \$108,350.00.

#### **ATTACHMENT**

A.        Map of Streets to be Crack Sealed.

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 28, 2006

TITLE: Work Order 06-13, 2006 Accessibility Ramps  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for the 2006 Accessibility Ramps on August 15, 2006. After the bid opening, an inquiry was received as to a potential bid irregularity. Based on the inquiry, the bids are currently under review. This project will construct approximately 104 Accessibility Ramps on Poly Drive, 13<sup>th</sup> Street West, and the intersection of 19<sup>th</sup> Street West and Lewis Avenue. Per the agreement between the Department of Justice and the City Of Billings, the City is required to construct accessibility ramps on all streets that have been reconstructed or overlayed since 1992. The city added \$500,000 of gas tax funds to the CIP each year for the next five years.

**FINANCIAL IMPACT:** Funding for Work Order 06-13, 2006 Accessibility Ramps, will be provided from Gas Tax. We received four bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 378,028.90
J & J Concrete	\$ 332,227.50
CMG Construction	\$ 346,180.00
H.L. Ostermiller	\$ 370,696.00
JTL Group, Inc.	\$ 474,415.00

#### CIP Project #ENG ADA

CIP Budgeted Amount	\$500,000.00
Previous Encumbrances	\$000,000.00
Bid Award Amount	<u>\$332,227.50</u>
Budget Fund Balance	\$167,772.50 (after this award)

#### RECOMMENDATION

Staff recommends that Council delay the award of Work Order 06-13, 2006 Accessibility Ramps, until the September 11, 2006, City Council Meeting pending further investigation into an inquiry of a potential bid irregularity.

**Approved By: City Administrator** \_\_\_\_ **City Attorney** \_\_\_\_

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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday August 28, 2006**

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**TITLE:** Grant Application Submittal for the Fannie Mae American Dream Fund

**DEPARTMENT:** Planning & Community Development Division

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

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**PROBLEM/ISSUE STATEMENT:** The Community Development Division is requesting approval to write a letter of application to the Fannie Mae American Dream Fund for \$2,500 on behalf of the Mayor's Committee on Homelessness. The grant would assist the Community Development Division in providing funding for the Community Development staff to administer the Mayor's Committee in their efforts to develop a 10-Year Plan to impact chronic homelessness.

The Mayor's Committee on Homelessness was approved through resolution by the City Council on April 24, 2006. Twenty members have been appointed by the Mayor and a Provider Network Subcommittee has been established with over 60 listed participants to date.

**ALTERNATIVES ANALYZED:** If unable to pursue this grant, administrative costs associated with facilitating the Mayor's Committee on Homelessness would primarily impact the limited Community Development Block Grant (CDBG) administration costs.

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

**RECOMMENDATION**

Staff recommends that the City Council authorize the submission of the Fannie Mae American Dream Fund grant and authorize City staff to negotiate and finalize the grant if awarded.

**Approved By:** City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, August 28, 2006**

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TITLE: Approval of Semi Annual Investment Report  
DEPARTMENT: Administration-Finance Division  
PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings Investment Policy states the Finance Division shall submit semi-annually, an investment report describing the portfolio in terms of type, interest rate, and maturity date. In addition, the investment policy requires the funds average maturity may not exceed 397 days. On June 30, 2006 the City had the following amounts invested:

Repurchase Agreements	\$ 5,397,946.86
Montana State Short Term Investment Pool	\$ 16,886,358.34
U.S. government and U.S. agency obligations	\$ 65,991,000.00
Certificates of deposit	\$ 7,000,000.00
US Bank Municipal Investor	\$ 5,134,905.66
 Total Investments	 \$ 100,410,210.86

Funds Average Days to Maturity 182 Days

Effective Rate of Return (1/30/06 to 6/30/06) 4.43%

**RECOMMENDATION**

Staff recommends that Council approve the Semi-Annual Investment Report.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENT**

A – Investment Detail

Issuer	Par Value	YTM 365 Equiv.	Maturity Date
Federal Farm Credit Bank	500,000.00	4.35	10/19/2006
Federal Farm Credit Bank	510,000.00	2.35	03/26/2007
Federal Farm Credit Bank	325,000.00	5.121	07/14/2008
Federal Home Loan Bank	250,000.00	4.232	07/07/2006
Federal Home Loan Bank	5,000,000.00	4.05	07/07/2006
Federal Home Loan Bank	3,000,000.00	3.181	07/11/2006
Federal Home Loan Bank	300,000.00	4.007	07/19/2006
Federal Home Loan Bank	500,000.00	4	08/10/2006
Federal Home Loan Bank	300,000.00	4.125	08/11/2006
Federal Home Loan Bank	3,000,000.00	3.564	08/17/2006
Federal Home Loan Bank	2,000,000.00	3.423	08/25/2006
Federal Home Loan Bank	3,000,000.00	3.567	09/08/2006
Federal Home Loan Bank	1,000,000.00	4.614	09/15/2006
Federal Home Loan Bank	1,000,000.00	4	09/15/2006
Federal Home Loan Bank	500,000.00	2.165	09/29/2006
Federal Home Loan Bank	500,000.00	4.95	09/29/2006
Federal Home Loan Bank	500,000.00	4.96	09/29/2006
Federal Home Loan Bank	500,000.00	4.95	09/29/2006
Federal Home Loan Bank	500,000.00	4.938	09/29/2006
Federal Home Loan Bank	1,000,000.00	3.92	10/12/2006
Federal Home Loan Bank	1,000,000.00	3.985	10/12/2006
Federal Home Loan Bank	500,000.00	2.25	10/13/2006
Federal Home Loan Bank	1,000,000.00	5.125	11/17/2006
Federal Home Loan Bank	500,000.00	4.311	11/24/2006
Federal Home Loan Bank	535,000.00	3.937	12/15/2006
Federal Home Loan Bank	500,000.00	4.627	12/15/2006
Federal Home Loan Bank	1,000,000.00	4.65	01/17/2007
Federal Home Loan Bank	1,000,000.00	5.11	02/09/2007
Federal Home Loan Bank	300,000.00	4.253	02/16/2007
Federal Home Loan Bank	2,500,000.00	2.551	02/28/2007
Federal Home Loan Bank	300,000.00	4.515	04/16/2007
Federal Home Loan Bank	300,000.00	5.267	04/23/2007
Federal Home Loan Bank	1,000,000.00	3.356	06/13/2007
Federal Home Loan Bank	1,000,000.00	2.25	06/26/2007
Federal Home Loan Bank	2,000,000.00	4.757	06/29/2007
Federal Home Loan Bank	500,000.00	4.953	07/16/2007
Federal Home Loan Bank	1,190,000.00	5.02	09/14/2007
Federal Home Loan Bank	1,000,000.00	5.178	10/05/2007
Federal Home Loan Bank	800,000.00	4.804	10/26/2007
Federal Home Loan Bank	500,000.00	5.32	11/23/2007
Federal Home Loan Bank	855,000.00	5	12/28/2007
Federal Home Loan Bank	145,000.00	5	12/28/2007
Federal Home Loan Bank	1,000,000.00	4.875	01/30/2008
Federal Home Loan Bank	1,500,000.00	5.1	02/28/2008
Federal Home Loan Mtg Corp	519,000.00	4.072	07/25/2006
Federal Home Loan Mtg Corp	500,000.00	5.002	10/15/2006
Federal Home Loan Mtg Corp	2,000,000.00	2.1	12/19/2006
Federal Home Loan Mtg Corp	3,000,000.00	5.177	04/24/2007
Federal Home Loan Mtg Corp	2,000,000.00	4.782	10/05/2007
Federal National Mtg Assn	2,500,000.00	2.41	11/28/2006
Federal National Mtg Assn	1,000,000.00	4.868	12/21/2006
Federal National Mtg Assn	2,012,000.00	4.602	05/23/2007
Federal National Mtg Assn	2,500,000.00	5.401	08/10/2007
Federal National Mtg Assn	2,000,000.00	5.2	09/28/2007
Federal National Mtg Assn	500,000.00	5.5	11/23/2007
Federal National Mtg Assn	500,000.00	5.5	11/23/2007
Federal National Mtg Assn	500,000.00	5.5	11/23/2007
Federal National Mtg Assn	300,000.00	5.549	05/30/2008
Federal National Mtg Assn	500,000.00	5.5	06/26/2008
U.S. Treasury	10,000.00	6.497	10/15/2006
U.S. Treasury	5,000.00	6.247	02/15/2007
U.S. Treasury	10,000.00	6.122	08/15/2007
U.S. Treasury	10,000.00	5.498	02/15/2008
U.S. Treasury	10,000.00	5.998	08/15/2009
U.S. Treasury	5,000.00	6.498	02/15/2010
<b>Total</b>	<b>65,991,000.00</b>		
MT Short Term Investment	<b>16,886,358.34</b>		
Sterling Savings-CD	1,000,000.00	5.12	10/20/2006
Sterling Savings-CD	1,000,000.00	5.728	12/22/2007
Wells Fargo Bank-CD	4,000,000.00	4.481	02/25/2007
US Bank-CD	1,000,000.00	4.917	12/13/2006
<b>Total</b>	<b>7,000,000.00</b>		
US Bank Repurchase	<b>5,397,946.86</b>		
US Bank-MIA account	<b>5,134,905.66</b>	4.95	

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## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, August 28, 2006

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**TITLE:** Donation from Billings Hardware for 32 ornamental trees for Centennial, Harvest and Olympic Parks.

**DEPARTMENT:** Park, Recreation, and Public Lands

**PRESENTED BY:** Gene Blackwell, Interim Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** The City of Billings Park, Recreation, and Public Lands has received a donation from Billings Hardware of 32 ornamental trees. These trees have been planted to establish and/or replace trees in Centennial, Harvest and Olympic Parks in accordance with their park master plans. An Eagle Scout candidate, Robert Knutson of Scout Troop 394, organized a volunteer group and planted the trees as a service project for his community. The value of the trees is \$1024.00 (see attachment A).

**ALTERNATIVES ANALYZED:**

- The trees are needed in the parks to provide shade and aesthetic beauty. The addition of these trees conforms to each parks master plan.
- Decline the donation.

**FINANCIAL IMPACT:** There will be no financial impact to the City. The trees were donated and the installation was done as a service project.

**RECOMMENDATION**

Staff recommends that Council graciously accept this generous donation of trees from Billings Hardware and the service project organized by Robert Knutson and publicly acknowledge these gifts to the community by directing staff to send an acknowledgement and thank you letter to Billings Hardware and a Certificate of Appreciation to Robert Knutson.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_\_

**ATTACHMENTS:**

- A.** Donation Receipt
- B.** Acknowledgement and Thank You Letter
- C.** Certificate of Appreciation

**Attachment A**

585350

CUSTOMER'S ORDER NO. DONATION		DATE 7-21-06				
NAME Billings Hardware						
ADDRESS 3175 Grand Ave						
CITY, STATE, ZIP Billings, MT 59102						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD.	PAID OUT
QUAN.	DESCRIPTION		AMOUNT			
1	18	Cleveland Flower Pear	32	-		
2	14	SPR Snow Crab	32	-		
3						
4						
5						
6	32	@ \$32. <u>Donated</u>				
7						
8		TOTAL Donation	1024	-		
9						
10						
11		Thank you				
12		TJ & Bob				
RECEIVED BY						

KEEP THIS SLIP FOR REFERENCE

3705

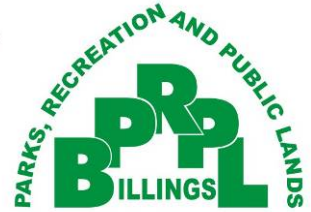


**Attachment B**



**CITY OF BILLINGS**

DEPARTMENT OF PARKS, RECREATION & PUBLIC LANDS  
390 N 23RD STREET  
BILLINGS, MONTANA 59101  
Mark L. Jarvis, Park Planner  
(406) 657-8367  
FAX: (406) 247-8641  
[jarvism@ci.billings.mt.us](mailto:jarvism@ci.billings.mt.us)



August 28, 2006

Billings Hardware  
3175 Grand Ave.  
Billings, MT 59102

Dear T.J:

On behalf of the City of Billings Parks, Recreation and Public Lands Department we would like to express our deep appreciation for your most generous gift of 32 ornamental trees. They are gratefully accepted and have been planted by Robert Knudson of Scout Troop 394 as his Eagle Scout service project in Centennial, Harvest and Olympic Parks. They will be a welcome addition to these parks for their shade, flowers and ornamental value.

Again, thank you for your donation.

Sincerely,

Mark L. Jarvis, ASLA

**Attachment C**



City of Billings  
Parks, Recreation and Public Lands Department

## CERTIFICATE OF APPRECIATION

*This certificate is awarded to*

**Robert Knutson**

in recognition of valuable contributions to the City of Billings for:

Planting 32 trees at Centennial, Harvest and Olympic Parks as a service project to fulfill his Boy Scout Eagle badge requirements.

Gene Blackwell—Acting Director

Date

Mark Jarvis—Park Planner

Date



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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 28, 2006

TITLE: Donation of an Education Shelter in Swords Park  
DEPARTMENT: Aviation and Transit  
PRESENTED BY: Thomas H. Binford, A.A.E., Interim Director of Aviation and Transit

**PROBLEM/ISSUE STATEMENT:** The Yellowstone Conservation District would like to install an open education shelter in Swords Park and donate it to the City. The shelter consists of a 10 foot by 12 foot concrete slab, with two 9 inch by 9 inch timber columns supporting a wooden roof structure and metal roofing. This would be installed on Airport property near the new Cat's Eye Trailhead (eastern end) in Swords Park. Similar structures have also been erected at the bike path trailhead near the Metra. In accordance with Administrative Order No 102, donations to the City greater than \$500.00 must be accepted by the City Council at a regularly scheduled meeting.

**FINANCIAL IMPACT:** The estimated value of this shelter is \$40,785 and will be donated to the City when completed.

### RECOMMENDATION

Staff recommends that City Council approve the acceptance of the donation of this education shelter from the Yellowstone Conservation District.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 28, 2006

TITLE: YMCA 2006 Montana Marathon Street Closure Request  
DEPARTMENT: Parks, Recreation and Public Lands  
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

**PROBLEM/ISSUE STATEMENT:** Jennifer Anderson, of the YMCA, along with several event sponsors, requests partial street closures for their 8th Annual Montana Marathon event on Sunday, September 17, 2006, from 6:30 am to 2:30 pm. The route begins on Molt Road and disbands at Daylis Stadium. (Course attached) Volunteers will secure the course and provide crossing guards. Ms. Anderson will coordinate with County and State Departments for Molt Road usage.

Recommended conditions of approval include YMCA:

1. Contact all businesses and making them aware of the event as soon as possible
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event
4. Provide certificate of insurance with required liability amounts naming the City of Billings as additional insured
5. Provide and install adequate traffic barricades and signs directing motorists around closure

#### **ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** There are no costs to the City of Billings other than administrative time to process permit. Traffic control and litter removal are to be paid for by the event sponsors.

#### **RECOMMENDATION**

Staff recommends that Council approve the closures named above for the 8<sup>th</sup> Annual Montana Marathon.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENTS**

- A. Brochure outlining event (1 page)
- B. Right of Way Permit Application (2 pages)
- C. Course map and directions (2 pages)
- D. Certificate of insurance (2 pages)

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 28, 2006

TITLE: Billings Central High School's Homecoming Parade Street Closure  
DEPARTMENT: Parks, Recreation and Public Lands  
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

**PROBLEM/ISSUE STATEMENT:** Billings Central High School requests permission to hold its annual Homecoming parade on Friday, September 29, 2006, from 1:00 pm to 3:30 pm (including set up and disbanding time). The parade will be assembling at the school (Wyoming Ave) at 1:00 pm and departing at 2:45 pm. It will travel from Wyoming Avenue to Division Street, then proceed westward on Broadwater to 5<sup>th</sup> Street West and head north on 5<sup>th</sup> Street West through Grand Avenue, and disband at the parking entrance behind Senior High School.

Recommended conditions of approval include Billings Central High School:

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

#### **ALTERNATIVES ANALYZED:**

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

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

#### **RECOMMENDATION**

Staff recommends that Council approve the closure named above on September 29, 2006, for Billings Central High School's Homecoming Parade.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENTS**

- A. Letter outlining event (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (2 pages)

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 28, 2006**

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**TITLE:** Acknowledge Receipt of Petition to Vacate Portions of 9<sup>th</sup> Ave. N., 8<sup>th</sup> Ave. N., and the Alley between 7<sup>th</sup> Ave. N. and 8<sup>th</sup> Ave. N. and Set a Public Hearing Date

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Billings Clinic has petitioned to vacate 9<sup>th</sup> Ave. N. between N. 28<sup>th</sup> Street and N. 29<sup>th</sup> Street, 8<sup>th</sup> Ave. N. between N. 28<sup>th</sup> Street and N. 29<sup>th</sup> Street, and the alley between 7<sup>th</sup> Ave. N. and 8<sup>th</sup> Ave. N. Billings Clinic owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. Currently, there are water, sanitary sewer, and storm drain lines running through the proposed vacated area of 9<sup>th</sup> Avenue North. Billings Clinic will enter into an easement agreement that will allow full access to these lines and will require Billings Clinic to relocate all of the lines if they ever propose to construct a structure over the lines.

**ALTERNATIVES ANALYZED:**

1. Acknowledge receipt of petition to vacate the above-mentioned right-of-way and set a public hearing for September 25, 2006.
2. Do not acknowledge receipt of petition to vacate the above-mentioned right-of-way.

**FINANCIAL IMPACT:** Billings Clinic is willing to accept the same value established by an appraisal completed for N. 28<sup>th</sup> Street between 11<sup>th</sup> Ave. N. and 12<sup>th</sup> Ave. N. The appraisal established the value of the right-of-way at \$20.50 per square foot and \$10.25 per square foot for any area encumbered by a utility easement. The total value of the proposed vacated property (34,500 square feet unencumbered and 18,000 square feet encumbered with a public utility easement) to be paid to the city from Billings Clinic is \$891,250.00.

**RECOMMENDATION**

Staff recommends that Council acknowledge the receipt of petition to vacate portions of 9<sup>th</sup> Ave. N., 8<sup>th</sup> Ave. N., and the alley between 7<sup>th</sup> Ave. N. and 8<sup>th</sup> Ave. N. and set a public hearing date for September 25, 2006.



**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENT**

A.    Map Depicting Area to be Vacated

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, August 28, 2006

**TITLE:** Acknowledge Receipt of Petition and Set a Public Hearing for the Proposed Street Name Change of Broadview Drive to Twin Oaks Drive

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** At the request of the property owners, the City of Billings is proposing to change the name of Broadview Drive to Twin Oaks Drive, located within Uinta Park Subdivision. The property owners would like the name of the street to match the proposed future Twin Oaks Drive to the north. As shown in Attachment A, the property owners feel it would be more practical to name that portion of Broadview Drive north of Uinta Park Drive (the proposed Twin Oaks Drive) to something different than Broadview Drive to limit confusion, as the main portion of Broadview Drive is not in the general vicinity of that portion of Broadview Drive. No address changes will be required as a result of this request.

**ALTERNATIVES ANALYZED**

- Acknowledge Receipt of Petition and set a public hearing for September 25, 2006.
- Do not acknowledge Receipt of Petition.

**FINANCIAL IMPACT:** There will be one new street name sign to be made. The new street name sign will be made and installed by the Street and Traffic Division for a total estimated cost of \$100.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge the Receipt of Petition to change the street name of Broadview Drive to Twin Oaks Drive and set a public hearing for September 25, 2006.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A. Map (one page)
- B. Formal Request From Owner (one page)

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H

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, August 28, 2006**

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**TITLE:** Bill & Melinda Gates Foundation PAC-HUG Grant

**DEPARTMENT:** Parmly Billings Library

**PRESENTED BY:** Bill Cochran, Library Director

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**PROBLEM/ISSUE STATEMENT:**

Council approval required for acceptance of Gates Foundation Grant

**FINANCIAL IMPACT:**

The Library is eligible to receive \$5,725 from the Gates Foundation for the replacement or addition of publicly accessible computer workstations.

**RECOMMENDATION**

Staff recommends that Council approve the grant from the Bill and Melinda Gates Foundation for public computer workstations.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENTS**

Attachment A: Montana State Library Gates Grant Information Packet

## **INTRODUCTION**

Parmly Billings Library has been informed by the Montana State Library of its eligibility for \$5,725 from the Bill and Melinda Gates Foundation for public computing.

## **PROCEDURAL HISTORY**

- Notification of eligibility by Montana State Library.
- Approval of grant acceptance by Parmly Billings Library Board on August 10, 2006.
- Approval of grant acceptance by Billings City Council.
- Monies to be disbursed by Montana State Library
- Monies to be expended by December 31, 2008.

## **BACKGROUND**

In 2000, the Bill and Melinda Gates Foundation provided computers to public libraries throughout Montana for public access computing. Parmly Billings Library received four computer workstations and a server through this grant. The current grant is intended to replace existing workstations or add additional capability for public access internet stations.

## **ALTERNATIVES ANALYSIS**

The Gates Foundation grant can be accepted, in which case the Library receives \$5,725 for computer workstations for public internet access. This funding can be used to replace aging equipment already in place for public access or be used to expand the amount of workstations available to the public.

The Gates Foundation grant may be rejected, and the Library will use existing funds in the Technology Replacement Plan to replace existing stations. Any additional workstations would come from existing funds and supplemental requests to the TRP.

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

The funding is not required to be expended until December 31, 2008, allowing enough time for the workstation replacement or augmentations to be incorporated into the Technology Replacement Plan.

## **RECOMMENDATION**

Staff recommends that Council approve the grant from the Bill and Melinda Gates Foundation for public computer workstations.

## **ATTACHMENTS**

Attachment A: Montana State Library Gates Grant Information Packet

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**TITLE:** Second Reading of an Ordinance Expanding Ward II  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On July 24, 2006, the City Council approved Annexation #06-10, annexation of an approximate 288 acre parcel legally described as unplatted portions of the N1/2, Section 20, T1N, R26E and Certificate of Survey 1904. The request for annexation was submitted by the Montana Department of Natural Resources and Conservation and the representing agent is Engineering, Inc. Upon annexation, the property must be added to one (1) of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward II was conducted on August 14, 2006. The second reading of the ordinance will be conducted on August 28, 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 second reading of this ordinance that adds property to City Ward II.

**Approved by:**            **City Administrator** \_\_\_\_\_            **City Attorney** \_\_\_\_\_

**ATTACHMENT**

A: Ward Ordinance and Exhibit A

**ATTACHMENT A**

**ORDINANCE NO. 06-\_\_\_\_\_**

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

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

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

A tract of land situated in the NW 1/2 of Section 20, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 1904, under Document No. 1132787; and the remainder of the N1/2 of Section 20, T.1N., R.26E., P.M.M., Yellowstone County, Montana, less those territories previously annexed, as recorded under Document Numbers 1360107 and 1360108, Records of Yellowstone County, Montana.

. Containing 288 acres, more or less.

(# 06-10) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 14<sup>th</sup> day of August, 2006.

PASSED by the City Council on the second reading this 28<sup>th</sup> day of August, 2006.

THE CITY OF BILLINGS:

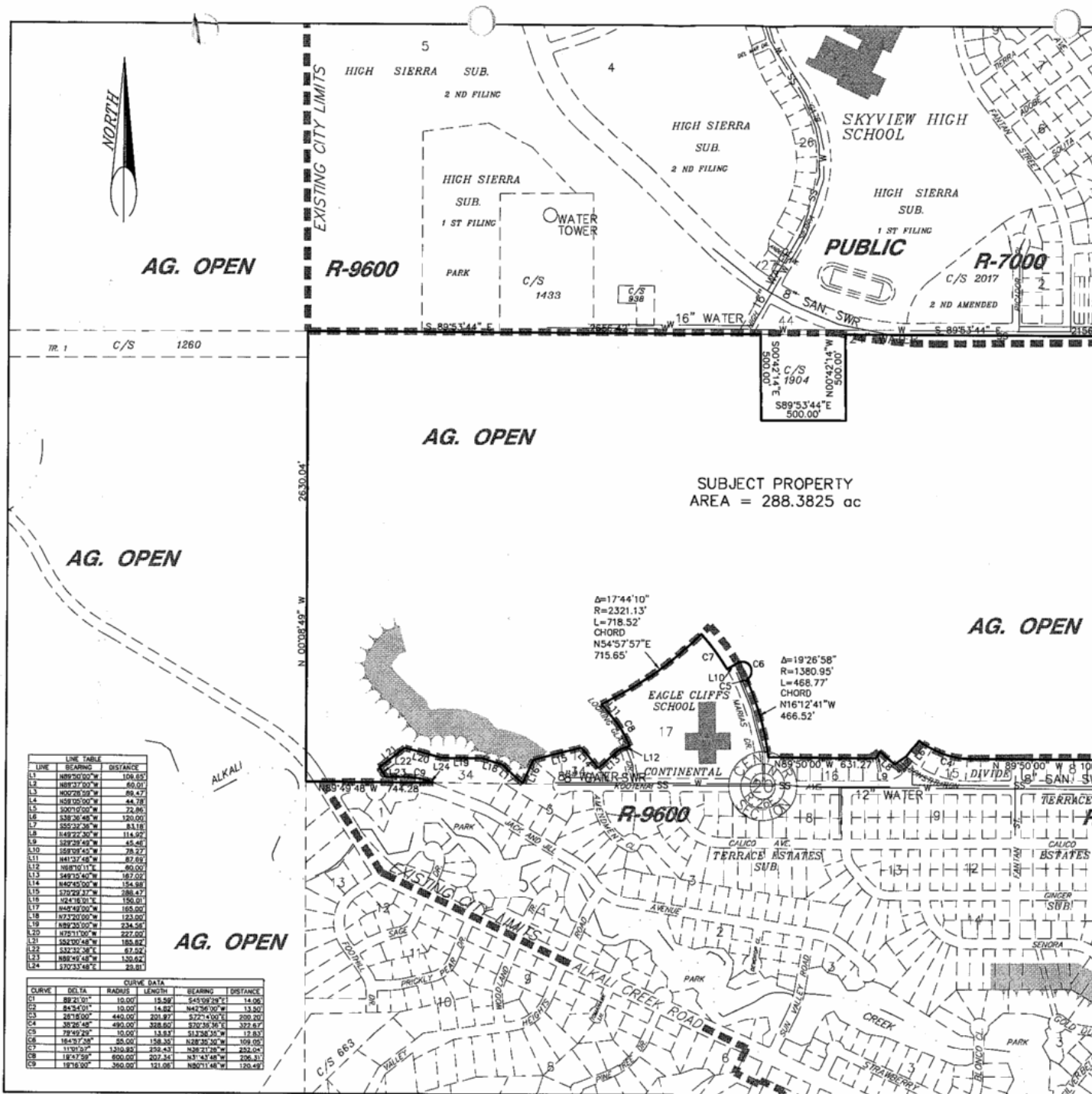
\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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



# EXHIBIT A



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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**TITLE:** Zone Change #784, 2<sup>nd</sup> Reading of Ordinance  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**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. On July 24, 2006, the City Council opened the public hearing for the proposed zone change and continued the public hearing to the August 14, 2006, meeting to allow planning staff time to evaluate a petition submitted by the surrounding property owners to determine if it is a valid protest. The City Council conducted the public hearing and approved the first reading of this zone change on August 14, 2006.

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

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

**FINANCIAL IMPACT:** The proposed zone change will have a minimal effect on the City's tax base when the property is re-developed.

**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:     Ordinance

**ATTACHMENT A**  
**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 August 14, 2006.

PASSED, ADOPTED AND APPROVED on second reading August 28, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk  
ZC#784

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# K1

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, August 28, 2006**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$4,137,644.70 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 28, 2006, is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

### **ATTACHMENT:**

A -- List of claims greater than \$2500

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**SUBJECT:** Payment of Claims  
**DEPARTMENT:** Municipal Court  
**PRESENTED BY:** Nikki R. Schaubel, Municipal Court Administrator

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$80,026.97 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 1, 2006 to July 31, 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 07/01/2006 – 07/31/2006

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, AUGUST 28, 2006**

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**SUBJECT:** Approval of Resolution Approving and Adopting Budget Amendment for Fiscal Year 2005/2006

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Budget adjustments are requested for Fiscal Year 2005/2006. The Parks Acquisition and Development Fund requires budget adjustments for: the spray ground construction at Castle Rock Park and the Cobb Field Stadium Design and Feasibility Study Consultant Contract – Amendment No. 1. Council approved the bid award for the construction on February 27, 2006 and the amendment on January 23, 2006.

**RECOMMENDATION**

Staff recommends that the City Council approve the resolution approving and adopting the budget amendment for Fiscal Year 2005/2006 per attached.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2005/2006 Adjustment Appropriation (with Exhibit A)

RESOLUTION 06-

A RESOLUTION TO MAKE **FISCAL YEAR 2006** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a Budget Review (**FY 2005/2006**), it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 28th day of August, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMCCITY CLERK



### ***BUDGET ADJUSTMENTS***

	<b><u>Revenue</u></b>	<b><u>Expenditure</u></b>
769-5182-452     3560		\$20,000.00 Consultant services
769-5182-452     9370		\$4500.00 Recreation facilities

The Parks Acquisition Fund's contract with HNTB Montana Inc. for consulting services related to Cobb Field was amended to include an additional \$20,000 to increase the scope of work to elicit feedback regarding citizens' willingness to support a new ballpark. Council authorized the additional payment to be paid from fund 769.

On February 27, 2006, Council also designated to fund the portion of the AME Inc. contract, which was in excess of the engineers' estimate, from Fund 769.

The additional expenditures are to be paid from cash reserves.

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, August 28, 2006**


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**TITLE:** Zone Change #787 Public Hearing and 1<sup>st</sup> Reading of Ordinance –Text Amendment to Section 27-1404 through 1406 and Section 27-1431 through 1433 BMCC

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** The Shiloh Corridor Overlay District (SCOD) requires that after one (1) year of the effective date of this article, and periodically afterward, these regulation shall be reviewed for their effectiveness and the practicality of implementation and enforcement, Sec. 27-1452 BMCC Reexamination of regulations. The Planning Division has received comments from local professional Landscape Architects and Architects with concerns about the planting requirements for the SCOD. The existing planting requirements for trees on the north end of the district were too heavy to have healthy tree growth, would create problems with visibility and require tree removal in the future to allow the remaining trees to grow in a healthier manner. The result is the proposed new wording in the SCOD with additional clarification on planting to encourage massing of trees and shrubs for better growth and appearance. The Zoning Commission held a public hearing on the amendment to the zoning regulation on August 1, 2006, and voted 5-0 to recommend approval to the City Council.

**ALTERNATIVES ANALYZED:** The City Zoning Commission held a public hearing on the proposed text amendment on August 1, 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 5-0 vote recommends that the City Council approve Zone Change #787.

**Approved by:** \_\_\_\_\_ **City Administrator** \_\_\_\_\_ **City Attorney**

**ATTACHMENTS:**

A: Ordinance

**INTRODUCTION**

The current SCOD was adopted on December 13, 2004. To comply with the requirement for annual review, the Planning Division submitted this amendment to the Shiloh Corridor Overlay District standards, Sections 27-1404 through 1406 and Sections 27-1431 through 1433 (BMCC) in May 2006. The Planning Division took the recommendations provided by local professionals to amend the number of required trees to be planted and to add language to clarify the way trees and shrubs may be planted along the street frontage. There is also a proposed change to the ordinance to help clarify who is required to meet the SCOD planting requirements. The original document required that developers plant eight (8) canopy or evergreen trees for every 100 lineal feet of street frontage along Shiloh Road; it is proposed that there should be five (5) trees planted for every 100 lineal feet of street frontage. Two (2) ornamental trees for one (1) canopy or evergreen tree may be substituted along that 100 lineal foot frontage. It is also proposed that the developer may, within a 200 lineal foot length of frontage, mass the required trees and shrubs to create variety. Also the developer may put up to 30% of the required plantings within the right-of-way. With these new regulations there will be more variety and healthier plant growth while at the same time creating an aesthetically pleasing streetscape. The Planning Division notified all property owners within the SCOD and conducted a public meeting on Monday June 19, 2006 to inform property owners of the proposed changes and clarifications to the overlay district. Property owners and those 300 feet around the SCOD were also notified of the public hearing held by the Zoning Commission on Tuesday August 1, 2006.

**PROCEDURAL HISTORY**

- In May 2006, the Planning Division began the process to amend the Shiloh Corridor Overlay District Sections 27-1404 through 1406 and Sections 27-1431 through 1433 BMCC.
- On June 19, 2006 staff held a public meeting with property owners along the Shiloh Corridor Overlay District.
- On August 1, 2006, the City Zoning Commission conducted the public hearing for the change to the Shiloh Corridor Overlay District regulations. The Commission voted 5-0 to forward a recommendation of approval to the City Council.
- The City Council will hold a public hearing and 1<sup>st</sup> reading of the ordinance on Monday August 28, 2006, and act on the changes to the Shiloh Corridor Overlay District regulations.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on September 11, 2006.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, or delay the adoption of the changes to the Shiloh Corridor Overlay District regulations. Planning Staff has reviewed and worked with local professionals in the field of Landscape Architecture and Architecture with concerns about the planting requirements along the Shiloh Corridor Overlay District. The Planning staff was careful to draft an amendment that would allow for more diversity with the planting, promote healthier plant growth while creating an aesthetically pleasing driving corridor along Shiloh Road.

### **STAKEHOLDERS**

The Zoning Commission held a public hearing on August 1, 2006, on the proposed changes to the Shiloh Corridor Overlay District regulations. There were no comments from the public at the meeting. Staff had held a public meeting on June 19, 2006 where it was presented to community members. The following concerns were received from William Cole via email: It was felt that in paragraph 1406(b)1a that the phrase "from up to a 200 lineal foot length" is ambiguous, also 1406(b)1b '30 percent planting may be in right-of-way' was not clear can it be less than or not more than, and '2 of the trees' from 1406(b)8 is ambiguous.

### **RECOMMENDATION**

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #787.

### **ATTACHMENTS:**

A: Ordinance

**ATTACHMENT A  
ORDINANCE NO. 06-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-1404 THROUGH 1406 AND SECTION 27-1431 THROUGH 1433 BMCC, 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. Pursuant to sections 27-1425 and 27-1452, BMCC the Planning division reexamined the Shiloh Corridor Overlay District regulations and forwarded recommended amendments to the City Zoning Commission. 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 the Shiloh Corridor Overlay District which is five hundred feet in both directions from center line of Shiloh Road: from the intersection of Shiloh Road and Rimrock Road, to the dead end of Shiloh Road at the railroad right-of-way and from the intersection of Shiloh Road and Zoo Drive to Interstate 90, Section 27-1404 through 1406 and Section 27-1431 through 1433 in the Billings, Montana City Code.*

**Section 3.**    *That the Billings, Montana City Code be amended by revising Section 27-1404 through 1406 and Section 27-1431 through 1433 to delete certain language and add new language to read as follows:*

**PROPOSED AMENDMENTS TO SHILOH CORRIDOR OVERLAY DISTRICT  
STANDARDS**

**SEC. 27-1404. APPLICATION AND APPROVAL PROCESS.**

(a)    *Approval required.* . This chapter applies only to properties within the City of Billings. Any new development or remodel requires a building permit from the city Building Division. Planning Division approval is also required prior to construction. Planning Division approval is to ensure compliance with the zoning regulations. This does not in anyway imply approval by any other city department.

(b)    *Content of application.* Each application for development located in the Shiloh Corridor overlay district shall include the following:

- (1)    The name and address of the property owner and applicant, if different;

- (2) The legal and general description of the tracts or lots upon which review is sought;
- (3) A statement of proposed use;
- (4) A complete site development plan drawn to scale of no less than one (1) inch = forty (40) feet indicating:
  - a. Plans for landscape development, including irrigation, drainage, grading, and planting detail showing species, size and spacing of trees and shrubs and percent of living and non-living material;
  - b. Dimension and location of all existing and proposed buildings, recreation areas, utility and service areas, trash storage area, fire hydrants, access drives, full width of street and adjacent drives, parking areas, existing utility lines, and easements;
  - c. Dimension, location and description of all other existing and proposed site improvements including fences, walls, walkways, patios, decks, and barriers;
  - d. A clear delineation of all areas to be paved or surfaced, including a description of surfacing materials to be used;
  - e. Location and description of all off-site improvements and right-of-way dedication; and
  - f. Location and type of lighting, including a scaled or dimensioned elevation of each type of lighting fixture, and the maximum illumination measured in foot-candles at the property line.
  - g. Information describing how sound suppression will be accomplished when property is adjacent to residential use.
    - (1) Building plans drawn to a scale of no less than one-sixteenth (1/16) inch = one (1) foot for all structures, including architectural plans for proposed buildings complete with exterior finishes and including floor plans and elevations.
    - (2) A signage plan describing specifications and location of all signage. A separate application and approval shall be required for all signs;
    - (3) A timetable for the proposed construction project; and
    - (4) A complete form showing compliance with the relative criteria and points assigned (see section 27-1424);
    - (5) Any other information pertinent to the particular project which, in the opinion of the zoning coordinator, is determined to be necessary for the review of the project.

Within fifteen (15) working days following the submittal of a complete application, the zoning coordinator or his/her designee shall approve or deny the application, unless the applicant consents in writing to an extension of the review period. In the event that review exceeds fifteen (15) days, the applicant may seek immediate approval from the planning director. If an application is determined to be incomplete, the applicant shall be notified within five (5) days of the submittal. Should the application be denied, the applicant shall be notified in writing specifying all areas of noncompliance with this section.

(Ord. No. 04-5310, § 1, 12-13-04)

#### **SEC. 27-1405. DEFINITIONS.**

Terms not specifically defined in this chapter shall have the same meanings as defined in section 27-201. The standard dictionary meaning shall be applied to terms not otherwise defined.

(Ord. No. 04-5310, § 1, 12-13-04)

#### **SEC. 27-1406. ABSOLUTE CRITERIA.**

(a) *Development standards.*

- (1) *Shiloh road frontage setbacks.* The minimum frontage setback from the property line along Shiloh Road for all developments excluding residential single family or duplex shall be twenty (20) feet. The clear vision triangle will be maintained as required in section 27-615. Side and rear building setbacks shall be the same as the underlying zoning district. All arterial setbacks as outlined in section 27-602 must also be maintained.
- (2) *Other regulations.* All other city and county codes shall apply, including but not limited to the following: building, zoning, site development, parking and drainage regulations that are not directly addressed in this chapter. Where requirements are addressed in both this section and other codes, those in this section apply.
- (3) *Sidewalks.* All sidewalks along internal platted streets shall be boulevard walks. The boulevard shall be at least five (5) feet wide and landscaped. The landscaping shall contain ground cover such as sod, shrubs, flower beds or living plant material. River rock, bark chips, flagstones or similar non-living material may be used as mulch or decorative landscape features to supplement the living plant material. No more than twenty-five (25) percent of the landscaped area shall contain non-living material. There shall be at least one (1) canopy tree per every forty (40) linear feet.

(b) *Landscaping standards.*

- (1) *Shiloh Road frontage setback landscaping required.* All developments are required to landscape the frontage setback adjacent to and along the length of Shiloh Road, excluding driveways. Frontage setbacks shall be landscaped with a minimum

of ~~eight (8)~~ five (5) canopy or evergreen trees and fifteen (15) shrubs per one hundred (100) feet of frontage.

a Developer is encouraged to mass trees to create interest along the frontage. Two (2) ornamental trees may be substituted for one (1) canopy or evergreen tree. Trees and shrubs from up to a 200 lineal foot length may be massed together to create one or more large tree and shrub planting area(s) somewhere within the 200 foot length. Developer is encouraged to mass ornamental trees and shrub beds at intersections with Shiloh Road and other right-of-way frontage roads and at internal street intersections while still maintaining clear vision triangle height restrictions, pursuant to section 27-618.

b. Up to thirty (30) percent of the required landscaping may be located in the boulevard of the public right-of-way.

(2) *Right-of-way frontage other than Shiloh Road landscaping required.* All developments are required to landscape the frontage setback adjacent to and along the length of all rights-of-way other than Shiloh Road, excluding driveways. Right-of-way frontage setbacks shall be landscaped with a minimum of ~~four (4)~~ three (3) canopy or evergreen trees and eight (8) shrubs per one hundred (100) feet of frontage. See (1) a. above

a. Up to thirty (30) percent of the required landscaping may be located in the boulevard of the public right of way.

(3) *Off-street parking lot landscaping.*

a. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space.

b. ~~Two (2)~~ One (1) canopy and/or evergreen trees and (5) shrubs shall be required for every eight (8) parking spaces. Developer is encouraged to mass trees to create interest inside parking lot. Two (2) ornamental trees may be substituted for one (1) canopy or evergreen tree. Developer is encouraged to create several large shrub areas throughout the parking lot and to use parking lot islands with trees and shrubs to direct traffic through parking lot.

c. The shortest dimension of any parking lot landscaped area shall not be less than five (5) feet.

d. Internal parking lot landscaping shall be proportionately dispersed, at the developer's discretion, in order to define aisles and limit unbroken rows of parking. The maximum unbroken distance in any direction shall be limited to one



hundred (100) feet. See section 27-1106 for additional requirements.

- (4) *Commercial uses abutting residential and public uses.* All commercial or industrial uses shall be separated from abutting, including across an alley, residential single family, duplex and public uses by a fifteen (15) foot wide bufferyard. The bufferyard shall be landscaped with a minimum of ~~six (6)~~ five (5) canopy or evergreen trees and twelve (12) shrubs per one hundred (100) linear feet. See (1) a. above. If the adjacent land use is a vacant building or ground, then the zoning shall be used in place of the land use.

A solid fence or wall that is architecturally similar in color and design shall be required on the property line. The fence shall be a minimum of six (6) feet high. Chain link or other wire fencing material is prohibited. All fences shall be maintained by the commercial property owner.

- (5) *Non-living material allowed.* River rock, bark chips, flagstones or similar material may be used as mulch or decorative landscape features to supplement the living plant material. Bufferyards may include boulevard sidewalks. No more than twenty-five (25) percent of the landscaped area shall contain non-living material.
- (6) *Landscape maintenance required.* All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter. Dead or dying material shall be replaced within one (1) year.
- (7) *Protection of landscaped areas.* Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt or other approved barriers.
- (8) *Automobile and recreation vehicle sales.* Automobile and recreation vehicle sales are required to install two (2) of the required trees and one and one half (1½) the required shrubs along street frontages or are exempt from the tree requirements as long as the required trees are replaced with shrubs and/or other landscape features, including but not limited to water features, landscape rock, public art, etc.
- (9) *Plant standards.*
  - a. *Canopy tree.* A species of tree that normally bears crown foliage no lower than six (6) feet above ground level upon maturity. Minimum size of canopy trees shall be at least two (2) inches in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.

- b. *Evergreen.* A tree or shrub of a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be five (5) feet in height at the time of installation.
- c. *Ornamental tree.* A species of tree that normally bears flowers in the spring time of the year or has other ornamental features such as unique leaves, bark, leaf color or fruit. Minimum size at installation shall be one and one half (1½) inch caliper. Caliper shall be defined by the American Nurseryman Standard Definition.
- d. *Shrubs.* The minimum size of a shrub shall be at least five (5) gallons.
- e. *Recommended tree types.* It is recommended that the developer work with the city parks department, county extension agent, a local greenhouse operator, landscape architect or other professional designer to determine the species of trees that are most suitable for each situation. The use of native, drought tolerant plant materials is strongly encouraged. Evergreen trees are discouraged for internal parking areas if they limit sight lines. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site. A list of recommended plant material shall be available at the planning department.
- f. *Fractions in the calculations of number of trees and shrubs.* In the calculation of trees and shrubs for bufferyards or parking landscaping, fractions of less than five-tenths (.5) shall be rounded down to the nearest whole number; fractions of more than five-tenths (.5) shall be rounded up to the nearest whole number.

#### **SEC. 27-1431. APPLICATION AND APPROVAL PROCESS.**

- (a) *Approval required.* . This chapter applies only to properties within the City of Billings. Any new development or remodel requires a building permit from the city Building Division. Planning Division approval is also required prior to construction. Planning Division approval is to ensure compliance with the zoning regulations. This does not in anyway imply approval by any other city department.
- (b) *Content of application.* Each application for development located in the South Shiloh corridor overlay district shall include the following:
  - (1) The name and address of the property owner and applicant, if different;

- (2) The legal and general description of the tracts or lots upon which review is sought;
- (3) A statement of proposed use;
- (4) A complete site development plan drawn to scale of no less than one (1) inch = forty (40) feet indicating:
  - a. Plans for landscape development, including irrigation, drainage, grading, and planting detail showing species, size and spacing of trees and shrubs and percent of living and non-living material;
  - b. Dimension and location of all existing and proposed buildings, recreation areas, utility and service areas, trash storage area, fire hydrants, access drives, full width of street and adjacent drives, parking areas, existing utility lines, and easements;
  - c. Dimension, location and description of all other existing and proposed site improvements including fences, walls, walkways, patios, decks, and barriers;
  - d. A clear delineation of all areas to be paved or surfaced, including a description of surfacing materials to be used;
  - e. Location and description of all off-site improvements and right-of-way dedication; and,
  - f. Location and type of lighting, including a scaled or dimensioned elevation of each type of lighting fixture, and the maximum illumination measured in foot-candles at the property line.
  - g. Information describing how sound suppression will be accomplished when property is adjacent to residential use.
- (5) Building plans drawn to a scale of no less than one-sixteenth inch ( 1/16) = one (1) foot. for all structures, including architectural plans for proposed buildings complete with exterior finishes and including floor plans and elevations.
- (6) A signage plan describing specifications and location of all signage. A separate application and approval shall be required for all signs;
- (7) A timetable for the proposed construction project; and
- (8) A complete form showing compliance with the relative criteria and points assigned (see section 27-1424);
- (9) Any other information pertinent to the particular project which, in the opinion of the zoning coordinator, is determined to be necessary for the review of the project.

(Ord. No. 05-5314, § 1, 1-24-05)

#### **SEC. 27-1432. DEFINITIONS.**

Terms not specifically defined in this chapter shall have the same meanings as defined in sections 27-201 and 27-1104. The standard dictionary meaning shall be applied to terms not otherwise defined.

(Ord. No. 05-5314, § 1, 1-24-05)

**SEC. 27-1433. ABSOLUTE CRITERIA.**

- (a) *Development standards.*
  - (1) *Shiloh Road and Zoo Drive frontage setbacks.* The minimum frontage setback from the property line along Shiloh Road and Zoo Drive for all developments excluding residential single family or duplex shall be twenty (20) feet. The clear vision triangle will be maintained as required in section 27-615. Side and rear building setbacks shall be the same as the underlying zoning district. All arterial setbacks as outlined in section 27-602 must also be maintained.
  - (2) *Other regulations.* All other city and county codes shall apply, including but not limited to the following: building, zoning, site development, parking and drainage regulations that are not directly addressed in this chapter. Where requirements are addressed in both this section and other codes, those in this section apply.
  - (3) *Sidewalks.* All sidewalks along internal platted streets shall be boulevard walks. The boulevard shall be at least five (5) feet wide and landscaped. The landscaping shall contain ground cover such as sod, shrubs, flower beds or living plant material. River rock, bark chips, flagstones or similar non-living material may be used as mulch or decorative landscape features to supplement the living plant material. No more than twenty-five (25) percent of the landscaped area shall contain non-living material. There shall be at least one (1) canopy tree per every forty (40) linear feet.
- (b) *Landscaping standards.*
  - (1) *Shiloh Road and Zoo Drive frontage setback landscaping required.* All developments are required to landscape the frontage setback adjacent to and along the length of Shiloh Road and Zoo Drive, excluding driveways. Frontage setbacks shall be landscaped with a minimum of five (5) canopy or evergreen trees and ten (10) shrubs per one hundred (100) feet of frontage. Trees may be massed within the frontage setback as long as the same densities are maintained.
    - a Developer is encouraged to mass trees to create interest along the frontage. Two (2) ornamental trees may be substituted for one (1) canopy or evergreen tree. Trees and shrubs from up to a 200 lineal foot length may be massed together to create one or more large tree and shrub planting area(s) somewhere within the 200 foot length. Developer is encouraged to mass ornamental trees and shrub beds at intersections with Shiloh Road, Zoo Drive and other right-of-way frontage roads and at internal street

intersections while still maintaining clear vision triangle height restrictions, pursuant to section 27-618.

- b. Up to thirty (30) percent of the required landscaping may be located in the boulevard of the public right-of-way.

(2) *Right-of-way frontage other than Shiloh Road and Zoo Drive landscaping required.* All developments are required to landscape the frontage setback adjacent to and along the length of all rights-of-way other than Shiloh Road, excluding driveways. Right-of-way frontage setbacks shall be landscaped with a minimum of four (4) canopy or evergreen trees and eight (8) shrubs per one hundred (100) feet of frontage. Massing of landscaping elements with the required number of landscaping is permitted to meet the intent of subsection (b)(1)a.

- a. Up to thirty (30) percent of the required landscaping may be located in the boulevard of the public right of way.

(3) *Off-street parking lot landscaping.*

- a. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space.
- b. ~~Two (2)~~ One (1) canopy and/or evergreen trees and five (5) shrubs shall be required for every nine (9) parking spaces. Developer is encouraged to mass trees to create interest inside parking lot. Two (2) ornamental trees may be substituted for one (1) canopy or evergreen tree. Developer is encouraged to create several large shrub areas throughout the parking lot and to use parking lot islands with trees and shrubs to direct traffic through parking lot.
- c. The shortest dimension of any parking lot landscaped area shall not be less than five (5) feet.
- d. Internal parking lot landscaping shall be proportionately dispersed, at the developer's discretion, in order to define aisles and limit unbroken rows of parking. The maximum unbroken distance in any direction shall be limited to one hundred fifty (150) feet. See section 27-1106 for additional requirements.
- e. Trees and shrubs may be massed.

(4) *Commercial uses abutting residential and public uses.* All commercial or industrial uses shall be separated from abutting, including across an alley, residential single family, duplex and public uses by a fifteen (15) foot wide bufferyard. The bufferyard shall be landscaped with a minimum of five (5) canopy or evergreen trees and ten (10) shrubs per one hundred (100) linear feet. If the adjacent land use is a vacant building or ground, then the zoning shall be used in place of the land use.

A solid fence or wall that is architecturally similar in color and design shall be required on the property line. The fence shall be a minimum of six (6) feet high. Chain link or other wire fencing material is prohibited. All fences shall be maintained by the commercial property owner.

- (5) *Non-living material allowed.* River rock, bark chips, flagstones or similar material may be used as mulch or decorative landscape features to supplement the living plant material. Bufferyards may include boulevard sidewalks. No more than twenty-five (25) percent of the landscaped area shall contain non-living material.
- (6) *Landscape maintenance required.* All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter. Dead or dying material shall be replaced within one (1) year.
- (7) *Protection of landscaped areas.* Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt or other approved barriers.
- (8) *Landscape exemptions.* Uses for automobile and recreation vehicle sales are required to install half (1/2) the required trees and one and one half (1½) the required shrubs along street frontages or are exempt from the tree requirements in the interior of their lots only as long as the required trees are replaced with shrubs and/or other landscape features, including but not limited to water features, landscape rock, public art, etc. If no landscaping is provided in the interior of lots, at least one (1) additional tree and two additional shrubs per five hundred (500) feet of frontage should be provided in perimeter landscape to offset the exemption. This landscaping may also be massed.
  - a Developer is encouraged to mass trees to create interest inside their lot. Two (2) ornamental trees may be substituted for one (1) canopy or evergreen tree. Developer is encouraged to create several large shrub areas throughout their lot and to use planting islands with trees and shrubs to direct traffic through their lot.
- (9) *Plant standards.*
  - a. *Canopy tree.* A species of tree that normally bears crown foliage no lower than six (6) feet above ground level upon maturity. Minimum size of canopy trees shall be at least two (2) inches in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.
  - b. *Evergreen.* A tree or shrub of a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be five (5) feet in height at the time of installation.
  - c. *Ornamental tree.* A species of tree that normally bears flowers in the spring time of the year or has other ornamental features such as unique leaves, bark, leaf color or fruit. Minimum size at installation shall be one and one

half (1½) inch caliper. Caliper shall be defined by the American Nurseryman Standard Definition.

- d. *Shrubs.* The minimum size of a shrub shall be at least five (5) gallons.
- e. *Recommended tree types.* It is recommended that the developer work with the city parks department, county extension agent, a local greenhouse operator, landscape architect or other professional designer to determine the species of trees that are most suitable for each situation. The use of native, drought tolerant plant materials is strongly encouraged. Evergreen trees are discouraged for internal parking areas if they limit sight lines. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site. A list of recommended plant material shall be available at the planning department.
- f. *Fractions in the calculations of number of trees and shrubs.* In the calculation of trees and shrubs for buffer yards or parking landscaping, fractions of less than five-tenths (.5) shall be rounded down to the nearest whole number; fractions five-tenths and more (.5) shall be rounded up to the nearest whole number.

**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 August 14, 2006.

PASSED, ADOPTED AND APPROVED on second reading September 11, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY:  
Marita Herold, CMC/AAE, City Clerk

ZC#787 – Amending Section 27-1404 through 1406 and Section 27-1431 through 1433 BMCC  
Shiloh Corridor Overlay District

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



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, August 28, 2006**


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**TITLE:** Zone Change #789 Public Hearing and 1<sup>st</sup> Reading of Ordinance

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential 9600 (R-9600) to Neighborhood Commercial (NC) on Lots 8 & 9, Block 2, Central Acres Subdivision, 2<sup>nd</sup> Filing. The subject property is located at 3525 Central Avenue. The owner is Betty Larsen and the agent is Jim Lucas. The Zoning Commission conducted a public hearing on August 1, 2006, and voted 5-0 to recommend approval to the City Council. 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 could potentially increase the City's tax base upon development of the property.

**RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council **approval** Zone Change #789 and adopt the determinations of the 12 criteria, as discussed within this report.

**Approved by:** \_\_\_\_\_ **City Administrator** \_\_\_\_\_ **City Attorney**

**ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance
- D: Letters of Opposition

## **INTRODUCTION**

The applicant is requesting a zone change from Residential 9600 (R-9600) to Neighborhood Commercial (NC) on Lots 8 & 9, Block 2, Central Acres Subdivision, 2<sup>nd</sup> Filing. The subject property is located at 3525 Central Avenue. The owner is Betty Larsen and the agent is Jim Lucas. The Zoning Commission conducted a public hearing on August 1, 2006, and voted 5-0 to recommend approval to the City Council. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

## **PROCEDURAL HISTORY**

- On July 3, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on August 1, 2006, and recommended approval to the City Council by a 5-0 vote.
- The City Council will conduct a public hearing and first reading on August 28, 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 September 11, 2006.

## **BACKGROUND**

The applicant is requesting to rezone Lots 8 & 9, Block 2, Central Acres Subdivision, 2<sup>nd</sup> Filing from Residential 9600 (R9600) to Neighborhood Commercial (NC). The proposed neighborhood commercial zoning would allow for limited retail activities conducted to serve the surrounding neighborhood with shopping facilities consisting of convenience retail and personal service establishments. Neighborhood Commercial would also allow multi-family housing. The lots submitted under this proposal are 22,141 square feet and development on these lots would be required to submit for site development review which would include landscaping and buffering. In addition, any development of the property will have to comply with the requirements set forth for the Neighborhood Commercial zoning district in the Unified Zoning Regulations. The applicant at this time does not have plans to develop this property.

Planning staff reviewed the application and recommended approval to the Zoning Commission based on the attached 12 criteria for zone changes. The subject property is adjacent to Residential 9600 zoning to the north and east, Public zoning to the west (College of Technology) and Planned Unit Development (PUD) zoning to the south (Parkland West Subdivision).

## **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:

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The proposed new zoning will address predictable land uses that are consistent with the surrounding neighborhood character. The 2003 Growth Policy supports contiguous

development in and around existing population centers. This is an appropriate development of an area with a Planned Unit Development zone south across Central Avenue that includes single-family, multi-family and commercial development and the Public zoning west with the location of the College of Technology. Neighborhood Commercial zoning allows service and conveniences to the neighborhood. In addition, the 2003 Growth Policy states that new development should be sensitive to and compatible with the character of existing neighborhoods. At this time, the applicant does not have any plans for when or what type of development will occur on this site, however, Neighborhood Commercial uses would provide services and conveniences to the adjoining neighborhoods.

2. *Is the new zoning designed to lessen congestion in the streets?*

It is not known how much traffic would be generated by this property since it depends on the use that occupies the site. However, it is expected that traffic will increase in this area with the development of Parkland West PUD and the expansion of the College of Technology. Central Avenue is classified as a principal arterial and 36<sup>th</sup> Street West is classified as a collector street.

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

This lot currently does not have a developed access; however, the property is a corner lot with Central Avenue to the south, 36<sup>th</sup> Street West to the west and an alley. 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 Neighborhood Commercial zone allows for maximum lot coverage of 50 percent, or 11,070 square feet on a 22,141 square foot lot. This limitation should prevent overcrowding of the land.

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

The new zoning does not require a minimum amount of square footage per structure; therefore, there could be some concentration of commercial uses located on this property.

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

<i>Transportation:</i>	It is not known how much traffic would be generated by this property since it depends on the use that occupies the site. However, it is expected that traffic will increase in this area with the development of Parkland West PUD and the expansion of the College of Technology. Central Avenue is classified as a principal arterial and 36 <sup>th</sup> Street West is classified as a collector street.
<i>Water and Sewerage:</i>	The City will provide water and sewer service to the property and has adequate facilities to serve this property.
<i>Schools and Parks:</i>	There should be no effect on parks or schools from this rezoning.
<i>Fire and Police:</i>	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-9,600 to the north and east until 35<sup>th</sup> Street West. Between 35<sup>th</sup> Street and West 34<sup>th</sup> Street West north of Central Avenue is Community Commercial zoning. To the south is Planned Unit Development zoning which contains single-family, multi-family and commercial zoning and to the west is Public zoning. The existing neighborhood consists of a mainly single-family housing and the College of Technology. Parkland West Subdivision to the south has yet to be developed. The proposed Neighborhood Commercial zone 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?*  
It is not known if the new zoning and its proximity to residential property will have an effect on the value of residential buildings.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*  
Yes, the new zoning will allow a commercial node at a principal arterial and collector intersection that will provide services and conveniences to the surrounding neighborhood.

### **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 August 1, 2006, and forwarded a recommendation of approval to the City Council by a 5-0 vote. Owner Betty Larsen addressed the Zoning Commission. Mrs. Larsen stated that she does not have plans to develop the lots herself. She intends to sell them in the future. Jim Lucas (agent and owner's brother) stated that

these lots were purchased originally by Mr. and Mrs. Larsen for investment purposes. Mr. Lucas also stated that he and the owner will be in contact with the surrounding property owners who submitted a valid protest petition to discuss alternatives and reach a consensus before the City Council meeting.

There was one (1) surrounding property owner present at the public hearing who raised concerns regarding the potential traffic impact onto Lynn Avenue. The property owner stated that 36<sup>th</sup> Street West and Lynn Avenue is consistently used by students at the College of Technology to gain access to Central Avenue and feels that commercial development at this corner will increase traffic. The property owner also stated that the neighborhood commercial zoning does not fit the neighborhood.

The Zoning Commission stated that the proposed Neighborhood Commercial would be an appropriate development as the location of these lots at the intersection of a principal arterial and a collector does not support single-family residential. There was a question asked by the commission in regards to this being a “spot zoning”. Nicole Cromwell, Zoning Coordinated addressed this concern by reviewing the three (3) questions that are asked when discussion spot zoning. 1) Is the request on relatively small lots/area; 2) Does the request only benefit one (1) entity; and 3) Are there other “like” zonings in the area. The request does not meet criteria two (2) or three (3), and criteria one (1) does not fully refer to Neighborhood Commercial as this zoning generally limits itself to small not overbearing commercial development.

A petition was delivered to the Planning Division on July 27, 2006. The petition contained signatures from 11 property owners. For a petition to trigger a valid protest, 25% of the property owners who signed are required to be within 150’ of the proposed zone change. Staff reviewed the petition and verified that 33% of the signatures are within 150’ of the proposal, therefore triggering the valid protest. Due to this valid protest, City Council will have to approve the zone change by a 2/3 majority vote.

### **RECOMMENDATION**

The Zoning Commission recommends by a 5-0 vote that the City Council **approve** Zone Change #789.

### **ATTACHMENTS:**

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance
- D: Valid Protest Petition

**Attachment A**  
Site Photos – Zone Change #789



Photo 1: Subject site at 109 South 39<sup>th</sup> Street



Photo 2: View west along Central Avenue



**Attachment A**  
Site Photos – Zone Change #789 Continued



Photo 3: View southeast towards the undeveloped Parkland West Subdivision



Photo 4: View north along 36<sup>th</sup> Street West towards single-family housing



## Surrounding Zoning – Zone Change #789



**ATTACHMENT C**

Zone Change #789

**ORDINANCE NO. 06-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION  
FOR Lots 8 & 9, Block 2, Central Acres Subdivision, 2<sup>nd</sup> Filing,  
containing approximately 22,141 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 8 & 9, Block 2, Central Acres Subdivision, 2<sup>nd</sup> Filing, containing approximately 22,141 square feet 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 **Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading August 28, 2006.

PASSED, ADOPTED AND APPROVED on second reading September 11, 2006.

CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

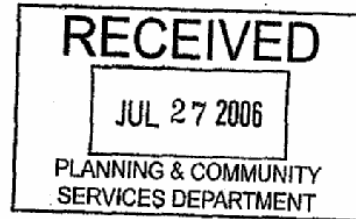
ZC#789

**ATTACHMENT D**

Valid Protest Petition and List of Properties Within 150' - Zone Change #789

City of Billings, Planning & Community Services Department  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

RE: CITY ZC  
Project Number: 06-00000578



Property Owner within the 150 foot designation, Protest Petition

within 150' {  
✓ Name (Print) Jeffrey Cummins Address 3538 Lynn Ave  
Signature Jeffrey Cummins Date 7-22-06  
✓ Name (Print) Susan Cummins Address 3538 Lynn Ave  
Signature Susan Cummins Date 7/23/06

within 150' {  
✓ Name (Print) Kevin Costin Address 3546 Lynn Ave  
Signature Kevin Costin Date 7-23-06  
Name (Print) Karen Hannah Address 3520 Lynn Ave  
Signature Karen S. Hannah Date 7-23-06

within 150' {  
ok Name (Print) Linda L. Carlson Address 3526 Lynn Ave  
Signature Linda L. Carlson Date 7-24-06

Name (Print) Teresa Fischer Address 3509 Lynn Ave  
Signature Teresa Fischer Date 7-24-2006

Name (Print) Peter Heitberg Address 3531 Lynn Ave  
Signature Peter Heitberg Date 7-24-2006

City of Billings, Planning & Community Services Department  
510 North Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

RE: CITY ZC  
Project Number: 06-00000578

Property Owners <sup>Win P</sup> beyond the 150 foot designation, Protest Petition (Continued)

Name (Print) Richard West Address 3537 Lynn Ave  
Signature Richard West Date 7-24-06

**ATTACHMENT D**

Valid Protest Petition and List of Properties Within 150' - Zone Change #789 Continued

150' Radius of 3525 Central Avenue  
Valid Protest Radius

<b>Tax Id</b>	<b>Address</b>
D00326	03723 CENTRAL AVE
C01775	03526 LYNN AVE
C01776	03530 LYNN AVE
C01777	03538 LYNN AVE
C01778	03546 LYNN AVE
C01782	03515 CENTRAL AVE
C01781	03519 CENTRAL AVE
C01780	CENTRAL AVE
C01779	CENTRAL AVE
D11511	03500 CENTRAL AVE
A27316	
A27255A	

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 28, 2006****TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV**DEPARTMENT:** Planning and Community Services Department**PRESENTED BY:** Juliet Spalding, Planner II

**PROBLEM/ISSUE STATEMENT:** On August 14, 2006, the City Council approved the annexation of the 36-acre parcel legally described as Tract 1 of Certificate of Survey 3273. (Annexation #06-11). The petition for annexation was submitted by owners of property, Jim Boyer and Paul Bromenshenk. 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 IV will be held on August 28, 2006. The second reading of the ordinance is scheduled for Council action on September 11, 2006.

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

**RECOMMENDATION**

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

**Approved by:**            **City Administrator** \_\_\_\_\_            **City Attorney** \_\_\_\_\_

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

**ORDINANCE NO. 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 E1/2 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County,

Montana, more particularly described as:

Tract 1 of Certificate of Survey 3273, recorded June 26, 2006, under Document No. 3382821,

Records of Yellowstone County, Montana.

Containing 36.360 gross and net acres.

(# 06-11) 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 28<sup>th</sup> day of August, 2006.

PASSED by the City Council on the second reading this 11<sup>th</sup> day of September, 2006.

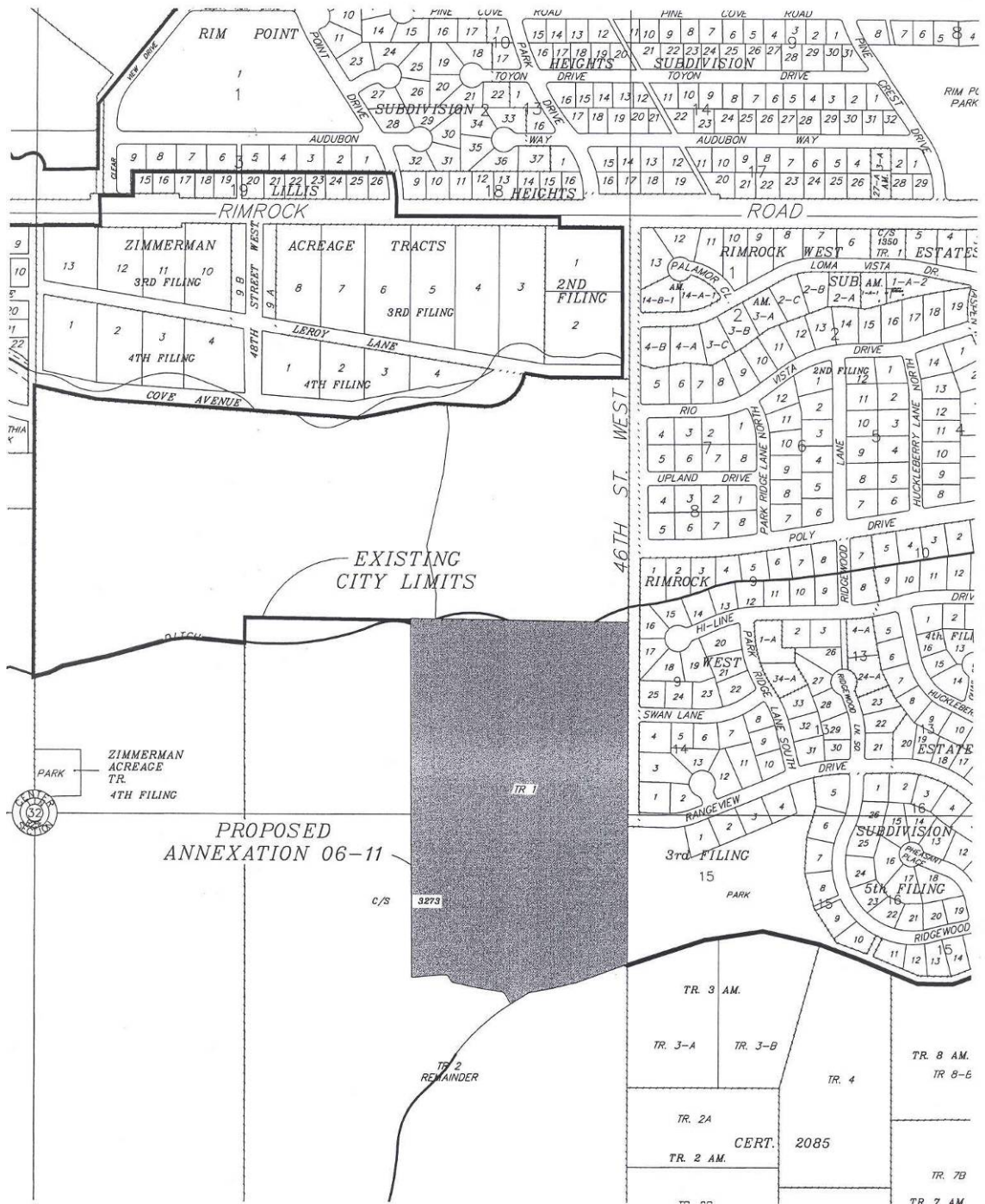
THE CITY OF BILLINGS:

\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

# EXHIBIT A



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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, August 28, 2006**


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**TITLE:** Public Hearing and 1<sup>st</sup> Reading – Ordinance Amending Parking Fines and Vehicle Immobilization

**DEPARTMENT:** Administrative Services – Parking

**PRESENTED BY:** Chris Mallow, Parking Supervisor

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**PROBLEM/ISSUE STATEMENT:** The Parking Advisory Board has recommended an increase in existing fines for parking violations and ordinance changes concerning vehicle immobilization. The Parking Advisory Board recommendations are outlined in the Stakeholders section. In April 2001 and November 2002, some recommended changes were made to the fine structure of parking violations. More recently, when the Council considered the parking rate increases, it asked staff to recommend parking fine increases and other steps to help reduce parking abuses. These proposed ordinances respond to that Council request.

**ALTERNATIVES ANALYZED:** The recommended changes would increase safety-related fines, meter-plugging fines, and time for escalating violations. The recommended changes would also restructure and tighten loopholes in the “booting” ordinances. The alternatives are as follows:

- Accept recommended changes.
- Accept some of the recommended changes.
- Keep the existing fine structure and ordinances, as written.

**FINANCIAL IMPACT:** The increase in fines will increase the revenue for the Parking Division by approximately \$55,000/year.

**RECOMMENDATION**

Staff recommends that Council adopt the ordinances amending the parking fine system and vehicle immobilization.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

- A. Ordinance amending various sections of the parking code

## **INTRODUCTION**

The Parking Advisory Board and City Staff work together continually to ensure an efficient fine structure for violations and to improve consistency in fines and ordinances.

## **PROCEDURAL HISTORY**

February 2001 - The increased fines were approved by the Parking Advisory Board. They also added their approval for escalation of violations in timed zones to be equitable with the new ordinance for escalation at expired meters.

April 2001 - Some of the recommended changes were approved and put into effect by City Council, such as the escalating fine system for expired meters.

November 2002 – Additional changes to the fine structure were approved and put into effect by City Council, such as increased fines for safety-related violations and the renewal of the meter plugging violation.

April and June 2006 – The Parking Advisory Board reviewed, made changes to and approved an amended immobilization policy.

June 2006 – City Council requested that parking-related fines and ordinances be reviewed and that the 30-day cycle for escalating fines be changed to a 180-day cycle.

August 14, 2006 – Parking Advisory Board reviewed Staff recommendation per City Council guidance and made a separate recommendation outlined in the Stakeholders Section.

## **BACKGROUND**

This has been an on-going process for many years. The resulting fine recommendations have come about as a combined effort between the Traffic Control Board, the Parking Advisory Board and City Staff.

In April 2001, the escalating fine system went into effect. The fine structure is based on a 30-day period, with each first time violator receiving a courtesy ticket every 30 days. This is currently being used for both metered and time-posted areas. Staff has found that the courtesy ticket system is easily manipulated, at its current 30-day cycle.

In November 2002, the meter plugging ordinance was renewed and a one-time courtesy given. The escalating fine system was also created at that time for the time-posted areas, in addition to the metered areas. Since that time, City staff has observed a great deal of abuse and limited turn-over in on-street parking.

In June 2006, a new rate structure for leased parking was reviewed, amended and adopted in June. At that time, City Council requested that parking-related fines and ordinances be reviewed and that the 30-day cycle for escalating fines be changed to a 180-day cycle.

## **STAKEHOLDERS**

At the August 14, 2006, Parking Advisory Board meeting Staff presented their recommendation for the changes to ordinance concerning parking fines and immobilization procedure. The Parking Advisory Board reviewed Staff recommendation and passed a motion to amend the Staff recommendation. The differences in their recommendations are as follows:

- To increase the time allotted to a vehicle between courtesy tickets. This will allow officers to give one courtesy ticket to all offending drivers in both metered and un-metered zones, every 90 days contingent on offending driver has no outstanding, unpaid parking tickets.
- The Parking Advisory Board does recommend increasing the fine for the meter plugging violation to \$25, but recommends changing the meter plugging courtesy violation. The Parking Division currently allows drivers one meter plugging courtesy per lifetime; the Parking Advisory Board recommends granting a meter plugging courtesy ticket every 365 days.

## **ALTERNATIVES ANALYSIS**

Alternative 1 – Accept recommended changes: This alternative would allow an increase in revenue and more consistency in both ticketing and fine structure. The attached changes are outlined as follows:

Courtesy Tickets: Section 24-1011 is being amended to increase the time allotted to a vehicle between courtesy tickets. This will allow officers to give one courtesy ticket to all offending drivers in both metered and un-metered zones, every 180 days. The alternative would be to continue to issue one courtesy ticket to all offending drivers every 30 days. As stated above, staff has found that the courtesy ticket system is easily manipulated, at its current 30-day cycle.

Fine Increases: Section 24-1011 is being amended to increase fines for safety-related violations, such as fire lanes and fire hydrant zones; as well as increasing the fine for meter plugging.

The alternative to increasing the fine structure would be to continue with the existing fines and/or adopt some of the recommended changes.

### Vehicle Immobilization:

The current immobilization policy requires that:

- A vehicle must have received one (1) \$100 handicap ticket or (10) or more other tickets, totaling \$40 or more;
- The registered owner has five (5) days in which to contest a ticket;
- The City must be able to get the registered owner information from the State, which often is not available or incorrect;
- The registered owner must have received a final notice for unpaid tickets for at least the amount listed above; and,
- City staff cannot immobilize a vehicle until at least fourteen (14) days after the final notice date.

The proposed immobilization policy, if approved, would be as follows:

- A vehicle must have received any number of tickets totaling \$50 or more;
- The registered owner has five (5) days in which to contest a ticket;
- After five (5) days from issue date of ticket making vehicle eligible for booting, enforcement may place a sticker on the driver's side window of the vehicle notifying the driver that, if tickets remain unpaid after 48 hours, the vehicle will be immobilized;
- Final notices will continue to be mailed to all registered owners with unpaid tickets but booting eligibility will not hinge upon final notice mailing dates; and,
- Warrants may still be made for arrest of habitual offenders.

All of the changes outlined above are recommended to:

- Improve consistency in violations;
- Deter violators of safety-related zones;
- Deter habitual offenders; and,
- Be more consistent in fine structure with comparable cities across the country.

Alternative 2 – Accept some recommended changes: This alternative would also allow for an increase in revenue, but may hinder consistency in ticketing, immobilization and fine structure.

Alternative 3 – Keep the existing fine structure and ordinances: This alternative would hinder the desired goal of consistency in both ticketing and fine structure and would be inconsistent with preferences that have been stated by City Council, the Parking Advisory Board and City Staff.

## **RECOMMENDATION**

Staff recommends that Council adopt the ordinances amending the parking fine system and vehicle immobilization.

## **ATTACHMENTS**

- A. Ordinance amending various sections of the parking code

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

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 24-1007, 24-1008, 24-1009, AND 24-1011; PROVIDING FOR VEHICLE IMMOBILIZATION WHEN OUTSTANDING PARKING FINES EXCEED \$50; UPDATING THE PROCEDURE; INCREASING CERTAIN FINES.

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

*Section 1.* That Section 24-1007 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-1007. Authorization to tow or use vehicle immobilizer.

In addition to, or as an alternative to towing, the city administrator is authorized to use a vehicle immobilizer ("boot") to immobilize any vehicle that is parked in a city parking space or along any right of way within the city limits and that has ~~one (1) or more unpaid handicapped parking tickets or ten (10) or more other unpaid parking tickets~~ any number of unpaid parking tickets totaling fifty dollars (\$50) or more. ~~provided that the city administrator has sent the registered owner of the vehicle a final written notice for one (1) or more of the unpaid parking tickets as required by section 24-1005.~~

*Section 2.* That Section 24-1008 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-1008. Procedure for vehicle immobilization.

If the city administrator chooses to immobilize a vehicle with a boot as allowed by section 24-1007, then the city administrator shall conspicuously affix to such vehicle a notice in writing notifying the owner, driver or person in charge of such vehicle that such vehicle has unpaid parking tickets totaling fifty dollars (\$50) or more and will be immobilized in forty-eight (48) hours. ~~After forty-eight (48) hours the City Administrator shall conspicuously~~ affix to such vehicle a notice in writing notifying the owner, driver or person in charge of such vehicle: that such vehicle has been immobilized by the city for violation of one or more provisions of this chapter; that release from such immobilization may be obtained at a designated place; that unless arrangements are made for the release of such vehicle within forty-eight (48) hours the vehicle will be impounded and towed as provided in section 24-1009; and that removing or attempting to remove the immobilization device from the vehicle, or removing or attempting to move the vehicle from the place at which the immobilization device was affixed to the vehicle before a release is obtained is unlawful.

It shall be a misdemeanor punishable as provided in section 1-110 for any person to remove or attempt to remove any immobilization device or to move any immobilized vehicle from the place at which the immobilization device was affixed to the vehicle before a release is obtained from the city administrator. An immobilized vehicle shall not be released by the city until a fee of fifty dollars (\$50.00) for the immobilization is paid, together with payment of all outstanding parking fines, or posting of bond as allowed by subsection 24-1009.5(b).

If the vehicle has remained immobilized for a period of forty-eight (48) hours and a release has not been obtained, then the city administrator shall have the vehicle impounded and towed as provided in section 24-1009.

*Section 3.* That Section 24-1009 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-1009. Removal of violation vehicle.

(a) The city is authorized to remove a vehicle or tow a vehicle from a street, highway or city parking space, as defined in section 24-451, to the nearest garage or other place of safety or to a garage designated or maintained by the police department under the circumstances hereinafter enumerated:

(1) When any vehicle is left unattended upon any bridge-viaduct or causeway or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;

(2) When a vehicle upon a street is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is unable by reason of physical injury or incapacitated to such an extent as to be unable to provide for its custody or removal;

(3) Whenever any vehicle is found by a police officer parked or left standing in the streets or alleys of the city in violation of the provisions of this chapter.

(4) When a vehicle is parked in any city parking space ~~and the vehicle has ten (10) or more unpaid parking tickets and is in violation of Sec. 24-1007, and the city administrator or his designee has sent notified the registered owner, driver or person in charge of such vehicle of the vehicle a final written notice for one or more of the unpaid parking tickets as required by section such violation, pursuant to Sec. 24-10058.~~

(b) Whenever an officer removes a vehicle from a street or city parking space as authorized in this section and the officer knows or is able to ascertain from the registration records on the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons thereof and of the place to which such vehicle has been removed. If any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage. Further, the party towing the vehicle shall immediately notify the police department dispatcher that a vehicle has been towed from a specific location and give the dispatcher a detailed description of the vehicle and the location to which it is being towed.

(c) Whenever an officer removes a vehicle from a street under this section and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, and if the vehicle is not returned to the owner within a period of three (3) days, then the office shall immediately send or

cause to be sent written reports of such removal by mail to the state department whose duty it is to register motor vehicles, and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for such removal and name of the garage of place where the vehicle is stored.

(d) Any officer is authorized to take possession of any motor vehicle owned by any person that has violated, as to the vehicle, any of the provisions of this chapter, and has authority to remove such vehicle from the streets, alleys or other public places where the violation occurs, and to store and keep possession thereof until the owner of such vehicle appears and claims the same. The cost of towing or removing such vehicle and costs of storing the same shall be chargeable against the vehicle and shall be paid by the owner of the vehicle before the same shall be released. The vehicle may be stored in a public or a private place; if in a public place the storage charges shall be the amount charged for such public storage; if stored on city property, the storage shall be as prescribed from time to time by council resolution during the time the vehicle is in the possession of the city. The owner of a vehicle impounded and towed due to unpaid parking tickets must secure the release of the vehicle as required by section 24-1009.5.

(e) The taking of possession of a vehicle for violation of traffic ordinance shall not prohibit the filing of a complaint for the violation of traffic ordinances as hereinabove provided.

*Section 4.* That Section 24-1011 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-1011. Penalty for violations.

(a) Upon conviction any person who violates or permits or allows anyone to violate the following listed sections shall pay the fine specified.

Section(s)	Description	Fine
24-443	Handicap	\$100
24-455 24-456(a)(1) 24-462	Meter Expired	<del>30</del> <u>180</u> day escalation courtesy/ 5/10/20
24-412	Posted Signs (Time Zones)	<del>30</del> <u>180</u> day escalation courtesy/ 5/10/20
24-430	Loading Zone	25
24-401	No Parking	25
24-402	Alley	25
24-429	No Delivery Permit	25

24-403	Yellow Zone	25
24-472	Fire Hydrant	<del>50</del> <u>100</u>
24-101	Sidewalk	25
24-413	Cab Zone	25
24-413	Bus Zone	25
24-101	Parked Against Traffic	15
24-456(a)(2)	Meter Plugging	<del>40</del> <u>25</u>
24-454	Taking up 2 Spaces	10
24-463	Garage	10
24-471	Fire Lane	<del>50</del> <u>100</u>
24-1008	Boot Fee	50

Posted signs include 10-minute zones and 2-hour zones.

(b) Any person who violates or permits or allows anyone to violate sections 24-412, 24-455, 24-456(a) (1), or 24-462 is guilty of a misdemeanor and upon conviction shall be fined as follows:

First citation . . . No charge

Second citation . . . \$5.00

Third citation . . . 10.00

Fourth and subsequent citations . . . 20.00

If fewer than ~~thirty (30)~~ 180 days have elapsed between the issuance of the first citation and the issuance of the present citation, the fine will escalate from the previous citation as provided above. When ~~thirty (30)~~ 180 or more days have elapsed from the issuance of the first citation, the fine for the present citation shall become the first citation and the above escalation provisions shall apply.

(c) Unless otherwise provided, it is a misdemeanor for any person to violate any of the provisions of this chapter.

(d) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished as provided in section 1-110.

(e) Upon conviction, the court costs or any part thereof may be assessed against the defendant in the discretion of the court.

*Section 5.*     EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

*Section 6.*     REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.



*Section 7.*     SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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

CITY OF BILLINGS

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

ATTEST:

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

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

**AGENDA ITEM:**


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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**TITLE:** Public Hearing and Resolution to Annex – Annexation #06-12  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Candi Beaudry, AICP, Interim Director

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**PROBLEM/ISSUE STATEMENT:** The Bell Family Trust, owner of the property located near the southwest corner of the intersection of Central Avenue and Shiloh Road, has petitioned to annex this property to the City of Billings on behalf of the developers, Mountain West Senior Housing, LLC. The owner is requesting annexation in order to obtain city water and sewer to develop a senior housing and care complex. The property is described as Tract 1, of Corrected Amendment of Tracts 1 and 3 and Remainder Tract 2 to be Amendment of Tracts 1, 2, and 3, Certificate of Survey No. 1648 and contains 14.077 acres. The adjoining rights-of-way in Bell Avenue and Central Avenue will also be annexed at the same time, adding .472 acres for a total of 14.549 acres. The City Council acknowledged receipt of the petition annex this property on August 14, 2006, and set a public hearing date for August 28, 2006. Upon annexation the zoning of the property will automatically convert from Agricultural Open Space to Residential 9600 (R-9,600). The owner has also applied for a Special Review to allow a senior housing and care complex in the R-9,600 zoning district. The City Council will hold a public hearing and act on the Special Review application on September 26, 2006.

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

**FINANCIAL IMPACT:** The City can provide service to this property. The zoning of the property will automatically convert from Agricultural-Open Space to Residential 9,600 upon annexation, but the owners intend to apply for a Special Review to allow a senior housing and care complex in the R-9,600 zoning district. The commercial use of this property will increase the City's tax base and is expected to generate more tax revenue than it requires in service costs.

**RECOMMENDATION**

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

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

**Approved By:**            **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENT**

- A. Resolution to Annex
- B. Photographs of Subject Property
- C. Preliminary Site Plan

## **INTRODUCTION**

On July 5, 2006, the owner submitted a petition for annexation of a 14.077-acre property located near the southwest corner of the intersection of Central Avenue and Shiloh Road. The owner has also applied for a concurrent Special Review for the property. The property will convert to Residential 9,600 upon annexation and the Special Review request is to allow for the development of a senior housing complex with including assisted living and memory care facilities. The subject property is separated from the contiguous City limits to the east by the Shiloh Drain and Shiloh Road right-of-way. The property is adjacent to a non-contiguous City subdivision, Legends West, to the west.

## **PROCEDURAL HISTORY**

- August 14, 2006 – City Council acknowledged receipt of annexation petition and set a public hearing date for August 28, 2006.
- August 28, 2006 – City Council holds the public hearing and acts on the Resolution to Annex.
- September 5, 2006 – City Zoning Commission holds a public hearing on the Special Review
- September 12, 2006 – Upon approval of the annexation, the City Council acts on the 1<sup>st</sup> Reading of the Ordinance to change the Ward Boundaries.
- September 26, 2006 – Upon approval of the 1<sup>st</sup> Reading, the City Council acts on the 2<sup>nd</sup> Reading of the Ordinance to change the Ward Boundaries. City Council also holds a public hearing on the Special Review and acts on the resolution.

## **BACKGROUND**

The developers, Mountain West Senior Housing, LLC, are proposing to construct a multi-dimensional senior housing and care complex on approximately 14 acres. The project will consist of approximately 84 assisted living units, 40 memory care beds, 144 congregate care units for seniors and 24 cottage units. The preliminary site plan shows a large, 3-story winged complex centered about a dining and kitchen facility. Separate from the main facility are 24 duplexes located along the west and north side of the property.

## **ALTERNATIVES ANALYSIS**

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements meet City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. The property is contiguous to existing City limits.

The proposed annexation is also consistent with the Growth Policy and the West Billings Plan.

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. Yellowstone County Public Works requested that the adjoining rights-of-way be included in this annexation. It is standard practice with the City of Billings to annex adjoining rights-of-way as it is required by state statute (7-2-4211, MCA).

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

**Water:** Water service will be extended from Central Avenue from an existing 16-inch water main.

**Sewer:** An existing 24-inch sewer main is located in Central Avenue.

**Stormwater:** Future development will discharge stormwater into a stormwater detention facility located on site.

**Transportation:** The property is located near the southwest corner of the intersection of Central Avenue and Shiloh Road. Both of these streets are classified as principal arterials. The primary access to the property is from Central Avenue and Bell Avenue.

Bell Avenue is presently in the County and is unpaved. City site development standards require the developer to construct at least a half street section along Bell Avenue consisting of 30 feet of pavement, curb, gutter and sidewalk. Central Avenue will not require improvements at the time of development, but a contribution will be made to the cost of future curb, gutter, and pavement along Central Avenue.

The property is separated from the Shiloh Road right-of-way by the Shiloh Drain, a privately held parcel. Because there is no direct frontage along Shiloh Road, no contributions to improvements for Shiloh Road will be required.

**Fire Station:** The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Fire protection will be provided to this property after annexation from Fire Station No. 5 located on 24<sup>th</sup> Street near Rosebud Drive.

**Parks:** The Park, Recreation and Public Lands Department will not be affected because this will be developed as commercial property.

**Bicycle and pedestrian facilities:** The preliminary site plan shows a network of sidewalks throughout the development. Future bicycle facilities along Shiloh Drain will be accessible from the site.

**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, including Fire, MET Transit, Finance, Legal and Planning, did not object to the annexation of this property. The Police Department responded that this annexation may adversely affect its ability to provide timely service.

### **STAKEHOLDERS**

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

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

The property is also within the area covered by the 2003 Growth Policy and the West Billings Plan. The proposed development is consistent with the applicable land use goals of these Plans in the following manner:

#### Growth Policy

Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The property adjoins existing City limits.*

#### West Billings Plan

1. Establish Development Patterns that Use Land More Efficiently. *The future development will utilize available infrastructure that can service the proposed commercial development*
2. Plan for the Orderly and Efficient Urbanization of Agricultural Lands. *The property is currently zoned Agricultural Open-Space but will automatically convert to Residential-9,600. The proposed use of the property for senior housing and care facilities is a use allowed by Special Review only. Conditions may be placed on the proposed developed to ensure compatibility with the adjoining residential and commercial properties.*

### **RECOMMENDATION**

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

1. Prior to development of the site the following shall occur:

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

**ATTACHMENT**

- A. Resolution to Annex
- B. Photographs of Subject Property
- C. Preliminary Site Plan

**ATTACHMENT A  
RESOLUTION TO ANNEX**

**RESOLUTION NO. 06-**

A RESOLUTION OF THE CITY OF BILLINGS  
APPROVING PETITION 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 located in the NE1/4 of Section 10, T.1S., R.25E., and the SE1/4 of Section 3, T.1S., R.25E., P.M.M., Yellowstone County, Montana, being more particularly described as: Tract 1 and that portion of Tract 4 (a road Tract) adjacent to the north line of Tract 1 of Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648, Recorded July 20, 1994, Under Document No. 1749237, Records of Yellowstone County, Montana, including all adjacent right-of-way of Central Avenue. Containing 14.549 gross acres and 14.077 net acres.

(# 06-12) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved subject to the following conditions:
  1. Prior to development of the site the following shall occur:



**ATTACHMENT A  
RESOLUTION TO ANNEX**

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
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 28th day of August, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

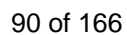
ATTEST:

BY: \_\_\_\_\_

Marita Herold, CMC/AAE CITY CLERK

(AN 06-12)

## EXHIBIT A





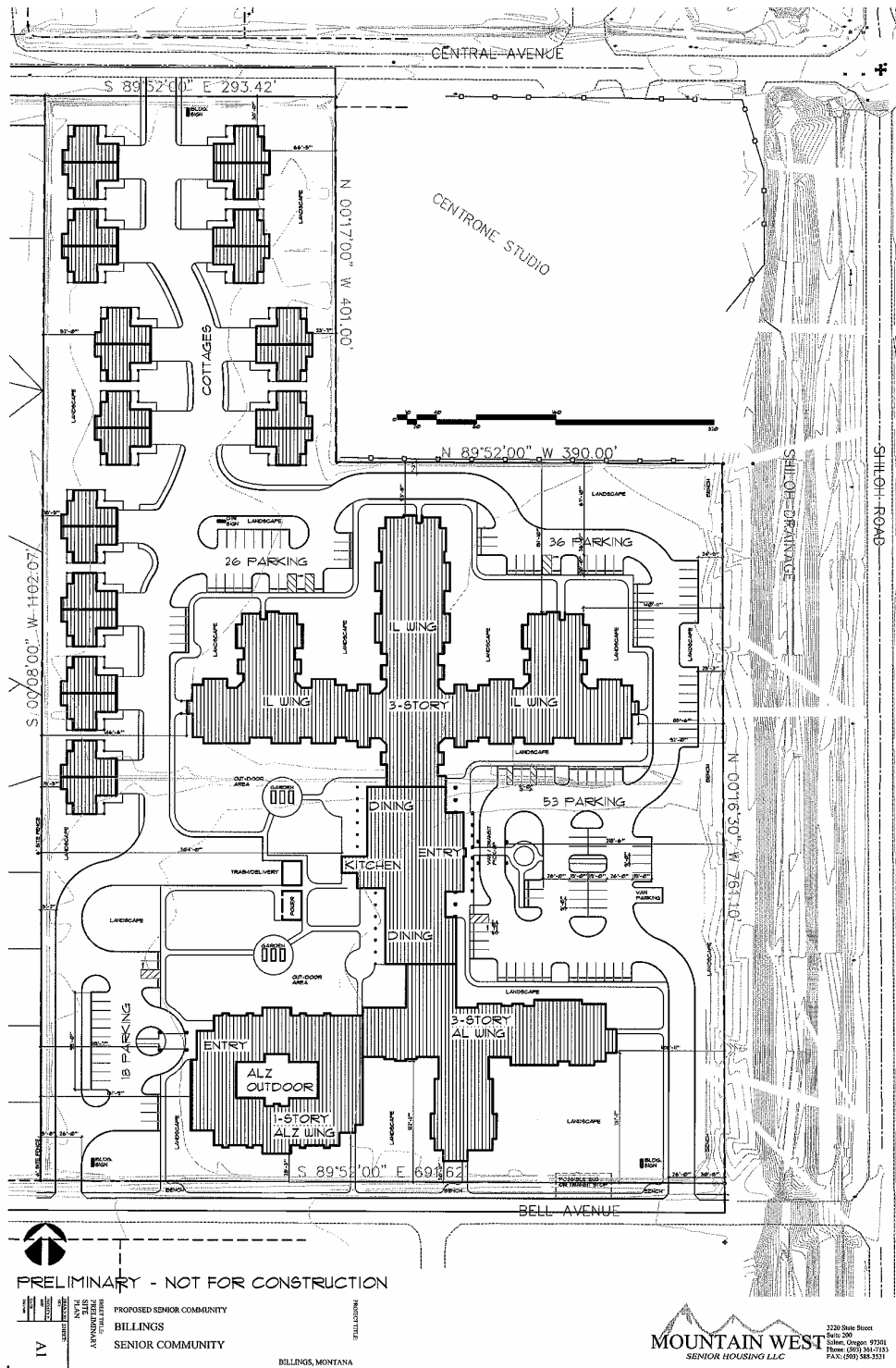
View looking north along east edge of subject property. Berming along Shiloh Drain is visible on right side of photo.



View looking northwest across subject property. Legends West Subdivision is visible in background.



View looking west along Bell Avenue. Subject property is on right of photo.



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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, August 28, 2006**


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**TITLE:** Public Hearing and Resolution Naming the New Street Section through the Peter Yegen, Jr. Golf Course between Grand Avenue and Broadwater Avenue as Zimmerman Trail

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The Arlene Corridor Project is one of three General Obligation Transportation Bond Projects approved by voters in the Fall of 2003. This project was designed to construct a new arterial roadway from the intersection of Zimmerman Trail at Poly Drive south through the Peter Yegen, Jr. Golf Course to Broadwater Avenue at 32<sup>nd</sup> Street West. The existing section of roadway from Rimrock Road to Poly Drive was renamed Zimmerman Trail in May 2005, extending the Zimmerman Trail name from Highway 3 to Poly Drive. The first section of roadway was completed between Poly Drive and Grand Avenue and in December 2005 was renamed Zimmerman Trail, extending the Zimmerman Trail name from Highway 3 to Grand Avenue. The final section of the new roadway from Grand Avenue through the Peter Yegen, Jr. Golf Course to Broadwater Avenue at 32<sup>nd</sup> Street West is nearing completion. In order to extend the Zimmerman Trail name from Highway 3 to Broadwater Avenue, this final section of roadway is recommended to be named Zimmerman Trail.

**ALTERNATIVES ANALYZED:**

- Name the roadway through the Peter Yegen, Jr. Golf Course as Zimmerman Trail.
- Do not name the roadway through the Peter Yegen, Jr. Golf Course as Zimmerman Trail and create a new street name.

**FINANCIAL IMPACT:** None

**RECOMMENDATION**

Staff recommends that Council conduct a public hearing and pass a resolution naming the new roadway through the Peter Yegen, Jr. Golf Course as Zimmerman Trail.

**Approved By:**        **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

**ATTACHMENTS**

- A. Map of new roadway through Peter Yegen, Jr. Golf Course
- B. Resolution

RESOLUTION NO. 06-\_\_\_\_\_

***A RESOLUTION OF THE BILLINGS, MONTANA CITY COUNCIL NAMING A NEWLY-BUILT ROADWAY BETWEEN GRAND AVENUE AND BROADWATER AVENUE AS ZIMMERMAN TRAIL.***

WHEREAS, the City Council has the authority to change the name of any street or avenue pursuant to Section 22-700, Billings, Montana, City Code (BMCC), and therefore has the inherent authority to name new streets in the first instance; and

WHEREAS, a new roadway has been completed between Grand Avenue and Broadwater Avenue from what has heretofore been the south terminus of Zimmerman Trail to what has heretofore been the north terminus of 32<sup>nd</sup> Street West; and

WHEREAS, the City Clerk published a notice of the public hearing in accordance with Section 22-702, Billings, Montana, City Code (BMCC); and

WHEREAS, the City Clerk mailed a notice of the public hearing to each property owner, or his agent on the newly built roadway immediately south of the present Zimmerman Trail, from Grand Avenue to Broadwater Avenue; and

WHEREAS, the Billings City Council finds that naming the above-described new roadway “Zimmerman Trail”, from Grand Avenue to Broadwater Avenue, is in the best interests of the City and the inhabitants thereof.

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

That once a copy of this resolution is filed in the Office of the Clerk and Recorder of Yellowstone County, Montana, the above-described new roadway from Grand Avenue to Broadwater Avenue is named Zimmerman Trail. (See Attachment A.)

APPROVED AND PASSED by the City Council of the City of Billings, this \_\_\_\_ day of August, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing MAYOR

ATTEST:

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**TITLE:** Public hearing and Resolution Authorizing the Sale of Property at 4<sup>th</sup> and Broadway to Stockman Bank

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** In January the City Council authorized the 4<sup>th</sup> and Broadway Ad-Hoc Committee to negotiate a development agreement with Stockman Bank for the purchase and development of the six (6) City owned lots on the corner of 4<sup>th</sup> and Broadway. The committee met multiple times with Stockman Bank representatives and exchanged proposed development agreements but could not reach agreement. On July 26<sup>th</sup> the City received a new offer from the bank with a response deadline of August 15<sup>th</sup>, later amended to August 29<sup>th</sup>. The Billings Municipal Code Section 22-902 requires that the City Council conduct a public hearing before approving a land sale. The hearing notice was published and surrounding property owners were notified.

**ALTERNATIVES ANALYZED:** The Council may:

- Approve the offer
- Reject the offer
- Approve the offer with conditions

**FINANCIAL IMPACT:** The City paid \$868,500 for the property when it purchased the two separate parcels in 2002 and 2003. The funding came from the Parking Enterprise Fund (\$504,750) and from the Tax Increment Fund (\$363,750). The City usually deposits land sale proceeds in the Fund that originally purchased the land but the Council is not required to do this and may direct that the money be deposited in any Fund.

**RECOMMENDATION**

Staff and the 4<sup>th</sup> and Broadway Ad-hoc Committee recommend that the City Council approve the sale of lots 1-6, block 53 Fosters Addition to Stockman Bank for \$900,000, without conditions and deposit the proceeds in the Parking Enterprise Fund.

**Approved By:**            **City Administrator** \_\_\_\_    **City Attorney** \_\_\_\_

## **ATTACHMENTS**

A:     Stockman offer to purchase

## **INTRODUCTION**

The Stockman Bank has offered to purchase six (6) City owned lots at the corner of 4<sup>th</sup> and Broadway. The offer expires August 29 so the Council must accept or reject the offer before the deadline.

## **PROCEDURAL HISTORY**

- July, 2005 City receives an unsolicited offer from Stockman Bank to purchase the six corner lots.
- September, 2005 Council rejects proposal from GSA to develop an interim courthouse and directs staff to advertise the property for sale.
- November 15, 2005, City receives 3 development proposals for the 4<sup>th</sup> and Broadway property.
- November 28, 2005, City Council creates a 4<sup>th</sup> and Broadway development proposal advisory committee.
- January 9, 2006, City Council grants conditional approval for Stockman Bank purchase and authorizes 90 negotiating period for Downtown Billings Investors (DBI) development proposal.
- April 10, 2006, City Council grants a 90 day extension for negotiating with DBI.
- June 28, 2006, City awards Park II construction contract that permits further negotiations with Stockman and DBI.
- July 24, 2006, City Council grants a 90 day extension for negotiating with DBI.
- July 26, 2006, City receives new written offer from Stockman Bank to purchase the six (6) corner lots.
- August 10 and 17 City advertises a public hearing set for August 28 to consider selling six lots to Stockman Bank.
- August 28 City Council considers selling six lots to Stockman Bank.

## **BACKGROUND**

The City acquired the property at 4<sup>th</sup> and Broadway in 2002 and 2003 with the intention of using it for a future parking structure or aggregating it with the adjoining Library property and selling it for redevelopment and/or parking. Over the years, the City considered multiple development proposals for the property including from at least three mixed-use project developers, from the MET Transit Division that wanted to use the site for a new downtown bus transfer and operations center and from the Government Services Administration for an interim federal courthouse and future Library expansion. In September 2005 the Council directed staff to

advertise all of the vacant property for sale and in November 2005 created an Ad-hoc committee to review proposals and recommend development projects to the Council. In January 2006 the Council conditionally approved selling the six (6) corner lots to Stockman Bank and asked the committee to negotiate a development agreement with Downtown Billings Investors for the remaining vacant City property in that block.

The conditions that the Council approved for the Stockman sale were to require bank development within 3 years, reserving first right of refusal to re-purchase the property if a bank isn't built and reserving air rights over the northern lot for future construction of a parking deck. These elements were incorporated in several agreements that were exchanged with the Bank. During the negotiations the Bank requested 60 free parking spaces and this became particularly problematic when the Park II expansion bids were opened and were substantially over budget. This caused a delay in negotiating with Downtown Billings Investors and Stockman Bank because staff was uncertain about how much money would be available for parking at 4<sup>th</sup> and Broadway after completing Park II. The Committee communicated to Stockman that it could not recommend giving parking spaces to the Bank in light of Park II costs and the expense would represent too great of a subsidy for the project. The committee also disclosed to Stockman, recent sales and appraisal information that supported the Bank's initial offer of \$900,000 without parking. Based on that feedback, on July 26, 2006 the Bank submitted a new offer to purchase the six lots for \$900,000 and no conditions other than the City completing the usual environmental review and disclosure statements. The Ad-hoc committee met on August 2 to review the offer and recommends that the City Council accept it.

### **RECOMMENDATION**

Staff and the 4<sup>th</sup> and Broadway Ad-hoc Committee recommend that the City Council approve the sale of lots 1-6, block 53 Fosters Addition to Stockman Bank for \$900,000, without conditions and deposit the proceeds in the Parking Enterprise Fund.

### **ATTACHMENTS**

A: Stockman offer to purchase

RESOLUTION 06 - \_\_\_\_\_

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED OF, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to dispose of the public property on the 400 block of N. Broadway (N. 28<sup>th</sup> Street); and

WHEREAS, the location of the public property to be disposed of is more particularly described as follows:

Lots 1-6, Block 53, Fosters Addition, City of Billings, Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana; and

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 28<sup>th</sup> day August, 2006;

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

That the City staff is authorized to proceed with the sale of the Lots 1-6, Block 53, Fosters Addition to the Stockman Bank under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
RON TUSSING, MAYOR

ATTEST:

\_\_\_\_\_  
MARITA HEROLD, CMC/A AE, CITY CLERK

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**TITLE:** Terminate Negotiations with Downtown Billings Investors  
**DEPARTMENT:** Administration  
**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** In January, 2006 the City Council appointed an ad-hoc committee to review proposals for developing city owned land at 4<sup>th</sup> and Broadway. The Council approved a 90 day exclusive negotiating period with Downtown Billings Investors (DBI) for a mixed-use project and charged the Committee with minimizing risk for the City. The Council twice extended the time limit. The Committee met numerous times with DBI and exchanged proposals. Within the past month the Committee presented a list of project and financing elements that it could recommend to the Council and asked DBI for a response. The response was judged to be inadequate and the Committee is recommending that negotiations be officially terminated with DBI.

**ALTERNATIVES ANALYZED:** The Council may:

- Terminate negotiations and direct staff to re-advertise for development proposals.
- Terminate negotiations and allow the property to continue being used as Library parking.
- Continue negotiations with instructions to the Committee and staff on revised negotiating points.

**FINANCIAL IMPACT:** There will be no direct financial impact to the City.

**RECOMMENDATION**

The 4<sup>th</sup> and Broadway Development Review Ad-Hoc Committee recommends that the City Council formally terminate negotiations with Downtown Billings Investors for redevelopment of property located near 4<sup>th</sup> Avenue North and Broadway.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

**ATTACHMENTS**

A: August 9 letter to DBI

## **INTRODUCTION**

The Council created a 4<sup>th</sup> and Broadway Development review committee in January and asked it to negotiate a development agreement with Downtown Billings Investors (DBI) for redeveloping City owned property near 4<sup>th</sup> Avenue North and Broadway. The Committee has completed its work with DBI and is recommending that the Council formally terminate negotiations with DBI.

## **BACKGROUND**

The Council asked the Committee to work with DBI and present a development agreement that minimizes risk to the City. The Committee's work was delayed for about 6 months as the City struggled to bid and finance an expansion to the Park II garage. In June the Committee sent DBI a letter containing the project elements and financing package that it could support. The Committee met with Mr. Fagg in July and reviewed his response. This recommendation results from that review.

The attached correspondence contains the detailed explanation of the proposal deficiencies. Generally, they are:

- The developer's expectation for compensation for land or air rights for the public parking structure are uncertain and are not included in the project cost estimates.
- The proposal suggests a \$10,000/parking space subsidy for parties willing to pre-purchase parking spaces.
- Inadequate funding for long term parking structure operations and maintenance.
- Insufficient long term funding for proposed parking revenue bond debt service.
- The project would use 100% of the anticipated tax increment from a new central downtown tax increment district.
- Insufficient security for a proposed Fannie Mae loan for the housing element.

## **ALTERNATIVES ANALYSIS**

The City Council could accept the Committee's recommendation and terminate negotiations. There were two proposals submitted to the City when it requested them in November, 2005. The City could approach that proposed developer and determine if it is still interested in developing the property. The City could re-advertise the land availability and attempt to attract a developer with more direct experience in the desired kind and scope of project. The property could continue to be used as surface parking and redeveloped sometime in the future or used for Library expansion.

The Council could direct the Committee to continue negotiating with DBI. If it chooses this option, the Council should help the Committee by outlining the risks and expenses that it is willing to assume in order to let this developer proceed.

## **RECOMMENDATION**

The 4<sup>th</sup> and Broadway Development Review Ad-Hoc Committee recommends that the City Council formally terminate negotiations with Downtown Billings Investors for redevelopment of property located near 4<sup>th</sup> Avenue North and Broadway.

## **ATTACHMENTS**

A: August 9 letter to DBI

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

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**SUBJECT:** Resolution Relating to Pooled Sidewalk Bonds Series 2006; Creating a Special Sidewalk Fund and Prescribing Covenants

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** On July 24, 2006, City Council approved a resolution authorizing the issuance and pooled bond sale for the following three sidewalk projects; WO 03-02, WO 04-02 and WO 02-14. Northland Securities was awarded the bond sale with a true interest rate of 4.7083%. The following resolution creates a special sidewalk fund and prescribes covenants of the city for the security of the holders of the bonds.

**RECOMMENDATION**

Staff recommends that the 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, Yellowstone County, 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; CREATING SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH FUND AND PRESCRIBING COVENANTS OF THE CITY FOR THE SECURITY OF THE HOLDERS OF 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 of the City at a regular meeting on August 28, 2006, and that the meeting was duly held by the City Council Members 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 August, 2006.

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



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

RESOLUTION RELATING TO \$380,000 POOLED SPECIAL  
SIDEWALK, CURB, GUTTER AND ALLEY APPROACH  
BONDS, SERIES 2006; CREATING SPECIAL SIDEWALK,  
CURB, GUTTER AND ALLEY APPROACH FUND AND  
PRESCRIBING COVENANTS OF THE CITY FOR THE  
SECURITY OF THE HOLDERS OF THE BONDS

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

Recitals. It is hereby found, determined and declared as follows:

Sale of Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds. This Council, by Resolution No. 06-18455, adopted July 24, 2006, authorized the issuance and public sale of pooled special sidewalk, curb, gutter and alley approach bonds of the City in the aggregate principal amount of \$380,000 (the "Bonds") for the purpose of financing the construction of certain sidewalks, curbs, gutter and alley approach projects (the "Projects"; each, a "Project") heretofore ordered by this Council pursuant to Resolution Nos. 03-17977, 04-18179, and 02-17923, adopted April 28, 2003, August 23, 2004, and October 28, 2002, respectively, and as set forth on Exhibit A hereto, as the Miscellaneous and Developer Related Improvements (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 "Improvements"). Advertisements for bids for the purchase of the Bonds were published in accordance with the provisions of Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. After a public sale conducted in accordance with applicable statutory provisions and pursuant to the minutes of its August 14, 2006 meeting, this Council authorized the City to enter into a contract with Northland Securities, of Minneapolis, Minnesota (the "Original Purchaser"), as the lowest responsible bidder pursuant to which the Original Purchaser agreed to purchase from the City the Bonds at a purchase price of \$373,920.00, plus accrued interest thereon from the date of original issue of the Bonds, at the rates of interest set forth in Section 2.01 hereof and upon the further terms set forth in this resolution resulting at a net interest cost of 4.663557% per annum and a total dollar interest cost of \$122,262.92.

In Resolution Nos. 03-17977, 04-18179, and 02-17923, adopted April 28, 2003, August 23, 2004, and October 28, 2002, respectively, this Council found that it is in the public interest, and in the best interest of the City and the properties, to secure payment of principal of and interest on the Bonds by the Special Improvement District Revolving Fund of the City, on the basis of the factors required to be considered under Section 7-12-4225 of the Act. Those findings are hereby ratified and confirmed.

Costs. It is currently estimated that the costs and expenses to be assessed against properties benefited by the Improvements, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction

contract and all other costs and expenses, including the deposit of proceeds in the Revolving Fund, is not less than \$380,000 (\$171,518.85 for the Miscellaneous/Developer-Related Improvements (03-02), \$148,743.01 for the Miscellaneous/Developer-Related Improvements (04-02), and \$59,738.14 for the School Route Improvements). Such amount will be levied and assessed upon the assessable real property benefited by the Improvements. This Council has jurisdiction and is required by law to levy and assess such amount, to collect such special assessments and credit the same to the pooled special sidewalk, curb, gutter and alley approach sinking fund created for the Improvements, which fund is to be maintained on the official books and records of the City separate from all other City funds, for the payment of principal and interest when due on the bonds herein authorized.

Compliance with Constitution and Statutes. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 14, Part 41, and Title 7, Chapter 12, Parts 41 and 42, as amended, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as required.

\$380,000 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006.

Principal Amount, Maturities, Date, Denominations and Interest Rate. For the purpose of paying the costs and expenses incurred in the construction of the Improvements and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the public offering and contract of sale described in Section 1.01, the City shall forthwith issue and deliver to the Purchaser its Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006, in the aggregate principal amount of \$380,000, payable solely from the 2006 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the “2006 Sidewalk Sinking Fund”). The Bonds shall bear an original issue date and be registered as of September 1, 2006, and shall be issued in the form of fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

The Bonds shall mature on July 1 in the years and amounts set forth below, subject to prior redemption, and shall bear interest from the date of original registration to their respective maturities or prior dates upon which they have been duly called for redemption at the rates per annum set forth opposite such years and amounts, respectively:

Stated Maturity (July 1)	Principal Amount	Interest Rate
2007	\$ 20,000	3.900%
2008	25,000	4.000
2012*	120,000	4.250
2015*	100,000	4.400
2018*	115,000	4.550

\*Term bond subject to mandatory sinking fund redemption as set forth in Section 2.05 below.

Principal of and interest on the Bonds are payable in lawful money of the United States of America. Upon the original delivery of the Bonds or upon transfer or exchange of Bonds, the Registrar (as hereinafter defined) shall date each Bond so delivered as of the date of its authentication.

Method of Payment. The Bonds shall be issuable only in fully registered form, and the ownership of the Bonds shall be transferred only upon the bond register of the City hereinafter described. The interest on, and upon presentation and surrender thereof at the principal office of the Registrar described herein, the principal amount of each Bond at the principal office of the Registrar described herein, the amount payable with respect thereto, shall be payable by check or draft issued by the Registrar.

Interest Payment Dates. Interest on the Bonds shall be payable semiannually on each January 1 and July 1, commencing January 1, 2007, to the owners of record thereof as such appear in the bond register as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

Registration. The City hereby appoints U.S. Bank National Association, of Seattle, Washington to act as bond registrar, transfer agent and paying agent (the "Registrar"). The City reserves the right to appoint a bank, trust company or fiscal company as successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana (the "Act"), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. This Section 2.04 shall establish a system of registration for the Bonds as defined by the Act. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

Bond Register. The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

Transfer. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of the transfer of any Bond or principal installment thereof to be selected or called for redemption. No transfer or exchange of a Bond shall affect its order of registration for purposes of redemption pursuant to Section 2.05.

Exchange of Bonds. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except for an exchange upon the partial redemption of any Bond pursuant to Section 0), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or such Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

#### Redemption.

(a) Optional Redemption of Bonds. The Bonds with stated maturities on or before July 1, 2012 shall not be subject to optional redemption prior to maturity, but Bonds having stated maturity dates in the years 2015 and later years, in addition to being subject to mandatory sinking fund redemption, are each subject to redemption and prepayment at the option of the City, in whole or in part, and if in part in principal amounts and from Stated Maturities selected by the City, and within a Stated Maturity in \$5,000 principal amounts selected by lot or such

other manner as determined by the Paying Agent, on July 1, 2012 and any date thereafter, at a price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

(b) Mandatory Sinking Fund Redemption of Series 2006 Term Bonds.

The Bonds having Stated Maturities in 2012, 2015, and 2018 are subject to mandatory sinking fund redemption on July 1 in the respective years and the respective principal amounts set forth below, in \$5,000 principal amounts selected by the Registrar, by lot or other manner it deems fair, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued thereon to the redemption date:

<u>Stated Maturity of Term Bonds (July 1)</u>	<u>Sinking Fund Payment Date (July 1)</u>	<u>Principal Amount on Sinking Fund Payment Date</u>
2012	2009	\$30,000
\$30,000	2010	30,000
	2011	30,000
2015	2013	\$30,000
\$35,000	2014	35,000
2018	2016	\$ 35,000
\$40,000	2017	40,000

The Registrar shall select the Series 2006 Term Bonds to be redeemed on each Sinking Fund Payment Date in accordance with Section 2.04, and the Bonds selected by the Registrar shall become due and payable on such date. The City may reduce the amount of any Mandatory Sinking Fund Payment payable on any Sinking Fund Payment Date or Dates by an amount equal to the principal amount of Outstanding Series 2006 Term Bonds then to be redeemed that shall be surrendered uncanceled by the City to the Registrar; provided that the City shall have surrendered such Series 2006 Term Bonds to the Registrar not less than forty-five days before the first such Sinking Fund Payment Date, together with a City Certificate stating its election to use such Series 2006 Term Bonds for such purpose and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Series 2006 Term Bonds so surrendered by the City.

If Series 2006 Term Bonds are redeemed at the option of the City pursuant to Subsection (a) of this Section 2.05, the Bonds so optionally redeemed may, at the option of the City, be applied as a credit against any subsequent Mandatory Sinking Fund Payment or Payments with respect to Series 2006 Term Bonds, such credit to be equal to the principal amount of such Series

2006 Term Bonds redeemed pursuant to Subsection (a) of this Section 2.05; provided that the City shall have delivered to the Registrar not less than forty-five (45) days before the first such Sinking Fund Payment Date a City Certificate stating its election to apply such Series 2006 Term Bonds as such a credit and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Bonds of the same Stated Maturity so redeemed pursuant to Subsection (b) of this Section 2.05.

Any credit given to Mandatory Sinking Fund Payments pursuant to this Section 2.05(b) shall not affect any other Mandatory Sinking Fund Payments, which shall remain payable as otherwise provided in this Section 2.05(c), unless and until another credit is given in accordance with the provisions hereof.

(c) Notice of Redemption. The Financial Services Manager shall cause notice of redemption, stating the series, the amount, the serial numbers, the maturities, the CUSIP numbers and the interest rates of the Bonds or portions thereof called for redemption, to be mailed to the Registrar, the Paying Agent and to the registered owner of each Bond to be redeemed at his address shown in the Bond Register not less than 30 days before the redemption date therefor; provided that any defect in or failure to give such mailed notice shall not affect the validity of proceedings for the redemption of any Bond not affected thereby. Notice of the call of any Bond for redemption having been mailed as herein provided, and funds sufficient for the payment thereof with accrued interest having been deposited with the Paying Agent on or before the redemption date, interest on such Bond shall cease to accrue on said date, and the Owner shall have no further rights with respect thereto or under the Resolution except to receive the redemption price so deposited.

In addition to the notice prescribed by the preceding paragraph, the Financial Services Manager shall also give, or cause the Bond Registrar to give, notice of the redemption of any Bond or Bonds or portions thereof at least 35 days before the Redemption Date by certified mail, telecopy or express delivery service to the Original Purchaser of the Bonds and all registered securities depositories then in the business of holding substantial amounts of obligations of the character of the Bonds (such depositories now being The Depository Trust Company, of New York, New York) and the one or more national information services that disseminate information regarding municipal bond redemptions; provided that any defect in or any failure to give any notice of redemption prescribed by this paragraph shall not affect the validity of the proceedings for the redemption of any Bond or portion thereof.

Execution, Registration and Delivery of Bonds. The Bonds shall be prepared under the direction of the City Clerk and shall be executed on behalf of the City by the signatures of the Mayor, the Financial Services Manager and the City Clerk and sealed with the official seal of the City; provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or

obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificate of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Bonds shall be registered in order of their serial numbers by the Financial Services Manager as of September 1, 2006, and the Bonds shall be delivered by the Registrar to the Original Purchaser upon payment of \$373,920.00, which represents a discount of \$6,080.00, for the principal of the Bonds plus accrued interest from the registration date to the date of such delivery and payment. The Original Purchaser shall not be obligated to see to the application of the purchase price, but from the proceeds of the Bonds the Financial Services Manager shall credit forthwith the balance of such proceeds to the Construction Subaccounts in the respective Project Accounts in the 2006 Sidewalk Sinking Fund to be used solely for the payment of the cost and expenses necessarily incurred in the construction of the Improvements and costs of issuance and sale of the Bonds, except that the accrued interest received shall be deposited in the Interest Subaccounts in the respective Project Accounts in the 2006 Sidewalk Sinking Fund and applied in payment of interest on the Bonds when due.

Form of Bonds. The Bonds shall be prepared in substantially the form set forth in Montana Code Annotated, Section 7-12-4203, as more fully set forth in Exhibit B hereto and by this reference made a part hereof.

Application of Proceeds. The Original Purchaser shall not be obligated to see to the application of the purchase price. The Financial Services Manager shall credit forthwith the proceeds of the Bonds as follows:

Deposit to the credit of the Interest Subaccounts in the respective Project Accounts in the 2006 Sidewalk Sinking Fund the amount of accrued interest, if any, paid by the Original Purchaser thereof to the date of delivery of the Bonds, in proportion to the principal amounts of the Bonds allocable to each of the Projects, as set forth in Section 1.02, which will be applied to payment of interest on the Bonds when due;

Deposit \$19,000.00 to the Revolving Fund (\$8,575.94 for the Miscellaneous/Developer-Related Improvements (03-02), \$7,437.15 for the Miscellaneous/Developer-Related Improvements (04-02), and \$2,986.91 for the School Route Improvements); and

Deposit the balance of the proceeds to the Construction Subaccounts in the respective Project Accounts, in proportion to the principal amounts of the Bonds allocable to each of the Projects, including costs of issuance, to be used for the purposes described in Section 3.02.

2006 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund.

2006 Sidewalk Sinking Fund. The 2006 Sidewalk Sinking Fund is hereby created and designated as the “2006 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund.” The 2006 Sidewalk Sinking Fund shall be maintained as a separate bookkeeping account by the Financial Services Manager on the books and records of the City. Within the 2006 Sidewalk Sinking Fund there shall be maintained separate accounts for the Miscellaneous/Developer-Related Improvements (03-02), the Miscellaneous/Developer-Related Improvements (04-02), and the School Route Improvements shown on Exhibit A hereto, designated accordingly (collectively, the “Project Accounts”). Within each Project Account there shall be maintained three separate subaccounts, designated as the “Construction Subaccount,” the “Principal Subaccount” and the “Interest Subaccount,” respectively.

Construction Subaccounts. There shall be credited to the Construction Subaccount in each of the Project Accounts the proceeds of the sale of the Bonds, less any interest accrued thereon to the date of delivery to the Purchaser. All costs and expenses of constructing the Improvements to be paid from proceeds of the Bonds shall be paid from time to time as incurred and allowed from the Construction Subaccount in the respective Project Accounts in accordance with the provisions of applicable law, and moneys in such Construction Subaccount shall be used for no other purpose; provided that after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any moneys remaining in the Construction Subaccount shall be transferred to the Principal Subaccount in the Project Account for the Project and applied to the redemption of Bonds.

Principal Subaccounts and Interest Subaccounts. Moneys in the Principal Subaccounts and the Interest Subaccounts shall be used only for payment of the principal of and interest on the Bonds as such payments become due, or to prepay and redeem Bonds. Upon the collection of the installment of principal and interest due on November 30 and May 31 of each year on the special assessments to be levied with respect to the Improvements, the Financial Services Manager shall credit to the Interest Subaccounts in the respective Project Accounts so much of said special assessments as is collected as interest payment, and credit the balance of such assessments to the Principal Subaccounts. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the nearest bond call date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the 2006 Sidewalk Sinking Fund. All moneys in the Interest Subaccounts and the Principal Subaccounts shall be used first to pay interest due, and any remaining moneys shall be used to pay Bonds then due and, if moneys are available, to redeem Bonds or principal installments thereof in accordance with Section 2.05; provided that any money transferred to the Principal Subaccount from the Construction Subaccount pursuant to Section 3.02 or any prepaid special assessments shall be applied to redeem Bonds or principal installments thereof to the extent possible on the next interest payment date for which notice of redemption may properly be given pursuant to Section 2.05. Redemption of Bonds from the Principal Subaccount shall be in order of the principal installments they represent as provided in Section 2.05, and interest shall be paid from the Interest Subaccount as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Sections 7-12-4206.



Loans From Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Special Improvement District Revolving Fund to each of the Project Accounts in an amount sufficient to make good any deficiency then existing in the Interest Subaccount in the Project Account, and shall issue an order authorizing a loan or advance from the Revolving Fund to the Project Account in an amount sufficient to make good any deficiency then existing in the Principal Subaccount of the Project Account, to the extent that moneys are available in the Revolving Fund. Pursuant to Ordinance No. 1096 and in connection with the public offering of the Bonds, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-4222. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City is not sufficient to make good all deficiencies then existing in the improvement district fund or sidewalk, curb, gutter and alley approach fund for which the City has promised to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City has been paid. On any date when all accrued interest on special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City payable from funds for which the City has promised to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the improvement district fund or sidewalk, curb, gutter and alley approach fund for payment and redemption of bonds or warrants to the extent the improvement district fund or sidewalk, curb, gutter and alley approach fund is deficient for such purpose, in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

City Covenants. The City covenants and agrees with the holders from time to time of each of the Bonds that until all of the Bonds and interest thereon are fully paid:

Compliance with Covenants. The City will hold the 2006 Sidewalk Sinking Fund and the Special Improvement District Revolving Fund of the City created by Ordinance No. 1096, adopted June 3, 1930 (the "Revolving Fund"), as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this resolution. The covenants hereinabove made with respect to the 2006 Sidewalk Sinking Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering of the Bonds and the sale of the Bonds as set forth in Section 1.01.

Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts entered into or to be entered into for the

Improvements and to ensure the completion of the Improvements in accordance with the plans and specifications therefor and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Project Accounts in the Construction Subaccount and within the amount of the bond proceeds appropriated thereto.

Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable property benefited by the Improvements, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than \$380,000. of which \$171,518.85 shall be assessed against properties benefited by the Miscellaneous/Developer-Related Improvements (03-02), \$148,743.01 for the Miscellaneous/Developer-Related Improvements (04-02), and \$59,738.14 for the School Route Improvements. Such special assessments shall be levied on each lot or parcel of land in front of which sidewalks, curbs and gutters are to be constructed and each lot or parcel of land having an access via the alley approach and, unless prepaid in full, shall be payable in equal semiannual installments over a period of twelve years, each installment being due in an amount equal to one twenty-fourth (1/24th) of the principal amount of each assessment with interest on the whole amount remaining unpaid at an annual rate equal to the sum of: (i) the average annual interest rate then borne by the outstanding Bonds, plus (ii) one-half of one percent per annum (0.50%), interest being payable with principal installments. The assessments to be levied will be payable on the 30th day of November in each of the years 2006 through 2017, and on the 31st day of May in the years 2007 through 2018. The first partial payment of each such assessment shall include interest on the entire assessment from September 1, 2006, the date of original registration of the Bonds, to January 1, 2007, and each subsequent partial payment shall include interest for six months on the unpaid balance of such special assessment. All installments of special assessments not paid in full on or before the date due shall become delinquent on that date. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-4191. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-309.

Re-assess and Re-levy. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will re-assess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-4186. Any special assessment, or re-assessment or re-levy shall, so far as practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bonds, including investment income thereon, are applied to the redemption of the Bonds, as provided in Montana Code Annotated, Sections 7-12-4205 and 7-12-4206, or if refunding bonds are issued and the principal amount of the outstanding bonds is decreased or increased, the City will reduce or increase, respectively, the assessments levied in

the project area and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this Council, its officers and employees will re-assess and re-levy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Montana Code Annotated, Sections 7-12-4176 through 7-12-4178.

Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened, questioning the validity or regularity of the ordering of the Improvements, any contract for construction of the Improvements, the levy and collection of special assessments as described herein or the undertaking and agreement of the City to make up any deficiency in the collection of special assessments through the levy of taxes and the making of advances from the Revolving Fund, or the right and powers of the City to issue the Bonds, or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Original Purchaser, and will furnish the Original Purchaser a copy of all documents, including pleadings, in connection with such litigation.

Tax Matters.

General Covenant. The City covenants and agrees with the owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Arbitrage Certification. The Mayor, the City Clerk and the Financial Services Manager, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

Arbitrage Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, unless the Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no "gross proceeds" of the Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, City Clerk and Financial Services Manager are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be

prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Information Reporting. The City shall file with the Secretary of the Treasury, not later than November 15, 2006, a statement concerning the Bonds containing the information required by Section 149(e) of the Code.

“Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The City has not designated any obligations in 2006 other than the Bonds under Section 265(b)(3), except \$851,000 Pooled Special Improvement District Bonds (Special Improvement District Nos. 1368, 1370 and 1373), Series 2006. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) Bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all “subordinate entities” of the City in 2006 in an amount greater than \$10,000,000.

Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Original Purchaser and to the attorneys approving the legality of the Bonds certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the statements contained therein.

Defeasance.

General. When the liability of the City on all Bonds issued under and secured by this Resolution has been discharged as provided in this Section 7, all pledges, covenants and other rights granted by this Resolution to the owners of the Bonds shall cease.

Payment. The City may discharge its liability with reference to any Bond, principal installment thereof or installment of interest thereon which is due on any date by depositing with the Registrar on or before that date a sum sufficient and providing proceeds available for the payment thereof in full; or if any Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient and providing proceeds available for the payment thereof in full with interest accrued to the date of such deposit.

Redemption. The City may also discharge its liability with reference to any prepayable Bonds which are called for redemption on any date in accordance with their terms by depositing with the Registrar on or before that date an amount equal to the principal and interest which are then due thereon; provided that notice of such redemption has been duly given as provided in this Resolution.

Defeasance by Escrow. The City may also at any time discharge its liability in its entirety with reference to the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on all Bonds on or before maturity or, if any Bond has been duly called for redemption or provision irrevocably made therefor, on or before the designated redemption date.

Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 7 with the Registrar shall be irrevocable and held for the benefit of the owners of Bonds in respect of which such deposits have been made.

Continuing Disclosure.

(a) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the “Rule”), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. The District is the only “obligated person” in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made. The District has complied in all material respects with any undertaking previously entered into by it under the Rule.

If the City fails to comply with any provisions of this Section 8, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 8, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 8 constitute a default under the Bonds or under any other provision of this resolution.

As used in this Section 8, “Owner” or “Bondowner” means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any “Beneficial Owner” (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, “Beneficial Owner” means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 270 days after the end of each fiscal year of the City, commencing with the fiscal year ending June 30, 2006, the following financial information and operating data in respect of the City (the “Disclosure Information”):

(A) An extract from the financial statements of the City for such fiscal year, including the complete audit report and opinion of an independent certified public accountant or state legislative auditor thereon, containing the financial statements of the 2006 Sidewalk Sinking Fund and the Revolving Fund of the City including balance sheets as of the end of such fiscal year and a statement of operations and changes in fund balances for the fiscal year then ended, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the Financial Services Manager of the City, to the best of his or her knowledge;

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or the period most recently available of the type identified below, which information may be unaudited, but shall be certified as to accuracy and completeness in all material respects by the Financial Services Manager of the City to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or other third-party sources:

1. Information, for such fiscal year, relating to the Project assessments, collections, investment earnings and debt service payments, amounts on hand in the Revolving Fund and transfers in and out contained in the table under the captions “Revolving Fund,” “Other Outstanding Special Sidewalk Bonds and Special Improvement District Bonds and The Revolving Fund,” “Statement of Changes in Fund Balance of the Revolving Fund,” “Special Assessment Collections” and “Future Financings” in the Official Statement, dated as of August 14, 2006 (the “Official Statement”).

2. Information, as of January 1 for the current tax year, relating to the appraised value and taxable value of taxable property in the Project.

3. Identification of the ten property owners in the Project with the largest assessments by name, type of property and taxable value.

4. Information, as of the most recent date available, regarding employment in the Billings MSA, the State of Montana and the United States of the type contained in the table under the caption “The City—Employment” in the Official Statement.

5. Information, as of the most recent date available, regarding the larger employers in the Billings MSA, identifying the employer and estimated number of employees of the type contained in the table under the caption “The City—Major Employers” in the Official Statement.

6. Information, as of the end of the most recent fiscal year, regarding the direct debt of the City, including debt evidenced by special improvement district bonds, overlapping general obligation debt and debt ratios of the type contained under the captions “The City—Direct Debt of the City,” “—Overlapping General Obligation Debt,” “—Debt Ratios for General Obligation Debt” in the Official Statement.

7. Information relating to the State of Montana’s property tax system contained under the caption “The City—Budgeting Process” in the Official Statement.

Notwithstanding the foregoing paragraph, if the audited financial statements from which such extracts are to be taken are not available by the date specified, the City shall provide on or before such date extracts from unaudited financial statements in the format required as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide extracts from the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (c) or the SEC. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the Project or the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be a Material Fact (as defined in paragraph (2) hereof), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 8 is amended as permitted by this paragraph (b)(1) or subsection (d), then the City shall include in the next

Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided. Such explanation shall include any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities;
- and
- (K) Rating changes.

As used herein, a “Material Fact” is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a “Material Fact” is also an event that would be deemed “material” for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

- (A) the failure of the City to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;
- (B) the amendment or supplementing of this Section 8 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under subsection (d)(2);
- (C) the termination of the obligations of the City under this Section 8 pursuant to subsection (d); and
- (D) any change in the fiscal year of the City.



(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Montana as contemplated by the Rule (the "State Depository"), if any; and

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 8 shall remain in effect so long as any Bonds are Outstanding.

(2) This Section 8 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (c)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the City Clerk of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that such amendment or supplement (A) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City, the Project or the 2006 Sidewalk Sinking Fund and the Revolving Fund or the type of operations conducted by the City or the Project, or (B) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule, such provisions apply to the Bonds.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 8 is entered into as a continuing disclosure undertaking to provide continuing disclosure identical to that required by the continuing disclosure provisions of the Rule and should be construed so the undertaking would satisfy the requirements of paragraph (b)(5) of the Rule, assuming it was otherwise applicable to the Bonds.

(e) Further Limitation of Liability of City. In and to the extent the limitations of liability contained in subsection (a) are not effective, anything contained in this Section 8 to the contrary notwithstanding, in making the agreements, provisions and covenants set forth in this Section 8, the City has not obligated itself except with respect to the assessments pledged to pay the Bonds and the covenant to utilize the Revolving Fund as permitted by law and described herein. None of the agreements or obligations of the City contained herein shall be construed to

constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions whatsoever or constitute a pledge of the general credit or taxing powers of the City.

Repeals and Effective Date.

Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Council that are in any way inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

Effective Date. This resolution shall take effect immediately upon its passage and adoption by this Council.

PASSED by the City Council of Billings, Montana, this 28th day of August, 2006.

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Mayor

Attest:

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City Clerk

(SEAL)

## EXHIBIT A THE IMPROVEMENTS

### **General Description**

The Bonds are being issued to pay a portion of the costs of engineering, reconstructing and installing certain local improvements to benefit certain properties in the City described below consisting of various sidewalk, curb, gutter and alley approach improvements all as a part of the Miscellaneous/Developer Related Improvements Project 03-02 (the “Miscellaneous/Developer Related Improvements (03-02)”), the Miscellaneous/Developer Related Improvements Project 04-02 (the “Miscellaneous/Developer Related Improvements (04-02)”) and the School Route Improvements (the “School Route Improvements”) (collectively, the “Improvements”) as shown below.

### **Miscellaneous/Developer Related Improvements (03-02)**

The Improvements described below constituting the Miscellaneous/Developer Related Improvements (03-02) will be constructed adjacent to the properties shown under each category of Improvements.

#### **Replacement of Sidewalk:**

- South side of Avenue D between 14<sup>th</sup> Street W and 15<sup>th</sup> Street West
- 1708 Burlington Avenue
- 1619 Clark Avenue
- 308 South 39<sup>th</sup> Street
- 1127 and 1133 Yellowstone Avenue
- 536 South 18<sup>th</sup> Street West
- 1655 Vuecrest Drive
- 3342 Stoney Ridge Drive
- 518 South 31<sup>st</sup> Street
- 2107 Locust Street
- 3160-3162 South Daffodil Drive

#### **Replacement of Sidewalk, Curb and Gutter:**

- Both sides of Montana Avenue between Division Street and North 32<sup>nd</sup> Street
- North side of 6<sup>th</sup> Avenue South between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street
- 2824 2<sup>nd</sup> Avenue North
- 823 North 28<sup>th</sup> Street
- West side of South 36<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- West side of South 32<sup>nd</sup> Street between 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South
- Division Street and Montana Avenue (Mac Intyre Park – interior s/w)
- 1905 Poly Drive
- 2530 Burlington Avenue
- 219/223 Birchwood Drive
- 1102 20<sup>th</sup> Street West
- East side of 12<sup>th</sup> Street West between Broadwater Avenue and Yellowstone Avenue
- North side of 2<sup>nd</sup> Avenue North between North 16<sup>th</sup> Street and North 17<sup>th</sup> Street
- South side of 3<sup>rd</sup> Avenue North between North 16<sup>th</sup> Street and North 17<sup>th</sup> Street
- East side of south 31<sup>st</sup> Street between 4<sup>th</sup> Avenue South and 51 feet to the North

#### **Replacement of Sidewalk, Curb, Gutter and Drive Approaches:**

- 1420 Avenue D
- 1028 Broadwater Avenue
- South side of 5<sup>th</sup> Avenue South between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street
- West side of South 29<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- East side of South 30<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- 2412 22<sup>nd</sup> Street West
- North side of 6<sup>th</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- 620 Crawford Drive
- 2011 Yellowstone Avenue
- 515 Moore Lane
- 715 Central Avenue
- East side of North 16<sup>th</sup> Street between 2<sup>nd</sup> Avenue North and 3<sup>rd</sup> Avenue North
- 2940 Poly Drive (Mayflower Congregational Church)
- 1610 Bitterroot Drive
- 2121 Rosebud Drive
- 1105 Princeton Avenue
- 806 South 32<sup>nd</sup> Street
- 712 South 34<sup>th</sup> Street

#### **Replacement of Curb and Gutter:**

- 3001 1<sup>st</sup> Avenue North
- 2416 and 2220 Green Valley Drive
- Southwest corner of Wicks Lane and Main Street
- North side of Wicks Lane at Lake Hills Drive
- 306 Clark Avenue
- 1949 Iris Lane
- 2005/1949 Yellowstone Avenue
- 2200 Custer Avenue

#### **Replacement of Drive Approaches:**

- 1056 Calico Avenue
- 3115 1<sup>st</sup> Avenue North (work on north 32<sup>nd</sup> street)
- 3839 War Bonnet Trail

#### **Replacement of Sidewalk, Curb, Gutter, Drive and Alley Approaches:**

- North side of 4<sup>th</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- South side of 5<sup>th</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- East side of South 31<sup>st</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- North side of 8<sup>th</sup> Avenue North between North 18<sup>th</sup> Street and North 19<sup>th</sup> Street
- West side of South 30<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South

#### **Replacement of Alley Approaches:**

- West side of 2<sup>nd</sup> Street West between Miles Avenue and Terry Avenue
- Both sides of 3<sup>rd</sup> Street West between Miles Avenue and Terry Avenue
- East side of 4<sup>th</sup> Street West between Miles Avenue and Terry Avenue
- South side of 3<sup>rd</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- South side of 5<sup>th</sup> Avenue South between South 36<sup>th</sup> Street and South 37<sup>th</sup> Street
- North side of 6<sup>th</sup> Avenue South between South 36<sup>th</sup> Street and South 37<sup>th</sup> Street

#### **Miscellaneous/Developer Related Improvements (04-02)**

The Improvements described below constituting the Miscellaneous/Developer Related Improvements (04-02) will be constructed adjacent to the properties shown under each category of Improvements.

**Replacement of Sidewalk:**

- 362 Wyoming Avenue
- West side of 24<sup>th</sup> Street West from the BBWA canal approximately 200 Feet South
- 143 Norris Court
- 4104 Cambridge Drive
- 1331 Concord Drive
- 1804 Monad Road
- 2306 Locust Avenue
- 2419 Elm Street
- Playground area at Pioneer Park to Zimmerman Center walking trail
- 119 North 33<sup>rd</sup> Street

**Replacement of Sidewalk, Curb and Gutter:**

- 4101 Morgan Avenue
- 1006 Yale Avenue
- 603 Avenue C
- 224 South 33<sup>rd</sup> Street
- Both sides of Senators Boulevard, between Judicial Avenue and Gold Dust Circle
- East side of Division Street between 2<sup>nd</sup> Avenue North and 3<sup>rd</sup> Avenue North (Founders Park)
- 3301 1<sup>st</sup> Avenue North (Holiday Furniture)
- 2013 Avenue D
- 1711 3<sup>rd</sup> Street West
- The intersection of Grand Avenue and 19<sup>th</sup> Street West (all four corner handicap ramps)
- 1808 Parkhill Drive
- North side of 6<sup>th</sup> Avenue South between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street
- Pedestrian Ramos at the corners of the intersection of Division Street and Lewis Avenue and Division Street and 4<sup>th</sup> Avenue North
- Both sides of North 33<sup>rd</sup> Street, between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North
- Northeast corner of the intersection at 32<sup>nd</sup> Street West and Parkhill Drive

**Replacement of Sidewalk, Curb, Gutter and Drive Approaches:**

- 2435, 2443, 2501 Interlachen Drive
- 2501 and 2507 Wyoming Avenue
- West side of South 28<sup>th</sup> Street, between 1<sup>st</sup> Avenue South and 2<sup>nd</sup> Avenue South

**Replacement of Curb and Gutter:**

- West side of Westfield Drive, from County lane to Poly Drive
- South side of 4<sup>th</sup> Avenue North, between North 28<sup>th</sup> Street, and 135' West to the Alley
- 4235 Arden Avenue
- West side of Arcadia Drive between North ridge Circle, and Forest Park Drive
- 2102 Grand Avenue (approximately)
- 331 Burlington Avenue

**Replacement of Curb, Gutter and Drive Approaches:**

- 1505 and 1511 Patricia Lane

**Replacement of Drive Approaches:**

- 1126 Calico Avenue
- 1005 Siesta Avenue
- 1118 Toole Court
- 818 Silver Dollar Circle
- 2315 Colton Boulevard (on Meadowood Street)

**Replacement of Sidewalk, Curb, Gutter, Drive and Alley Approaches:**

- East side of South 30<sup>th</sup> Street, between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- West side of South 29<sup>th</sup> Street, between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- South side of 4<sup>th</sup> Avenue South, from South 38<sup>th</sup> Street and South 39<sup>th</sup> Street
- West side of 6<sup>th</sup> Street West, between Avenue C and Avenue D
- South side of 3<sup>rd</sup> Avenue North, between North 33<sup>rd</sup> Street and Division Street
- South side of 5<sup>th</sup> Avenue South, between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street

**Replacement of Alley Approaches:**

- East side of 7<sup>th</sup> Street West, between Avenue C and Avenue D
- West side of 14<sup>th</sup> Street West, between Concord Drive and Eldorado Drive

**School Route Improvements**

The Improvements described below constituting the School Route Improvements will be constructed adjacent to the properties shown under each category of Improvements.

**Replacement of Sidewalk:**

- North side of St. Johns Avenue, from 10<sup>th</sup> Street West to the cul-de-sac
- 1044 Cook Avenue (Washington Elementary School)

**Replacement of Sidewalk, Curb, Gutter and Drive Approaches:**

- East and west sides of North 22<sup>nd</sup> Street, between 9<sup>th</sup> Avenue North and 11<sup>th</sup> Avenue North

EXHIBIT B

[Face of the Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
YELLOWSTONE COUNTY

CITY OF BILLINGS

POOLED SPECIAL SIDEWALK, CURB, GUTTER AND  
ALLEY APPROACH BOND, SERIES 2006

Interest at the rate per annum specified below  
payable on January 1, 2007 and  
semiannually thereafter on the 1st day of January  
and the 1st day of July in each year.

No. \_\_\_\_\_ \$ \_\_\_\_\_ .00

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	July 1,	September 1, 2006	

**REGISTERED OWNER:** CEDE & CO.

**PRINCIPAL AMOUNT:**

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana (the "City"), will pay to the registered owner identified above or registered assigns, on the maturity date specified above the principal amount, solely from the revenues hereinafter specified, as authorized by Resolution No. \_\_\_\_\_, adopted on August 28, 2006 (the "Bond Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of registration of this Bond, as expressed herein, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Financial Services Director. Interest on this Bond is payable semiannually, commencing January 1, 2007, on the 1st day of January and the 1st day of July in each year, to the owner of record of this Bond appearing as such 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. Interest on and, upon presentation and surrender hereof at the operations center in St. Paul, Minnesota, of the bond registrar and paying agent hereinafter named, the principal of this Bond are payable by check or draft of U.S. Bank National Association, of Seattle, Washington, as bond registrar and paying agent, or its successor designated under the Bond Resolution described herein (the "Registrar"). The principal of and interest on this Bond are payable in lawful money of the United States of America.

Notwithstanding any other provisions of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the City.

This Bond is one of an issue in the aggregate principal amount of \$380,000 (the "Series 2006 Bonds"), all of like date of original issue and tenor, except as to serial number, denomination, date, interest rate, maturity date, and redemption privilege. The Series 2006 Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 14, Part 41 and Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing a portion of the cost of construction of sidewalk, curb, gutter and alley approach improvements in the City (the "Improvements"), to fund a deposit to the revolving fund and to pay costs associated with the sale and security of the Series 2006 Bonds. The Series 2006 Bonds are issuable only as fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

This Bond is payable from the collection of a special tax or assessment levied upon all assessable property benefitted by the Improvements. This Bond is not a general obligation of the City.

The City has also validly established a Special Improvement District Revolving Fund (the "Revolving Fund") to secure the payment of certain of its special improvement district bonds and sidewalk, curb, gutter and alley approach bonds or warrants, including the Series 2006 Bonds. The City has also agreed, to the extent permitted by the Act, to issue orders annually authorizing loans or advances from the Revolving Fund to the 2006 Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund (the "2006 Sidewalk Sinking Fund"), in amounts sufficient to make good any deficiency in the 2006 Sidewalk Sinking Fund to pay principal of or interest on the Series 2006 Bonds, to the extent that funds are available in the Revolving Fund, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement district bonds and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Bond Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

The Bonds with stated maturities on or before July 1, 2012 shall not be subject to optional redemption prior to maturity, but Bonds having stated maturity dates in the years 2013 and later years, in addition to being subject to mandatory sinking fund redemption, are each subject to redemption and prepayment at the option of the City, in whole or in part, and if in part



in principal amounts and from Stated Maturities selected by the City, and within a Stated Maturity in \$5,000 principal amounts selected by lot or such other manner as determined by the Paying Agent, on July 1, 2012 and any date thereafter, at a price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

The Bonds having Stated Maturities in 2012, 2015, and 2018 are subject to mandatory sinking fund redemption on July 1 in the respective years and the respective principal amounts set forth below, in \$5,000 principal amounts selected by the Registrar, by lot or other manner it deems fair, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued thereon to the redemption date:

<u>Stated Maturity of Term Bonds (July 1)</u>	<u>Sinking Fund Payment Date (July 1)</u>	<u>Principal Amount on Sinking Fund Payment Date</u>
2012	2009	\$30,000
30,000	2010	30,000
	2011	30,000
2015	2013	\$30,000
35,000	2014	35,000
2018	2016	\$ 35,000
40,000	2017	40,000

The Registrar shall select the Series 2006 Term Bonds to be redeemed on each Sinking Fund Payment Date in accordance with the Bond Resolution, and the Bonds selected by the Registrar shall become due and payable on such date. The City may reduce the amount of any Mandatory Sinking Fund Payment payable on any Sinking Fund Payment Date or Dates by an amount equal to the principal amount of Outstanding Series 2006 Term Bonds then to be redeemed that shall be surrendered uncanceled by the City to the Registrar; provided that the City shall have surrendered such Series 2006 Term Bonds to the Registrar not less than forty-five days before the first such Sinking Fund Payment Date, together with a City Certificate stating its election to use such Series 2006 Term Bonds for such purpose and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Series 2006 Term Bonds so surrendered by the City.

If Series 2006 Term Bonds are redeemed at the option of the City pursuant to the Bond Resolution, the Bonds so optionally redeemed may, at the option of the City, be applied as a credit against any subsequent Mandatory Sinking Fund Payment or Payments with respect to Series 2006 Term Bonds, such credit to be equal to the principal amount of such Series 2006 Term Bonds redeemed pursuant to the Bond Resolution; provided that the City shall have delivered to the Registrar not less than forty-five (45) days before the first such Sinking Fund Payment Date a City Certificate stating its election to apply such Series 2006 Term Bonds as such a credit and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Bonds of the same Stated Maturity so redeemed pursuant to the Bond Resolution.

Any credit given to Mandatory Sinking Fund Payments pursuant to the Bond Resolution shall not affect any other Mandatory Sinking Fund Payments, which shall remain payable as otherwise provided in the Bond Resolution, unless and until another credit is given in accordance with the provisions hereof.

As provided in the Bond Resolution, and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the operations center of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series 2006 Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance hereof; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Series 2006 Bonds, dated the date of original issuance and delivery of the Series 2006 Bonds.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.



IN WITNESS WHEREOF, the City of Billings, Montana, by its City Council has caused this Bond to be executed by the facsimile signatures of the Mayor, the Financial Services Director and the City Clerk and by a facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile signature)  
Mayor

(Facsimile signature)  
Financial Services Director

(Facsimile Seal)

(Facsimile signature)  
City Clerk

Date:

### CERTIFICATE OF AUTHENTICATION

This is one of the Series 2006 Bonds delivered pursuant to the Bond Resolution mentioned herein.

U.S. BANK NATIONAL ASSOCIATION,  
as Registrar

By \_\_\_\_\_  
Authorized Representative

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM –	as tenants in common	UTMA.....Custodian ..... (Cust) (Minor)
TEN ENT –	as tenants by the entireties	
JT TEN –	as joint tenants with right of survivorship and not as tenants in common	under Uniform Transfers to Minors Act ..... (State)

Additional abbreviations may also be used.

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE:

\_\_\_\_\_  
/ \_\_\_\_\_ /

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEED

Signature(s)	must	be	guaranteed	by	an
"eligible	guarantor	of	institution"	Registrar,	meeting
the	requirements	include	the	membership	which
requirements	in	STAMP	or	such	or
participation	guaranty	program"	as	may	other
"signature	by	the	Registrar	in	be
determined	in	substitution	for	STAMP,	addition
to or	with	the	Securities	all	in
accordance					Exchange

**Act of 1934, as amended.**

**CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Yellowstone County, 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; CREATING SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH FUND AND PRESCRIBING COVENANTS OF THE CITY FOR THE SECURITY OF THE HOLDERS OF 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 of the City at a regular meeting on August 28, 2006, and that the meeting was duly held by the City Council Members 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 August, 2006.

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

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

RESOLUTION RELATING TO \$380,000 POOLED SPECIAL  
SIDEWALK, CURB, GUTTER AND ALLEY APPROACH  
BONDS, SERIES 2006; CREATING SPECIAL SIDEWALK,  
CURB, GUTTER AND ALLEY APPROACH FUND AND  
PRESCRIBING COVENANTS OF THE CITY FOR THE  
SECURITY OF THE HOLDERS OF THE BONDS

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

Recitals. It is hereby found, determined and declared as follows:

Sale of Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds. This Council, by Resolution No. 06-18455, adopted July 24, 2006, authorized the issuance and public sale of pooled special sidewalk, curb, gutter and alley approach bonds of the City in the aggregate principal amount of \$380,000 (the "Bonds") for the purpose of financing the construction of certain sidewalks, curbs, gutter and alley approach projects (the "Projects"; each, a "Project") heretofore ordered by this Council pursuant to Resolution Nos. 03-17977, 04-18179, and 02-17923, adopted April 28, 2003, August 23, 2004, and October 28, 2002, respectively, and as set forth on Exhibit A hereto, as the Miscellaneous and Developer Related Improvements (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 "Improvements"). Advertisements for bids for the purchase of the Bonds were published in accordance with the provisions of Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. After a public sale conducted in accordance with applicable statutory provisions and pursuant to the minutes of its August 14, 2006 meeting, this Council authorized the City to enter into a contract with Northland Securities, of Minneapolis, Minnesota (the "Original Purchaser"), as the lowest responsible bidder pursuant to which the Original Purchaser agreed to purchase from the City the Bonds at a purchase price of \$373,920.00, plus accrued interest thereon from the date of original issue of the Bonds, at the rates of interest set forth in Section 2.01 hereof and upon the further terms set forth in this resolution resulting at a net interest cost of 4.663557% per annum and a total dollar interest cost of \$122,262.92.

In Resolution Nos. 03-17977, 04-18179, and 02-17923, adopted April 28, 2003, August 23, 2004, and October 28, 2002, respectively, this Council found that it is in the public interest, and in the best interest of the City and the properties, to secure payment of principal of and interest on the Bonds by the Special Improvement District Revolving Fund of the City, on the basis of the factors required to be considered under Section 7-12-4225 of the Act. Those findings are hereby ratified and confirmed.

Costs. It is currently estimated that the costs and expenses to be assessed against properties benefited by the Improvements, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction



contract and all other costs and expenses, including the deposit of proceeds in the Revolving Fund, is not less than \$380,000 (\$171,518.85 for the Miscellaneous/Developer-Related Improvements (03-02), \$148,743.01 for the Miscellaneous/Developer-Related Improvements (04-02), and \$59,738.14 for the School Route Improvements). Such amount will be levied and assessed upon the assessable real property benefited by the Improvements. This Council has jurisdiction and is required by law to levy and assess such amount, to collect such special assessments and credit the same to the pooled special sidewalk, curb, gutter and alley approach sinking fund created for the Improvements, which fund is to be maintained on the official books and records of the City separate from all other City funds, for the payment of principal and interest when due on the bonds herein authorized.

Compliance with Constitution and Statutes. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 14, Part 41, and Title 7, Chapter 12, Parts 41 and 42, as amended, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as required.

\$380,000 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006.

Principal Amount, Maturities, Date, Denominations and Interest Rate. For the purpose of paying the costs and expenses incurred in the construction of the Improvements and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the public offering and contract of sale described in Section 1.01, the City shall forthwith issue and deliver to the Purchaser its Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006, in the aggregate principal amount of \$380,000, payable solely from the 2006 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the “2006 Sidewalk Sinking Fund”). The Bonds shall bear an original issue date and be registered as of September 1, 2006, and shall be issued in the form of fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

The Bonds shall mature on July 1 in the years and amounts set forth below, subject to prior redemption, and shall bear interest from the date of original registration to their respective maturities or prior dates upon which they have been duly called for redemption at the rates per annum set forth opposite such years and amounts, respectively:

Stated Maturity (July 1)	Principal Amount	Interest Rate
2007	\$ 20,000	3.900%
2008	25,000	4.000
2012*	120,000	4.250
2015*	100,000	4.400
2018*	115,000	4.550

\*Term bond subject to mandatory sinking fund redemption as set forth in Section 2.05 below.

Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Principal of and interest on the Bonds are payable in lawful money of the United States of America. Upon the original delivery of the Bonds or upon transfer or exchange of Bonds, the Registrar (as hereinafter defined) shall date each Bond so delivered as of the date of its authentication.

Method of Payment. The Bonds shall be issuable only in fully registered form, and the ownership of the Bonds shall be transferred only upon the bond register of the City hereinafter described. The interest on, and upon presentation and surrender thereof at the principal office of the Registrar described herein, the principal amount of each Bond at the principal office of the Registrar described herein, the amount payable with respect thereto, shall be payable by check or draft issued by the Registrar.

Interest Payment Dates. Interest on the Bonds shall be payable semiannually on each January 1 and July 1, commencing January 1, 2007, to the owners of record thereof as such appear in the bond register as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

Registration. The City hereby appoints U.S. Bank National Association, of Seattle, Washington to act as bond registrar, transfer agent and paying agent (the "Registrar"). The City reserves the right to appoint a bank, trust company or fiscal company as successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana (the "Act"), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. This Section 2.04 shall establish a system of registration for the Bonds as defined by the Act. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

Bond Register. The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

Transfer. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of the transfer of any Bond or principal installment thereof to be selected or called for redemption. No transfer or exchange of a Bond shall affect its order of registration for purposes of redemption pursuant to Section 2.05.

Exchange of Bonds. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except for an exchange upon the partial redemption of any Bond pursuant to Section 0), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or such Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

#### Redemption.

(a) Optional Redemption of Bonds. The Bonds with stated maturities on or before July 1, 2012 shall not be subject to optional redemption prior to maturity, but Bonds having stated maturity dates in the years 2015 and later years, in addition to being subject to mandatory sinking fund redemption, are each subject to redemption and prepayment at the option of the City, in whole or in part, and if in part in principal amounts and from Stated Maturities selected by the City, and within a Stated Maturity in \$5,000 principal amounts selected by lot or such

other manner as determined by the Paying Agent, on July 1, 2012 and any date thereafter, at a price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

(b) Mandatory Sinking Fund Redemption of Series 2006 Term Bonds.

The Bonds having Stated Maturities in 2012, 2015, and 2018 are subject to mandatory sinking fund redemption on July 1 in the respective years and the respective principal amounts set forth below, in \$5,000 principal amounts selected by the Registrar, by lot or other manner it deems fair, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued thereon to the redemption date:

<u>Stated Maturity of Term Bonds (July 1)</u>	<u>Sinking Fund Payment Date (July 1)</u>	<u>Principal Amount on Sinking Fund Payment Date</u>
2012	2009	\$30,000
\$30,000	2010	30,000
	2011	30,000
2015	2013	\$30,000
\$35,000	2014	35,000
2018	2016	\$ 35,000
\$40,000	2017	40,000

The Registrar shall select the Series 2006 Term Bonds to be redeemed on each Sinking Fund Payment Date in accordance with Section 2.04, and the Bonds selected by the Registrar shall become due and payable on such date. The City may reduce the amount of any Mandatory Sinking Fund Payment payable on any Sinking Fund Payment Date or Dates by an amount equal to the principal amount of Outstanding Series 2006 Term Bonds then to be redeemed that shall be surrendered uncanceled by the City to the Registrar; provided that the City shall have surrendered such Series 2006 Term Bonds to the Registrar not less than forty-five days before the first such Sinking Fund Payment Date, together with a City Certificate stating its election to use such Series 2006 Term Bonds for such purpose and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Series 2006 Term Bonds so surrendered by the City.

If Series 2006 Term Bonds are redeemed at the option of the City pursuant to Subsection (a) of this Section 2.05, the Bonds so optionally redeemed may, at the option of the City, be applied as a credit against any subsequent Mandatory Sinking Fund Payment or Payments with respect to Series 2006 Term Bonds, such credit to be equal to the principal amount of such Series

2006 Term Bonds redeemed pursuant to Subsection (a) of this Section 2.05; provided that the City shall have delivered to the Registrar not less than forty-five (45) days before the first such Sinking Fund Payment Date a City Certificate stating its election to apply such Series 2006 Term Bonds as such a credit and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Bonds of the same Stated Maturity so redeemed pursuant to Subsection (b) of this Section 2.05.

Any credit given to Mandatory Sinking Fund Payments pursuant to this Section 2.05(b) shall not affect any other Mandatory Sinking Fund Payments, which shall remain payable as otherwise provided in this Section 2.05(c), unless and until another credit is given in accordance with the provisions hereof.

(c) Notice of Redemption. The Financial Services Manager shall cause notice of redemption, stating the series, the amount, the serial numbers, the maturities, the CUSIP numbers and the interest rates of the Bonds or portions thereof called for redemption, to be mailed to the Registrar, the Paying Agent and to the registered owner of each Bond to be redeemed at his address shown in the Bond Register not less than 30 days before the redemption date therefor; provided that any defect in or failure to give such mailed notice shall not affect the validity of proceedings for the redemption of any Bond not affected thereby. Notice of the call of any Bond for redemption having been mailed as herein provided, and funds sufficient for the payment thereof with accrued interest having been deposited with the Paying Agent on or before the redemption date, interest on such Bond shall cease to accrue on said date, and the Owner shall have no further rights with respect thereto or under the Resolution except to receive the redemption price so deposited.

In addition to the notice prescribed by the preceding paragraph, the Financial Services Manager shall also give, or cause the Bond Registrar to give, notice of the redemption of any Bond or Bonds or portions thereof at least 35 days before the Redemption Date by certified mail, telecopy or express delivery service to the Original Purchaser of the Bonds and all registered securities depositories then in the business of holding substantial amounts of obligations of the character of the Bonds (such depositories now being The Depository Trust Company, of New York, New York) and the one or more national information services that disseminate information regarding municipal bond redemptions; provided that any defect in or any failure to give any notice of redemption prescribed by this paragraph shall not affect the validity of the proceedings for the redemption of any Bond or portion thereof.

Execution, Registration and Delivery of Bonds. The Bonds shall be prepared under the direction of the City Clerk and shall be executed on behalf of the City by the signatures of the Mayor, the Financial Services Manager and the City Clerk and sealed with the official seal of the City; provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or

obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificate of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Bonds shall be registered in order of their serial numbers by the Financial Services Manager as of September 1, 2006, and the Bonds shall be delivered by the Registrar to the Original Purchaser upon payment of \$373,920.00, which represents a discount of \$6,080.00, for the principal of the Bonds plus accrued interest from the registration date to the date of such delivery and payment. The Original Purchaser shall not be obligated to see to the application of the purchase price, but from the proceeds of the Bonds the Financial Services Manager shall credit forthwith the balance of such proceeds to the Construction Subaccounts in the respective Project Accounts in the 2006 Sidewalk Sinking Fund to be used solely for the payment of the cost and expenses necessarily incurred in the construction of the Improvements and costs of issuance and sale of the Bonds, except that the accrued interest received shall be deposited in the Interest Subaccounts in the respective Project Accounts in the 2006 Sidewalk Sinking Fund and applied in payment of interest on the Bonds when due.

Form of Bonds. The Bonds shall be prepared in substantially the form set forth in Montana Code Annotated, Section 7-12-4203, as more fully set forth in Exhibit B hereto and by this reference made a part hereof.

Application of Proceeds. The Original Purchaser shall not be obligated to see to the application of the purchase price. The Financial Services Manager shall credit forthwith the proceeds of the Bonds as follows:

Deposit to the credit of the Interest Subaccounts in the respective Project Accounts in the 2006 Sidewalk Sinking Fund the amount of accrued interest, if any, paid by the Original Purchaser thereof to the date of delivery of the Bonds, in proportion to the principal amounts of the Bonds allocable to each of the Projects, as set forth in Section 1.02, which will be applied to payment of interest on the Bonds when due;

Deposit \$19,000.00 to the Revolving Fund (\$8,575.94 for the Miscellaneous/Developer-Related Improvements (03-02), \$7,437.15 for the Miscellaneous/Developer-Related Improvements (04-02), and \$2,986.91 for the School Route Improvements); and

Deposit the balance of the proceeds to the Construction Subaccounts in the respective Project Accounts, in proportion to the principal amounts of the Bonds allocable to each of the Projects, including costs of issuance, to be used for the purposes described in Section 3.02.

2006 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund.

2006 Sidewalk Sinking Fund. The 2006 Sidewalk Sinking Fund is hereby created and designated as the “2006 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund.” The 2006 Sidewalk Sinking Fund shall be maintained as a separate bookkeeping account by the Financial Services Manager on the books and records of the City. Within the 2006 Sidewalk Sinking Fund there shall be maintained separate accounts for the Miscellaneous/Developer-Related Improvements (03-02), the Miscellaneous/Developer-Related Improvements (04-02), and the School Route Improvements shown on Exhibit A hereto, designated accordingly (collectively, the “Project Accounts”). Within each Project Account there shall be maintained three separate subaccounts, designated as the “Construction Subaccount,” the “Principal Subaccount” and the “Interest Subaccount,” respectively.

Construction Subaccounts. There shall be credited to the Construction Subaccount in each of the Project Accounts the proceeds of the sale of the Bonds, less any interest accrued thereon to the date of delivery to the Purchaser. All costs and expenses of constructing the Improvements to be paid from proceeds of the Bonds shall be paid from time to time as incurred and allowed from the Construction Subaccount in the respective Project Accounts in accordance with the provisions of applicable law, and moneys in such Construction Subaccount shall be used for no other purpose; provided that after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any moneys remaining in the Construction Subaccount shall be transferred to the Principal Subaccount in the Project Account for the Project and applied to the redemption of Bonds.

Principal Subaccounts and Interest Subaccounts. Moneys in the Principal Subaccounts and the Interest Subaccounts shall be used only for payment of the principal of and interest on the Bonds as such payments become due, or to prepay and redeem Bonds. Upon the collection of the installment of principal and interest due on November 30 and May 31 of each year on the special assessments to be levied with respect to the Improvements, the Financial Services Manager shall credit to the Interest Subaccounts in the respective Project Accounts so much of said special assessments as is collected as interest payment, and credit the balance of such assessments to the Principal Subaccounts. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the nearest bond call date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the 2006 Sidewalk Sinking Fund. All moneys in the Interest Subaccounts and the Principal Subaccounts shall be used first to pay interest due, and any remaining moneys shall be used to pay Bonds then due and, if moneys are available, to redeem Bonds or principal installments thereof in accordance with Section 2.05; provided that any money transferred to the Principal Subaccount from the Construction Subaccount pursuant to Section 3.02 or any prepaid special assessments shall be applied to redeem Bonds or principal installments thereof to the extent possible on the next interest payment date for which notice of redemption may properly be given pursuant to Section 2.05. Redemption of Bonds from the Principal Subaccount shall be in order of the principal installments they represent as provided in Section 2.05, and interest shall be paid from the Interest Subaccount as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Sections 7-12-4206.

Loans From Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Special Improvement District Revolving Fund to each of the Project Accounts in an amount sufficient to make good any deficiency then existing in the Interest Subaccount in the Project Account, and shall issue an order authorizing a loan or advance from the Revolving Fund to the Project Account in an amount sufficient to make good any deficiency then existing in the Principal Subaccount of the Project Account, to the extent that moneys are available in the Revolving Fund. Pursuant to Ordinance No. 1096 and in connection with the public offering of the Bonds, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-4222. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City is not sufficient to make good all deficiencies then existing in the improvement district fund or sidewalk, curb, gutter and alley approach fund for which the City has promised to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City has been paid. On any date when all accrued interest on special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City payable from funds for which the City has promised to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the improvement district fund or sidewalk, curb, gutter and alley approach fund for payment and redemption of bonds or warrants to the extent the improvement district fund or sidewalk, curb, gutter and alley approach fund is deficient for such purpose, in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

City Covenants. The City covenants and agrees with the holders from time to time of each of the Bonds that until all of the Bonds and interest thereon are fully paid:

Compliance with Covenants. The City will hold the 2006 Sidewalk Sinking Fund and the Special Improvement District Revolving Fund of the City created by Ordinance No. 1096, adopted June 3, 1930 (the "Revolving Fund"), as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this resolution. The covenants hereinabove made with respect to the 2006 Sidewalk Sinking Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering of the Bonds and the sale of the Bonds as set forth in Section 1.01.

Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts entered into or to be entered into for the



Improvements and to ensure the completion of the Improvements in accordance with the plans and specifications therefor and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Project Accounts in the Construction Subaccount and within the amount of the bond proceeds appropriated thereto.

Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable property benefited by the Improvements, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than \$380,000. of which \$171,518.85 shall be assessed against properties benefited by the Miscellaneous/Developer-Related Improvements (03-02), \$148,743.01 for the Miscellaneous/Developer-Related Improvements (04-02), and \$59,738.14 for the School Route Improvements. Such special assessments shall be levied on each lot or parcel of land in front of which sidewalks, curbs and gutters are to be constructed and each lot or parcel of land having an access via the alley approach and, unless prepaid in full, shall be payable in equal semiannual installments over a period of twelve years, each installment being due in an amount equal to one twenty-fourth (1/24th) of the principal amount of each assessment with interest on the whole amount remaining unpaid at an annual rate equal to the sum of: (i) the average annual interest rate then borne by the outstanding Bonds, plus (ii) one-half of one percent per annum (0.50%), interest being payable with principal installments. The assessments to be levied will be payable on the 30th day of November in each of the years 2006 through 2017, and on the 31st day of May in the years 2007 through 2018. The first partial payment of each such assessment shall include interest on the entire assessment from September 1, 2006, the date of original registration of the Bonds, to January 1, 2007, and each subsequent partial payment shall include interest for six months on the unpaid balance of such special assessment. All installments of special assessments not paid in full on or before the date due shall become delinquent on that date. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-4191. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-309.

Re-assess and Re-levy. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will re-assess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-4186. Any special assessment, or re-assessment or re-levy shall, so far as practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bonds, including investment income thereon, are applied to the redemption of the Bonds, as provided in Montana Code Annotated, Sections 7-12-4205 and 7-12-4206, or if refunding bonds are issued and the principal amount of the outstanding bonds is decreased or increased, the City will reduce or increase, respectively, the assessments levied in

the project area and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this Council, its officers and employees will re-assess and re-levy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Montana Code Annotated, Sections 7-12-4176 through 7-12-4178.

Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened, questioning the validity or regularity of the ordering of the Improvements, any contract for construction of the Improvements, the levy and collection of special assessments as described herein or the undertaking and agreement of the City to make up any deficiency in the collection of special assessments through the levy of taxes and the making of advances from the Revolving Fund, or the right and powers of the City to issue the Bonds, or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Original Purchaser, and will furnish the Original Purchaser a copy of all documents, including pleadings, in connection with such litigation.

Tax Matters.

General Covenant. The City covenants and agrees with the owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Arbitrage Certification. The Mayor, the City Clerk and the Financial Services Manager, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

Arbitrage Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, unless the Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no "gross proceeds" of the Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, City Clerk and Financial Services Manager are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be

prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Information Reporting. The City shall file with the Secretary of the Treasury, not later than November 15, 2006, a statement concerning the Bonds containing the information required by Section 149(e) of the Code.

“Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The City has not designated any obligations in 2006 other than the Bonds under Section 265(b)(3), except \$851,000 Pooled Special Improvement District Bonds (Special Improvement District Nos. 1368, 1370 and 1373), Series 2006. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) Bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all “subordinate entities” of the City in 2006 in an amount greater than \$10,000,000.

Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Original Purchaser and to the attorneys approving the legality of the Bonds certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the statements contained therein.

Defeasance.

General. When the liability of the City on all Bonds issued under and secured by this Resolution has been discharged as provided in this Section 7, all pledges, covenants and other rights granted by this Resolution to the owners of the Bonds shall cease.

Payment. The City may discharge its liability with reference to any Bond, principal installment thereof or installment of interest thereon which is due on any date by depositing with the Registrar on or before that date a sum sufficient and providing proceeds available for the payment thereof in full; or if any Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient and providing proceeds available for the payment thereof in full with interest accrued to the date of such deposit.

Redemption. The City may also discharge its liability with reference to any prepayable Bonds which are called for redemption on any date in accordance with their terms by depositing with the Registrar on or before that date an amount equal to the principal and interest which are then due thereon; provided that notice of such redemption has been duly given as provided in this Resolution.

Defeasance by Escrow. The City may also at any time discharge its liability in its entirety with reference to the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on all Bonds on or before maturity or, if any Bond has been duly called for redemption or provision irrevocably made therefor, on or before the designated redemption date.

Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 7 with the Registrar shall be irrevocable and held for the benefit of the owners of Bonds in respect of which such deposits have been made.

Continuing Disclosure.

(a) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the “Rule”), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. The District is the only “obligated person” in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made. The District has complied in all material respects with any undertaking previously entered into by it under the Rule.

If the City fails to comply with any provisions of this Section 8, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 8, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 8 constitute a default under the Bonds or under any other provision of this resolution.

As used in this Section 8, “Owner” or “Bondowner” means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any “Beneficial Owner” (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, “Beneficial Owner” means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 270 days after the end of each fiscal year of the City, commencing with the fiscal year ending June 30, 2006, the following financial information and operating data in respect of the City (the “Disclosure Information”):

(A) An extract from the financial statements of the City for such fiscal year, including the complete audit report and opinion of an independent certified public accountant or state legislative auditor thereon, containing the financial statements of the 2006 Sidewalk Sinking Fund and the Revolving Fund of the City including balance sheets as of the end of such fiscal year and a statement of operations and changes in fund balances for the fiscal year then ended, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the Financial Services Manager of the City, to the best of his or her knowledge;

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or the period most recently available of the type identified below, which information may be unaudited, but shall be certified as to accuracy and completeness in all material respects by the Financial Services Manager of the City to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or other third-party sources:

1. Information, for such fiscal year, relating to the special assessments, collections, investment earnings and debt service payments, amounts on hand in the Revolving Fund and transfers in and out contained in the table under the captions “Revolving Fund,” “Other Outstanding Special Sidewalk Bonds and Special Improvement District Bonds and The Revolving Fund,” “Statement of Changes in Fund Balance of the Revolving Fund,” “Special Assessment Collections” and “Future Financings” in the Official Statement, dated as of August 14, 2006 (the “Official Statement”).

2. Information, as of January 1 for the current tax year, relating to the appraised value and taxable value of taxable property in the Project.

3. Identification of the ten property owners in the Project with the largest assessments by name, type of property and taxable value.

4. Information, as of the most recent date available, regarding employment in the Billings MSA, the State of Montana and the United States of the type contained in the table under the caption “The City—Employment” in the Official Statement.

5. Information, as of the most recent date available, regarding the larger employers in the Billings MSA, identifying the employer and estimated number of employees of the type contained in the table under the caption “The City—Major Employers” in the Official Statement.

6. Information, as of the end of the most recent fiscal year, regarding the direct debt of the City, including debt evidenced by special improvement district bonds, overlapping general obligation debt and debt ratios of the type contained under the captions “The City—Direct Debt of the City,” “—Overlapping General Obligation Debt,” “—Debt Ratios for General Obligation Debt” in the Official Statement.

7. Information relating to the State of Montana’s property tax system contained under the caption “The City—Budgeting Process” in the Official Statement.

Notwithstanding the foregoing paragraph, if the audited financial statements from which such extracts are to be taken are not available by the date specified, the City shall provide on or before such date extracts from unaudited financial statements in the format required as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide extracts from the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (c) or the SEC. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the Project or the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be a Material Fact (as defined in paragraph (2) hereof), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 8 is amended as permitted by this paragraph (b)(1) or subsection (d), then the City shall include in the next

Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided. Such explanation shall include any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities;
- and
- (K) Rating changes.

As used herein, a “Material Fact” is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a “Material Fact” is also an event that would be deemed “material” for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

- (A) the failure of the City to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;
- (B) the amendment or supplementing of this Section 8 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under subsection (d)(2);
- (C) the termination of the obligations of the City under this Section 8 pursuant to subsection (d); and
- (D) any change in the fiscal year of the City.

(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Montana as contemplated by the Rule (the "State Depository"), if any; and

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 8 shall remain in effect so long as any Bonds are Outstanding.

(2) This Section 8 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (c)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the City Clerk of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that such amendment or supplement (A) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City, the Project or the 2006 Sidewalk Sinking Fund and the Revolving Fund or the type of operations conducted by the City or the Project, or (B) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule, such provisions apply to the Bonds.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 8 is entered into as a continuing disclosure undertaking to provide continuing disclosure identical to that required by the continuing disclosure provisions of the Rule and should be construed so the undertaking would satisfy the requirements of paragraph (b)(5) of the Rule, assuming it was otherwise applicable to the Bonds.

(e) Further Limitation of Liability of City. In and to the extent the limitations of liability contained in subsection (a) are not effective, anything contained in this Section 8 to the contrary notwithstanding, in making the agreements, provisions and covenants set forth in this Section 8, the City has not obligated itself except with respect to the assessments pledged to pay the Bonds and the covenant to utilize the Revolving Fund as permitted by law and described herein. None of the agreements or obligations of the City contained herein shall be construed to



constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions whatsoever or constitute a pledge of the general credit or taxing powers of the City.

Repeals and Effective Date.

Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Council that are in any way inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

Effective Date. This resolution shall take effect immediately upon its passage and adoption by this Council.

PASSED by the City Council of Billings, Montana, this 28th day of August, 2006.

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Mayor

Attest:

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City Clerk

(SEAL)

## EXHIBIT A THE IMPROVEMENTS

### **General Description**

The Bonds are being issued to pay a portion of the costs of engineering, reconstructing and installing certain local improvements to benefit certain properties in the City described below consisting of various sidewalk, curb, gutter and alley approach improvements all as a part of the Miscellaneous/Developer Related Improvements Project 03-02 (the “Miscellaneous/Developer Related Improvements (03-02)”), the Miscellaneous/Developer Related Improvements Project 04-02 (the “Miscellaneous/Developer Related Improvements (04-02)”) and the School Route Improvements (the “School Route Improvements”) (collectively, the “Improvements”) as shown below.

### **Miscellaneous/Developer Related Improvements (03-02)**

The Improvements described below constituting the Miscellaneous/Developer Related Improvements (03-02) will be constructed adjacent to the properties shown under each category of Improvements.

#### **Replacement of Sidewalk:**

- South side of Avenue D between 14<sup>th</sup> Street W and 15<sup>th</sup> Street West
- 1708 Burlington Avenue
- 1619 Clark Avenue
- 308 South 39<sup>th</sup> Street
- 1127 and 1133 Yellowstone Avenue
- 536 South 18<sup>th</sup> Street West
- 1655 Vuecrest Drive
- 3342 Stoney Ridge Drive
- 518 South 31<sup>st</sup> Street
- 2107 Locust Street
- 3160-3162 South Daffodil Drive

#### **Replacement of Sidewalk, Curb and Gutter:**

- Both sides of Montana Avenue between Division Street and North 32<sup>nd</sup> Street
- North side of 6<sup>th</sup> Avenue South between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street
- 2824 2<sup>nd</sup> Avenue North
- 823 North 28<sup>th</sup> Street
- West side of South 36<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- West side of South 32<sup>nd</sup> Street between 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South
- Division Street and Montana Avenue (Mac Intyre Park – interior s/w)
- 1905 Poly Drive
- 2530 Burlington Avenue
- 219/223 Birchwood Drive
- 1102 20<sup>th</sup> Street West
- East side of 12<sup>th</sup> Street West between Broadwater Avenue and Yellowstone Avenue
- North side of 2<sup>nd</sup> Avenue North between North 16<sup>th</sup> Street and North 17<sup>th</sup> Street
- South side of 3<sup>rd</sup> Avenue North between North 16<sup>th</sup> Street and North 17<sup>th</sup> Street
- East side of south 31<sup>st</sup> Street between 4<sup>th</sup> Avenue South and 51 feet to the North

#### **Replacement of Sidewalk, Curb, Gutter and Drive Approaches:**

- 1420 Avenue D
- 1028 Broadwater Avenue
- South side of 5<sup>th</sup> Avenue South between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street
- West side of South 29<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- East side of South 30<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- 2412 22<sup>nd</sup> Street West
- North side of 6<sup>th</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- 620 Crawford Drive
- 2011 Yellowstone Avenue
- 515 Moore Lane
- 715 Central Avenue
- East side of North 16<sup>th</sup> Street between 2<sup>nd</sup> Avenue North and 3<sup>rd</sup> Avenue North
- 2940 Poly Drive (Mayflower Congregational Church)
- 1610 Bitterroot Drive
- 2121 Rosebud Drive
- 1105 Princeton Avenue
- 806 South 32<sup>nd</sup> Street
- 712 South 34<sup>th</sup> Street

#### **Replacement of Curb and Gutter:**

- 3001 1<sup>st</sup> Avenue North
- 2416 and 2220 Green Valley Drive
- Southwest corner of Wicks Lane and Main Street
- North side of Wicks Lane at Lake Hills Drive
- 306 Clark Avenue
- 1949 Iris Lane
- 2005/1949 Yellowstone Avenue
- 2200 Custer Avenue

#### **Replacement of Drive Approaches:**

- 1056 Calico Avenue
- 3115 1<sup>st</sup> Avenue North (work on north 32<sup>nd</sup> street)
- 3839 War Bonnet Trail

#### **Replacement of Sidewalk, Curb, Gutter, Drive and Alley Approaches:**

- North side of 4<sup>th</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- South side of 5<sup>th</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- East side of South 31<sup>st</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- North side of 8<sup>th</sup> Avenue North between North 18<sup>th</sup> Street and North 19<sup>th</sup> Street
- West side of South 30<sup>th</sup> Street between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South

#### **Replacement of Alley Approaches:**

- West side of 2<sup>nd</sup> Street West between Miles Avenue and Terry Avenue
- Both sides of 3<sup>rd</sup> Street West between Miles Avenue and Terry Avenue
- East side of 4<sup>th</sup> Street West between Miles Avenue and Terry Avenue
- South side of 3<sup>rd</sup> Avenue South between South 30<sup>th</sup> Street and South 31<sup>st</sup> Street
- South side of 5<sup>th</sup> Avenue South between South 36<sup>th</sup> Street and South 37<sup>th</sup> Street
- North side of 6<sup>th</sup> Avenue South between South 36<sup>th</sup> Street and South 37<sup>th</sup> Street

#### **Miscellaneous/Developer Related Improvements (04-02)**

The Improvements described below constituting the Miscellaneous/Developer Related Improvements (04-02) will be constructed adjacent to the properties shown under each category of Improvements.

**Replacement of Sidewalk:**

- 362 Wyoming Avenue
- West side of 24<sup>th</sup> Street West from the BBWA canal approximately 200 Feet South
- 143 Norris Court
- 4104 Cambridge Drive
- 1331 Concord Drive
- 1804 Monad Road
- 2306 Locust Avenue
- 2419 Elm Street
- Playground area at Pioneer Park to Zimmerman Center walking trail
- 119 North 33<sup>rd</sup> Street

**Replacement of Sidewalk, Curb and Gutter:**

- 4101 Morgan Avenue
- 1006 Yale Avenue
- 603 Avenue C
- 224 South 33<sup>rd</sup> Street
- Both sides of Senators Boulevard, between Judicial Avenue and Gold Dust Circle
- East side of Division Street between 2<sup>nd</sup> Avenue North and 3<sup>rd</sup> Avenue North (Founders Park)
- 3301 1<sup>st</sup> Avenue North (Holiday Furniture)
- 2013 Avenue D
- 1711 3<sup>rd</sup> Street West
- The intersection of Grand Avenue and 19<sup>th</sup> Street West (all four corner handicap ramps)
- 1808 Parkhill Drive
- North side of 6<sup>th</sup> Avenue South between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street
- Pedestrian Ramos at the corners of the intersection of Division Street and Lewis Avenue and Division Street and 4<sup>th</sup> Avenue North
- Both sides of North 33<sup>rd</sup> Street, between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North
- Northeast corner of the intersection at 32<sup>nd</sup> Street West and Parkhill Drive

**Replacement of Sidewalk, Curb, Gutter and Drive Approaches:**

- 2435, 2443, 2501 Interlachen Drive
- 2501 and 2507 Wyoming Avenue
- West side of South 28<sup>th</sup> Street, between 1<sup>st</sup> Avenue South and 2<sup>nd</sup> Avenue South

**Replacement of Curb and Gutter:**

- West side of Westfield Drive, from County lane to Poly Drive
- South side of 4<sup>th</sup> Avenue North, between North 28<sup>th</sup> Street, and 135' West to the Alley
- 4235 Arden Avenue
- West side of Arcadia Drive between North ridge Circle, and Forest Park Drive
- 2102 Grand Avenue (approximately)
- 331 Burlington Avenue

**Replacement of Curb, Gutter and Drive Approaches:**

- 1505 and 1511 Patricia Lane

#### **Replacement of Drive Approaches:**

- 1126 Calico Avenue
- 1005 Siesta Avenue
- 1118 Toole Court
- 818 Silver Dollar Circle
- 2315 Colton Boulevard (on Meadowood Street)

#### **Replacement of Sidewalk, Curb, Gutter, Drive and Alley Approaches:**

- East side of South 30<sup>th</sup> Street, between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- West side of South 29<sup>th</sup> Street, between 5<sup>th</sup> Avenue South and 6<sup>th</sup> Avenue South
- South side of 4<sup>th</sup> Avenue South, from South 38<sup>th</sup> Street and South 39<sup>th</sup> Street
- West side of 6<sup>th</sup> Street West, between Avenue C and Avenue D
- South side of 3<sup>rd</sup> Avenue North, between North 33<sup>rd</sup> Street and Division Street
- South side of 5<sup>th</sup> Avenue South, between South 29<sup>th</sup> Street and South 30<sup>th</sup> Street

#### **Replacement of Alley Approaches:**

- East side of 7<sup>th</sup> Street West, between Avenue C and Avenue D
- West side of 14<sup>th</sup> Street West, between Concord Drive and Eldorado Drive

### **School Route Improvements**

The Improvements described below constituting the School Route Improvements will be constructed adjacent to the properties shown under each category of Improvements.

#### **Replacement of Sidewalk:**

- North side of St. Johns Avenue, from 10<sup>th</sup> Street West to the cul-de-sac
- 1044 Cook Avenue (Washington Elementary School)

#### **Replacement of Sidewalk, Curb, Gutter and Drive Approaches:**

- East and west sides of North 22<sup>nd</sup> Street, between 9<sup>th</sup> Avenue North and 11<sup>th</sup> Avenue North

EXHIBIT B

[Face of the Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
YELLOWSTONE COUNTY

CITY OF BILLINGS

POOLED SPECIAL SIDEWALK, CURB, GUTTER AND  
ALLEY APPROACH BOND, SERIES 2006

Interest at the rate per annum specified below  
payable on January 1, 2007 and  
semiannually thereafter on the 1st day of January  
and the 1st day of July in each year.

No. \_\_\_\_\_ \$\_\_\_\_\_ .00

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	July 1,	September 1, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana (the "City"), will pay to the registered owner identified above or registered assigns, on the maturity date specified above the principal amount, solely from the revenues hereinafter specified, as authorized by Resolution No. \_\_\_\_\_, adopted on August 28, 2006 (the "Bond Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of registration of this Bond, as expressed herein, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Financial Services Director. Interest on this Bond is payable semiannually, commencing January 1, 2007, on the 1st day of January and the 1st day of July in each year, to the owner of record of this Bond appearing as such 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. Interest on and, upon presentation and surrender hereof at the operations center in St. Paul, Minnesota, of the bond registrar and paying agent hereinafter named, the principal of this Bond are payable by check or draft of U.S. Bank National Association, of Seattle, Washington, as bond registrar and paying agent, or its successor

designated under the Bond Resolution described herein (the “Registrar”). The principal of and interest on this Bond are payable in lawful money of the United States of America.

Notwithstanding any other provisions of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the City.

This Bond is one of an issue in the aggregate principal amount of \$380,000 (the “Series 2006 Bonds”), all of like date of original issue and tenor, except as to serial number, denomination, date, interest rate, maturity date, and redemption privilege. The Series 2006 Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 14, Part 41 and Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing a portion of the cost of construction of sidewalk, curb, gutter and alley approach improvements in the City (the “Improvements”), to fund a deposit to the revolving fund and to pay costs associated with the sale and security of the Series 2006 Bonds. The Series 2006 Bonds are issuable only as fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

This Bond is payable from the collection of a special tax or assessment levied upon all assessable property benefitted by the Improvements. This Bond is not a general obligation of the City.

The City has also validly established a Special Improvement District Revolving Fund (the “Revolving Fund”) to secure the payment of certain of its special improvement district bonds and sidewalk, curb, gutter and alley approach bonds or warrants, including the Series 2006 Bonds. The City has also agreed, to the extent permitted by the Act, to issue orders annually authorizing loans or advances from the Revolving Fund to the 2006 Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund (the “2006 Sidewalk Sinking Fund”), in amounts sufficient to make good any deficiency in the 2006 Sidewalk Sinking Fund to pay principal of or interest on the Series 2006 Bonds, to the extent that funds are available in the Revolving Fund, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City’s then outstanding special improvement district bonds and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Bond Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

The Bonds with stated maturities on or before July 1, 2012 shall not be subject to optional redemption prior to maturity, but Bonds having stated maturity dates in the years 2013 and later years, in addition to being subject to mandatory sinking fund redemption, are each subject to redemption and prepayment at the option of the City, in whole or in part, and if in part in principal amounts and from Stated Maturities selected by the City, and within a Stated Maturity in \$5,000 principal amounts selected by lot or such other manner as determined by the Paying Agent, on July 1, 2012 and any date thereafter, at a price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

The Bonds having Stated Maturities in 2012, 2015, and 2018 are subject to mandatory sinking fund redemption on July 1 in the respective years and the respective principal amounts set forth below, in \$5,000 principal amounts selected by the Registrar, by lot or other manner it deems fair, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued thereon to the redemption date:

<u>Stated Maturity of Term Bonds (July 1)</u>	<u>Sinking Fund Payment Date (July 1)</u>	<u>Principal Amount on Sinking Fund Payment Date</u>
2012	2009	\$30,000
\$30,000	2010	30,000
	2011	30,000
2015	2013	\$30,000
\$35,000	2014	35,000
2018	2016	\$ 35,000
\$40,000	2017	40,000

The Registrar shall select the Series 2006 Term Bonds to be redeemed on each Sinking Fund Payment Date in accordance with the Bond Resolution, and the Bonds selected by the Registrar shall become due and payable on such date. The City may reduce the amount of any Mandatory Sinking Fund Payment payable on any Sinking Fund Payment Date or Dates by an amount equal to the principal amount of Outstanding Series 2006 Term Bonds then to be redeemed that shall be surrendered uncanceled by the City to the Registrar; provided that the City shall have surrendered such Series 2006 Term Bonds to the Registrar not less than forty-five days before the first such Sinking Fund Payment Date, together with a City Certificate stating its election to use such Series 2006 Term Bonds for such purpose and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or



Dates so determined by the principal amount of Series 2006 Term Bonds so surrendered by the City.

If Series 2006 Term Bonds are redeemed at the option of the City pursuant to the Bond Resolution, the Bonds so optionally redeemed may, at the option of the City, be applied as a credit against any subsequent Mandatory Sinking Fund Payment or Payments with respect to Series 2006 Term Bonds, such credit to be equal to the principal amount of such Series 2006 Term Bonds redeemed pursuant to the Bond Resolution; provided that the City shall have delivered to the Registrar not less than forty-five (45) days before the first such Sinking Fund Payment Date a City Certificate stating its election to apply such Series 2006 Term Bonds as such a credit and designating the Sinking Fund Payment Date or Dates as to which such credit is to be applied (if no such designation is made, such credits shall be applied in inverse order of Sinking Fund Payment Dates). In such case, the City may reduce the amount of Bonds to be redeemed on the Sinking Fund Payment Date or Dates so determined by the principal amount of Bonds of the same Stated Maturity so redeemed pursuant to the Bond Resolution.

Any credit given to Mandatory Sinking Fund Payments pursuant to the Bond Resolution shall not affect any other Mandatory Sinking Fund Payments, which shall remain payable as otherwise provided in the Bond Resolution, unless and until another credit is given in accordance with the provisions hereof.

As provided in the Bond Resolution, and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the operations center of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series 2006 Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance hereof; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Series 2006 Bonds, dated the date of original issuance and delivery of the Series 2006 Bonds.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication hereon shall

have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Montana, by its City Council has caused this Bond to be executed by the facsimile signatures of the Mayor, the Financial Services Director and the City Clerk and by a facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile signature)  
Mayor

(Facsimile signature)  
Financial Services Director

(Facsimile Seal)

(Facsimile signature)  
City Clerk

Date:

### CERTIFICATE OF AUTHENTICATION

This is one of the Series 2006 Bonds delivered pursuant to the Bond Resolution mentioned herein.

U.S. BANK NATIONAL ASSOCIATION,  
as Registrar

By \_\_\_\_\_  
Authorized Representative

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM –	as tenants in common	UTMA.....Custodian ..... (Cust) (Minor)
TEN ENT –	as tenants by the entireties	
JT TEN –	as joint tenants with right of survivorship and not as tenants in common	under Uniform Transfers to Minors Act ..... (State)

Additional abbreviations may also be used.

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#### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE:

\_\_\_\_\_  
/ \_\_\_\_\_ /

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEED

\_\_\_\_\_  
Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Registrar in addition

to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 28, 2006**

**TITLE:** City Administrator Recruitment  
**DEPARTMENT:** Administration  
**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

**PROBLEM/ISSUE STATEMENT:** The City Council will discuss its plans for recruiting a new City Administrator. The topic will also be discussed at the August 21 work session. No binding decisions may be made at the work session, so scheduling this item at the regular meeting allows the Council to make decisions about the remaining recruiting process.

**RECOMMENDATION**

Staff recommends that Council direct staff regarding the final steps of the City Administrator recruiting process.

**Approved By:** City Administrator \_\_\_\_ City Attorney \_\_\_\_

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