

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

August 14, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Nancy Boyer
ROLL CALL
MINUTES -- July 24, 2006
COURTESIES
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #9 through #13 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)
(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

CONSENT AGENDA:

1. A. **Mayor's Appointments:**
(1) **Human Relations Commission**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Gwendolyn Kircher	Human Relations Commission	08/14/06	12/31/09

1. Unexpired term of Rev. David Jernigan
([Corresponding Staff Memo A](#))

B. Bid Awards:

(1) **W.O. 06-03, Contact #2: 2006 Street Maintenance.** (Opened 7/25/06). Recommend JTL Group, Inc., \$518,848.89.
([Corresponding Staff Memo B1](#))

C. Change Order #3, W.O. 05-01A: Michigan Street, JEM Contracting, Inc., \$2,300.00.
([Corresponding Staff Memo C](#))

D. Contract for Library Services, Golden Valley County, term: 7/1/06 – 6/30/07, \$4,962.30.
([Corresponding Staff Memo D](#))

E. Funding Agreement with Yellowstone County Council on Aging (YCCOA), \$21,000.00.
([Corresponding Staff Memo E](#))

F. Assignment and Transfer of West End Hangar Ground Lease from Brian Bross to Bonnie Daniels.
([Corresponding Staff Memo F](#))

G. Contract Extension with Montana Dept. of Public Health and Human Services – Developmental Disabilities Division to 6/30/07.
([Corresponding Staff Memo G](#))

H. Agreement with Montana Supreme Court and acceptance of the donation of up to \$1500 for youth scholarships for low income families to register for PRPL summer youth programs.
([Corresponding Staff Memo H](#))

I. Approval of purchase of thirteen (13) police vehicles from Bison Motor Company as determined per State bid, \$284,804.00.
([Corresponding Staff Memo I](#))

J. Purchase Of An IBM i5 Server

(1) Approval of purchase of an IBM i5 Server through the State of Montana WSCA agreement, \$96,185.12.
([Corresponding Staff Memo J1](#))

(2) Authorization to apply for an INTERCAP loan for \$125,000.00 through the Montana Board of Investments to pay for a new i5 (AS400) and associated costs plus four integrated x series servers.
([Corresponding Staff Memo J2](#))

K. Acceptance of FAA Airport Improvement Program (AIP) #31 grant, \$1,204,742.00.
([Corresponding Staff Memo K](#))

L. Affordable Housing Development Agreement with Menola Land, Sage Tower LLC for a \$175,000.00 loan at 1% and amortized over 20 years.

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

M. Acceptance of a \$500.00 memorial gift donation from Linda Bell (and friends) in memory of Michael Bell, for trees to be planted at Heritage Park.

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

N. Approval of Domestic Violence Unit Grant (\$52,000.00) and Victim Witness Program Grant (\$38,000.00).

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

O. Acknowledging receipt of petition #06-12 to annex a 14.077-acre parcel described as Tract 1, C/S 1648 and including adjoining road tracts, generally located near the southwest intersection of Central Ave. and Shiloh Rd., Bell Family Trust, owners, and setting a public hearing for 8/28/06.

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

P. Resolutions of Intent to create:

- (1) SILMD 290: S. 32nd Street West
- (2) SILMD 299: Vintage Estates Sub.
- (3) SILMD 300: Bellville Sub.

and setting a public hearing for 9/11/06.

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

Q. Street Closures:

- (1) Black Otter Hill Climb: intersection of Airport Road and Swords Bypass Road to the top of the trail, August 19 – 20, 2006.

[\(Corresponding Staff Memo Q1\)](#)

- (2) Western Wheel Bar Customer Appreciation Celebration: Minnesota Ave. between S. 27th and S. 28th Streets, August 26, 2006.

[\(Corresponding Staff Memo Q2\)](#)

- (3) Billings Association of Realtors 2 and 5-Mile Run: Masterson Circle on Hwy 3, down Airport Rd., right on 27th St; right on Rimrock Rd; left on Virginia Ln; through Pioneer Park from Zimmerman Center to the SE corner of the park, left on 3rd St. W., right on Parkhill; right on 32nd St., disbanding at the corner of 6th Ave. N. and 32nd St. in the Transwestern parking lot, August 26, 2006.

[\(Corresponding Staff Memo Q3\)](#)

- (4) Billings Clinic's Classic Street Party: N. Broadway between 3rd Ave. N. and 4th Ave. N.; as well as the alley that runs between 3rd Ave. N. and 4th Ave. N. August 24-27, 2006.

[\(Corresponding Staff Memo Q4\)](#)

R. Second/Final reading ordinance for Zone Change #778: A text amendment to BMCC Section 27-310(i), changing the size, height, and bulk for detached accessory structures within all residential zoning districts within the Billings

city limits. Yellowstone County Board of Planning initiated the amendment on May 9, 2006.

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

S. Second/Final reading ordinance for Zone Change #783: A zone change from Controlled Industrial to Residential-6,000 on Lots 17 & 18 of Block 32 of Highland Addition, and located at 109 South 39th Street. Dave Hagstrom, owner.

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

T. Second/Final reading ordinance amending the BMCC by revising Sections 23-304 and 23-308, providing a procedure for review of subsequent minor subdivisions.

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

U. Second/final reading ordinance expanding the boundaries of Ward II to included the recently annexed property in annexation #06-07: 57 acres in T1N-R26E-S23: N2NE4 Less C/S 515 and C/S 1335, but including C/S 999, generally located south of Wicks Lane between Hawthorne Lane and Bitterroot Drive, Felton Associates LLC, owner and petitioner.

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

V. Second/final reading ordinance expanding the boundaries of Ward III to included the recently annexed property in annexation #06-09: 2.1371 acres in T1S-R25E-S23: NE4 described as C/S 2771, Tract 2, generally located on the south side of Hesper Road west of S. 32nd St. W, Rice Wagon, LLC, petitioner, Brady Wagner and Carrie Orr-Wagner, owners.

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

W. Preliminary Plat of Gunn Estates Subdivision, 2nd Filing, generally located on the north side of Lux Ave. between Calhoun Lane and Orchard Lane, conditional approval of the plat and adoption of the findings of fact.

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

X. Preliminary Plat of Amended Lot 3, Block 1, Yellowstone Ridge Sub., generally located north of Rimrock Rd. at the intersection of 54th St. W. and Rocky Mountain Blvd., conditional approval of the plat, approval of the variance and adoption of the findings of fact.

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

Y. Final Plat of Lake Hills Subdivision, 13th Filing Amended.

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

Z. Bills and payroll.

(1) July 14, 2006

[\(Corresponding Staff Memo Z1\)](#)

(2) July 21, 2006

[\(Corresponding Staff Memo Z2\)](#)

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

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION** annexing a 36-acre parcel described as Tract 1, C/S 3273, generally located on the west side of 46th St. W, south of Rimrock Rd., Jim Boyer and Paul Bromenshenk, petitioners. (#06-11). Staff recommends conditional approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND FIRST 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. Staff recommends conditional approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND VARIANCE #OP06-01:** a variance from the Site Development Ordinance, Section 6-1203(j) regarding parking spaces on Lots 1-5, Block 1, Cellan Acre Sub., Tract S, generally located at the northeast corner of Grand Avenue and 11th St. W, between Grand Ave. and Ave. B. Rich Hageman (Dairy Queen), applicant. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND RESOLUTIONS** vacating portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision, Lot 1 parcel: \$2,669.10; Lot 2 parcel: \$2,618.26; and Lot 4 parcel: \$3,017.60. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND RESOLUTION** adopting the *Gateway Business Park Plan*. Planning Board recommends approval of the plan with Alternative #2 as the preferred implementation strategy. (**Action:** approval or disapproval of Planning Board recommendation.)
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND RESOLUTION** approving tax benefits for Golden Recycling and Salvage, Inc. Staff recommends conditional approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)

8. **PUBLIC HEARING CONTINUED AND FIRST READING ORDINANCE FOR ZONE CHANGE #784:** A zone change from Residential-9,600 to Residential-6,000-Restricted on Lot 1, Block 1 and Lot 1, Block 2 of Arlene Subdivision, and located at 3410 and 3416 Poly Drive. City of Billings' Public Works Department, owner; David Mumford, agent. (Delayed from 7/24/06). Zoning Commission makes no recommendation. **(Action:** approval or disapproval of Zoning Commission recommendation.)
[\(Corresponding Staff Memo 8\)](#)
9. **BID AWARD: W.O. 05-12: Big Ditch Trail – Billings, Federal Aid No. STPE 1099(49), MDT CN5908.** (Opened 7/11/06; delayed from 7/24/06). Staff recommends CMG Construction, Inc., Base bid and Bid Alternate #2, \$105,730.00 and 30 calendar days, contingent on CTEP concurrence. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 9\)](#)
10. **PROPOSAL** from Koch Financial Corporation to finance the Park II Expansion at a rate of 5.48%. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 10\)](#)
11. **WASTEWATER SERVICE AGREEMENT** with Lockwood Water and Sewer District, initial term: 15 years. (Delayed from 7/10/06). Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 11\)](#)
12. **RESOLUTION** creating the *Energy & Conservation Commission*, defining the duties and making appointments. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 12\)](#)
13. **RESOLUTION** awarding the sale of \$380,000.00 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006. (Opened 8/14/06). Recommendation to be made at meeting. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 13\)](#)
14. **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:

8/14/2006	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
8/15/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
8/17/2006	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
8/21/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
8/22/2006	Planning Board Traffic Control Board	6:00 p.m. NOON	4 th Floor Library 4 th Floor Library
8/23/2006	Development Process Advisory Review Board (DPARB)	1:00 p.m.	CH Conference Room
8/24/2006	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street
8/28/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
8/30/2006	Housing Authority	NOON	2415 1 st Avenue North

SEPTEMBER:

9/04/2006	LABOR DAY – CITY OFFICES CLOSED		
9/05/2006	Community Development Board	3:00 p.m.	4 th 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 rd St
	Board of Adjustment	6:00 p.m.	Council Chambers
9/06/2006	Policy Coordinating Committee	8:00 a.m.	4 th Floor Library
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 th Floor Library
9/13/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
9/14/2006	Library Board	NOON	Library
9/18/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
9/19/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
9/25/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
9/26/2006	Planning Board	6:00 p.m.	4 th Floor Library
	Traffic Control Board	NOON	4 th Floor Library
9/27/2006	Housing Authority	NOON	2415 1 st Avenue North
	Development Process Advisory Review Board (DPARB)	1:00 p.m.	CH Conference Room
9/28/2006	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street

A



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 14, 2006

TITLE: Boards & Commissions –Appointment
DEPARTMENT: City Administrator’s Office
PRESENTED BY: wynn timer Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of the appointment for Board and Commission position that is vacant due to a resignation.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Gwendolyn Kircher	Human Relations Commission	08/14/06	12/31/09

1. Unexpired term of Rev. David Jernigan

Approved By: City Administrator ____ City Attorney ____

Attachment

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B1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Work Order 06-03, 2006 Street Maintenance Contract No. 2 – Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for the 2006 Street Maintenance Contract No. 2 on July 25, 2006. This project will overlay 19th Street West from Central Ave. to Monad Road, Monad Road from Plainview to 20th Street West, 10th Ave. North from N. 27th Street to N. 30th Street, Belknap Avenue, and Central Ave. from Montana to 6th Street West.

ALTERNATIVES ANALYZED:

1. Award Work Order 06-03, Contract No. 2, to JTL Group, Inc. in the amount of \$518,848.89;
or
2. Not award Work Order 06-03, Contract No. 2.

FINANCIAL IMPACT: Funding for the 2006 Street Maintenance Program, Contract No. 2, 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	\$ 543,345.05
JTL Group, Inc.	\$ 518,848.89
<u>CIP Project #ENG98</u>	
CIP Budgeted Amount	\$960,000.00
Previous Encumbrances	\$000,000.00
Budget Fund Balance	\$441,151.11
(after this award)	

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Overlay Maintenance Project with JTL Group, Inc. in the amount of \$518,848.89.

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

Bids were received for the Street Maintenance Overlay Project on July 25, 2006. JTL Group, Inc. is the only bidder.

PROCEDURAL HISTORY

If City Council chooses to award the overlay contract, the project will move forward and be completed October 31, 2006.

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 will be for overlay resurfacing, and the third contract will be for crack seal. This contract will provide new surfacing for 19th Street West, Monad Road, Belknap Avenue, 10th Avenue North, and Central Avenue.

ALTERNATIVES ANALYSIS

Bids were received on July 25, 2006, with JTL Group, Inc. being the low bidder in the amount of \$518,848.89. JTL Group, Inc. was approximately 5% below the Engineer's Estimate.

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Overlay Maintenance Project with JTL Group, Inc. in the amount of \$518,848.89.

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: W.O. 05-01A, Michigan Street, Change Order No. 3 – JEM Contracting, Inc.

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Change Order No. 3 is for the adjustment of four manholes and two valve boxes. The original street section, as bid by the contractor, did not include a crown. During construction, it was determined by the City that a crowned-street would function better than a straight-graded street, so the design was changed. As a result, valve boxes and manholes were adjusted. There was no bid item for these adjustments so a change order was needed. To be consistent with other bid prices received this year, the City is willing to pay \$450 for each manhole adjustment and \$250 for each valve adjustment. With four (4) manholes and two (2) valves being adjusted, the total cost of Change Order No. 3 comes to \$2,300.

ALTERNATIVES ANALYZED:

1. Approve Change Order No. 3 for a net increase of \$2,000.
2. Do not approve Change Order No. 3 for a net increase of \$2,000.

FINANCIAL IMPACT: The following represents the financial impact to the project. All monies used for Change Order No. 3 will come from the Gas Tax.

<u>Original Contract Amount</u>	<u>\$93,049.00</u>	<u>% of Contract</u>	<u>Cumulative % Contract</u>
Change Order No. 1	\$9,100.00	9.78	9.78
Change Order No. 2	\$12,167.73	13.08	22.86
Change Order No. 3	<u>\$2,300.00</u>	2.47	25.33
	\$23,567.73		
Total	\$116,616.73		

RECOMMENDATION

Staff recommends that Council approve Change Order No. 3 in the amount of \$2,300 with JEM Contracting, Inc.

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

ATTACHMENT

A. Change Order No. 3 – (one page)

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Golden Valley Contract for Library Services 2006/2007
DEPARTMENT: Parmly Billings Library
PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: Parmly Billings Library began contracting with Golden Valley County in 1977 to provide library service to its residents. Golden Valley is one of two counties in Montana that does not have its own public library and for this reason it contracts with Parmly Billings Library for service. The proposed contract is for a one-year period beginning July 1, 2006; either party may cancel the agreement with thirty (30) days written notice.

ALTERNATIVES AVAILABLE:

1. Approve the contract.
2. Direct renegotiation of the rate in the contract.
3. Do not approve the contract.

FINANCIAL IMPACT: The Library charges Golden Valley County \$1.70, the same rate that has been charged since the contract began, which was estimated to be proportionate to the local support provided per circulation at that time for each item circulated. Based on the actual activity for 2,919 circulations, an annual payment of \$4,962.30 for the contract period July 1, 2006 – June 30, 2007 is due to the Library no later than September 30, 2006.

RECOMMENDATION

Staff recommends that Council approve the one-year agreement to provide library service to Golden Valley County.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS:

A. Contract

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Monday, August 14th, 2006

A. Memorandum of Agreement with Yellowstone County Council on Aging, Inc. (2 pages)

ATTACHMENT “A”

AGREEMENT

This AGREEMENT between the Yellowstone County Council on Aging, Inc (YCCOA) and the City of Billings, is for the provision of the services for persons 60 years of age or older and their spouses according to the following terms.

SECTION 1 GENERAL TERMS

- 1.1 This agreement will be effective from July 1, 2006 through June 30, 2007. Prior to the completion date, the contract will be reviewed for renewal by YCCOA upon submission of a budget and funding request to YCCOA for the upcoming year by the City.
- 1.2 This agreement is for Yellowstone County funding which comes to the Yellowstone County Council on Aging and is distributed to senior service providers by the YCCOA with approval by the County Commissioners. As such, these funds are available to match Federal funds or other grants.
- 1.3 The allocation for this time period will be \$21,000. Payments will be made in four equal quarterly allocations. Those allocations will be made by the 15th of August, November, February and May. This amount includes \$1,800 that is considered rent for the kitchen and dining room space for the Senior Dinner Program meal site. The remainder of the funds will be used to support the Senior Center program expenses. It is understood that YCCOA will pay for ½ of the repairs to the kitchen equipment that it uses.
- 1.4 This agreement may be modified by a written amendment signed by an authorized representative of both parties, and attached to the original of this contract.
- 1.5 Either party, without cause, may terminate this agreement by written notice sixty (60) days in advance.

SECTION 2 REPORTS AND RECORDS

- 2.1 All financial and supporting documents regarding the use of these funds shall be available at anytime to the YCCOA upon request from the YCCOA auditor.
- 2.2 A monthly report of individual senior participants at the senior center will be submitted to the YCCOA office no later than 10 working days into the next month. This will include name and birthdate of each participant.

SECTION 3 REPRESENTATIVES

- 3.1 The YCCOA representative shall be Bea Ann Melichar, YCCOA Executive Director or her representative. The City of Billings representative shall be the Parks Recreation and Public Lands Director or his representative.

SECTION 4 SENIOR NEWS

- 4.1 The monthly YCCOA publication, "Senior News", shall be available to all participants of the Billings Community Center and is not subject to their membership in any organization. News specific to the Billings Community Center shall be included in the publication each month. Guidelines established by YCCOA will be followed for setup, font, size and content with upcoming events, activities and speakers featured. News is subject to review and editing by the YCCOA Executive Director and or her designee. This news is to be submitted by the 15th of each month unless otherwise notified.

SECTION 5 TRAINING/PLANNING MEETINGS

- 5.1 A representative of the Billings Community Center will attend planning or training meetings as necessary in relationship to these funds, provided there is adequate notification of such meetings.

SECTION 6 IDENTIFICATION ON PUBLICATIONS

- 6.1 Any written materials the Billing Community Center Senior Citizens produces that lists the sources of funding for their program shall also include the Yellowstone County Council on Aging.

This Agreement is hereby signed and entered into by both parties:

Bea Ann Melichar, Executive Director

Date

City of Billings Representative

Date

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F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Assignment and Transfer of West End Hangar Ground Lease from Brian Bross to Bonnie Daniels

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On October 22, 2001, Brian Bross entered into a twenty-year West End Hangar Ground Lease with the City of Billings for a parcel of land in the General Aviation Hangar area and subsequently constructed a 3,600 square foot hangar on the leased parcel. Mr. Bross has requested an Assignment of the Ground Lease for this hangar to Ms. Bonnie Daniels. The approval of this Assignment and Transfer by City Council will formally transfer the Lease Agreement from Mr. Bross to Ms. Daniels. This is basically a housekeeping item that is needed to finalize the transfer of the leasehold property between the two parties.

FINANCIAL IMPACT: There is no financial impact from this action. The current annual Lease payment is \$995.44. The Lease requires that the rate will be adjusted annually using the Consumer Price Index for all Urban Consumers (CPI-U). Approval of the Assignment and Transfer will only change the name of the Lessee. All of the Lease terms remain the same.

RECOMMENDATION

Staff recommends that Council approve the Assignment and Transfer of the West End Hangar Ground Lease from Brian Bross to Bonnie Daniels.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

A. Assignment and Transfer (3 pages)

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Approval of Contract Extension with Montana Department of Public Health and Human Services – Developmental Disabilities Division

DEPARTMENT: Aviation and Transit Department

PRESENTED BY: Thomas H. Binford, Interim Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: Since July 1997, the State of Montana Department of Public Health and Human Services – Developmental Disabilities Division (DD) has contracted with MET Transit to provide specialized transportation for developmentally disabled individuals from their home or group home to and from their respective DD Division day/work programs. The service Transit provides improves the quality of life for persons with developmental disabilities. The contract payments for this service are based on a per-person, per-month ridership.

On July 28, 2003, City Council approved the current contract, which was awarded by the State on July 1, 2003. This contract contains a clause, which allows the service to be extended for up to three additional one-year periods, if both parties agree. On August 8, 2005, Council did approve the extension of the contract through June 30, 2006. The DD Division is again requesting that we extend the current contract, utilizing the last additional one year extension period which will end June 30, 2007. The City has utilized a similar clause in past contracts. Legal has reviewed the extension clause and has approved it as to form and content.

FINANCIAL IMPACT: Through this contract extension the City's Transit Division could receive up to \$161,042 of revenue for FY 06/07 for the services provided. This anticipated revenue was budgeted in the FY 06/07 budget.

RECOMMENDATION

Staff recommends that Council approve the one year contract extension and authorize the Mayor to execute the attached transportation contract between the City's MET Transit Division and the Montana Department of Public Health and Human Services (DPHHS) – Developmental Disabilities Division (DD Division).

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

ATTACHMENT

A – DD Contract Amendment (7 pages)

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H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Montana Supreme Court Youth Scholarships
DEPARTMENT: PRPL/Recreation Division
PRESENTED BY: Joe Fedin, Supt. of Recreation

PROBLEM/ISSUE STATEMENT: Montana Youth Court has offered to provide through a grant program up to \$1,500 to be used for youth scholarships for low income families to register for PRPL summer youth programs. They are requiring this agreement specify that the scholarships be awarded similar to the Wendy's Scholarship Program which allows each low income child to register for any program offered up to a \$50 value. It is hoped that involvement in such programs will reduce the chance of these children getting into trouble later in life. This will enable troubled or low income youth to become involved in an activity which they normally wouldn't have the opportunity to do. The agreement for the use of the scholarship amount is retroactive to June 15th. As of August 1st - \$591 has been awarded to low income families. Unfortunately we did not receive the agreement from the Montana Supreme Court until early July, so Council action will be after the fact, but the alternative would be to return the funds awarded to date. The agreement has been reviewed by Legal.

FINANCIAL IMPACT: This could increase PRPL recreation programs revenue by up to \$1,500 from registrations which otherwise would probably not occur. The court will reimburse the city for actual registrations made up to the limit set.

RECOMMENDATION

Staff recommends that Council enter into the agreement with the Montana Supreme Court and accept the donation of up to \$1,500 for the scholarship program.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

Attachment A – Montana Supreme Court and City of Billings – City Parks and Recreation Summer Program.

ATTACHMENT A

CONTRACT NUMBER 2006 –82103B

**MONTANA SUPREME COURT
AND
CITY OF BILLINGS-CITY PARKS AND RECREATION SUMMER PROGRAM**

EFFECTIVE: June 15, 2006 through September 30, 2006

THIS CONTRACT, is entered into by and between the Montana Supreme Court, Office of the Court Administrator, hereinafter referred to as the OCA, and the City of Billings-Park and Recreation Department, Summer Program, hereinafter referred to as the City, in cooperation with the 13th Judicial District Youth Court Services, hereinafter referred to as Court Services.

IN CONSIDERATION, of the mutual covenants and agreements herein contained, the parties agree as follows:

SECTION 1 - PURPOSE

The purpose of this contract is for the OCA to purchase from the City, learning and recreational programming that promotes competency development and life enhancing experiences, as described in Section 3 herein for youth involved in the Intensive Community Supervision Program (ICS) and other at-risk youth in Yellowstone County.

SECTION 2 - EFFECTIVE DATE AND DURATION

The City shall commence performance of this contract on June 15, 2006 and shall complete performance to the satisfaction of OCA no later than September 30, 2006. The duration of this contract may be extended on written agreement of the OCA and The City.

SECTION 3 - SERVICES

- A. Provide structured educational and pro-social programming for approximately 30 youth;
- B. Accept appropriate referrals of youth from Court Services to receive services;
- C. Track fees to be charged to ensure enrollments of youth do not exceed the maximum amount allowed in the agreement;
- D. Provide to Court Services a list of youth and programs in which they each participate; at a one-time cost of \$50 per youth;
- E. Provide all necessary supervision, mentoring, transportation, equipment, supplies, and all other associated expenses for participating youth;
- F. Provide oversight of staff, both paid and unpaid, working with youth;
- G. Obtain and provide copies to Court Services of appropriate informed consent/participant releases signed by a parent or guardian for each participating youth immediately upon enrollment. Said consent/participant release shall provide for waiver and release of any and all rights and claims for damages or injuries suffered by participating youth; release from liability and waiver of any and all claims against any person, who is involved in transporting participants in connection with any sponsored activity; and consent for emergency medical treatment of participants;
- H. Provide liaison services between the City and Court Services.

SECTION 4 - CONSIDERATION

- A. Funding for services provided herein is made available through the Intensive Community Supervision Program, Grant #05-A15-82103 from the Montana Board of Crime Control. When all enrollments have been completed or the maximum amount of \$1,500.00 has been reached, the City will submit an invoice for the amount due. The invoice shall be submitted no later than August 1, 2006 an amount not to exceed **\$1,500.00**.

B. The parties agree that the billing shall be subject to audit and adjustment both before and after OCA makes payment of any amount under this agreement, as the parties determine to be necessary.

SECTION 5 - REPORTS / EVALUATION

The City agrees to prepare any financial reports required by or associated with the program and required by the State and will provide a copy of any such reports to Court Services upon request. All reports, documents, databases, or other materials prepared by the City for the OCA shall also be provided on electronic medium or computer diskette and in a format agreed upon by the OCA and the City.

SECTION 6 - LIAISON

Joy Mariska will be the liaison for Court Services. Joe Fedin will be the liaison for the City. These representatives of the parties will be the first contacts regarding any questions or problems that arise in implementing this contract.

SECTION 7 - CIVIL RIGHTS

- A. The City will comply with the Civil Rights Act of 1964.
- B. The City agrees that no person shall, on the grounds of race, color, national origin, creed, sex, religion, political ideas, marital status, age or handicap be excluded from employment or participation in, be denied benefits, or be otherwise subjected to discrimination under any program or activity connected with the implementation of this contract, and further agrees that affirmative steps will be taken to employ and advance in employment qualified disabled individuals.
- C. The City further agrees that all hiring done in connection with this contract shall be on the basis of merit qualifications genuinely related to competent performance of the particular occupational task.

SECTION 8 - CONFIDENTIALITY

All material and information pertaining to clients provided to the City by Court Services or acquired by the City on behalf of Court Services, whether verbal, written, magnetic media or otherwise, shall be regarded as confidential information and may not be disseminated by the City.

SECTION 9 - DUPLICATION OF COST

The City represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other government contract, subcontract, or other government source.

SECTION 10 - POLITICAL ACTIVITIES

- A. The City agrees that expenditure of funds under the terms and conditions set forth in this contract shall not be used:
 - 1. For any political activities by the City and/or employees or representatives of the City; or

2. For any activities by the City and/or employees or representatives of the City to provide voters and prospective voters with transportation to the polls, or provide similar assistance in connection with an election or any voter registration activity.
- B. The City shall cooperate with any federal investigation undertaken under this section.

SECTION 11 - AVAILABILITY OF GOVERNMENT FUNDS

The parties agree that if anticipated government funds are reduced or become unavailable at any time during the term of this contract, neither party is obligated to continue performance of this contract beyond the date the federal or state funds are reduced or become unavailable.

SECTION 12 - TERMINATION

- A. This contract may be cancelled or terminated by either of the parties without cause; however, the party seeking to terminate or cancel this contract must give written notice of its intention to do so to the other party at least ten(10) days prior to the effective day of cancellation or termination.
- B. If the City fails to provide services called for by this contract, or to provide such services within the time specified herein or any extension thereof, the OCA may, by written notice of default to the City, terminate the whole or any part of this contract upon written notice.
- C. The parties may, upon finding that the City or OCA is not in compliance with any law or regulation, or applicable licensure and certification requirement, terminate this contract upon written notice to the other party.
- D. The above remedies are in addition to any other remedies provided by law or the terms of this contract.
- E. Upon contract termination or the non-renewal of this contract, the City will allow the OCA, its agents and representatives, full access to the City's records pertinent to the services provided under this contract for the purpose of arranging the orderly transfer of the contracted activities.

SECTION 13 - FINANCIAL RECORDS

The OCA and the City agree to account for all expenditures under this contract in accordance with generally accepted accounting principles.

SECTION 14 - AUDIT AND RETENTION OF RECORDS

- A. Audit:
Duly authorized designees of the City, Court Services, OCA, Montana Board of Crime Control, U.S. Department of Justice, and Comptroller General of the United States shall have the right of access to any books, documents, papers and records of the City which are pertinent to the services provided under this contract, for purposes of making audit, excerpts or transcripts.

Further, for purposes of verifying cost or pricing data submitted in conjunction with the negotiation of this contract or any amendments thereto, the State shall, until the expiration of three (3) years from the completion date, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein. The City's accounting procedures and practices shall conform to generally accepted accounting principles.

B. Retention of Records:

Financial records, supporting documents, statistical records and all other records supporting the services provided by The City under this contract shall be retained for a period of three (3) years from the completion date of this contract. The City agrees to make the records described herein available at all reasonable times at the Office of the Court Administrator. If any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

SECTION 15 - INDEPENDENT CONTRACTOR/AGENCY

- A. The City is an independent contractor, providing services for the OCA. None of the City employees are employees of the State of Montana or the OCA under the contract, nor will they be considered employees of the OCA under any subsequent amendment to this contract, unless otherwise expressed.
- B. The City further agrees that in accordance with 39-71-401 and 39-71-405, MCA, the City is responsible for worker's compensation coverage for the employees.

SECTION 16 - VENUE

The parties agree that in the event of litigation concerning this contract, venue shall be in the First Judicial District in and for the County of Lewis and Clark.

SECTION 17 - RESOLUTION OF CONTRACT DISPUTE

The parties agree that any dispute arising under this contract which is not disposed of by negotiation and agreement, shall be decided by judicial process. The City agrees to continue performance under this contract unless the OCA requests the City discontinue such performance.

SECTION 18 - MODIFICATION AND PREVIOUS AGREEMENTS

This instrument contains the entire contract between the parties and no statements, promises, or inducements made by either party or agents or either party that are not contained in this contract shall be valid or binding. This contract may not be enlarged, modified, or altered except by written amendment.

SECTION 19 - SEVERABILITY

In the event one part of this contract is found by a court of law to be void, the remainder of the contract remains operative.

IN WITNESS THEREOF, the parties have executed this contract on the dates set out below.

**MONTANA SUPREME COURT
OFFICE OF THE COURT ADMINISTRATOR**

By: _____
Title: Court Administrator

Date: _____

By: _____
Title: 13th JD Court Services Director

Date: _____

Federal ID # 81 0302402

CITY OF BILLINGS

By: _____
Title: _____

Date: _____

By: _____
Title: _____

Date: _____

Federal ID: _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Approval to Purchase Thirteen (13) Police Vehicles
DEPARTMENT: Administrative Services - Finance Division
PRESENTED BY: Liz Kampa-Weatherwax, Purchasing Agent
Larry Deschene, Motor Vehicle Maintenance Manager

PROBLEM/ISSUE STATEMENT: The Police Department has ten patrol vehicles to replace and two additional patrol vehicles to purchase in FY07. Additionally, the Airport Police has one patrol vehicle to replace. The vehicles were approved by council for replacement and purchase in the FY07 budget process and Equipment Replacement Plan (ERP). The State of Montana does an RFP for law enforcement vehicles annually. Local government agencies are allowed to use the same vendor that the State chooses for its highway patrol cars. Bison Ford Motor Company, of Great Falls, Montana, was selected in 2006 as the approved vendor by the State. Bison Ford Motor Company and the State have agreed to roll over the 2006 contract on Special Service vehicles.

FINANCIAL IMPACT: As per State bid the vehicle replacement will be through Bison Motor Company at \$21,908 per Crown Victoria. The total cost will be \$284,804. This expense was budgeted for FY07 in the Capital Replacement Fund (\$262,896) and Airport Fund (\$21,908).

RECOMMENDATION

Staff recommends that City Council give approval to purchase the Police patrol vehicles from Bison Motor Company as determined per State bid.

Approved By: City Administrator ____ City Attorney ____

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

J1



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Approve Purchase of IBM i5 Server
DEPARTMENT: Administration - ITD
PRESENTED BY: David Watterson, Interim ITD Manager

PROBLEM/ISSUE STATEMENT: The Information Technology Division (ITD) plans to replace the existing IBM iSeries Server. The existing iSeries (AS/400) hosts the financial & community development applications such as budgeting, general ledger, taxes, purchasing, accounts payable, utility billing, payroll, planning, engineering, code enforcement, land management, fleet, inventory, building permits, and business licenses. The replacement of this 6 year old server has been planned in the Technology Replacement Plan and a Supplemental Budget Request was approved during the budget process. ITD & the Purchasing Agent have determined it to be in the best interest of the City to purchase the equipment directly from IBM through the State contract Western States Contracting Alliance (WSCA) for computer equipment. The State utilizes the WSCA contracts for nearly all its computer equipment purchases and has no other established computer equipment contracts.

FINANCIAL IMPACT: The supplemental budget request was approved for the i5 (AS/400) at a cost of \$ 96,185 and associated costs including four IBM xSeries Servers at a price of \$28,815 for a total of \$ 125,000. The IBM xSeries Servers & other related expenses will be purchased separately.

RECOMMENDATION

Staff recommends that Council approve the purchase of the IBM i5 Server for \$ 96,185 from IBM through the State of Montana WSCA agreement.

Approved By: City Administrator _____ City Attorney _____

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

J2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Authorization to apply for InterCap Loan for Information Technology Division

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This authorizes the application for an InterCap Loan through the Montana Board of Investments in the amount of \$125,000 to pay for i5 (AS/400) at a cost of \$ 96,185 and associated costs including four IBM xSeries Servers at a price of \$28,815.

FINANCIAL IMPACT: The InterCap Loan Program through the State Board of Investments is a way for State agencies and local governments to finance projects and purchases with limited paper work and at attractive interest rates. The current interest rate is 4.75%. The rate is variable and is adjusted on February 16 each year.

Loan payments, based on the current interest rate will be \$35,100 per year for 4 years.

RECOMMENDATION

Staff recommends that Council authorize submission of the loan application and execution of related documents.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Loan Application

Attachment A

<p align="center">Send Application and Exhibits To: INTERCAP Loan Program Montana Board of Investments P.O. Box 200126 Helena, Mt. 59620-0126 Phone (406) 444-0001 Fax (406) 449-6579</p>		<i>(Shaded Area For Board Use Only)</i>	
		Board Loan #	
		Type Local Government	
		Date Received:	
<p>Application must be submitted by authorized local government representative</p>		By:	

Section 1. Applicant Information Summary

Applicant Name →	City of Billings		
Mailing Address →	P.O. Box 1178		
Contact , Name and Title →	Patrick M. Weber – Financial Services Manager		
Telephone number →	406-657-8209	Fax Number →	406-247-8108 e-mail → weberp@ci.billings.mt.us
Federal Employer Identification Number →	816001237		

Section 2. Loan Type information

Check One	Type of Loan Applied For – Based on term or repayment type
<input type="checkbox"/>	1. Short Term Loan
<input type="checkbox"/>	2. General Fund Debt Loan (no obligation of full faith and credit of issuer)
<input checked="" type="checkbox"/>	3. Enterprise Debt Loan
<input type="checkbox"/>	4. General Obligation Loan (requires backing of full faith and credit of issuer)
<input type="checkbox"/>	5. Fire District and Fire Service Area Loan
<input type="checkbox"/>	6. Special or Rural Improvement District Loan

Section 3. Project Information

A. Project Description and costs (Please provide specific details, e.g., type of vehicles, equipment, improvements, construction, etc. If more than one project is contemplated, please describe separately.)			
1 st Project Description →	I5 (AS400) & associated costs – four integrated x series servers		
	Total 1 st Project Cost		\$125,000
2 nd Project Description →	None		
	Total 2 nd Project Cost		\$125,000
B. Project Funding (Please enter <u>all</u> sources of funding for each project described).			
1 st Project Funding			
INTERCAP Portion of Loan →			\$125,000
Borrower Portion of loan , if any →			\$0
Other Funding Sources (please specify) →			\$0
	Total 1 st Project Cost		\$125,000
2 nd Project Funding			
INTERCAP Portion of Loan →			\$0
Borrower Portion of loan , if any →			\$0

Other Funding Sources (please specify) →		\$0
Total 2 nd Project Cost		\$0
C. Requested INTERCAP Loan Amount →		\$125,000
D. Requested Loan Term (years) →	4 Years	
E. Desired INTERCAP Loan Funding Date →	09/18/06	
F. Environmental Impact of Project. Please describe the environmental impact of the proposed project and indicate whether any environmental review or permits are required for this project. If permits, review or approval is required, please indicate the type of approval required and the date on which approval is expected to be obtained.		

Section 4. References

A. Project Attorney					
Name →	Brent Brooks	Legal Firm →	City of Billings		
Complete Address →					
Telephone →		Fax Number →		e-mail →	
B. Consulting Engineer (if applicable)					
Name →	None	Company →			
Complete Address →					
Telephone →		Fax Number →		e-mail →	
C. Accounting Firm					
Name →	City Finance	Firm →	City of Billings		
Complete Address →					
Telephone →		Fax Number		e-mail	

Section 5. Authorized Representatives/Disbursement of Funds

A. The individuals listed below are legally authorized to act on behalf of the Local Government with respect to the execution and delivery of all documents, certificates, or materials necessary to be provided to the Board of Investments in order to execute this loan agreement.			
Name→	Ron Tussing	Title →	Mayor
Complete Address→	P.O. Box 1178 Billings, MT 59103		
Name→	Patrick M. Weber	Title →	Financial Services Manager
Complete Address→	P.O. Box 1178 Billings, MT 59103		
Name→	Teri Kiedrowski	Title →	Investment/Debt Coordinator
Complete Address→	P.O. Box 1178 Billings, MT 59103		
Name→		Title →	
Complete Address→			
B. Loan proceeds are ordinarily disbursed by wire transfer. Please provide the following information.			
Bank Name→	US Bank, N.A.	Bank ABA Number →	092900383
Applicant's Account Number→	1 500 9559 2021		

Section 6. Supplemental Financial Information

1. Unless applying for a short-term interim financing loan (7A), please refer to the APPLICATION CHECKLIST for most of the supplemental information needed to speed up the review process. Please include any additional information that would clarify or enhance the financial circumstances of the applicant or better describe the source of repayment of the loan.

Section 7. Short Term Loans

There are two types of loans available for short term financing: 7A.) Interim financing in anticipation of Rural Development, TSEP, CDBG, or other state or federal loan or grant; and 7B.) Temporary cash flow borrowing.

<input type="checkbox"/>	7A. Interim Financing	Please describe anticipated funding and attach verification of loan or grant.
<input type="checkbox"/>	7B. Temporary Cash Flow	On next line, please describe cash flow needs.
If loan request is 7A, go directly to Section 10. If loan request is 7B, complete the remaining sections of the application including an identified source of funding (Section 9).		

Section 8. Property Value and Indebtedness

A. Property Value. Please use the most recent assessed value of taxable property under the applicant's jurisdiction beginning with the most recent year.					
Fiscal Year →	FY 06	ASSESSED (Market) VALUE \$4,574,155,297			
Real Property →	\$126,031,926	Personal Property →	\$6,113,878	Total Assessed Value →	\$132,165,804
B. Indebtedness Capacity					
Statutory indebtedness limitation: 1.51 % X assessed value					\$69,069,745
Current outstanding indebtedness subject to limitations →					\$15,114,482
Available debt authority →					\$53955263

Section 9. Source of Repayment of Loan

Please complete only the appropriate section based on the source of repayment.

9A. General Fund (general operating fund of the applicant).					
1. Please provide the general fund revenues for the current fiscal year and two preceding years. Please indicate if revenues are estimated.					
	Fiscal Year	Revenue	Expense	Fund Balance	
Current Year		\$	\$	\$	
Prior Year		\$	\$	\$	
Prior Year		\$	\$	\$	
2. Is the applicant, levying taxes for its general fund up to the maximum permitted mill levy authorized by Title 15, Chapter 10, Part 4, Montana Code Annotated, as amended ("the Property Tax Limitation Act")?					
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>		
3. Is the applicant currently delinquent, in default, or in arrears on any bond, loan, lease or any other type of obligation or agreement, payable from any source?					

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
4. If the prior question is affirmative, please indicate the nature of the extent of such delinquency, default or arrears. Please indicate what action the applicant is taking to correct such delinquency, default or arrearage.				
5. Has an amount necessary to pay the first installment on the loan been included in the budget for the current fiscal year?				
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
6. If no funds are currently budgeted, will a budget amendment include this financing?				
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
9B. Enterprise Fund or Revenue Financing.				
1. Please provide the projected rates and charges to support the loan repayment.				
Name of Enterprise →		Billing Frequency →		
Rates/charges Residential →	\$	Number Residential Users →		
Rates/charges Commercial →	\$	Number Commercial Users →		

2. List the outstanding debt of the enterprise fund from which the loan is to be repaid (include bonds, lease purchase agreements or installment purchase contracts). Please attach a copy of the resolution authorizing the outstanding debt.					
Purpose of Debt	Beginning date of debt	Final Year of Maturity	Debt Amount Outstanding	Maximum Debt Service (excluding INTERCAP Loan)	Debt Payment Dates
			\$	\$	
			\$	\$	
			\$	\$	
3. Please show revenues and Operations & maintenance expenses excluding debt service or depreciation expense for the last four fiscal years beginning with the current fiscal year.					
Fiscal Year	#1: Revenues	#2: Operation & Maintenance Expense	#3: Revenues less Operations & Maintenance Expense (#1 - #2)	#4: Debt Service Expense	#5: Ratio of Net Revenues (#3 / #4)
Current FY	\$	\$	\$	\$	\$
Prior FY	\$	\$	\$	\$	\$
Prior FY	\$	\$	\$	\$	\$
Prior FY	\$	\$	\$	\$	\$
4. Please show estimated budget for next two years. Projected expenses are for operations & maintenance (do not include debt service or depreciation expenses) Include INTERCAP loan debt service in projected debt service expense. You may use the 5.295% average variable interest rate since inception of the program in 1987 to estimate the INTERCAP debt service.					

Fiscal Year	Projected Revenues	Projected Expense	Projected Debt Service Expense
	\$	\$	\$
	\$	\$	\$

5. If the budget data shown in #4 above reflects an increase in the enterprise rate or charges please show increases

Fiscal Year	No. Residential Users	Projected Rate	No. Commercial Users	Projected Rate
		\$		\$
		\$		\$

9C. General Obligation Loan

1. If the loan is to be a general obligation of the applicant, payable from an ad valorem property tax levied on all property within its jurisdiction without limitation as to rate or amount, please complete the following.

Date Voters Authorized Debt →		Amount of Debt Authorized →	\$
-------------------------------	--	-----------------------------	----

2. Purpose of Borrowing as indicated on Ballot:

3. Term over which loan is to be repaid (5 year limit for school building reserve loans) →

4. Please provide the following information regarding the total revenue and expenditures

Fiscal Year	Anticipated Revenue over next three years	Anticipated Expenditures over next three years	Fiscal Year	Annual Revenues for last three years	Annual expenditures for last three years
	\$	\$		\$	\$
	\$	\$		\$	\$
	\$	\$		\$	\$

5. If the new revenue source is also pledged for other projects or purposes, please specify.

6. If the source of new revenue were lost, could general fund repay the loan?

Yes ☐

No ☐

9D. Fire District and Fire Service Area Loans

1. Please provide the following information regarding applicant's general fund.

Fire District

Fiscal Year	Revenues	Expenses	Fund Balance	# Authorized Mills
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	

2. For Fire Service Area: Fee per structure →

\$

Structures in area →

3. Is applicant levying taxes up to the maximum mill levy authorized by Title 15, Chapter 10, Part 4, Montana Code Annotated, as amended (the "Property Tax Limitation Act")?

Yes ☐

No ☐

List the outstanding debt of the fund from which the loan is to be repaid (include bonds, lease purchase agreements or installment purchase contracts):

Purpose of Debt	Beginning Date of Debt	Final Year of Maturity	Debt Amount Outstanding	Maximum Debt Service (excluding INTERCA P loan)	Debt Payment Dates
			\$	\$	
			\$	\$	
			\$	\$	

4. On the next line, please indicate if the applicant is currently delinquent, in default, or in arrears on any bond, loan, lease or any other type of obligation or agreement, and the nature and extent of such delinquency, default or arrears. Also please indicate what action the applicant is taking to correct such delinquency, default or arrears.

5. Has an amount necessary to pay the first installment of the project to be financed from the loan been included in the budget for the current fiscal year?

Yes ☐ No ☐

6. If no funds are currently budgeted, will a budget amendment include this financing?

Yes ☐ No ☐

9E. Special or Rural Improvement District Loan

1. Has the District been created? Yes ☐ No ☐

2. If the district has been created, please enclose with the application the transcript of proceedings creating the district. (A list of items constituting the transcript includes: Resolution of Intent to Create, Resolution to Create, Resolution Creating Revolving Fund).

3. Approximate size of District in acres →		4. Number of Parcels assessed in District →	
5. Method of Assessment →	Assessable Area <input type="checkbox"/>	Area <input type="checkbox"/>	Ad Valorem <input type="checkbox"/>
6. Taxable Valuation of the District →	\$		
7. Estimated average annual per property assessment needed to repay loan (4.42% interest rate) →			\$

8. Allocation of property within District (based on method of assessment):

Category	Developed	Undeveloped	
Commercial	%	%	
Industrial	%	%	
Single-Family Residential	%	%	
Multi-Family residential	%	%	
Agricultural	%	%	

9. On the line below, please describe the location of the district within the boundaries of the applicant.

10. If there are currently any bonds, notes, or warrants payable from special assessments please complete:

No. of SID/RID's Outstanding	Total Original Amount	Total Principal Amount Outstanding	Term Remaining	Amount of Delinquent Assessments if Any
	\$	\$		\$

11. If any SID/RID's have a delinquency of assessments greater than 5% , please provide the following information

District No.	Original Amount Assessed	Total Principal Amount Outstanding	Original Term of Debt	Amount of Delinquent Assessment	Percent of Delinquent Assessment
	\$	\$		\$	%
	\$	\$		\$	%

12. Do any of the above districts overlap with the district boundaries from which the loan is payable?

Yes ☐ No ☐

13. What is the current balance in the Revolving Fund securing those bonds or notes →

\$

9F. Other Repayment Sources

1. If the loan is to be repaid from sources other than those listed above, please provided the following information (if more than one request is to be repaid from such sources, please make additional pages as needed).

Please indicate the source of the other revenue: Information Technology charge for services

Fiscal Year	Anticipated Revenue over next three years	Anticipated Expenditures over next three years	Fiscal Year	Annual Revenues for last three years	Annual Expenditures for last Three Years
FY07	\$1,750,900	\$1,668,000	FY04	\$904,790	\$1,113,904
FY08	\$1,967,000	\$1,735,000	FY05	\$1,240,518	\$1,287,631
FY09	\$1,967,000	\$1,804,000	FY06 Est.	\$1,400,000	\$1,400,000

2. If the source(s) of revenue is pledged for other projects please indicate the amount pledged →

\$0

3. If the source of revenue were lost, could the applicant repay loan from general fund?

Yes X

No ☐

Section 10. Endorsement

I hereby certify as preparer of this application on behalf of the applicant that all of the information contained herein is true, accurate and complete as of the date hereof

Dated this 14th	Day of August	2006
By	Title: Financial Services Manager	
Patrick M. Weber		
Please print or type name		

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

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Acceptance of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) 31 Grant

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: It is necessary to secure the City Council's approval and authorization for the Mayor to execute Federal Aviation Administration (FAA), Airport Improvement Program (AIP) Grant 31 once it has been received from the FAA. Grant 31 contains discretionary funds that will provide two new fire trucks for the Aircraft Rescue and Fire Fighting (ARFF) Division at Billings Logan International Airport. The City Council approved the purchase of the new fire trucks during the July 24, 2006 City Council meeting.

FINANCIAL IMPACT: AIP Grant 31 will be \$1,204,742 and will cover 95% of the cost of the recently approved purchase of the two new ARFF fire trucks. The remaining 5% local match, \$63,408, will come from the Department's Capital Fund.

RECOMMENDATION

Staff recommends that the City Council approve the acceptance of this Grant and authorize the Mayor to execute AIP Grant 31.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

A. FAA AIP 31 Grant (4 pages)

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



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday August 14, 2006

TITLE: Staff Recommendation for Affordable Housing Fund Application
DEPARTMENT: Community Development Division
PRESENTED BY: Brenda Beckett, Community Development Manager
Vicki Lapp, CD Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal for Affordable Housing Funds from Menola Land, Sage Towers, LLC. The proposal was to assist them with acquisition and substantial rehab of the Sage Towers building at 115 No. 24th Street. Sage Tower is currently owned by Sage Tower, Inc. and is currently a 111 unit, elderly (55 and older) housing project, of which 52 units are HUD rent subsidized. It has a mix of units composed of efficiency and 1 bedroom units and includes meal service. They are proposing to combine 36 efficiency apartments into 18 large 1 bedroom units with 2 bathrooms. This will reduce the total units available to 90. Additional rehabilitation activities include new appliances, interior painting, new floor coverings, updating the emergency call system and the central kitchen, as well as additional accessibility features.

ALTERNATIVES ANALYZED: Alternatives would be: (1)To fully fund the project at \$175,000 thereby assisting in providing 90 units of quality, affordable housing; (2) Fund the project with a smaller funding amount; or (3)Not assist in funding the project. By not funding this project at all, the City would not get the opportunity to participate in providing 90 of affordable senior housing, as well as not meeting needs of a target population addressed in the City's 2006 - 2007 Consolidated Plan.

FINANCIAL IMPACT: CDBG and HOME funds are provided by HUD to the City for affordable housing projects. Total estimated project cost is \$2,961,200. CDBG/HOME financial is picture is as follows:

• Current HOME funds	\$ 307,003
• CDBG funds available	<u>\$ 128,309</u>
TOTAL	\$ 435,312
– This project	<u>\$ 175,000</u>

Final Balance **\$ 260,312**

RECOMMENDATION

CD Board and Staff recommend City Council approve a Development Agreement with Menola Land, Sage Towers for a \$175,000 1% loan, amortized over 20 years.

Approved By: **City Administrator** ____ **City Attorney** ____
Attachment: Draft Development Agreement

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing. They were affordability, condition, rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers/parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. This project is being targeted specifically to house elderly, as defined by HUD.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed 2/3 of the renter households are considered low income and 32% of the total renter households are cost burdened, and living in overcrowded and/or substandard housing.

There are 5,637 renter households in Billings under 50% Median Family Income(MFI). The Housing Needs Assessment indicates 67.5%, of the renter households with incomes at or below 50% AMI (which is the income group this project is targeting) are cost burdened. The elderly, low-income, renter households that could benefit from this type of project is expected to increase from 656 in 2000 to 730 in 2010.

33.7% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type only behind affordable single family homes for purchase. The Census Tract the project is located in is 70 - 100% Low Moderate Income (LMI).

This project meets the following strategies in the City's Consolidated Plan;

- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.
- Promote the preservation of the existing supply of affordable housing in the community.

PROCEDURAL HISTORY

- June 6, 2005 – Staff presented the Sage Towers project to the CD Board
- July 11, 2006 -- Staff recommendation is made to the CD Board
- August 14, 2006 -- CD Board recommendation will be made to City Council

BACKGROUND

Organizational Strengths

The Burgwyn Company will be responsible for management of HOME funds. They have several similar projects currently underway, including Fraser Tower & Rose Park Plaza Apartments here in Billings. Tamarack Property Management will be responsible for the day to day operations of the facility. They are a very reputable local Management Company with

extensive experience in managing these types of facilities, as well as they are currently managing Sage Towers. This will be the 3rd project in which the Burgwyn Company has used HOME funds. Their recently completed projects have added approximately 400 units to the affordable housing stock; mostly affordable to less than 60% Area Median Income (AMI).

Other considerations during the project review

The property is located within the City limits and is located in the Tax Increment District, as well as an identified difficult to develop area. HOME funds will be used for acquisition. An Environmental Review Record will be required to be completed before the Development Agreement can be executed.

Financial Plan

Total project cost is \$2,961,200 and sources of funds to complete the project financing are as follows:

City of Billings HOME funds	\$ 175,000
Bond Issue by MT Board of Housing	\$ 750,148
Construction/Permanent Loan	\$ 1,734,600
General Partner Contribution	\$ 166,859
Reserves	\$ 42,236
Construction Period Operations	\$ 92,357

The permanent loan is amortized over a 40 year period at 6.10% interest. The HOME funds are also a loan at 1% interest for 20 years. These two loans would mean an annual payment of \$126,995, which is reflected in the proforma. This is the maximum mortgage the property can support.

HOME Requirements Review

The HOME cost per unit is \$43,750 which is just below the maximum subsidy allowed of \$46,267 for an efficiency unit. They have indicated the four efficiency units that will be left in the complex will be HOME subsidized. Other, similar projects cost per unit that have recently been funded include: Lincoln Springs at \$70,000, the ACME at \$7,547, Southern Lights at \$15,000, and the Schwend project at \$27,533. Menola Land is proposing 6% of total cost out of HOME funds and 4% of the units will be HOME assisted.

The HOME 25% match requirement of \$43,750 is being met through owner equity, plus a percentage of the bond issue for a total of \$301,452. An intent to purchase has been signed. An Environmental Review Record must be completed before the Development Agreement can be signed, however a Phase I Environmental Assessment has been completed. The project has an acceptable Affirmative Marketing Plan. Section 504 Requirements call for five units to be specifically designed for accessibility to individuals with mobility impairments and an additional 2 units must be designed for individuals with sensory impairments. These requirements will be met.

Low Income Housing Tax Credits(LIHTC) Restrictions & Requirements

This application did not qualify for Low Income Housing Tax Credits, however the Developer has negotiated with the Montana Board of Housing to issue bonds for this portion of the financing package and will comply with stringent LIHTC requirements. LIHTC require that owners target no less than 40% of the units to be rented to 60% AMI or less. Menola Land, Sage Towers is targeting 92% of the units to 60% or less AMI. Seven of the units will be market rate rents. They also require projects must remain rent and income restricted for a minimum period of 15 years. Menola Land is proposing to extend the HUD rental assistance contract for an additional 20 years and have applied for an additional 38 project-based vouchers to ensure all the units remain affordable. The rent and income restrictions will be enforced through restrictive covenants that are recorded against the title of the property at closing. All residents, except the market rate units will pay 30% of their income for their rent.

In reviewing the application for the following cost limitations, Menola Land has followed the LIHTC as well as industry standard allowed percentages with regard to construction contingency, Developer's Fees, builder's overhead and General Requirements. All are a percentage of the construction costs minus the land costs. The breakdown is as follows:

	LIHTC allowed	Sage Towers
Construction Contingency	N/A	12%
Developers fee	15%	15%
Builder's Overhead	2%	2%
General Requirements	6%	6%

ALTERNATIVES ANALYZED: Alternatives would be (1)To fully fund the project at \$175,000; thereby assisting in providing 90 units of quality, affordable elderly housing. (2) Fund the project with a smaller amount of funds and (3)Not assist in funding the project. By not funding this project at all, the City would not get the opportunity to participate in providing 90 of affordable senior housing, as well as not meeting needs of a target population addressed in the City's recent Consolidated Plan.

STAKEHOLDERS

- Stakeholders Low Income families and individuals in the community. This project is targeted to families and individuals under 50% AMI
- Disabled individuals and families in the community. All of the units in the proposed project will be handicap accessible.
- The current tenants are also stakeholders, as the living conditions in Sage Towers will be immensely improved.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This project meets the following strategies in the City's Consolidated Plan.

- Promote New Affordable Housing Opportunities
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

SUMMARY

An overall review of the funding for the project reveals it to be consistent with other similar projects that the City has funded. The HOME subsidy amount being requested is consistent with the number of HOME assisted units, and is not over the subsidy limitation. Match requirements are being appropriately met, as well as Section 504 requirements and ADA accessibility. Menola Land, Sage Towers will contract with a Tamarack Management company for the day-to-day management services. This project is also consistent with our Consolidated Plan.

There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment, as well as a Market Analysis completed for the Tax Credit application. The current facility has vacant efficiency apartments that will be converted into 1 bedroom, 2 bathroom units in the hope of keeping them occupied. The reasoning behind this decision was solely due to the type of building construction and the ability to modify the wall structure.

The owner/developer has extensive experience, in developing and managing Low Income Housing Tax Credit projects. The developer/owner has two other similar projects in Billings.

RECOMMENDATION

CD Board and Staff recommend City Council approve a Development Agreement with Menola Land, Sage Towers for a \$175,000 1% loan, amortized over 20 years.

After recording, please return to:
City of Billings
Community Development Division
PO Box 1178
Billings, MT 59103

City of Billings
DRAFT HOME Investment Partnerships Program
DEVELOPMENT AGREEMENT

This AGREEMENT, dated the ____ day of _____, between the **CITY OF BILLINGS**, a Montana municipal corporation, whose address is P. O. Box 1178, Billings, MT 59103, and **Menola Land, Sage Tower, LLC**, a limited liability Company whose address is 1732 Wazee Street, #205, Denver CO 80202.

WHEREAS, the Developer desires to work with the City and build affordable housing on developer-owned property in the City of Billings, Yellowstone County, Montana commonly known as the Southeast corner of 8th Avenue South & South 28th Street or:

Lots 5, 6, 7, 13, 14, 15, 16, 17, and 18 in Block 88, Original Town, Now Billings, in the City of Billings, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana.

WHEREAS, the City has concurrently entered into a HOME Contract with HUD whereby the City will receive and administer HOME moneys to provide financing, in part, for the new construction project to be undertaken by the Developer.

WHEREAS, Developer is desirous of obtaining such financing on the Project and is willing to assume obligations to the City under the HOME Contract on the terms and conditions, as provided herein.

WHEREAS, the Developer desires to rehabilitate the structure for affordable rental housing, and the Developer desires to use HOME funds for acquisition;

WITNESSETH THAT the City of Billings and the Developer, mutually agree as follows:

PURPOSE

The purpose of this Agreement is to provide HOME funding for project activities approved by the City under its Home Investment Partnerships Program (HOME); and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act* (Title II, Public Law 101-625, approved November 1990, 104 Stat. 4079, 42 U.S.C. 12701-12839), as amended.

B. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED HERETO:

The Developer agrees to comply with all appropriate federal, state, and local laws applicable to activities undertaken through this agreement, including: Program requirements under the HOME Investment Partnerships Program 24 CFR Part 92, and the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of federal funds for this program, Developer's project application statements, as well as the Uniform Relocation Act and Section 104 (d). Incorporated by reference is Title VI of the Civil Rights Act of 1964. Executive Order 11246, Section 3, Federal Labor Standards set forth in 24 CFR 570-605 and the Americans with Disabilities Act.

C. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

1. The Developer will comply with all applicable parts and requirements of the *National Affordable Housing Act of 1990* (as amended), as now in effect or as they may be amended during the term of this Agreement; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
2. The Developer agrees to comply with Scope of Services section of this document together with the attachments thereto marked Exhibits 1 through 3, all of which are attached and incorporated herein by reference, as if fully set forth.
3. The Developer agrees that all contracts entered into by the Developer for the completion of the activities described in Section K of this Agreement will contain provisions requiring Developers to comply with all applicable HOME requirements. These contract provisions are to be included in all subcontracts and will be attached to the final Development Agreement as an Exhibit.
4. The Developer expressly agrees to repay to the City of Billings any funds paid on behalf of the Developer or its subcontractors that are expended in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME program, or if for some reason the project is unable to move forward in a timely manner.
5. Period of Affordability. The Developer agrees that all units constructed under the final Development Agreement will initially be rented to a low to moderate income tenant under the terms of the Deed Restriction Agreement which will be filed with the Yellowstone County Clerk & Recorder at the time it is negotiated. For purposes of that Agreement, the period of affordability, during which time Developer agrees to monitor and report on the project as required by the City of Billings and the HOME Program, is as follows:
 - a. Period Of Affordability: 20 years, as required by the HOME regulations

D. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the Developer or its subcontractors.

E. COMPENSATION

The City of Billings shall compensate the Developer for all eligible project costs as identified in the Scope of Services section of this Contract in the total amount of \$ 175,000. Notwithstanding anything to the contrary here, the City's obligation to make periodic or final payment to the Developer shall be conditioned upon the receipt by City of grant funds sufficient to make such payment.

F. PAYMENT METHOD

Payment for reimbursement of actual and proper expenditures of funds shall be made in accordance with the Development Agreement between City and Developer. City may withhold any payment if the Developer has failed to comply with program objectives, contractual terms, or reporting requirements. City may withhold payment of the final five percent (5%) of the total Contract amount until the Developer has submitted and City has accepted all required financial and performance report information required pursuant to either the Grant or City requirements.

G. DEVELOPER AN INDEPENDENT DEVELOPER

The Developer shall be an independent Developer, and may not be the agent or employee of City, and shall have no authorization, express, implied, or apparent, to bind City to any agreements, settlements, liability, or understanding except as expressly set forth herein.

H. PERSONNEL

The Developer represents that it has, or shall secure, at its own expense, all personnel required in performing the services under this Development Agreement. All of the services required hereunder shall be performed by the Developer, or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services provided hereunder, the Developer and any subcontractors shall be properly licensed therefore.

I. TIME OF PERFORMANCE

This Contract shall become effective upon its execution. The Project shall commence as soon as practicable after the execution of this Contract and shall be undertaken and performed in accordance with the schedule set forth in the Development Agreement between the City and **Menola Land, Sage Tower, LLC**. **Menola Land, Sage Tower, LLC** agrees that time is of the essence in the performance of its obligations under this Agreement, and that completion of the Project shall occur no later than the termination date plus authorized extensions as set forth in the Development Agreement between the City and Developer.

J. TERMINATION DATE

This contract shall terminate no later than twenty-four months after execution, plus authorized extensions as set forth in the Development Agreement between the City and the Developer.

K. SCOPE OF ACTIVITIES

The Developer will carry out the activities as set forth below. The major components pertaining to this Development Agreement include:

1. Partial assistance with acquisition of Sage Towers

L. PROJECT BUDGET

The project budget is included in Exhibit A (2). The Developer may modify this budget only after having requested and received the City's written approval of the adjustment. Requests for the City's funds will not be processed until documentation has been received that the balance of funds needed to complete the project have been obtained.

M. LIAISON AND NOTICE

Vicki Lapp, CD Program Coordinator, is the City's liaison with the Developer.

Henry Bergwyn is the Developer's liaison with the City.

Notice will be sufficient if given in writing and mailed to the parties' liaison at the addresses described above.

N. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any subcontractor pursuant to this Agreement are to be the property of the Developer, and the City, which each have the nonexclusive and unrestricted authority to release, publish or otherwise use in whole or in part, information relating to it. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written permission of the City of Billings and the Developer.

O. ACCESS TO RECORDS

The Developer will supply to the City copies of all pertinent records, including, but not limited to, contracts, approved invoices and lien releases. The City will retain records of the Developer's performance under this Agreement and will allow access to these records at any time during normal business hours by the Developer, the U.S. Department of Housing and Urban Development, and the Comptroller General. These records will be kept at the Community Development Office, 510 N. Broadway, Billings, Montana.

Project Records Required:

1. Documentation that the project meets applicable property standards for HOME rehabilitation activities;
2. Documentation that the rents charged in each HOME assisted unit conforms to HOME Program requirements;
3. For each household renting a HOME assisted unit, a copy of the rental application, income verification, and rental agreement and subsequent annual income verifications.
4. Copies of invoices submitted for payment
5. Verification of matching contribution from owner

The records described above must be retained for a period of five years after project closeout. The records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five years after the required period of affordability. If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular five-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

P. PROGRESS REPORTING

The Developer will promptly submit status reports on project progress at the request of, and in the format prescribed by, the City of Billings.

Q. AVOIDANCE OF CONFLICT OF INTEREST

The Developer will comply with the provisions of 24 CFR § 92.356; and with § 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, regarding the avoidance of conflict of interest.

No officer, employee, or agent of the Developer or immediate relative (spouse, parent, sibling, child) shall be an investor, officer, employee or agent of the City or Developer or receive any compensation from the Developer during the term of this agreement.

R. MODIFICATION AND ASSIGNABILITY OF AGREEMENT

This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement. This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein. The City & Developer accept responsibility for adherence to the terms of this Agreement by contractor, subcontractor or sub-recipient entities and by its agents, if any, to which it delegates authority to carry out portions hereof.

S. CONSTRUCTION AND VENUE

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the Thirteenth Judicial District in and for the County of Yellowstone, State of Montana.

T. INDEMNIFICATION

The Developer waives any all claims and recourse against the City, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Developer's or any contractor, subcontractor or sub-recipient's performance of this Agreement.

Further, Developer will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the Developer or any contractor, subcontractor or sub-recipient's performance of this Agreement. In the event that the City of Billings is named as a co-defendant in any action relating to activities to be performed by the Developer or sub-recipient under this Agreement, the Developer will notify the City in writing of such fact.

U. TERMINATION OF AGREEMENT

This Agreement may be terminated as follows:

Termination Due to Loss of Funding. The parties hereto expressly recognize that Developer is to be paid, reimbursed, or otherwise compensated with federal HOME funds provided to City under the HUD HOME Contract for the purpose of contracting for the services provided for herein or with program income; and therefore, Developer expressly understands and agrees that all its rights, demands, and claims to compensation arising under this contract are contingent upon receipt of such funds by City. In the event that such funds or any part thereof are not received by City, City may immediately terminate or amend this agreement.

Termination for Cause. If, through any cause, Developer shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the Developer shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Developer of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. It is understood that the Developer and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination, if City shall so request in writing. If the Agreement is terminated by the City as provided herein, the Developer will be reimbursed in an amount equal to the actual expenses incurred as of the date of termination.

Notwithstanding the above, the Developer shall not be relieved of liability to City for any damages sustained by City by virtue of any breach of contract by the Developer, and the City may withhold any payment to the Developer for the purpose of setoff until such time as the exact amount of damages due to the City from the Developer is determined.

Return of Material. In event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Developer under this Agreement, shall, at the option of the City, become its property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Compensation. In the event of termination, Developer shall be paid an amount which bears the same ratio to the total compensation as the services actually performed up to the effective date of termination bear to the total services of Developer covered by this Contract, less payments of compensation previously made: provided, however, that if less than sixty (60) percent (60%) of the services covered by this Agreement have been performed upon the effective date of such termination, Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Agreement) incurred by Developer during the Agreement period which are directly attributable to the incomplete portion of the services covered by this Agreement.

Remedies. Where either party violates or breaches contract terms, the other party, in its discretion, may, in addition to terminating this Agreement, institute such administrative, contractual, legal or equitable remedies available as may be appropriate. In such event, the party

found in violation of the Agreement shall pay the other party's costs and reasonable attorney's fees incurred thereby.

V. CONTRACT SUSPENSION

If the Developer fails to comply with any contractual provision, City may, after notice to the Developer, suspend the Agreement and withhold further payments or prohibit the Developer from incurring additional obligations of contractual funds, pending corrective action by City or a decision to terminate in accordance with provisions herein. City may determine to allow such necessary and proper costs which the Developer could not reasonably avoid during the period of suspension provided such costs were necessary and reasonable for the conduct of the project.

W. UNIFORM RELOCATION ACT

The Developer will be subject to compliance with the federal Uniform Relocation Act, be solely responsible for the cost to comply with those requirements, and be subject to termination of this Agreement if there is an issue with noncompliance.

X. COMPLIANCE WITH LAWS

1. **Median Income Level:** The City & Developer agree that 86 of the units to be built under the final Development Agreement will be occupied by households at 60% or less of Area Median Income. In the event that less than 86 of the units rented to households at or below 60% of the area median income at any given time, this imbalance shall be corrected by assuring future units rented in the project will be rented to a household at or below 60% of area median income until the imbalance is corrected and the 100% benefit level is achieved.
2. **Political Activities:** None of the funds, materials, property or services provided directly or indirectly under this agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for public office.
3. **Insurance Coverage:** The Developer shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Developer or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - a. Public Liability Insurance in an amount not less than \$1,000,000 for injuries, including accidental death to any one person;
 - b. Builder's Risk Insurance in an amount not less than the completed value of the whole property, or \$100,000, whichever is greater.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above, **before** the work under the final development agreement is begun. The Public Liability Insurance certificate shall be maintained during the life of the agreement. The Builders Risk Insurance shall be secured prior to initiating construction on the first unit. All insurance certificates shall name the City as an insured party and contain the following language, "The company agrees that it will give the City of Billings, Montana 10 days prior written notice of its intent to cancel or materially change the described policy. " This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable. The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Developer will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with State Law.

4. **Construction Contracts:** The Developer agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24CFR Part 24. The Developer will provide the City with the names of contractors and subcontractors prior to entering into contracts. The City, within five (5) working days, will provide the Developer a written notice if the contractors are ineligible.

5. **Lead-Based Paint:** The Developer agrees that any construction of residential structures with assistance provided under the final agreement shall be subject to HUD Lead-Based Paint Regulations at 24CFR 570.608, and 24CFR Part 35 which results in the prohibition of the use of lead-based paint for this project. Lead Based Paint requirements do not apply, as this facility will be occupied solely by elderly.
6. **Environmental Review:** The Developer will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the Developer does not assume the City's responsibility for the environmental review which will be completed by the City prior to the beginning of construction;
7. **Religious Organization:** The Developer will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in 24 CFR 92.257.
8. **Drug-Free Work Place:** The Developer certifies that it will provide a drug- free work place.
9. **Montana Residential Landlord-Tenant Act:** Menola Land, Sage Towers agrees to comply with the Montana Residential Landlord-Tenant Act law at MCA 70-24-104.
10. **Federal Labor Standards:** This project is NOT required to comply with the Federal Labor Standards Act, as there are less than 12 HOME assisted units.
11. **Fixed or floating units:** Four (4) of the units in the proposed project will be considered HOME assisted. The HOME assisted units will be considered floating units.

Y. GRANT CONTROLS

Notwithstanding any provision herein to the contrary, the performance and administration of this Contract shall be subject to the applicable provisions of the HUD Contract. Accordingly, the Developer hereby assumes all obligations under the Contract as a condition to Developer's obligation to perform under this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

Henry BergwynDate
Menola Land, Sage Tower, LLC

STATE OF MONTANA)
COUNTY OF YELLOWSTONE):ss
)

On the ____day of _____, 2006 before me, _____, a Notary Public for the State of _____, personally appeared **Henry Bergwyn, Menola Land, Sage Tower, LLC**, and that he executed the within instruments and acknowledged to me that that he executed the same as their free act and deed.

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

Printed Name_____
Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

Attest:CITY OF BILLINGS

Marita HeroldRon Tussing
City ClerkMayor

STATE OF MONTANA)
) :ss
County of Yellowstone)

On this _____day of _____ 2006, before me, a Notary Public for the State of Montana, personally appeared **Ron Tussing, Mayor, City of Billings** known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

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

Printed Name_____
Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

Menola Land, Sage Tower, LLC
Sage Tower

SCOPE OF SERVICES & PROJECT RESTRICTIONS

1. **Project Description & Objectives**

The City of Billings (City) will provide the Developer with a total of \$175,000 in HOME Investment Partnership Program Affordable Housing Funds as a 1% interest loan, amortized over 20 years. Funds will be used for assistance with acquisition of Sage Tower. See grant application narrative for a more specific description of project activities.

The project to be built will comply with affordability restrictions and design standards as specified below. At least 86 of the units must be initially rented to low-income elderly households (60% or less AMI) as defined by HOME Program regulations and verified through documentation provided by individuals renting the property.

2. **Benefit to Low Income**

At least 86 of the units rehabilitated will be rented to an elderly household who qualifies as a low-income as defined by HOME Program regulations. Low -income households are defined as those households whose income is equal to or less than 60% of the area median income for their particular family size. In the event that less than 86 of the units constructed in each phase are rented to households at or below 60% of the area median income at any given time, this imbalance shall be corrected by assuring future units in the project will be rented to a household at or below 60% of the area median income level until the imbalance is corrected and the 86 unit benefit level is achieved. The current HOME Program income guidelines are listed below. The City will provide the Developer with written notice of future modification to the income guidelines.

MEDIAN FAMILY INCOMES 2005	
HOUSEHOLD SIZE	60% Area Median Income
1	\$22,620
2	\$25,860
3	\$29,100
4	\$32,340
5	\$34,920
6	\$37,500
7	\$40,080
8+	\$42,660

3. **Property Standards**

Upon completion of rehabilitation, the building will, at a minimum, meet the Uniform Building Code, all applicable local and state building codes and standards, as well as the Model Energy Code, as much as is practicable, and Section 8 Housing Quality Standards.

4. **Rent Policy**

1. The rent policy is that 86 of the units will be targeted to elderly families with incomes at or below 60% AMI for the City of Billings.
2. The rents will not exceed the HOME limits as set annually by HUD.
3. The rents will be fixed.
4. All utilities will be included in the lease so no utility allowance will be needed.
5. 30 days written notice shall be given for all rental increases.
6. The facility will allow rental subsidy.
7. If a family income increases beyond 80% AMI, rent on the unit will increase to the lesser of 30% of their adjusted monthly income or the market rate. If the income of a very low-income family increases to more than 50% of median but less than 80%, the unit is reclassified as a High HOME rent unit and charged accordingly. Units will be rented to tenants with low or very-low income as unqualified tenants vacate units.

Loan Amortization Schedule

Enter values	
	\$
Loan amount	175,000.00
Annual interest rate	1.00 %
Loan period in years	20
Number of payments per year	1
Start date of loan	1/1/2007
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 9,697.68
Scheduled number of payments	20
Actual number of payments	20
Total early payments	\$ -
Total interest	\$ 18,953.60

Lender name:	City of Billings
--------------	------------------

PmtNo.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance
			\$		\$		\$	\$
1	1/1/2008	\$ 175,000.00	9,697.68	\$ -	9,697.68	\$ 7,947.68	1,750.00	167,052.32
2	1/1/2009	167,052.32	9,697.68	-	9,697.68	8,027.16	1,670.52	159,025.16
3	1/1/2010	159,025.16	9,697.68	-	9,697.68	8,107.43	1,590.25	150,917.73
4	1/1/2011	150,917.73	9,697.68	-	9,697.68	8,188.50	1,509.18	142,729.23
5	1/1/2012	142,729.23	9,697.68	-	9,697.68	8,270.39	1,427.29	134,458.84
6	1/1/2013	134,458.84	9,697.68	-	9,697.68	8,353.09	1,344.59	126,105.75
7	1/1/2014	126,105.75	9,697.68	-	9,697.68	8,436.62	1,261.06	117,669.13
8	1/1/2015	117,669.13	9,697.68	-	9,697.68	8,520.99	1,176.69	109,148.14
9	1/1/2016	109,148.14	9,697.68	-	9,697.68	8,606.20	1,091.48	100,541.94
10	1/1/2017	100,541.94	9,697.68	-	9,697.68	8,692.26	1,005.42	91,849.68
11	1/1/2018	91,849.68	9,697.68	-	9,697.68	8,779.18	918.50	83,070.50
12	1/1/2019	83,070.50	9,697.68	-	9,697.68	8,866.98	830.70	74,203.52
13	1/1/2020	74,203.52	9,697.68	-	9,697.68	8,955.64	742.04	65,247.88
14	1/1/2021	65,247.88	9,697.68	-	9,697.68	9,045.20	652.48	56,202.68
15	1/1/2022	56,202.68	9,697.68	-	9,697.68	9,135.65	562.03	47,067.02
16	1/1/2023	47,067.02	9,697.68	-	9,697.68	9,227.01	470.67	37,840.01
17	1/1/2024	37,840.01	9,697.68	-	9,697.68	9,319.28	378.40	28,520.73
18	1/1/2025	28,520.73	9,697.68	-	9,697.68	9,412.47	285.21	19,108.26
19	1/1/2026	19,108.26	9,697.68	-	9,697.68	9,506.60	191.08	9,601.66
20	1/1/2027	9,601.66	9,697.68	-	9,601.66	9,506.65	96.02	0.00

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, August 14, 2006**

TITLE: Heritage Park Donation
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Parks, Recreation and Public Lands Department has received a \$500 memorial gift donation in Memory of Mr. Michael Bell, for trees to be planted at Heritage Park, at 37th Street W and Heritage Circle. Mr. Bell was a long-time resident on Heritage Circle and contributed a great deal of his time and effort over the years to help maintain the park.

ALTERNATIVES ANALYZED:

1. Accept the donation (recommended).
2. Refuse the donation.

FINANCIAL IMPACT: The donation would offset costs incurred by the department to plant trees in the park.

RECOMMENDATION

Staff recommends that Council accept this donation and acknowledge the donation with a thank you letter.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

- A. List of donors and copy of check

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Approval of Domestic Violence Unit & Victim Witness Assistance Sub-Grants

DEPARTMENT: City Attorney's Office

PRESENTED BY: Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: Since July 2000, the City Attorney's Office has annually applied for, and been successfully awarded federal Violence Against Women Act monies through the Montana Board of Crime Control in the form of sub-grants. These sub-grants help fund positions within the City Attorney's Office Domestic Violence Unit and Victim Witness Assistance Program which together provide statutorily-mandated services to victims of violent crime including domestic violence, sexual assault, stalking, simple assault and violations of protective orders.

FINANCIAL IMPACT:

- The total amount of the sub-grant awards from the Board of Crime Control for FY 2006-2007 are:
- \$38,000.00: **Victim Witness Program Grant** (partial funding for the Victim Witness Assistance Program Director and Victim Witness Specialist positions), and
- \$52,000.00: **Domestic Violence Unit Grant** (partial funding for the Domestic Violence Dedicated Prosecutor and Victim Witness Specialist positions).

Victim Witness Program Grant
Original Request By City:

City Contribution: \$ 64,648.00

MBCC Match: \$ 38,000.00 (award is same amount as requested)
Total Grant Budget: \$102,648.00
Domestic Violence Unit Grant
Original Request By City:

City Contribution: \$ 33,498.83

Final Award and City Match Amounts:

\$ 36,498.00 (City)

MBCC Match: \$ 55,000.00
Total Grant Budget: \$ 88,498.00

\$ 52,000.00 (MBCC Actual Award)
\$ 88,498.00

Without this grant funding, the City would have the burden of fully funding these positions in order to maintain the staff and materials necessary to fulfill statutorily mandated services to victims of violent crime.

Each year the grant award amounts have been estimated into the fiscal year budget. The City's match for the Victim Witness Assistance Program grant totals \$64,648.00. For the Domestic Violence Unit grant the City's match is \$36,498.00

RECOMMENDATION

Staff recommends that the Mayor and City Council approve the acceptance of the Domestic Violence Unit and Victim Witness Assistance Program grants as awarded by the Montana Department of Justice, Board of Crime Control.

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

ATTACHMENTS

- A. *Grant Awards***
- B. *Amended Project Budget***

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Annexation petition #06-12: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: The property owner, Bell Family Trust, Robert and Bonnie Bell, Trustees, submitted a petition to annex land to the City of Billings under 7-2-4600 MCA. The 14.077-acre subject property is located near the southwest corner of the intersection of Shiloh Road and Central Avenue. Adjoining road tracts will be annexed along with this property. The property is currently vacant. The property owner is requesting annexation in order to obtain city water and sewer services to develop the property for a senior housing complex. Upon annexation, the zoning of the property will automatically convert to Residential 9,600. The owner will be required to submit a Special Review application to allow the proposed senior housing complex. The City Council's policy is to consider annexations at two separate Council meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date.

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

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for August 28, 2006, to consider annexing this property.

Approved by:

City Administrator ____

City Attorney ____

ATTACHMENTS

- A. Property data
- B. Annexation petition
- C. Map

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Bell Family Estates, Trustees
Purpose of annexation:	Obtain City services
Property included:	Tract 1, Certificate of Survey 1648, also including adjoining road tracts
Location:	Near the southwest intersection of Central Avenue and Shiloh Road
Total area:	14.077 net acres; 14.549 gross acres
Current zoning:	Agricultural-Open Space
Current land use:	vacant agricultural
Future land use:	Senior housing and assisted living

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

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

INSTRUCTIONS

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

The map must show:

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

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
6-26-06	Robert D. Bell	<i>Robert D. Bell</i>	1555 Ridgeview Dr.
6-26-06	Bonnie E. Bell	<i>Bonnie E. Bell</i>	Apt # 104
			Reno, NV 89059

(continued on separate page)

Revised 6/99

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

[illegible]

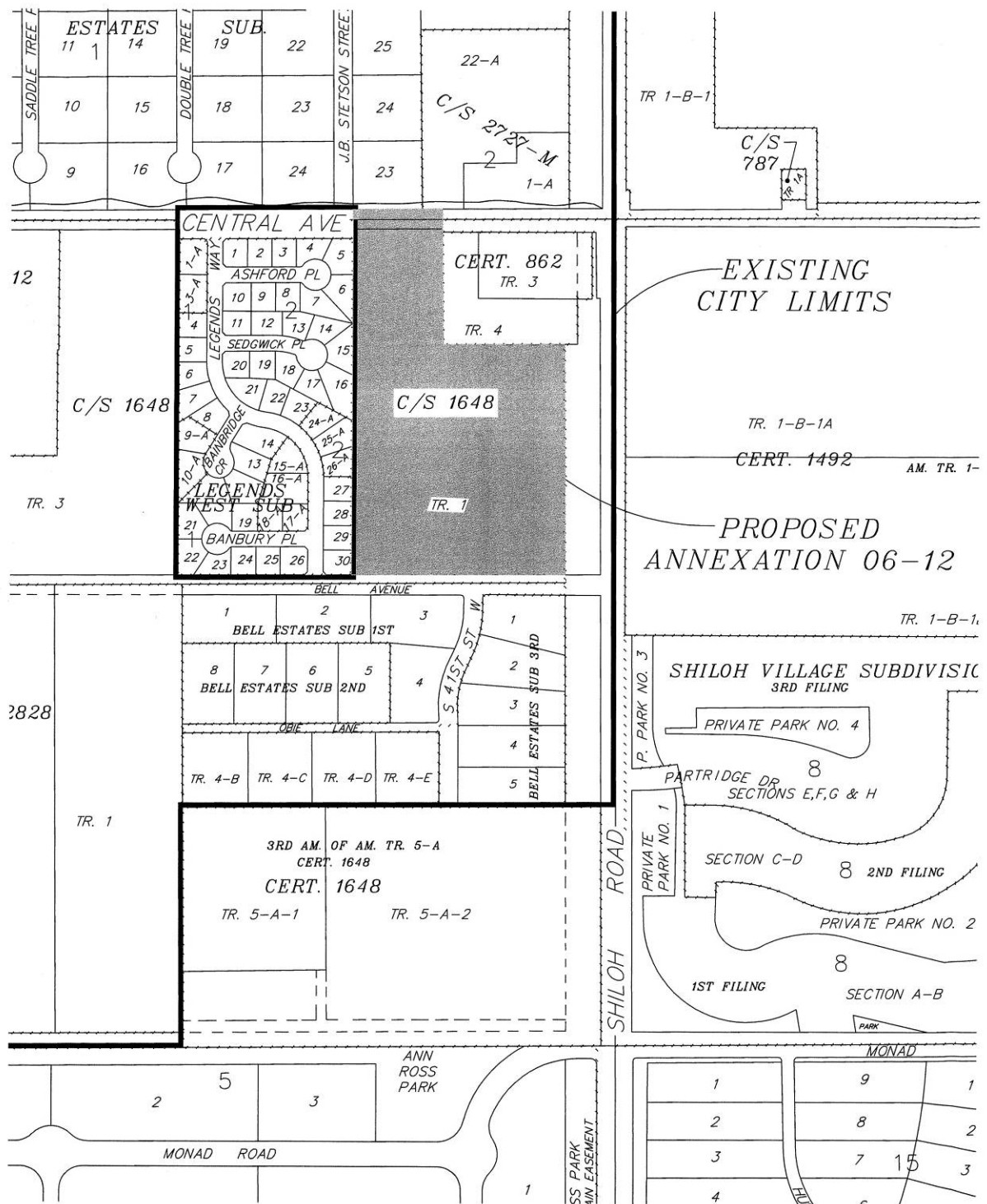
ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 6-30-06 Received By: Chib Beaudry Petition Number: AV06-12

Fee Paid: \$880⁰⁰

Revised 6/99

EXHIBIT A



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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, AUGUST 14, 2006

TITLE: SILMD 290 – S. 32nd St. West
 SILMD 299 – Vintage Estates Subdivision
 SILMD 300 – Bellville Subdivision

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: In order to pay the costs of energy & maintenance for street lighting the City has traditionally created Special Improvement Lighting Maintenance Districts (SILMD's) to assess the lighting costs to abutting property owners. Passage of the Resolutions of Intent is the first step in the legal process of creating an SILMD. Passage of the Resolutions of Intent will trigger the mailing of legal notices to the affected property owners and set Council public hearings for each district at the September 11, 2006, City Council meeting.

ALTERNATIVES ANALYZED:

1. Create the SILMD's to provide a source of funding for operation & maintenance of the street lights
2. Do not create an SILMD and do not install street lighting or in the case of 32nd Street West, turn the lights off
3. Develop some other source of funding to pay for street light energy & maintenance

FINANCIAL IMPACT: All maintenance and energy costs for these proposed light districts would be paid for by assessments against properties within the district. City properties within light districts are assessed their proportionate share of the costs for that particular district. The only City-owned property within any of the proposed districts is park within Bellville Subdivision, and a linear park strip along 32nd Street West near Banff Avenue. The estimated annual assessment for the park property within Bellville Subdivision is \$181. The estimated assessment for the park strip along 32nd Street West is \$18.

RECOMMENDATION

Staff recommends that Council pass Resolutions of Intent to create SILMD's 290, 299, and 300 and set a public hearing date for September 11, 2006.

Approved By:

City Administrator _____

City Attorney _____

ATTACHMENTS

- A. District Boundary Map SILMD 290
- B. District Boundary Map SILMD 299
- C. District Boundary Map SILMD 300

INTRODUCTION

The City has traditionally paid the cost of street lighting by assessment against the abutting properties. Creation of Special Improvement Lighting Maintenance Districts (SILMD's) is the mechanism used to assess lighting costs to the adjacent property owners. Each light district is a separate entity and funds from one district cannot be used to pay costs incurred by another district. Passage of a Resolution of Intent is the first step in the legal process of creating an SILMD. Passage of the Resolutions of Intent will trigger the mailing of legal notices to the affected property owners and set Council public hearings for each district at the September 11, 2006 City Council meeting.

PROCEDURAL HISTORY

- August 14 (this meeting), approve Resolutions of Intent to create one or all of the districts
- August 17, legal notices mailed to all affected property owners
- August 17 & 24, legal notices published in *Billings Times*
- September 11 Council meeting, Public hearings and creation for each district
- November 2006, initial assessments appear on tax statements

BACKGROUND

SILMD 290 S. 32nd Street West: Lighting along S. 32nd Street West from Central Avenue to Banff Avenue was installed with P-513, the private contract which reconstructed 32nd Street & the intersection of 32nd & Central. The private contract paid the cost of installing the lighting equipment (poles, lamps, wiring, etc). The SILMD will pay energy & maintenance costs only. Estimated annual assessments for private properties in this district will range from \$120 to \$700. There will be an assessment against the linear park strip in Parkland West Subdivision, 1st filing, which runs along the west side of 32nd Street, north & south of Banff Avenue. The assessment against this park strip is estimated at \$18 annually and will be recovered through the park maintenance district (PMD) for Parkland West Subdivision.

SILMD 299, Vintage Estates Subdivision: The developer of Vintage Estates has requested that street lighting be installed as part of the initial public improvements for the subdivision. Vintage Estates Subdivision is located south of Grand Avenue, just east of 54th Street West. All streets included in the proposed light district are local residential streets. This will be the first time that the City has entered into an agreement with Yellowstone Valley Electric to install & operate street lighting under an SILMD. The SILMD is being structured such that the cost of the lighting itself will be recovered over a period not to exceed 25 years. After that time the lighting equipment will become City owned and assessments will be reduced to cover energy & maintenance only. Assessments for the initial 25-year period will be comprised of three components. These are 1) a charge to recover YVE cost of equipment & installation; 2) actual energy costs for operating the lights; and 3) a maintenance charge for replacing bulbs and other routine maintenance. This is different from the typical Northwestern Energy owned lighting districts, where the Public Service Commission establishes a "return on investment" rate for the lighting that is charged for the life of the district and the lights are forever owned & maintained by the power company. Estimated annual

assessments in this district will range from \$126 to \$191.

SILMD 300, Bellville Subdivision: The developer of Bellville Subdivision has requested that street lighting be installed as part of the initial public improvements for the subdivision. Bellville Subdivision is a proposed subdivision located south of Kyhl Lane and east of the old BN right-of-way in the Heights. Bellville Subdivision has received preliminary plat approval, but a final plat has not been recorded at this time. All streets included in the proposed light district are local residential streets. Assessments are structured to correspond to the net lot area of the proposed subdivision, and therefore the assessment area does not encompass the entire area of the underlying certificate of survey. The lighting in this district will be owned & installed by Northwestern Energy. The energy, ownership, and maintenance charges for Northwestern Energy owned lighting are governed by the rate schedules approved by the Montana Public Service Commission (PSC). Estimated annual assessments in this district will range from \$181 to \$277.

The first year assessment for each of these districts will be higher than the annual estimates because the assessments collected on the first year's taxes have to cover a period of time longer than 12 months. The first year assessment has to cover energy & maintenance for calendar year 2007, plus any energy & operating costs incurred during 2006.

ALTERNATIVES ANALYSIS

1. Create the SILMD's to provide a source of funding for operation & maintenance of the streetlights. This is the standard method of paying the cost of energy & maintenance for all street lighting in Billings.
2. Do not create an SILMD. In the case of 32nd Street West, we would turn the lights off, and neither the adjacent properties nor the public would benefit from the construction costs already incurred under the Private Contract. In the case of Vintage Estates & Bellville Subdivisions, the lighting would simply not be installed and an amenity requested by the developers for their subdivision would not be provided.
3. Development of some other source of funding to pay for street light energy & maintenance. As noted above, the Council has entertained discussions of creating a City-wide arterial lighting district several times, most recently in 2002. At that time, Council directed staff not to pursue the option of a single City-wide district. Other than payment for the City park properties in these districts, no general fund monies have been budgeted in the current budget for operation of this lighting. To do so at this time would probably require elimination of other general fund services that have already been planned for. It could also be argued that payment of just the lighting costs in these proposed districts from sources other than assessments against the adjacent properties would not be equitable to property owners in existing lighting districts.

RECOMMENDATION

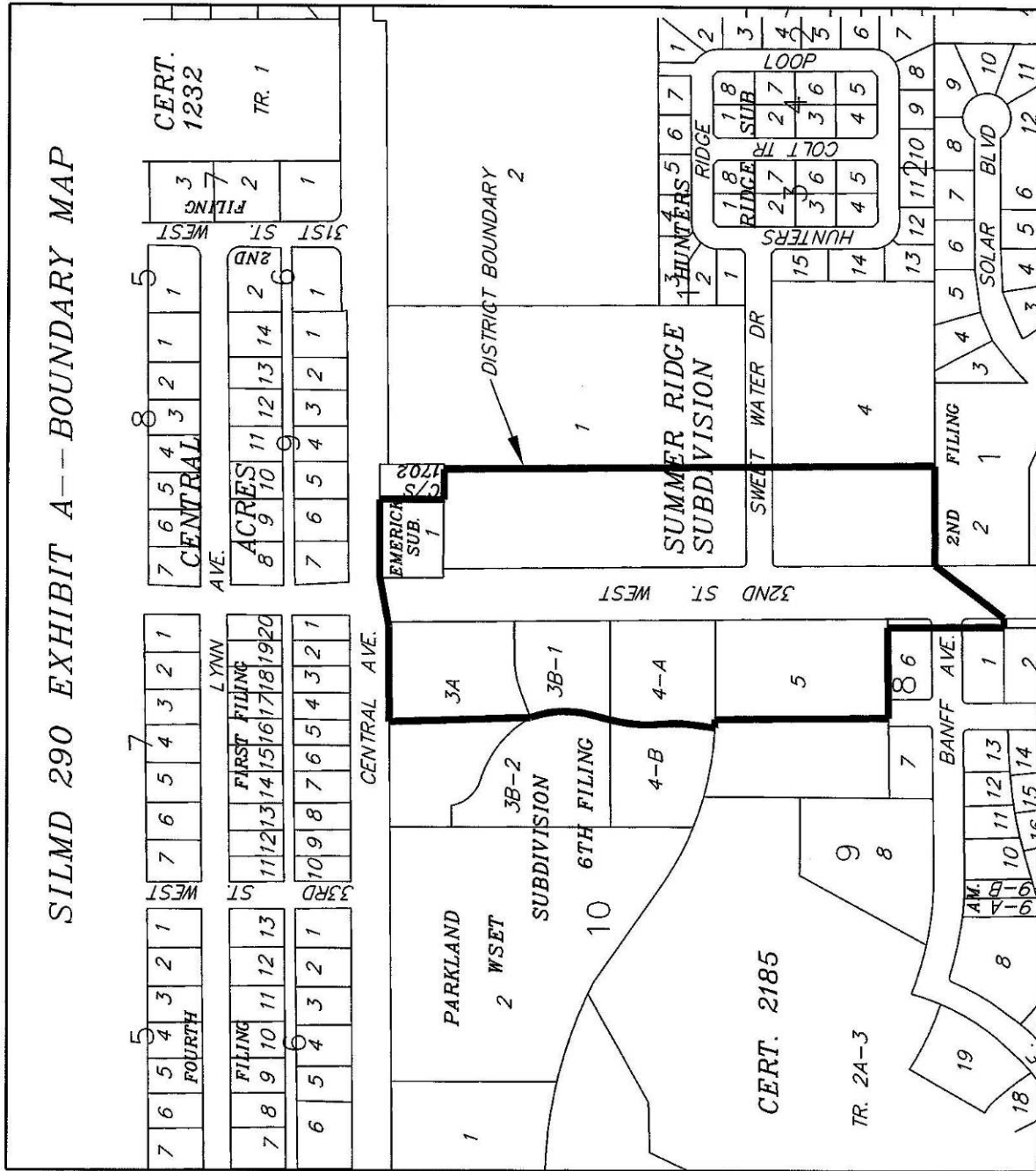
Staff recommends that Council pass Resolutions of Intent to create SILMD's 290, 299, and 300, and set a public hearing date for September 11, 2006.

ATTACHMENTS

- A. District Boundary Map SILMD 290

- B. District Boundary Map SILMD 299
- C. District Boundary Map SILMD 300

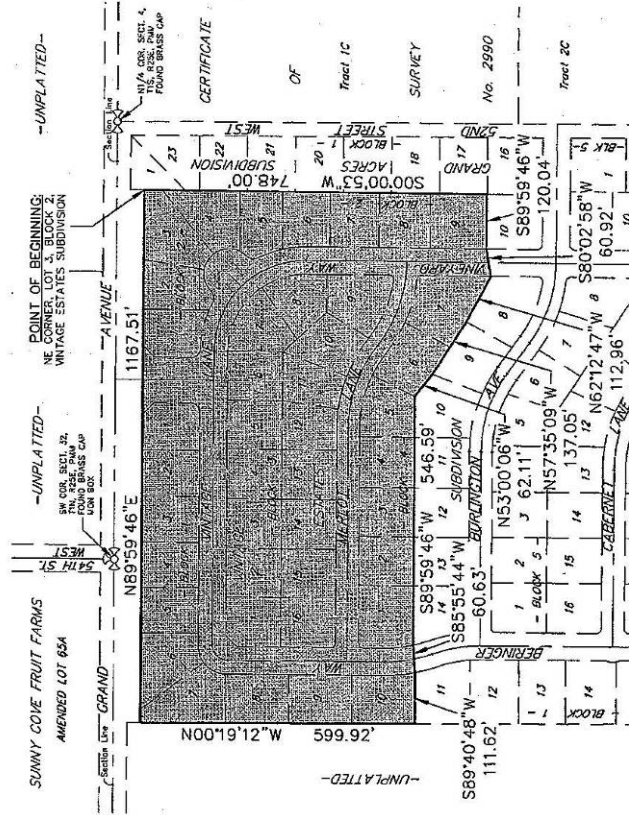
SILMD 290 EXHIBIT A-- BOUNDARY MAP



ATTCH "A"

EXHIBIT A
STREET LIGHT MAINTENANCE DISTRICT
 WITHIN
VINTAGE ESTATES SUBDIVISION
 SITUATED IN THE NW1/4 OF SECTION 4, T. 1 S., R. 25 E., P.M.M.
 IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
 PREPARED BY : ENGINEERING, INC.
 SCALE : 1"=200'

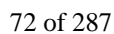
BILLINGS, MONTANA
 0 100 200 300



ATCH "B"

17/9/03 032

ATTCH "C"



SILMD 290

RESOLUTION NO. 06-_____

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 290 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

WHEREAS, the City Council of Billings, Montana, has determined that the public interest and convenience require the creation of a Special Improvement Lighting Maintenance District as hereinafter provided;

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

SECTION 1:

That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new street lights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 290" hereinafter called the District, and the boundaries of the District are hereby declared to include: All lots, parcels and pieces of land abutting South 32nd Street West between Central Avenue & Banff Avenue, as shown on the map designated as Exhibit "A" attached hereto, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto.

SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated within the boundaries of the District, will be especially benefited and affected by said improvements, and that all of the property included within the District is hereby declared to be the property to be assessed for the cost and expense of obtaining the electrical energy for and maintenance of said street lights.

SECTION 4:

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of ten (10) 250-watt high pressure sodium fixtures mounted on steel, mast arm style poles and served by underground wiring. The City of Billings owns all ten (10) streetlights and all associated appurtenant structures and materials.

SECTION 5:

The City of Billings intends to establish the contract rate for supplying electrical energy in accordance with the rate schedule LS-1 approved by the Montana Public Service Commission. Said rate is currently estimated at \$8.51 per unit, per month, That NorthWestern Energy Company shall provide energy to the lighting fixtures. That the City of Billings shall provide normal

maintenance to lighting fixtures, poles, cables and other incidental equipment, and shall at all times own said lighting fixtures, poles, cables and other incidental equipment.

SECTION 6:

The estimate of the cost of the District per year is the sum of \$2,364.84; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys and public places. The estimated cost of the District per year for property owners is on the basis of approximately \$0.00445735 per square foot.

Due to the difference in the time the lighting service started and the time assessments can be levied, the first assessment will cover a period of operation of the District greater than one year and is estimated to total \$2682.84 or approximately \$ 0.00505672 per square foot.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt a resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 290 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefor.

SECTION 8:

That on the 11th day of September, 2006, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 290 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in "The Billings Times", a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 290. Said notice is to be published and mailed on the same date.

PASSED by the City Council and APPROVED this 14th day of August 2006.

CITY OF BILLINGS

By _____
Ron Tussing Mayor

ATTEST:

By _____
Marita Herold, CMC/A City Clerk

SILMD 290 EXHIBIT A-- BOUNDARY MAP

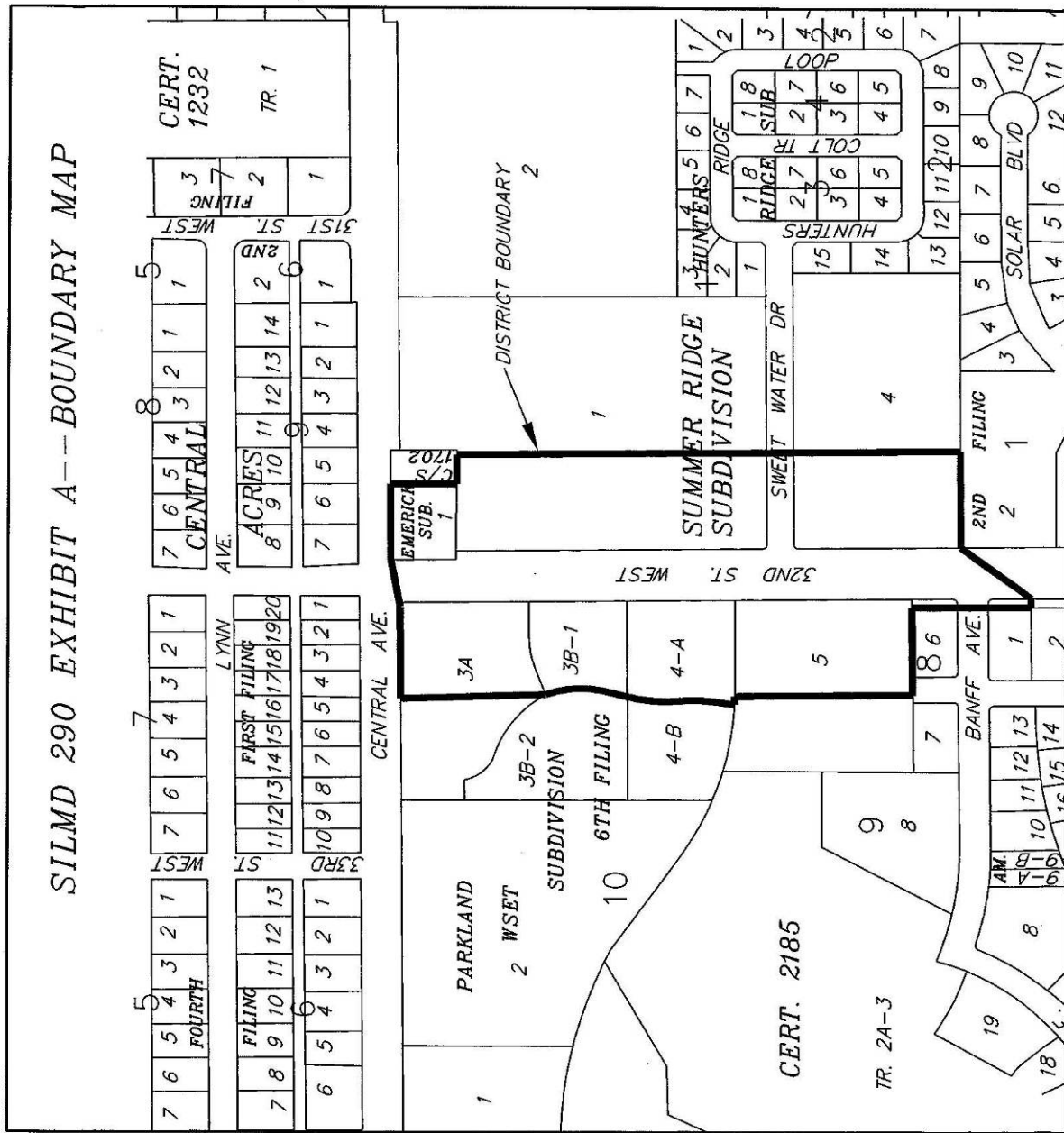


EXHIBIT "B"
OWNERSHIP LISTING
SILMD 290- 32ND ST. West

OwnerName	MailingAddress	City	State	Zip	Assessed Area (SF)	Lot	Block	Subdivision
CITY OF BILLINGS--Parks	PO BOX 1178	BILLINGS	MT	59103	1,979	Park	1	PARKLAND WEST SUBD 1st
CITY OF BILLINGS--Parks	PO BOX 1178	BILLINGS	MT	59103	1,979	Park	8	PARKLAND WEST SUBD 1st
LAUREL FEDERAL CREDIT UNION	PO BOX 310	LAUREL	MT	59044	66,401	3A	10	PARKLAND WEST 6TH FILING
LAUREL FEDERAL CREDIT UNION	PO BOX 310	LAUREL	MT	59044	44,610	3B-1	10	PARKLAND WEST 6TH FILING
DJ PROPERTIES LLC	374 BURNING TREE DR	BILLINGS	MT	59105	57,426	4A	10	PARKLAND WEST 6TH FILING
MLZ LLP	2619 SAINT JOHNS AVE STE A	BILLINGS	MT	59102	90,001	5	10	PARKLAND WEST 6TH FILING
FAITH EVANGELICAL CHURCH OF N AMERICA	3145 SWEET WATER DR	BILLINGS	MT	59102	156,799	1		SUMMER RIDGE SUBD
BILLINGS RETIREMENT LLC	PO BOX 1359	ABERDEEN	SD	57402	84,354	4		SUMMER RIDGE SUBD
QWEST CORPORATION	1801 CALIFORNIA ST STE 2500	DENVER	CO	80202	27,000	1		EMERICK SUBD
				TOTAL	530,549			

EXHIBIT “C”

SILMD 290 – BOUNDARY DESCRIPTION

Beginning at a point on the south right-of-way line of Central Avenue which bears N. 89°47'25"E a distance of 237.72 feet from the northwest corner of Lot 3A of the Amended Plat of Lot 3, Block 10, Parkland West Subdivision, 6th filing; thence

Southerly along a straight line thru said lot 3A to the southernmost lot corner of said Lot 3A, which is also the lot corner common to Lots 3A, 3-B1 and 3-B-2, Block 10 (as amended), Parkland West, 6th Filing; thence

Along the westerly boundary of said Lot 3-B-1 and the westerly boundary of Lot 4-A, Amended Lot 4, Block 10, Parkland Subdivision, 6th Filing to a point which is the southwest corner of said Lot 4-A; thence

Easterly along the south boundary of said Lot 4-A to a point which is 225 feet west of the west right-of-way line of S. 32nd Street West; thence

Southerly along a line that is parallel to and 225 feet west of the west right-of-way line of S. 32nd Street West to a point on the south line of Lot 5, Block 10, Parkland West, 6th Filing; thence

Easterly along the south line of said Lot 5, Block 10 to a point which is the northeast corner of Lot 6, Block 8, Parkland West Subdivision, 1st Filing, said point also being the northwest corner of the park strip in Block 8 Parkland West Subdivision, 1st Filing;

Thence southerly along the west line of said park strip in Block 8, Parkland West Subdivision, 1st Filing, extended to a point on the south right-of-way line of Banff Avenue which is also the most northwest corner of the park strip in Block 1, Parkland West Subdivision, 1st Filing; thence

Southerly along the west line of said park strip in Block 1, Parkland West Subdivision, 1st Filing which is also the east line of Lot 1, Block 1, Parkland West Subdivision, 1st Filing, to the southeast corner of said Lot 1, Block 1; thence

Easterly along an extension of the south line of said Lot 1, Block 1, Parkland West Subdivision, 1st Filing to a point on the westerly right-of-way line of S. 32nd Street West; thence

Northeasterly across S. 32nd Street West to a point which is the southwest corner of Lot 4, Summer Ridge Subdivision; thence

Easterly along the south line of said Lot 4, Summer Ridge Subdivision a distance of 225 feet; thence

Northerly along a line that is parallel to and 225 feet east of the east right-of-way line of South 32nd Street West to a point on the south line of Tract 2, C/S 1702; thence

Westerly along the south line of said Tract 2, C/S 1702 to the southwest corner of said Tract 2, which is also the southeast corner of Lot 1, Emerick Subdivision; thence

Northerly along the east line of said Lot 1, Emerick Subdivision to the northeast corner of said Lot 1, Emerick Subdivision, which is also a point on the south right-of-way line of Central Avenue; thence

Westerly along the south right-of-way line of Central to the northwest corner of said Lot 1, Emerick Subdivision; thence

Westerly across S. 32nd Street West to the northeast corner of Lot 3A of the Amended Plat of Lot 3, Block 10, Parkland West Subdivision, 6th filing; thence

Westerly along the north line of said Lot 3A, Block 6 to a point which is 225 feet west of the west right-of-way line of S. 32nd Street West, which is also the Point of Beginning;

Exempting there from all lands which are public street, road, or alley rights-of-way.

SILMD 299

RESOLUTION NO. 06-_____

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 299 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

WHEREAS, the City Council of Billings, Montana, has determined that the public interest and convenience require the creation of a Special Improvement Lighting Maintenance District as hereinafter provided;

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

SECTION 1:

That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new street lights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 299" hereinafter called the District, and the boundaries of the District are hereby declared to include the lots, parcels and pieces of land within Blocks 1, 2, 3, & 4 of Vintage Estates Subdivision, as shown on the map designated as Exhibit "A" attached hereto, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto.

SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated within the boundaries of the District, will be especially benefited and affected by said improvements, and that all of the property included within the District is hereby declared to be the property to be assessed for the cost and expense of obtaining the electrical energy for and maintenance of said street lights.

SECTION 4:

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of twelve (12) 100-watt high-pressure sodium acorn style lamps, mounted on twelve (12) foot posts with decorative fluted stems. The Yellowstone Valley Electric Company shall install the streetlights and all associated appurtenant structures and materials.

SECTION 5:

The City of Billings intends to establish the approximate contract rate for supplying electrical energy as follows: \$590 per year. Future energy costs shall be in accordance with the standard rates established by Yellowstone Valley Electric for customers within this service area.

That the Yellowstone Valley Electric Company shall provide energy to all of the lights. That the Yellowstone Valley Electric Company shall pay the initial costs of installing the light fixtures, poles, cables, and other equipment incidental to operating the lighting and shall provide normal maintenance and repairs to said equipment as part of the monthly rate for these lights. The installation costs shall be amortized over a period not to exceed 25 years, and at the end of such time all the light fixtures, poles, cables, and other equipment incidental to operating the lighting shall become the property of the City of Billings. The estimated annual cost of routine maintenance & recovery of capital investment is \$3821 per year.

SECTION 6:

The estimate of the cost of the District per year, including City administrative costs, is the sum of \$6,034.11; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which it's assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys and public places. The estimated cost of the District per year for property owners is on the basis of approximately \$0.01051166 per square foot. Due to the difference in the time the lighting service started and the time assessments can be levied, the first assessment will cover a period of operation of the District greater than one year and is estimated to total \$7,667.78 or approximately \$0.01335757 per square foot.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt a resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived

from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 299 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefore.

SECTION 8:

That on the 11th day of September, 2006, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 299 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in "The Billings Times", a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 299. Said notice is to be published and mailed on the same date.

PASSED by the City Council and APPROVED this 14th day of August 2006.

CITY OF BILLINGS

By _____
Ron Tussing Mayor

ATTEST:

By _____
Marita Herold, CMC/AAE City Clerk

EXHIBIT A
STREET LIGHT MAINTENANCE DISTRICT
 WITHIN
VINTAGE ESTATES SUBDIVISION
 SITUATED IN THE NW1/4 OF SECTION 4, T. 1 S., R. 25 E., P.M.M.
 IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
 PREPARED BY : ENGINEERING, INC.
 SCALE : 1"=200'

BILLINGS, MONTANA
 0 50 100

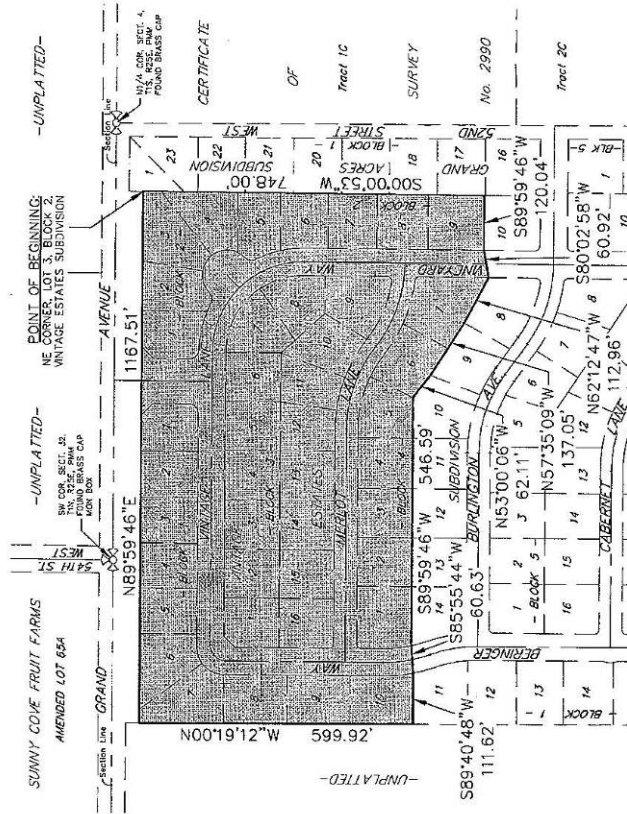


EXHIBIT B
SILMD 299 - ASSESSMENT DATA

Total Area to be Assessed	574,040
Equal Assessment Per Sq.Ft	\$0.01051166
1st Year Assessment (Per Sq. Ft.)	\$0.01335757

				1st Year Cost Per	Estimated	Estimated
				Cost Per	Annual Assessmen t	1st Year Assessmen t
Block #	Lot #	Lot Area (SF)	SF	SF		
1	1	12,727	\$0.0105	\$0.0134	\$133.78	\$170.00
1	2	12,500	\$0.0105	\$0.0134	\$131.40	\$166.97
1	3	12,500	\$0.0105	\$0.0134	\$131.40	\$166.97
1	4	12,500	\$0.0105	\$0.0134	\$131.40	\$166.97
1	5	12,500	\$0.0105	\$0.0134	\$131.40	\$166.97
1	6	15,232	\$0.0105	\$0.0134	\$160.11	\$203.46
1	7	16,625	\$0.0105	\$0.0134	\$174.76	\$222.07
1	8	14,778	\$0.0105	\$0.0134	\$155.34	\$197.40
1	9	14,637	\$0.0105	\$0.0134	\$153.86	\$195.51
1	10	14,679	\$0.0105	\$0.0134	\$154.30	\$196.08
				1st Year Cost Per	Estimated	Estimated
				Cost Per	Annual Assessmen t	1st Year Assessmen t
Block #	Lot #	Lot Area (SF)	SF	SF		
2	1	13,154	\$0.0105	\$0.0134	\$138.27	\$175.71
2	2	13,838	\$0.0105	\$0.0134	\$145.46	\$184.84
2	3	16,655	\$0.0105	\$0.0134	\$175.07	\$222.47
2	4	15,315	\$0.0105	\$0.0134	\$160.99	\$204.57
2	5	12,811	\$0.0105	\$0.0134	\$134.66	\$171.12
2	6	12,663	\$0.0105	\$0.0134	\$133.11	\$169.15
2	7	12,863	\$0.0105	\$0.0134	\$135.21	\$171.82
2	8	13,459	\$0.0105	\$0.0134	\$141.48	\$179.78
2	9	14,689	\$0.0105	\$0.0134	\$154.41	\$196.21
				1st Year Cost Per	Estimated	Estimated
				Cost Per	Annual Assessmen t	1st Year Assessmen t
Block #	Lot #	Lot Area (SF)	SF	SF		
3	1	12,768	\$0.0105	\$0.0134	\$134.21	\$170.55
3	2	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	3	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11

3	4	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	5	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	6	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	7	13,222	\$0.0105	\$0.0134	\$138.99	\$176.61
3	8	13,041	\$0.0105	\$0.0134	\$137.08	\$174.20
3	9	14,988	\$0.0105	\$0.0134	\$157.55	\$200.20
3	10	13,642	\$0.0105	\$0.0134	\$143.40	\$182.22
3	11	12,026	\$0.0105	\$0.0134	\$126.41	\$160.64
3	12	12,052	\$0.0105	\$0.0134	\$126.69	\$160.99
3	13	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	14	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	15	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
3	16	13,059	\$0.0105	\$0.0134	\$137.27	\$174.44

Block #	Lot #	Lot Area (SF)	Cost Per SF	1st Year Cost Per SF	Estimated	Estimated
					Annual Assessmen t	1st Year Assessmen t
4	1	16,361	\$0.0105	\$0.0134	\$171.98	\$218.54
4	2	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
4	3	12,960	\$0.0105	\$0.0134	\$136.23	\$173.11
4	4	13,203	\$0.0105	\$0.0134	\$138.79	\$176.36
4	5	13,125	\$0.0105	\$0.0134	\$137.97	\$175.32
4	6	14,626	\$0.0105	\$0.0134	\$153.74	\$195.37
4	7	18,202	\$0.0105	\$0.0134	\$191.33	\$243.13

Total Ara = 574,040 SF

EXHIBIT C: BOUNDARY DESCRIPTION

A tract of land situated in the NW ¼ of Section 4, T. 1 S., R. 25 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the northeast corner of Lot 3, Block 2, Vintage Estates Subdivision; thence S 00°00'53" W a distance of 748.00 feet to the southeast corner of Lot 9 of said Block 2; thence S 89°59'46" W a distance of 120.04 feet to the southwest corner of said Lot 9; thence, crossing the right-of-way of Vineyard Way, S 80°02'58" W a distance of 60.92 feet to the northeast corner of Lot 8, Block 4 of said Vintage Estates Subdivision; thence N 62°12'47" W a distance of 112.96 feet to the northwest corner of said Lot 8; thence N 57°35'09" W a distance of 137.05 feet to the northwest corner of Lot 9 of said Block 4; thence N 53°00'06" W a distance of 62.11 feet to the southeast corner of Lot 5 of said Block 4; thence S 89°59'46" W a distance of 546.59 feet to the southwest corner of Lot 1 of said Block 4; thence, crossing the right-of-way of Beringer Way, S 85°55'44" W a distance of 60.63 feet to the southeast corner of Lot 10 of Block 1 of said Vintage Estates Subdivision; thence S 89°40'48" W a distance of 111.62 feet to the southwest corner of said Lot 10; thence N 00°19'12" W a distance of 599.92 feet to the northwest corner of Lot 7 of said Block 1; thence N 89°59'46" E a distance of 1167.51 feet to the point of beginning; said described tract having an area of 17.1111 acres.

SILMD 300

RESOLUTION NO. 06-_____

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 300 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

WHEREAS, the City Council of Billings, Montana, has determined that the public interest and convenience require the creation of a Special Improvement Lighting Maintenance District as hereinafter provided;

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

SECTION 1:

That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new street lights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 300" hereinafter called the District, and the boundaries of the District are hereby declared to include: All lots, parcels and pieces of land within proposed Bellville Subdivision, as shown on the map designated as Exhibit "A" attached hereto, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto. This property is currently described as Tract A, C/S 485.

SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated within the boundaries of the District, will be especially benefited and affected by said improvements, and that all of the property included within the District is hereby declared to be the property to be assessed for the cost and expense of obtaining the electrical energy for and maintenance of said street lights.

SECTION 4:

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of twelve (12) 100-watt high-pressure sodium Acorn Type III fixtures mounted on decorative fiberglass poles and served by underground wiring. NorthWestern Energy shall own and install the streetlights and all associated appurtenant structures and materials.

SECTION 5:

The City of Billings intends to establish the approximate contract rate for installation & operation of this lighting as follows: \$3.07 per 100 watt unit, per month for supplying electrical energy; \$1.09 per unit, per month for maintenance; and \$24.17 per unit, per month for installation

and ownership costs. These rates in accordance with the applicable rate schedules approved by the Montana Public Service Commission. NorthWestern Energy Company shall provide energy to all of the lights and shall at all times own the light fixtures, poles, cables, and other incidental equipment, and shall provide maintenance and repairs to said equipment as part of the monthly rate for these lights.

SECTION 6:

The estimate of the cost of the District per year, including City administrative costs, is the sum of \$5,022.71; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys and public places. The estimated cost of the District per year for property owners is on the basis of approximately \$0.02260779 per square foot of assessable area. Due to the difference in the time the lighting service started and the time assessments can be levied, the first assessment will cover a period of operation of the District greater than one year and is estimated to total \$6,382.55 or approximately \$0.02872859 per square foot.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt a resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 300 Maintenance Fund," and warrants shall be drawn on said fund for the

payment of such costs of maintaining such lights and supplying electrical current therefor.

SECTION 8:

That on the 11th day of September, 2006, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 300 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in "The Billings Times", a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 300. Said notice is to be published and mailed on the same date.

PASSED by the City Council and APPROVED this 14th day of August 2006.

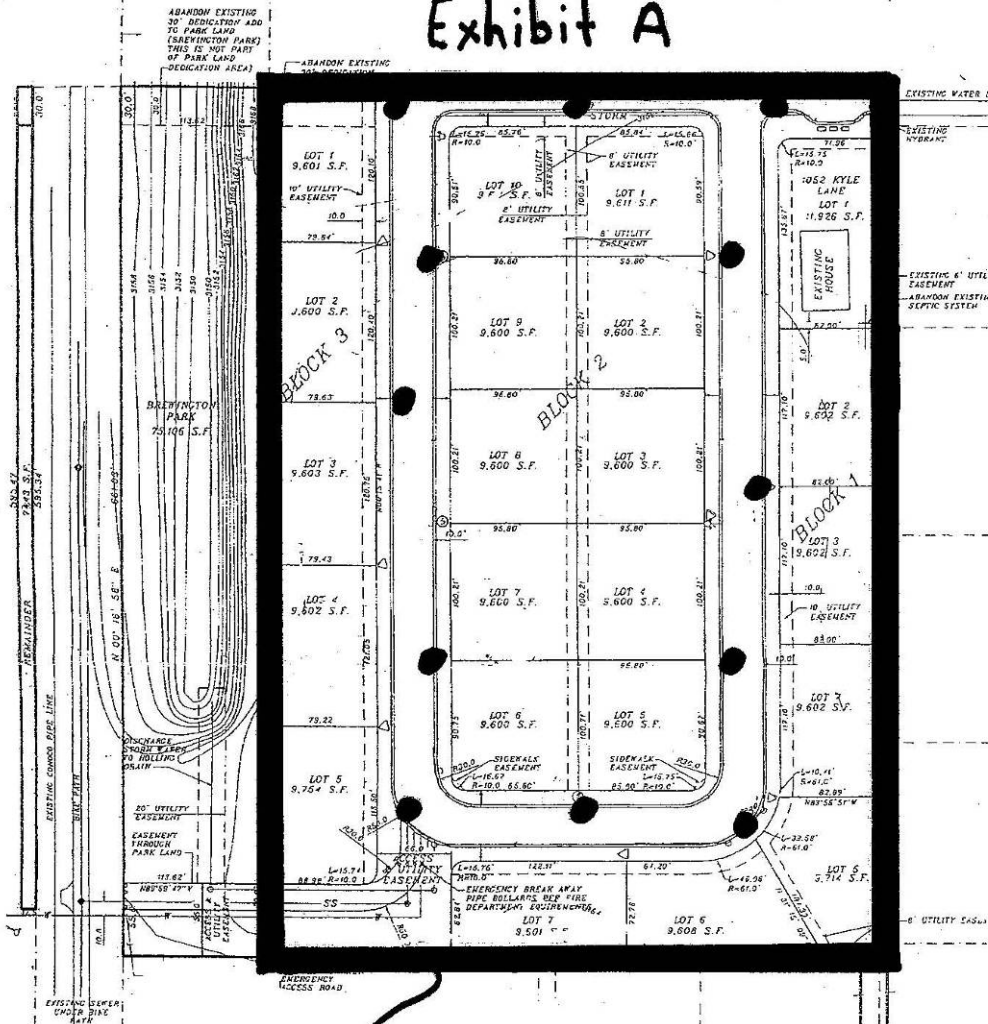
CITY OF BILLINGS

By _____
Ron Tussing Mayor

ATTEST:

By _____
Marita Herold, CMC/A City Clerk

Exhibit A



Proposed SILMA 300
Boundary

THIS AREA TO BE-
ADDED TO TAX IC
DO5163 BY SEPARATE
FILING PRIOR TO
FINAL PLAT.

EXHIBIT "B"
OWNERSHIP LISTING
SILMD 300 - BELLVILLE SUBDIVISION

OWNER	LEGAL DESCRIPTION	MAILING ADDRESS	CITYSTZIP	AREA
STEVE AND SOK SUN KERNS	Lot 1, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	12,262.00
STEVE AND SOK SUN KERNS	Lot 2, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,602.00
STEVE AND SOK SUN KERNS	Lot 3, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,602.00
STEVE AND SOK SUN KERNS	Lot 4, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,602.00
STEVE AND SOK SUN KERNS	Lot 5, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,714.00
STEVE AND SOK SUN KERNS	Lot 6, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,608.00
STEVE AND SOK SUN KERNS	Lot 7, Block 1 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,601.00
STEVE AND SOK SUN KERNS	Lot 1, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,611.00
STEVE AND SOK SUN KERNS	Lot 2, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 3, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 4, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 5, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 6, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 7, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 8, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 9, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 10, Block 2 Bellville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,611.00
STEVE AND SOK SUN KERNS	Lot 1, Block 3 Belleville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,601.00
STEVE AND SOK SUN KERNS	Lot 2, Block 3 Belleville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,600.00
STEVE AND SOK SUN KERNS	Lot 3, Block 3 Belleville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,603.00
STEVE AND SOK SUN KERNS	Lot 4, Block 3 Belleville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,602.00
STEVE AND SOK SUN KERNS	Lot 5, Block 3 Belleville Subdivision	1052 KYLE LANE	Billings, MT 59105	9,754.00
CITY OF BILLINGS	PARK LAND	P.O. BOX 1178	Billings, MT 59101	7,994.00

TOTAL AREA (SF): 222,167.00

EXHIBIT “C”
SILMD 300 – BOUNDARY DESCRIPTION

Beginning at the northwest property corner of Lot 1, Block 3 Bellville Subdivision;

Thence easterly along the Kyhl Lane Right-Of-Way centerline to the intersection of the Kyhl Lane Right-Of-Way centerline and the extrapolation of the east property line of Lot 1, Block 1, Bellville Subdivision;

Thence southerly along the east boundary of Bellville Subdivision, which is also the west boundary of Brewington Subdivision, to the southeast property corner of Lot 5, Block 1, Bellville Subdivision;

Thence westerly along the southern boundary of Bellville Subdivision to the intersection of the southern boundary of Brewington Park and the extrapolation of the western property line of Lot 5, Block 3, Bellville Subdivision;

Thence northerly to the northwest property corner of Lot 1, Block 3, Bellville Subdivision, the point of beginning.

Exempting there from all lands which are public streets, roads, or alley right-of-way.

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

Q1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Black Otter Hill Climb Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Black Otter Hill Climb Association requests the closure of Black Otter Trail from the intersection of Airport Road and Swords Bypass Road to the top of the trail on Saturday, August 19, and Sunday, August 20, 2006, from 7:00am to 5:00pm for the 41st annual Black Otter Sports Car Hill Climb event.

Recommended conditions of approval include the Black Otter Hill Climb Association:

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. Notify all emergency facilities, bus lines and media as soon as possible.
4. Provide and install adequate traffic barricades and signs directing motorists around closure.
5. Provide a certificate of insurance with required liability amounts naming the City of Billings as additional insured.
6. Obtain a Park Use permit from the Recreation Division for the use of Swords Park.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the temporary street closures for the Black Otter Hill Climb on August 19 and 20, 2006.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Western Wheel Bar Customer Appreciation Celebration Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Western Wheel Bar requests the temporary closure of Minnesota Avenue between S. 27th Street and S. 28th Street for a Customer Appreciation Celebration on Saturday, August 26, 2006, from 4:00 pm to 2:00 am. The event will include a barbeque and a band outside.

Recommended conditions of approval include Wagon Wheel Bar:

- Obtain proper permit for alcohol consumption in the right of way
- Obtain proper noise permit from Police Department
- Clean area to be used and provide empty waste cans
- Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
- Provide a 10' emergency vehicle access lane on either side of the street which is free of kiosks or anything other than pedestrians

ALTERNATIVES ANALYZED:

Approve request to close streets for the event (recommended).

Deny the street closures

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process.

RECOMMENDATION

Staff recommends that Council approve the temporary closure of Minnesota Avenue between S. 27th Street and S. 28th Street on Saturday, August 26, 2006, from 4:00 pm to 2:00 am.

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

ATTACHMENTS

- A.** Letter outlining event (1 page)
- B.** Right of Way Permit Application (2 pages)
- C.** Map outlining street closure (1 page)
- D.** Certificate of insurance (1 page)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Billings Association of Realtors 2 and 5 Mile Run
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Billings Association of Realtors request partial street closures on Saturday, August 26, 2006, from 5:00 am to 10:00 am for their 2 mile and 5 mile run. Their route begins at Masterson Circle on Hwy 3 (event coordinator is working with Hwy Dept as well for this section of race), runners will go down Airport Road; right on 27th Street; right on Rimrock Road; left on Virginia Lane; through Pioneer Park from Zimmerman Center to the SE corner of the park, left on 3rd Street West, right on Parkhill; right on 32nd Street; disbanding at the corner of 6th Avenue N. and 32nd Street in the Transwestern parking lot.

Recommended conditions of approval include Billings Association of Realtors:

- Have no alcohol consumption in the right of way
- Clean area to be used and provide and empty waste cans
- Notifying all emergency facilities, bus lines and media at least two weeks in advance of the event
- Provide a certificate of insurance with required liability amounts naming the City of Billings as additional insured
- Have traffic directors properly attired in orange vests or bright colored shirts
- 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 closures.

FINANCIAL IMPACT: Costs to the City of Billings include administrative time to process application.

RECOMMENDATION

Staff recommends that Council approve the temporary street closures for the Billings Association of Realtors 2 and 5 Mile Run.

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

ATTACHMENTS

- D. Letter outlining event
- E. Right of Way Special Activity Permit Application (2 pages)
- F. Course map (2 pages)
- G. Certificates of insurance (3 pages)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Billings Clinic's Classic Street Party Street Closure
 DEPARTMENT: Parks, Recreation and Public Lands
 PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

Billings Clinic requests the temporary closure of N. Broadway between 3rd Ave. N. and 4th Ave. N. from Thursday, August 24, from 12:00 midnight until Sunday, August 27, at 5:00 pm; as well as the alley between that runs between 3rd Ave. N. and 4th Ave. N. from Friday, August 25, 2006 at 9:00 pm through Sunday, August 27, 2006 at 5:00 am for the annual Classic Street Party.

Recommended conditions of approval include Billings Clinic:

- Obtain proper permit for alcohol consumption in the right of way
- Obtain proper open container and noise permits from Police Department
- Contact all businesses and make them aware of the event 60 days in advance
- Provide security for event
- Clean area to be used and provide and empty waste cans after the event
- Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event
- Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a 20' emergency vehicle access lane on either side of the street which is free of kiosks or anything other than pedestrians
- Pedestrian access to adjacent businesses be maintained

ALTERNATIVES ANALYZED:

- Approve request to close streets for the event (recommended)
- Deny the street closures

FINANCIAL IMPACT:

There are no costs to the City of Billings other than administrative time to process application.

RECOMMENDATION

Staff recommends that Council approve the temporary closures named above for the annual Billings Clinic Classic Street Party.

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

ATTACHMENTS

- A. Letter from Billings Clinic outlining events (2 pages)
- B. Right of Way Permit Application (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (2 pages)

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R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Zone Change #778 2nd Reading of Ordinance –Text Amendment to Section 27-310(i) Accessory Buildings in Residential zones

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The South Side Neighborhood Task Force has been concerned with the proliferation of agricultural-styled accessory buildings in neighborhoods that support some unique residential architecture. The existing accessory building standards do not regulate the size or bulk of buildings in relationship to the primary structure on the property. This has resulted in new accessory buildings that are built to the maximum allowable size and height. On May 9, 2006, the Planning Board initiated this text amendment to the accessory building regulations. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on July 5, 2006, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing and approved the first reading of this zone change on July 24, 2006.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on July 5, 2006. The Commission heard testimony before recommending approval of these changes. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the new zoning regulation.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #778 on 2nd reading.

Approved by: _____ City Administrator _____ City Attorney

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 27-310(i); YARDS AND SETBACKS FOR ACCESSORY BUILDINGS IN RESIDENTIAL ZONES, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC,* provide for amendment to the City Zoning Regulations from time to time. The Board of Planning initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings in the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts as described in Section 27-301 in the Billings, Montana City Code.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-310(i) to delete certain language and add new language to read as follows:

SEC. 27-310. SUPPLEMENTAL AREA, YARD AND HEIGHT RESTRICTIONS.

- (i) Yards and Setbacks for Accessory Buildings in Residential Zones. The following setbacks shall be provided for accessory buildings in Residential zones:
 - (1) Detached garages, carports, patios, tool or storage sheds, playhouses, greenhouses or other accessory buildings shall meet the setbacks required in below Table 1.

TABLE 1 Setbacks from property lines for detached garages, carports, tool or storage sheds, greenhouses or other detached accessory structures					
	Front (b)	Side Adjacent to Street (b)	Side	Rear with Alley (c)	Rear Without Alley
BUILDINGS LESS THAN 18 FEET (a) (d) (e) (f) Approach from a street	20	20	3	0	3
Approach at right angle from an alley	20	10	3	6	N/A
All others	20	10	3	0	3
BUILDINGS GREATER THAN 18 FEET IN HEIGHT UP TO AND INCLUDING THE MAXIMUM ALLOWED HEIGHT (a) (d) (e) Approach from a street	20	20	8	6	8
Approach at right angle from an alley	20	10	8	6	N/A
All others.	20	10	8	6	8

- (a) All setbacks are denoted in feet from the property line.
- (b) In districts with Front or Side Adjacent to Street setbacks greater than those required in above Table 1, the structure shall meet the most restrictive setback requirement.
- (c) No above building or structure nor any part thereof shall protrude into or hang over the public right-of-way.
- (d) Structures located adjacent to arterial streets must meet the Arterial Setbacks as outlined in BMCC Section 27-602.
- (e) Detached accessory buildings used to house, keep or shelter livestock or fowl shall meet the setbacks described in BMCC Section 27-607.
- (f) The side wall of detached accessory buildings in the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits shall be no greater in height than the side walls, excluding a gable wall, of an existing or proposed principal structure on the property.

N/A = Not Applicable

- (2) Garages, carports and other accessory buildings attached to a dwelling shall be considered to be part of the dwelling and setbacks shall be the same as those required for such dwelling. In addition, garages and carports attached to the dwelling that have their approach from a street shall be setback from that street property line a minimum of twenty (20) feet or meet the front setback in the zoning district in which it is located, whichever is greater.
- (3) Except in the R-9600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000, and Residential Manufactured Home zoning districts within the Billings city limits the maximum size allowed for detached accessory structures shall be based on the following criteria, based on the size of the lot:
- Lots containing less than .25 acres = 1,000 square feet maximum size.
 - Lots containing .25 acres up to 1 acre shall use the following formula:
 $(667 \times \text{lot acreage}) + 833 = \text{maximum detached structure size}$
 - Lots containing more than 1 acre = 1,500 square foot maximum size.

This provision shall not apply in the Agricultural-Open or Agricultural-Suburban zoning districts.

- (4) Except in the R-9600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits the maximum total square footage in detached accessory structures on any lot shall not exceed three thousand (3,000) square feet or that amount which, when added to the square footage of the principal structure(s), will achieve the maximum lot coverage allowable in that district, whichever is less. This three thousand (3,000) square foot limit shall not apply in the Agricultural-Open zoning district.
- (5) See BMCC Section 27-607, for setbacks regarding detached structures used to house livestock or fowl.
- (6) For watercourse setbacks, see BMCC Section 27-616.
- (7) No above allowed building or structure nor any part thereof shall protrude into or hang over any public right-of-way.
- (8) In the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits detached accessory structure(s) greater than 200 square feet in size shall not exceed the principal building first story square footage on the lot or 1,000 square feet, whichever is less. If the lot is greater than .25 acres maximum total square footage of a detached accessory structure shall be as calculated in Section 3 above or equal to the principal building first story square footage, whichever is less. No detached accessory structure within these residential zoning districts in the Billings city limits shall exceed 1,500 square feet. The maximum total square footage in detached accessory structures on any lot within these residential zoning districts in the Billings city limits shall not exceed 2,000 square feet or the

total principal building first story square footage on the lot, whichever is less.

- (9) In the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits, horizontal exterior siding is required on detached accessory structures greater than 200 square feet in size.

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

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

Section 6. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading July 24, 2006.

PASSED, ADOPTED AND APPROVED on second reading August 14, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#778 – Amending Section 27-310(i) Accessory Building Regulations in Residential zones

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Zone Change #783, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Controlled Industrial to R-6,000 on Lots 17 & 18, Block 32 of Highland Addition Subdivision. The property is located at 109 South 39th Street West. The applicant is Dave Hagstrom. The Zoning Commission conducted a public hearing on July 5, 2006, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing and approved the first reading of this zone change on July 24, 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 on a 4-0 vote recommends that the City Council approve Zone Change #783 on 2nd reading and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lots 17 & 18, Block 32 of Highland Addition Subdivision,
containing approximately 7,000 square feet

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

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

2. DESCRIPTION. A tract of land known as Lots 17 & 18, Block 32 of Highland Addition Subdivision, containing approximately 7,000 square feet and is presently zoned Controlled Industrial and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading July 24, 2006.

PASSED, ADOPTED AND APPROVED on second reading August 14, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#783 – 109 S 39th Street

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T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Second Reading of an Ordinance for Amended Sections 23-304 and 23-308 of the City Subdivision Regulations

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

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

The City-County Planning Board held a public hearing and reviewed the proposed amendments to Sections 23-304 and 23-308 of the City Subdivision Regulations on June 27, 2006. The City Council held a public hearing on the proposed amendments on July 10, 2006 and voted to approve the recommended changes on July 24, 2006. This is the second reading of the proposed ordinance.

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

RECOMMENDATION

The Planning Board recommends that the Billings City Council approve the proposed amendments to Sections 23-304 and 23-308 of the City Subdivision Regulations.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Ordinance

INTRODUCTION

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

At the July 10, 2006 meeting, City Council discussed whether it would be appropriate to include a public notification procedure to the subsequent minor subdivision process. Staff presented possible options to notifying the public in these situations to the Council on July 24, 2006. Council voted 8-3 to not include public notification in the subsequent minor subdivision procedure.

PROCEDURAL HISTORY

- February 15, 2006—the City Council approved, on second reading, Ordinance 06-5359 amending the City Subdivision Regulations in their entirety.
- June 27, 2006: Planning Board held a Public Hearing on the proposed amendments to Sections 23-304, 23-308 and 23-410 of the City Subdivision Regulations.
- July 10, 2006: City Council held a Public Hearing and requested more information of staff prior to acting on the Ordinance.
- July 24, 2006: City Council acted on the 1st Reading of Ordinance.
- August 14, 2006: City Council to act on the 2nd Reading of Ordinance.

STAKEHOLDERS

There were no public comments received at the Planning Board's public hearing held on June 27, 2006 or the City Council public hearing held on July 10, 2006.

RECOMMENDATION

The Planning Board recommends that the Billings City Council approve the proposed amendments to Sections 23-304 and 23-308 of the City Subdivision Regulations.

ATTACHMENTS

A: Ordinance

ORDINANCE NO. _____

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

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

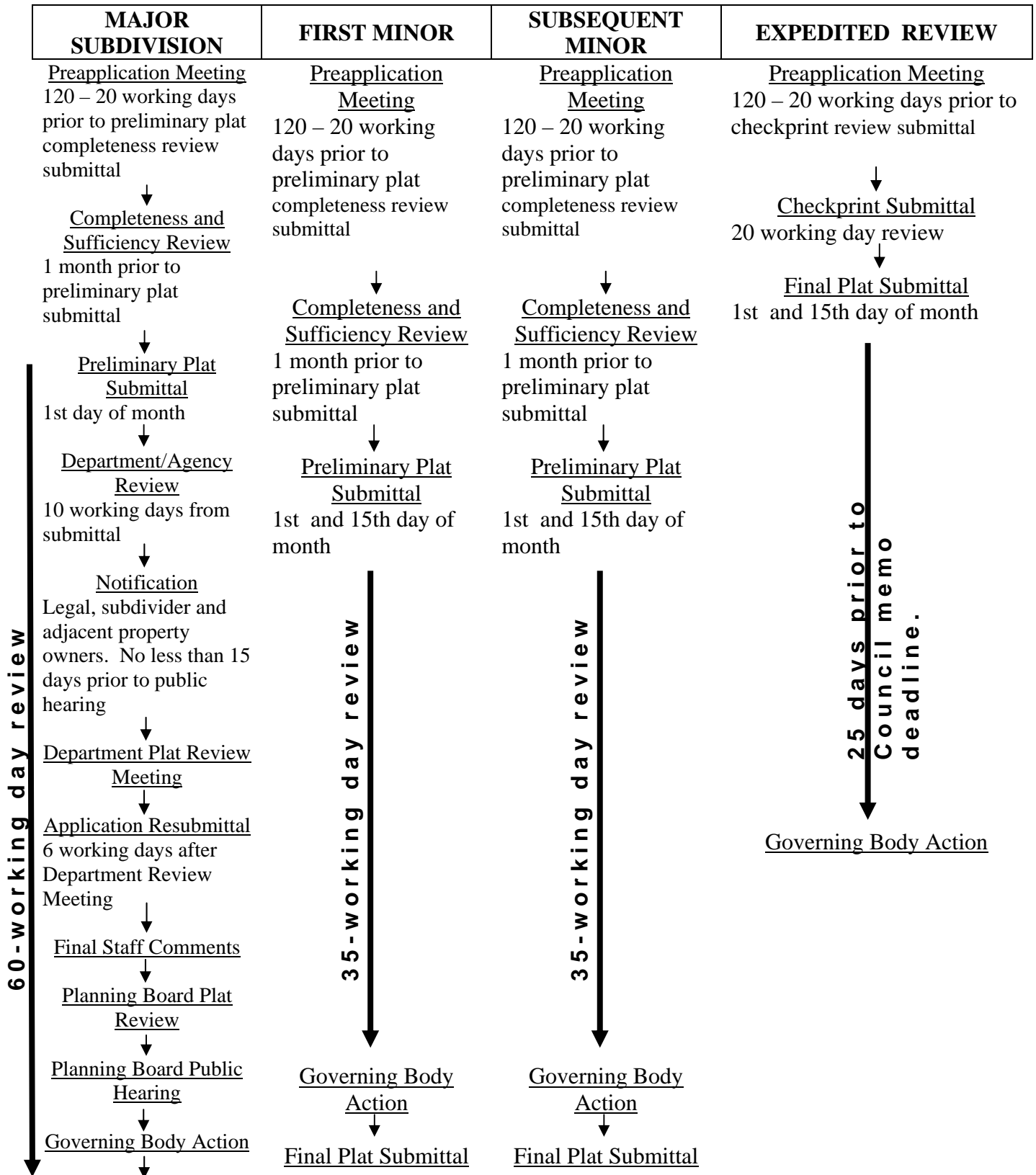
Section 1. That Section 23-304 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-304. Subsequent Minor Subdivisions.

Divisions of land creating five (5) or fewer lots that are not first minor subdivisions from a tract of record shall be reviewed as ~~major~~ first minor subdivisions in accordance with Section 23-302303 of this Article (76-3-609(4), MCA). The subsequent minor subdivision will be reviewed by the governing body where the jurisdiction in which it is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

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

Section 23-308. Flowchart of Subdivision Procedures.



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

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

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

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

PASSED, ADOPTED and APPROVED on second reading this 14th day of August, 2006.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

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U

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Second Reading of an Ordinance Expanding Ward II (Annexation #06-07)

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, Planner II

PROBLEM/ISSUE STATEMENT: On July 10, 2006, the City Council approved the annexation of the N1/2NE1/4 (Less Certificate of Survey 515 and 1335) and Certificate of Survey 999, T1N, R26E, Section 23 containing 57 acres (Annexation #06-07). The petition for annexation was submitted by Felton Associates, LLC, owner of property. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading, the ordinance to add the property to Ward II on July 24, 2006. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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

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

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

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

Being the N1/2 NE1/4 of Section 23, T.1N., R.26E., P.M.M., Yellowstone County, less

Certificate of Survey 515, recorded June 28, 1952, under Document No. 493273, Records of

Yellowstone County, Montana, and inclusive of all Amendments to date, including subdivisions thereof, also less Certificate of Survey 1335, recorded July 26, 1973, under Document No.

940459, Records of Yellowstone County, Montana, and inclusive of all Amendments to date;

including also Certificate of Survey 999, recorded July 29, 1965, under Document No. 759624

Records of Yellowstone County, Montana

Containing 57.004 gross and net acres, more or less.

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

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues

and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

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

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

PASSED by the City Council on the second reading this 14th day of August, 2006.

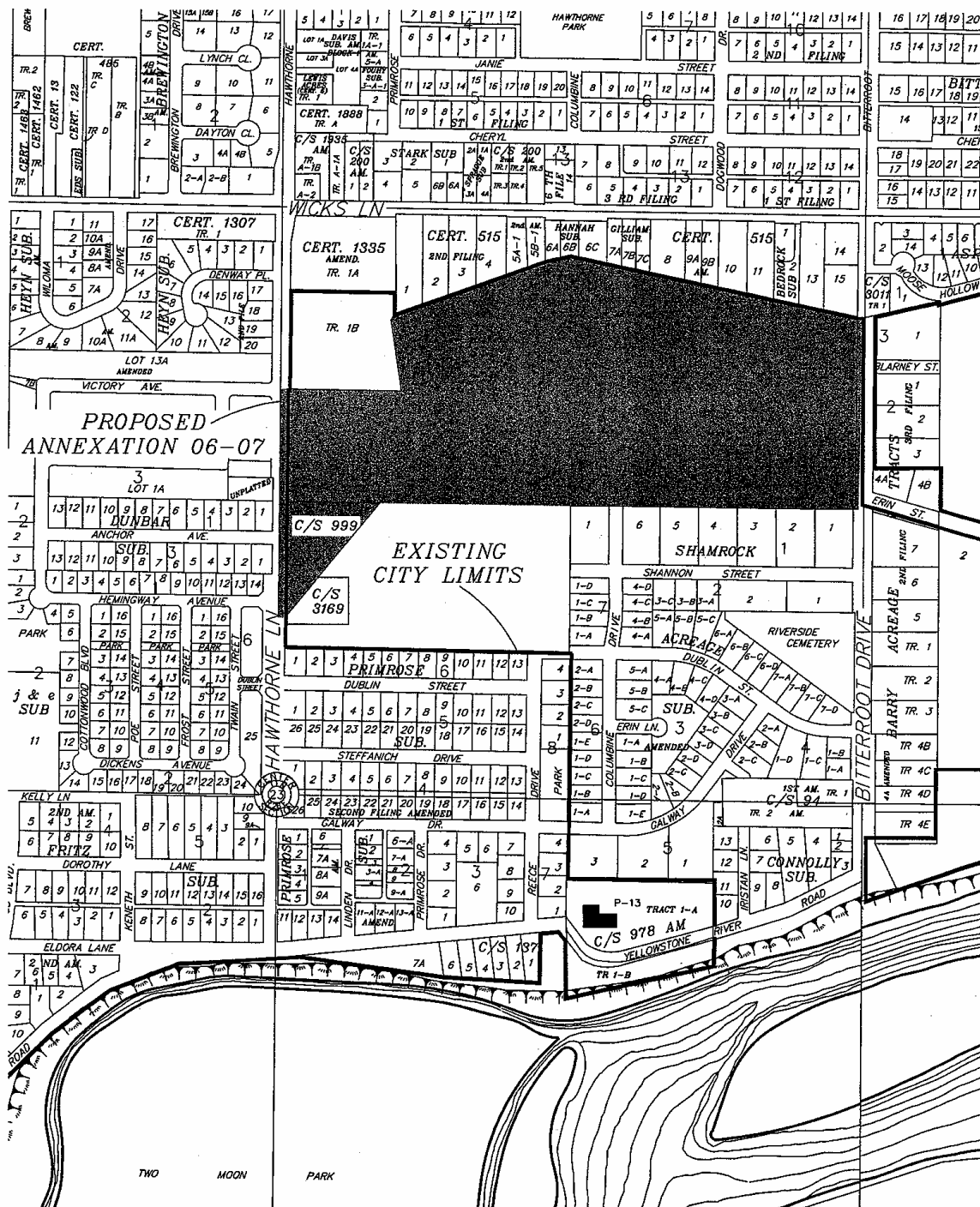
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Marita Herold, CITY CLERK

EXHIBIT A



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V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

TITLE: Second Reading of an Ordinance Expanding Ward III (Annexation #06-09)

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On July 10, 2006, the City Council approved the annexation of Tract 2, Certificate of Survey 2771, containing 2.137 acres (Annexation #06-09). The petition for annexation was submitted by Rice Wagon LLC, owner of property. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading, the ordinance to add the property to Ward III on July 24, 2006. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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

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

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

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

Tract 2 of Certificate of Survey 2771, recorded June 10, 1993, under Document No.

1688587, Records of Yellowstone County, Montana. Including all adjacent Right-Of-Way of Hesper Road. Containing 2.344 gross and 2.137 net acres.

(# 06-09) See Exhibit "A" Attached

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

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

PASSED by the City Council on the second reading this 14th day of August, 2006.

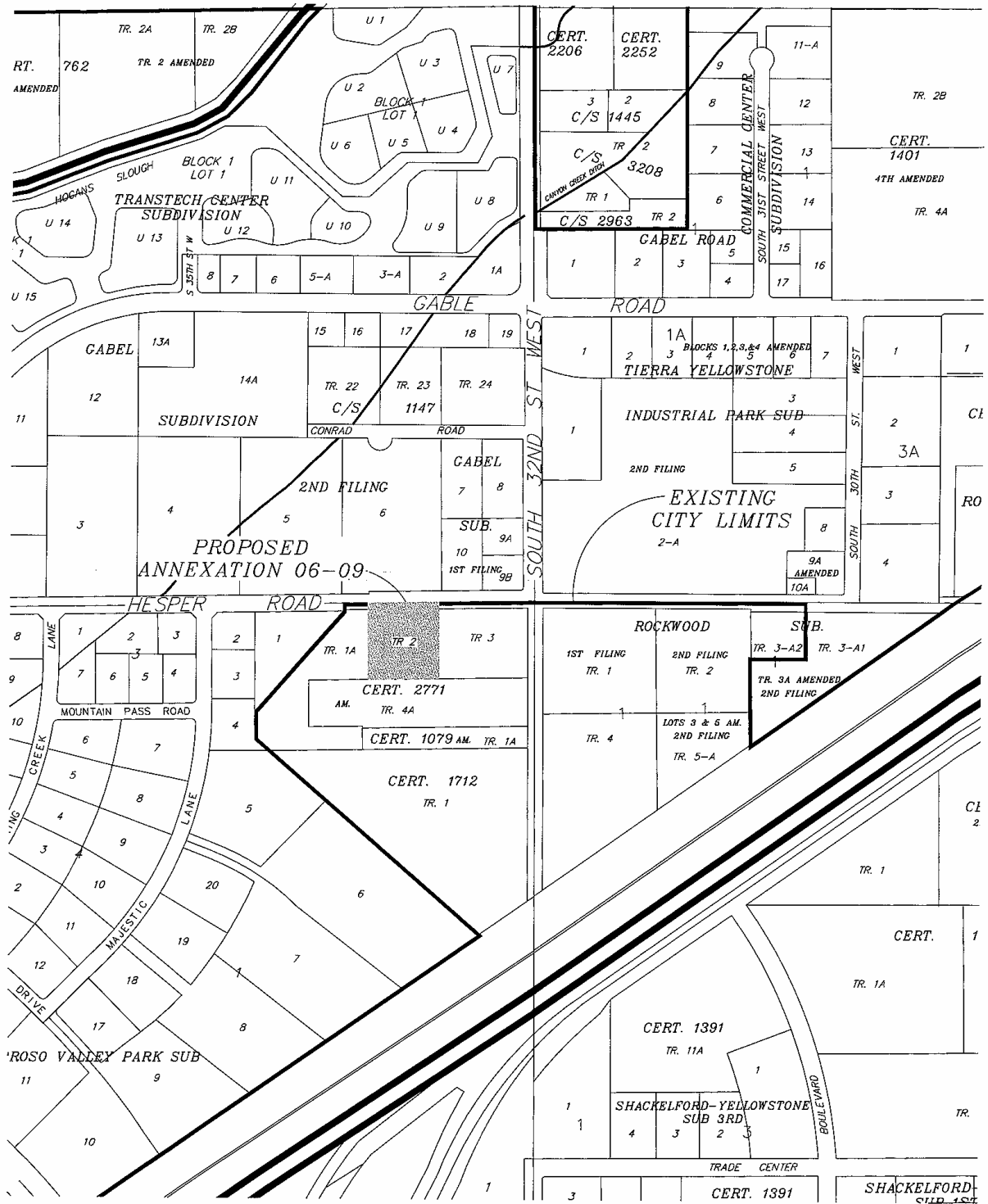
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Marita Herold, CITY CLERK

EXHIBIT A



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

W

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006**

TITLE: Preliminary Plat of Gunn Estates Subdivision, 2nd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On July 3, 2006, the preliminary minor plat for Gunn Estates Subdivision, 2nd Filing was submitted for review and approval. The proposed residential subdivision contains three (3) lots on approximately 23,300 square feet of land on the north side of Lux Avenue. The owner is Mankin Construction, Inc. and the representing agent is Engineering, Inc.

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

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Gunn Estates Subdivision, 2nd Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

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

INTRODUCTION

On July 3, 2006, Mankin Construction, Inc. applied for preliminary minor plat approval for Gunn Estates Subdivision, 2nd Filing, which contains three (3) lots on approximately 23,300 square feet of land for residential development. The subject property is surrounded by single-family residences located within the Residential 7000 zoning district.

PROCEDURAL HISTORY

- The preliminary plat application for this subdivision was submitted to the Planning Department on July 3, 2006.
- The City Council will consider the preliminary plat application on August 14, 2006.

BACKGROUND

General location:	North side of Lux Ave. between Calhoun Lane and Orchard Lane
Legal Description:	Lot 2, Block 2, Burns Subdivision, 2 nd Amendment and Lot 13B of Amended Lot 13, Block 2, Gunn Estates Subdivision
Owner/Subdivider:	Mankin Construction, Inc.
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Residential 7000
Existing land use:	residential/vacant
Proposed land use:	Residential
Gross area:	23,302 square feet
Net area:	21,102 square feet
Proposed number of lots:	3
Lot size:	Max: 7,000 square feet Min.: 7,102 square feet
Parkland requirements:	Parkland dedication is not required as this is a minor subdivision.
Dedications:	2,200 square feet for 10' alley dedication on north side of property.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To mitigate impacts on local services, the following changes to the SIA shall be made prior to final plat approval:
 - a. Section VI. Utilities A. Water: shall note that the Local Main Construction fees were paid under RID 1 and RID 37, not MID 488 as stated.
 - b. Section X. Financial Guarantees: shall strike "or by utilizing the mechanics of a special improvement district" in the first sentence, and delete the reference to special improvement district in the second sentence.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

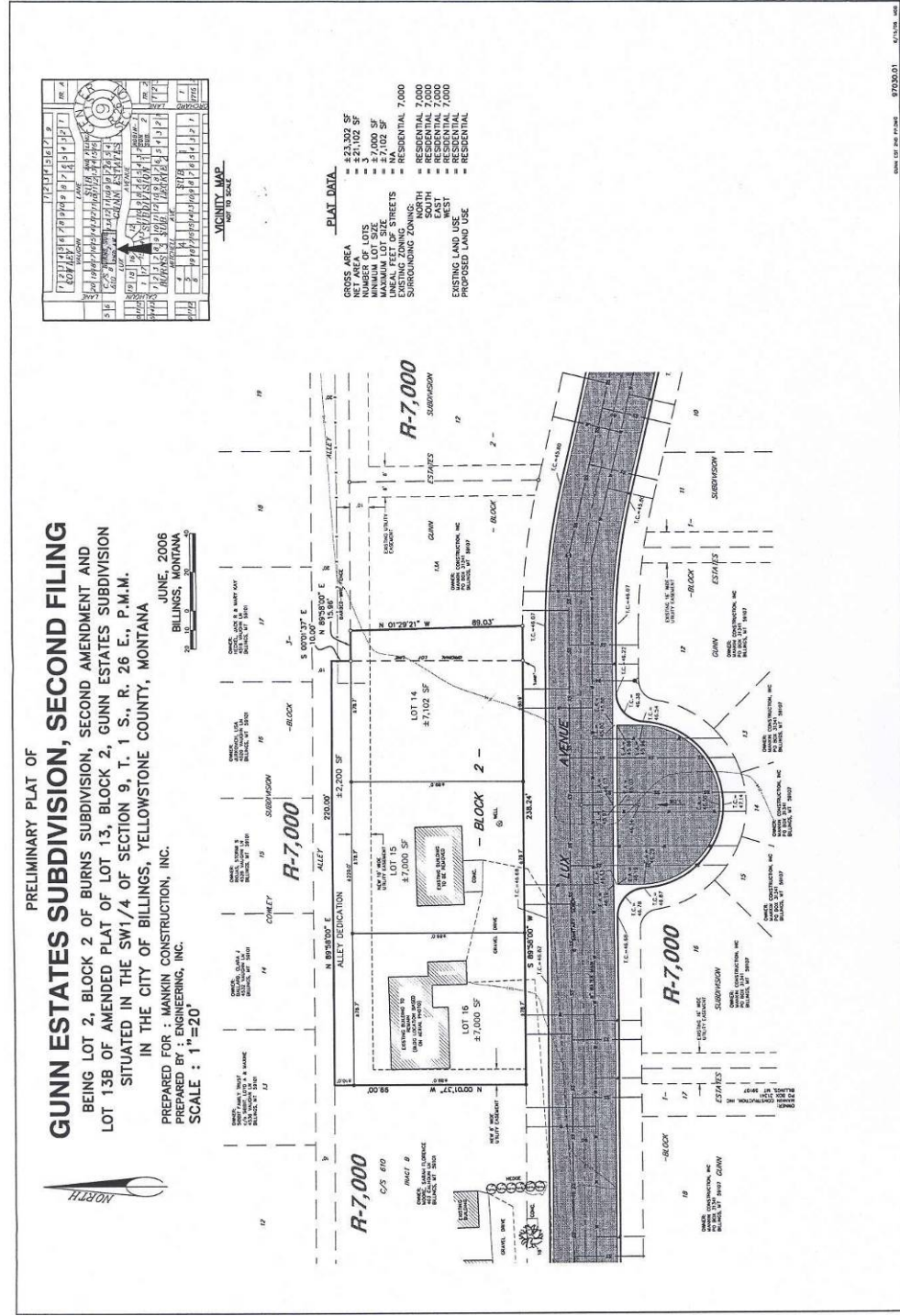
Staff recommends conditional approval of the preliminary plat of Gunn Estates Subdivision, 2nd Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of Gunn Estates Subdivision, 2nd Filing



ATTACHMENT B
Site Photographs



Figure 1: From corner of Orchard Lane and Lux Ave. looking east down Lux. Subject property is on left.



Figure 2: Looking NE at existing structures on Lots 15 & 16. Structures will be removed for new construction.



Figure 3: View of Lot 14 & 15. Stakes near fence in rear indicate alley dedication.

ATTACHMENT C

Findings of Fact

Staff is forwarding the recommended Findings of Fact for Gunn Estates Subdivision, 2nd Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-303.H., BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-303.H.1.]

1. Effect on agriculture and agricultural water user facilities

Impacts to agriculture or irrigation from this subdivision shall be negligible, since this is in an urbanized residential setting and there are no irrigation facilities on the subject property.

2. Effect on local services

- a. **Utilities** – There are existing 8” water and sewer lines in Lux Avenue that were installed with the first filing of this subdivision. The owners of the proposed lots will be responsible for connecting to the City water and sewer systems. Applicable System Development Fees will be required at the time of connection. Private utilities will be extended to this property under the companies’ operating rules. The utility easements shown on the plat have been approved by the private utility companies.
- b. **Storm water** – As was the case for the first filing of Gunn Estates, storm water will be drained by a combination of curbs and gutters and inlets on Lux Avenue to the storm drain line located at the intersection of Mitchell Avenue and Orchard Lane, and if necessary to the storm drain line in Calhoun Lane. Any drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** - Access to proposed lots will be off of Lux Avenue. Lux Ave. was constructed to City standards with the first filing of this subdivision, under Private Contract No. 527.

With this subdivision, a 10-foot alley dedication is being provided on the north side of the subject property.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The subdivision is located within the ambulance service area of American Medical Response.

- f. **Schools** - The subdivision is located within School District #2. Students from the proposed subdivision will attend Newman Elementary School, Riverside Middle School, and Senior High School. The principal from Riverside commented on the proposal, stating that current enrollment at the school is 500 students, and maximum capacity is 600 students. He also stated that they welcome this subdivision. This proposed minor subdivision will not create a significant population of students.
- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a minor plat.

3. Effect on the natural environment

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

4. Effect on wildlife and wildlife habitat

The proposed subdivision should have a minimal affect on wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

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

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-303.H.4.)]

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? [BMCC 23-303.H.3.]

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

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

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

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

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

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

2. Urban Area 2000 Transportation Plan Update

The Transportation Plan Update identifies Calhoun Lane and Orchard Lane as Collector status streets. Access to the subject lots will be off of Lux Avenue, which feeds onto either Calhoun or Orchard.

3. Heritage Trail Plan

This subdivision is within the area of the Heritage Trail Plan. However, the plan does not identify any trail corridors or routes through the subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-303.H.2.]

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

E. Does the subdivision conform to sanitary requirements?

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

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-303.H.2.e.]

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

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-303.H.2.b.]

Utility easements have been provided on the face of the plat. The easements have been reviewed and approved by the affected utility companies.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-303.H.2.c. and BMCC 23-303.H.2.d.]

Access to the proposed lots will be via private driveways from Lux Avenue.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Gunn Estates Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, August 14, 2006

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

August 15, 2006

Mankin Construction, Inc.
P.O. Box 31341
Billings, MT 59107

Dear Applicant:

On August 14, 2006, the Billings City Council conditionally approved the preliminary plat of Gunn Estates Subdivision, 2nd Filing, subject to the following conditions of approval:

1. To mitigate impacts on local services, the following changes to the Subdivision Improvements Agreement (SIA) shall be made prior to final plat approval:
 - a. Section VI. Utilities A. Water: shall note that the Local Main Construction fees were paid under RID 1 and RID 37, not MID 488 as stated.
 - b. Section X. Financial Guarantees: shall strike "or by utilizing the mechanics of a special improvement district" in the first sentence, and delete the reference to special improvement district in the second sentence.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Division at 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

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

X

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Preliminary Plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On July 5, 2006, the preliminary plat application for a subsequent minor subdivision was submitted to the Planning Department. The preliminary plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision would create two (2) lots; one (1) containing 21,036 square feet and one (1) containing 21,987 square feet. The subject property is zoned Residential 9600 (R-9600) and is generally located north of Rimrock Road at the intersection of 54th Street West and Rocky Mountain Boulevard. The property owner and representing agent is Stephen and Chris Hovis.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on August 21, 2006. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

FINANCIAL IMPACT: Upon development of the property, additional tax revenue for the City may be provided.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision, approval of the variance, and adoption of the Findings of Fact as presented within the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On July 5, 2006, the subsequent minor preliminary plat application was submitted to the Planning Department. The preliminary plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision would create two (2) lots; one (1) containing 21,036 square feet and one (1) containing 21,987 square feet. The subject property is zoned Residential 9600 (R-9600) and is generally located north of Rimrock Road at the intersection of 54th Street West and Rocky Mountain Boulevard. The subject property is surrounded on all sides by existing residences and residences under construction.

PROCEDURAL HISTORY

- Yellowstone Ridge Subdivision was recorded on May 14, 2003.
- The preliminary plat application for this subdivision was submitted to the Planning Department on July 5, 2006.
- The City Council will consider the preliminary plat application on August 14, 2006.
- The 35 working day review period for the proposed plat ends on August 21, 2006.

BACKGROUND

General location:	North of Rimrock Road at the intersection of 54 th Street West and Rocky Mountain Boulevard.
Legal Description:	Lot 3, Block 1, Yellowstone Ridge Subdivision
Subdivider/Owner:	Stephen and Chris Hovis
Engineer and Surveyor:	North Star Land Services, P.C.
Existing Zoning:	Residential 9600
Existing land use:	Vacant Land and a Residential Structure Foundation on Proposed Lot 3A
Proposed land use:	Residential
Gross area:	43,023 square feet
Net area:	43,023 square feet
Proposed number of lots:	2
Lot size:	Max: 21,987 square feet Min.: 21,036 square feet
Parkland requirements:	The parkland dedication was previously satisfied with the major subdivision.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of water and sanitary sewer services, the second sentence under Section VI. A. Utilities of the SIA shall be replaced with the following language (*Recommended by the Public Utilities Department*):

When Lot 3A is developed, a new water service shall be tapped into the existing public water main located in Rocky Mountain Boulevard. When Lot 3B is developed, a new sanitary sewer service shall be tapped into the existing public sewer main located in Rocky Mountain Boulevard.

2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCE REQUESTED

A variance to permit a 4-foot wide sidewalk and 7-feet of boulevard along the front lot lines of the proposed subdivision, where Table 23-406.B.1, BMCC, requires a 5-foot wide sidewalk and a minimum of 5-feet of boulevard. Engineering and Planning staff are supportive of this variance, as there are previously constructed boulevard walks within this subdivision that abut the subject property. Permitting the existing sidewalk width of 4-feet will maintain consistency within the subdivision. For further justification, the applicant did submit responses to the five (5) required variance criteria (please see Attachment C).

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

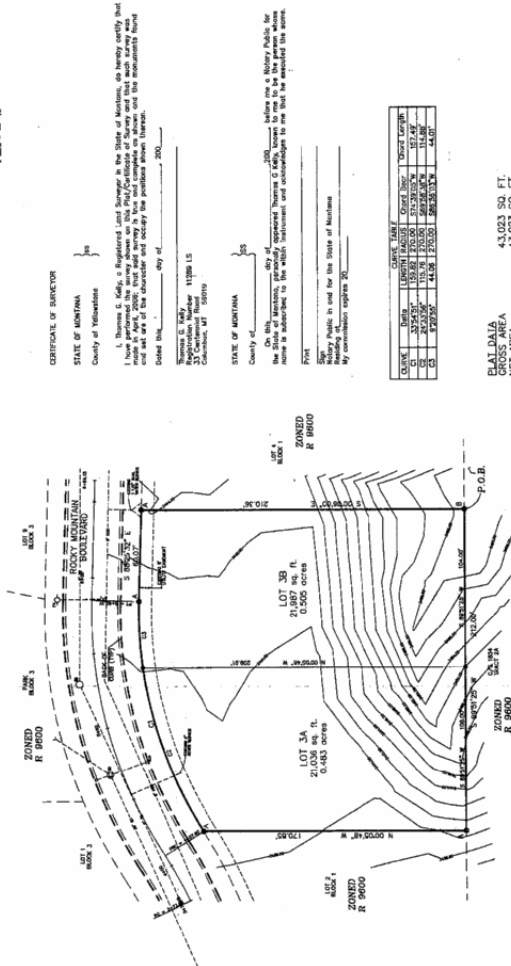
RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision, approval of the variance, and adoption of the Findings of Fact as presented within the staff report to the City Council.

ATTACHMENTS

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

PRELIMINARY
AMEND LOT 3, BLOCK 1
YELLOWSTONE RIDGE SUBDIVISION
LOCATED IN THE SW1/4 OF SECTION 29 T. 1 N., R. 25 E., P.M.M.
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA



I hereby certify that I have examined the annexed accounts for errors and omissions in computations and drafting and find them correct according to the laws of the State of Montana, and that said audit conforms to the orders of the Legislature.

Auditor General

WITNES MY HAND | have executed this CERTIFICATE OF APPROVAL this _____ day of _____, 20____.

PLAT DATA	
GROSS AREA	43,023 SQ. FT.
NET AREA	43,023 SQ. FT.
NUMBER OF LOTS	2
MINIMUM LOT SIZE	21,035 SQ. FT.
MAXIMUM LOT SIZE	21,987 SQ. FT.

CURVE	Delta	LENGTH	RADIUS	Chord Bear	Chord Length
C1	33°54'51"	159.82	270.00	574.39 03"W	157.43'
C2	24°53'46"	115.76	270.00	569.78 38"W	114.86'

Print _____
 Sign _____
 Military Public in and for the State of Montana
 Residing at _____

On this _____ day of _____, 200____, before me a Notary Public for the State of Montana, personally appeared Theresa G Kelly, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledges to me that he executed the same.

Dated this _____ day of _____ 200_____

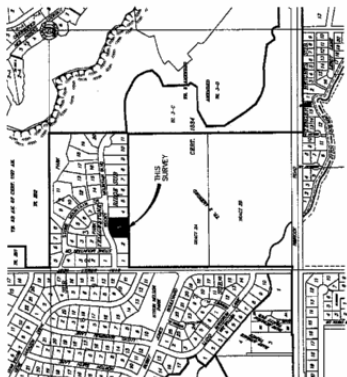
I, **Thomas C. Kelly**, a Registered Land Surveyor in the State of Montana, do hereby certify that I have performed the survey shown on this Plat/Certificate of Survey and that such survey was made in April, 2008; that said survey is true and complete as shown and the monuments found

CERTIFICATE OF SURVEYOR
STATE OF MONTANA
County of Yellowstone

GRAPHIC SCALE

(IN FEET)

1 inch = 50 feet

[illegible]

State (Indicate) _____

County of _____

STATE OF MONTANA } ss _____

_____ before me a Notary Public for the State of Montana,

On this _____ day of _____, 2000 _____

Chris Hyde (Wife) _____

Print _____
Sign _____
Secretary Public In and for the State of Montana

CERTIFICATE OF CITY ATTORNEY
STATE OF MONTANA)
County of Yellowstone) ss:
This document has been reviewed and is acceptable as to form.
Retained by _____
PLA 30

ATTACHMENT B
Site Photographs



Figure 1: View east along Rocky Mountain Boulevard toward the existing foundation on proposed Lot 3A.



Figure 2: View west along Rocky Mountain Boulevard toward its intersection with 54th Street West.



Figure 3: View southwest toward the construction on proposed Lot 3A.

ATTACHMENT C

Variance Criteria

VARIANCE REQUEST FOR SUBSEQUENT MINOR PLAT

July 3, 2006

To Whom It May Concern:

As owners and subdividers of Lot 3, Block 1, Yellowstone Ridge Subdivision, we are requesting a variance from Table 23-406.B.1, regarding width of boulevard sidewalk.

When Yellowstone Ridge Subdivision was platted the boulevard requirement within the subdivision was for a 7ft boulevard with a 4ft sidewalk. New regulations require a 5ft sidewalk. Because there are sections of sidewalk already constructed east and west of Lot 3, Block 1, we request a variance to conform to the existing sections of sidewalk. We feel the request is justifiable for the following reasons:

1. We feel that there will be no detriment to public health, safety or general welfare by granting this variance, nor will it be injurious to adjoining properties.
2. We feel that constructing a 5' sidewalk according to the new regulations, which will join existing 4' sidewalks, would be an undue hardship and be aesthetically unappealing.
3. Granting this variance will not result in any burden to Billing's taxpayers.
4. Granting this variance will not result in nonconformance with any adopted zoning regulations or growth Policy.
5. A 4ft sidewalk with a 7ft boulevard was previously approved within Yellowstone Ridge Subdivision, and sections have already been constructed. The existing sections of boulevard and 4' sidewalk are safe and effective. Continuing with the 4' sidewalk boulevard throughout Yellowstone Ridge will be an efficient and consistent application of city improvements.

Sincerely,


Stephen M. Hovis

Chris A. Hovis

ATTACHMENT D

Findings of Fact

Staff is forwarding the recommended Findings of Fact for Amended Lot 3, Block 1, Yellowstone Ridge Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Article 23-100, BMCC).

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

1. Effect on agriculture and agricultural water user facilities

There are no agricultural uses on this property or surrounding properties.

2. Effect on local services

- a. **Utilities** – Water and sanitary sewer will be extended through 8-inch main lines within Rocky Mountain Boulevard. As required by Condition #1, the subdivider shall remove the second sentence under Section VI of the SIA and replace it with the language required by the Public Utilities Department.
- b. **Stormwater** – As specified in the SIA, all storm drainage improvements have been constructed in accordance with the previously approved plat through Private Contract #477.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the lots will be via private driveways from Rocky Mountain Boulevard, which is fully constructed to city standards through Private Contract #477.
- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 24th Street West (Station #5). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Arrowhead Elementary School, Will James Middle School and West High School. West High School responded to the request for comments and did state that they are 250 students over their maximum occupancy.

- g. **Parks and Recreation** – The parkland dedication was satisfied with Yellowstone Ridge Subdivision through an onsite dedication located to the northeast of the property. A parkland dedication is not required for this subsequent minor subdivision.

3. Effect on the natural environment

A geotechnical report was submitted to the Building Department for a building permit approved on May 22, 2006, on proposed Lot 3A. The study is sufficient for the proposed subdivision.

There may be minor increases in air pollution during construction and from additional vehicle traffic in the area. No streams, lakes or reservoirs will be altered by the subdivision.

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

There are no known health or safety hazards on the property. This property is not within a mapped floodway or flood zone and should not create flooding hazards for surrounding properties.

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

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

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

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

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

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

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

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

The subject property is a replat of an existing subdivision within the city and can be considered infill development.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

The subdivision is within the jurisdictional area of the Heritage Trail Plan. A trail corridor was included in the parkland dedication for Yellowstone Ridge Subdivision. However, this subsequent minor plat does not include any of the parkland corridor and is not identified in the Heritage Trail Plan.

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

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

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

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

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

The subject property is located within the Residential 9600 (R-9600) zoning district and shall comply with the standards set forth in Section 27-308, BMCC. A building permit was approved for a 3,514 square foot residence on proposed Lot 3A on May 22, 2006. The foundation for this residence has already been constructed and the location meets all of the required setbacks with the proposed lot configuration. Due to the reduced lot size for the proposed residence on Lot 3A, the lot coverage will increase from 8% to 18%, where 30% lot coverage is permitted within the R-9600 zoning district.

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

The Montana Dakota Utilities Company and Northwestern Energy submitted reviews stating that the proposed location of the existing utilities is acceptable for this subdivision.

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

Legal and physical access to the proposed subdivision will be provided via Rocky Mountain Boulevard from 54th Street West.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, August 14, 2006

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

August 14, 2006

Stephen & Chris Hovis
4448 Audubon Way
Billings, Montana 59106

Dear Applicant:

On August 14, 2006, the Billings City Council conditionally approved the preliminary plat of Amended Lot 3, Block 1, Yellowstone Ridge Subdivision, subject to the following conditions of approval:

1. To ensure the provision of water and sanitary sewer services, the second sentence under Section VI. A. Utilities of the SIA shall be replaced with the following language (*Recommended by the Public Utilities Department*):

When Lot 3A is developed, a new water service shall be tapped into the existing public water main located in Rocky Mountain Boulevard. When Lot 3B is developed, as new sanitary sewer service shall be tapped into the existing public sewer main located in Rocky Mountain Boulevard.

2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

- A variance to permit a 4-foot wide sidewalk and 7-feet of boulevard along the front lot lines of the proposed subdivision, where Table 23-406.B.1, BMCC, requires a 5-foot wide sidewalk and a minimum of 5-feet of boulevard.

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

Sincerely,

Ron Tussing, Mayor

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

Y

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 14, 2006

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

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of Lake Hills Subdivision, 13th Filing, Amended, is being presented to the City Council for approval. On May 22, 2006, the City Council conditionally approved the 16-lot preliminary major plat on 3.64 acres for residential uses. The subject property is zoned Residential-9600 and is located on the north end of the Lake Hill golf course, on Annandale Road, between Greenbriar Road and Cherry Hills Road. The owner is Ron S. Hill and the agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Lake Hills Subdivision, 13th Filing, Amended

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Final Plat

Z1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,498,635.99 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 14, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A -- List of claims greater than \$2500

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

Z2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,194,749.20 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 21, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A -- List of claims greater than \$2500

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Public Hearing and Resolution for Annexation #06-11

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: Owners and petitioners, Jim Boyer and Paul Bromenshenk, are petitioning to annex a 36-acre parcel legally described as Tract 1 of Certificate of Survey 3273, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the west side of 46th Street West, south of Rimrock Road. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a major subdivision including several possible zone changes on the property. The subject property is currently irrigated agricultural land and zoned Agricultural-Open Space. Upon annexation the property will convert to R-9600 zoning.

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

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

RECOMMENDATION

Staff recommends that the City Council approve the Resolution of Annexation for Tract 1 of Certificate of Survey 3273, subject to the following conditions of approval:

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

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

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

ATTACHMENT

A. Resolution

INTRODUCTION

This petition for annexation is for a 36-acre parcel located on the west side of 46th Street West, south of Rimrock Road. The owners, Jim Boyer and Paul Bromenshenk, are requesting annexation to obtain city services for completion of a major residential subdivision. The subject property is currently irrigated crop land and zoned Agricultural-Open Space. It is located within the Urban Planning Area and is identified on the Limits of Annexation map for annexation within the next seven (7) years.

PROCEDURAL HISTORY

- On June 6, 2006, the Annexation Petition was submitted to the Planning Department.
- On July 24, 2006, the City Council acknowledged the annexation petition and set a public hearing date for August 14, 2006.
- On August 14, 2006, the City Council will conduct the public hearing and potentially adopt a resolution annexing the subject property.
- On August 28, 2006, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted.
- On September 11, 2006, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading.

BACKGROUND

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

ALTERNATIVES ANALYSIS

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

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

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan

including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably, except the Police Department, which responded that access to the property is limited. No comments were received from Yellowstone County.

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

- **Water:** Water to the subject property will be extended from the main line within 46th Street West.
- **Sewer:** Sanitary sewer will be connected to the existing main lines within 46th Street West.
- **Stormwater:** A stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- **Transportation:** The subject property will be accessed from internal streets off of 46th Street West. These streets will be constructed to city standards and will be reviewed with the subdivision. A Traffic Accessibility Study (TAS) will also be submitted for review and approval by the City Traffic Engineer.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is currently located at 604 S. 24th St. West (Station #5). However, a new fire station is anticipated at the corner of 54th St. West and Grand Avenue, which will more easily serve this property.
- **Parks:** Rimrock West Estates park is located immediately east across 46th St. West, and the proposed Cottonwood Park is located 1 mile to the west of the subject property at 54th St. West and Colton Blvd. With the proposed subdivision, any proposed internal parks will be reviewed during the subdivision process and the lots will be required to be a part of a Park Maintenance District.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. With the subdivision, the applicant has proposed trail corridors and connections along the Hi-Line Ditch on the northern boundary of the property and along the Big Ditch, which makes the property's southern boundary. These will be further reviewed with the subdivision.

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

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The Police Department noted that access to the property is limited. This is true, as the property is accessed from 46th St. West from the north only. At the current time, 46th St. West ends in a deadend at its intersection with Rangeview Drive. With this subdivision, it will not likely be extended south, and is not proposed to be connected to Grand Avenue in the long range transportation plans. However, the subdivision proposal does show a future extension of Rangeview Drive to the west, which could allow for a second access point from the west.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on July 28, 2006, and published in the Billings Gazette on July 30, 2006. The Planning Division had received no public comments regarding the proposed annexation at the time that this memo was drafted.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Recreation facilities that serve the diverse recreation needs of Billings. (Open Space and Recreation Goal, page 9)
- A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness. (Transportation Goal, Page 9)

RECOMMENDATION

Staff recommends that the City Council approve the Resolution of Annexation for Tract 1 of Certificate of Survey 3273, subject to the following conditions of approval:

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

ATTACHMENT

A. Resolution

RESOLUTION NO. 06-

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

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

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

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

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

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

A tract of land situated in the 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)

2. **CONDITIONS.** The annexation is approved, subject to the following conditions:
 - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 14th day of August, 2006.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

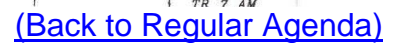
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 06-11)

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

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

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 will be conducted on August 14, 2006. The second reading of the ordinance is scheduled for Council action 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 first 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:

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 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

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 14th day of August, 2006.

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

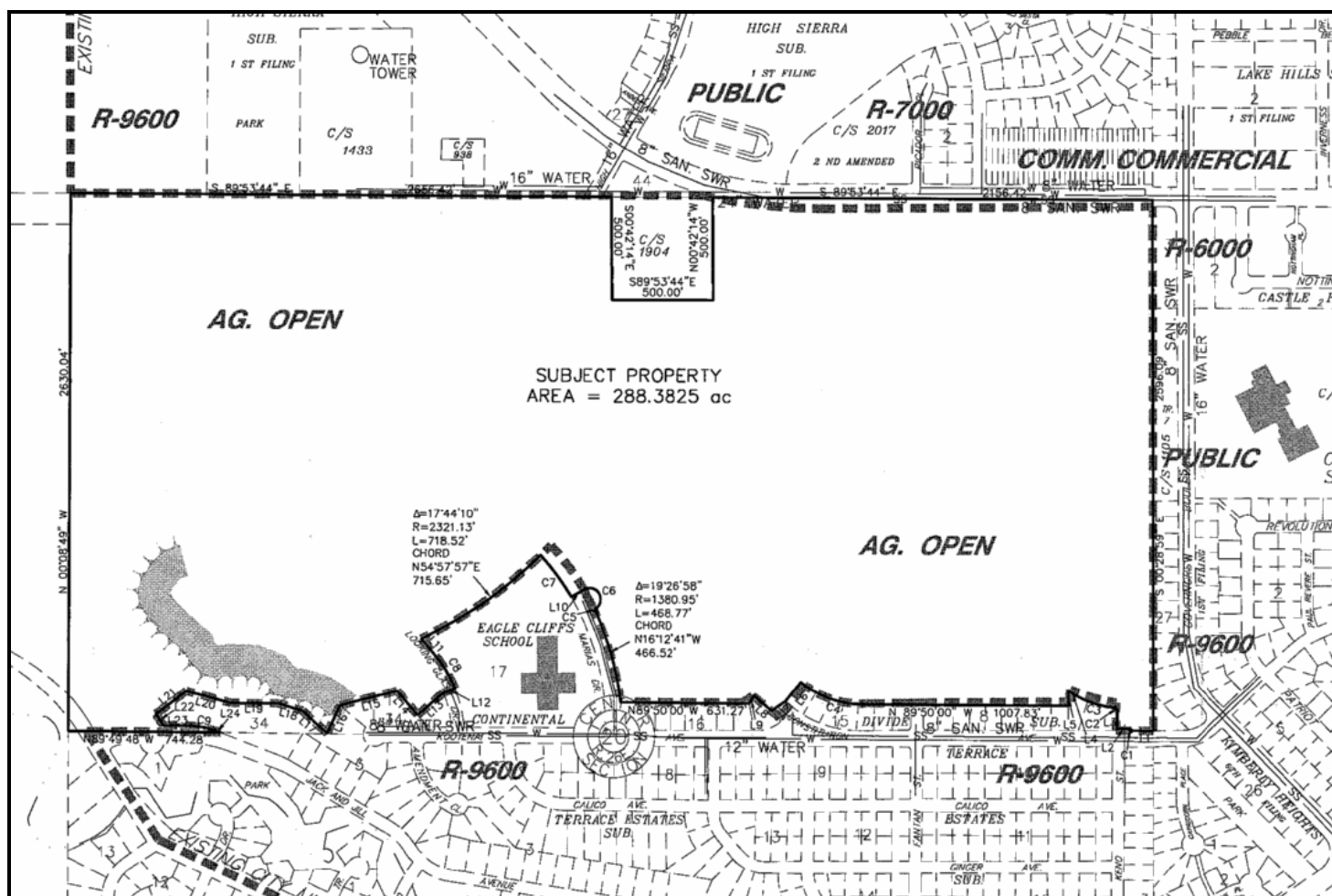
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Marita Herold, CITY CLERK

EXHIBIT A



(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Public Hearing/Site Development Ordinance Variance #OP06-01

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Dairy Queen, located on Lots 1-5, Block 1, Cellan Acre Subdivision, Tract S, being generally located at the northeast corner of Grand Avenue and 11th Street West, between Grand Avenue and Avenue “B”, is seeking a variance to provide fewer parking stalls than what City Ordinance allows. City Ordinance, Section 6-1203 (j) states that for food and beverage places with sale and consumption on the premise, the minimum parking requirements are one (1) stall per 100 square feet of gross floor area. The proposed site consists of a 3200 square foot building and 27 proposed parking stalls. A site plan showing the overall project is shown in Attachment A. If City Council does not grant this variance, the general manager of the neighboring business, Taco John’s, will lease to Dairy Queen the remainder of the required parking.

ALTERNATIVES ANALYZED:

1. Approve the variance allowing 27 parking stalls instead of the required 32 parking stalls.
2. Do not approve the variance allowing 27 parking stalls instead of the required 32 parking stalls and require the property owner to lease parking from a nearby business.

FINANCIAL IMPACT: There is no financial impact to the City of Billings.

RECOMMENDATION

Staff recommends that Council approve the variance allowing the Dairy Queen to provide 27 parking stalls instead of the required 32 parking stalls based on Council direction at the February 27th Special Review for the Dairy Queen property.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Site Plan – (one page)
- B. Variance Application (one page)

APPLICATION FORM

CITY VARIANCE

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings-Yellowstone County Unified Zoning Regulations.

Legal Description of Property: Lots 1-5, Block 1 of Cellan Acre Tracts

Address or General Location (If unknown, contact City Engineering): 1045 Grand Avenue

Zoning Classification: Community Commercial and Residential Multi-Family Restricted

Size of Parcel (Area & Dimensions): 25,000 sf (0.057 acres); approximately 250-feet by 100-feet

Covenants or Deed Restrictions on Property: Yes ☐ No ☒
If yes, please attach to application.

Variance Requested: Section 6-1203. Off street parking requirements. (32 required parking stalls, 27 provided)

Facts of Hardship: City Council conditionally approved City Special Review #803, with one of the conditions being that the two existing curb cuts that provide access to Avenue B be removed. This condition significantly altered the traffic flow characteristics of the site, so that the site is unable to meet the above-mentioned parking requirement. The 110-foot clear vision corner is an additional hardship affecting the site due to the fact that parking spaces are not allowed in this area.

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Rich Hageman
(Recorded Owner)

1212 Romelda Lane, Billings, MT 59102
(Address)

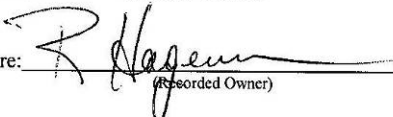
(406)245-5780
(Phone Number)

Agent(s): Engineering, Inc.
(Name)

1300 North Transtech Way, Billings, MT 59102
(Address)

(406)656-5255
(Phone Number)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: 
(Recorded Owner)

Date: 7/19/06

PA:PROJ_MANAGEMENT\06035_Cellan_Acre_Tracts_DQ_PM

(7/18/06)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Public Hearing and Resolutions for Vacation of Portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision

DEPARTMENT: Public Works/Engineering

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

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

ALTERNATIVES ANALYZED:

1. After holding a public hearing approve the vacation of the above-mentioned right-of-way.
2. Do not approve the vacation of the right-of-way.

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

RECOMMENDATION

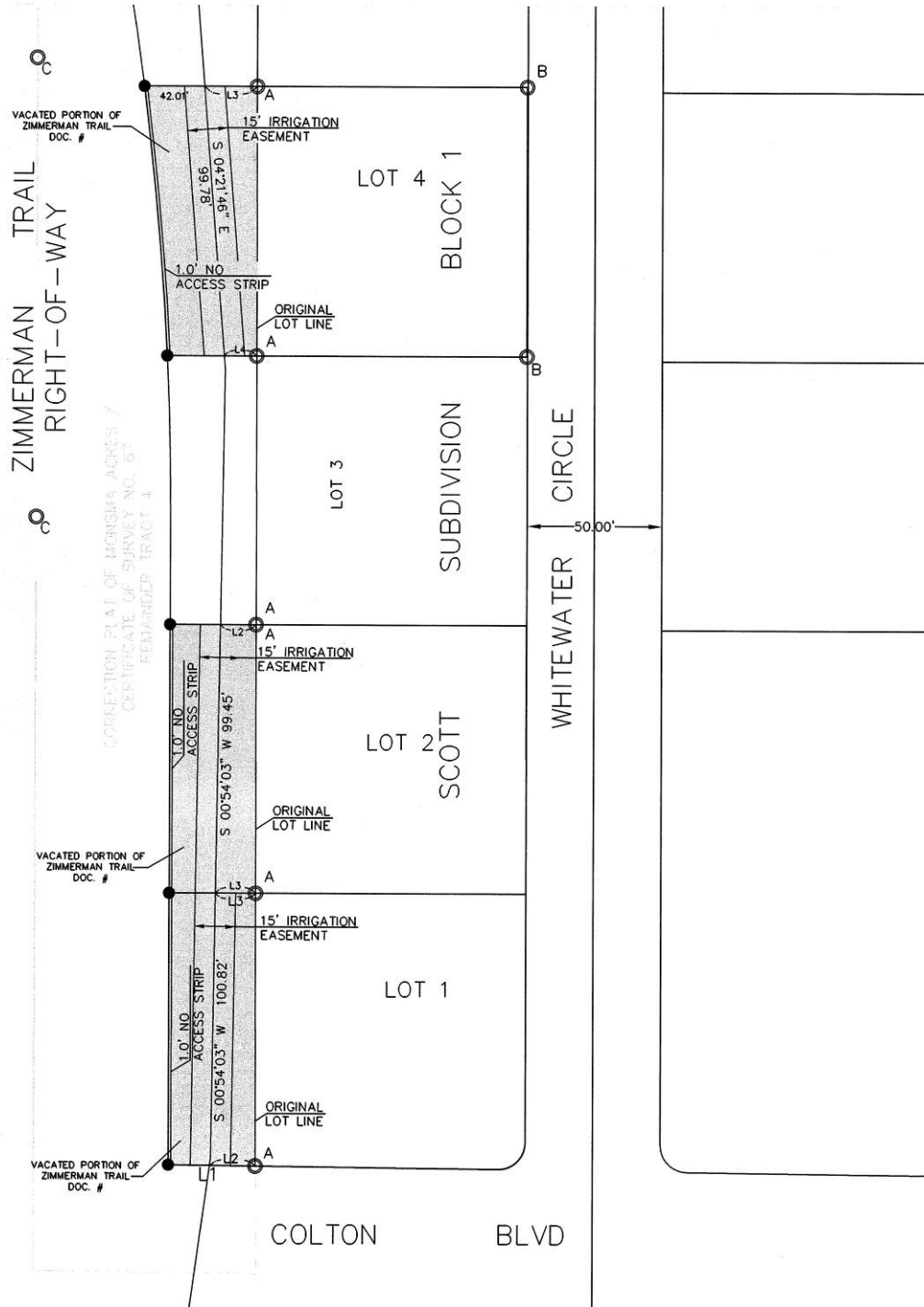
Staff recommends that Council approve the vacation of portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Map Depicting Area to be Vacated
- B. Resolutions vacating portions of Zimmerman Trail

EXHIBIT A



RESOLUTION NO. 06-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING **portion of
Zimmerman Trail.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **portion of Zimmerman Trail** as described hereinafter; and

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

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

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **portion of Zimmerman Trail** more particularly described as follows:

A tract of land being a portion of Zimmerman Trail situated in the NE1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: A portion of Zimmerman Trail Right-Of-Way adjacent to Lot 1, Block 1 Scott Subdivision, Recorded March 11, 1998, Under Document No. 1913900, Records of Yellowstone County, Montana, beginning at the northwest corner of said Lot 1, Block 1 Scott Subdivision; thence N 90 ° 00 ' 00 " W for a distance of 32.20 feet; thence S 00 ° 02 ' 27 " W for a distance of 100.65 feet; thence S 89 ° 23 ' 44 " E for a distance of 32.37 feet; thence N 00 ° 03 ' 28 " W for a distance of 100.99 feet to the Point of Beginning. Containing 3,255 square feet, more or less.

Is hereby discontinued, abandoned and vacated.

2. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described **portion of Zimmerman Trail** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 14th day of August 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

RESOLUTION NO. 06-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING **portion of
Zimmerman Trail.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings,
Montana, as per Section 22-601 BMCC, requesting discontinuance
and vacation of **portion of Zimmerman Trail** as described
hereinafter; and

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

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

3. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-
14-4115, M.C.A., **portion of Zimmerman Trail** more particularly described as
follows:

**A tract of land being a portion of Zimmerman Trail situated in the NE1/4 of Section
34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described
as:**

**A portion of Zimmerman Trail Right-Of-Way adjacent to Lot 2, Block 1 Scott
Subdivision, Recorded March 11, 1998, Under Document No. 1913900, Records of
Yellowstone County, Montana, beginning at the northwest corner of said Lot 2, Block
1 Scott Subdivision; thence N 90 ° 00 ' 00 '' W for a distance of 32.02 feet; thence S 00 °
02 ' 27 '' W for a distance of 99.43 feet; thence N 90 ° 00 ' 00 '' E for a distance of 32.20
feet; thence N 00 ° 03 ' 49 '' W for a distance of 99.43 feet to the Point of Beginning.
Containing 3,193 square feet, more or less.**

Is hereby discontinued, abandoned and vacated.

4. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above
described **portion of Zimmerman Trail** is in the best interest of the public and can
be done without any public detriment.

PASSED by the City Council and APPROVED this 14th day of August 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

RESOLUTION NO. 06-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING **portion of
Zimmerman Trail.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **portion of Zimmerman Trail** as described hereinafter; and

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

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

5. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **portion of Zimmerman Trail** more particularly described as follows:

**A tract of land being a portion of Zimmerman Trail situated in the NE1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: A portion of Zimmerman Trail Right-Of-Way adjacent to Lot 4, Block 1 Scott Subdivision, Recorded March 11, 1998, Under Document No. 1913900, Records of Yellowstone County, Montana, beginning at the northwest corner of said Lot 4, Block 1 Scott Subdivision; thence N 90 ° 00 ' 00 " W for a distance of 42.01 feet; thence on a curve to right with a radius of 1251.22 feet and an arc length of 99.90 feet (chord bearing S 05 ° 01 ' 14 " E a chord length of 99.88 feet); thence N 90 ° 00 ' 00 " E for a distance of 33.30 feet; thence N 00 ° 01 ' 08 " W for a distance of 99.49 feet to the Point of Beginning.
Containing 3,680 square feet, more or less.**

Is hereby discontinued, abandoned and vacated.

6. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described **portion of Zimmerman Trail** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 14th day of August 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Public Hearing and Resolution to Adopt the Gateway Business Park Plan
DEPARTMENT: Planning and Community Services
PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: The draft Gateway Business Park Plan was completed in July 2004 but was never adopted by City Council. In order to ensure that future development is consistent with the recommendations of the Plan, the City Council must formally adopt the Plan as an amendment to the 2003 City-County Growth Policy. On July 11, 2006, the Yellowstone Board of Planning held a public hearing and voted unanimously to recommend approval of the Gateway Business Park Plan.

ALTERNATIVES ANALYZED: Three alternatives are outlined in the Plan:

- Alternative #1: Do nothing
- Alternative #2: Gateway Business Park
- Alternative #3: Enterprise Opportunity

The Planning Board is recommending adopting Alternative #2.

FINANCIAL IMPACT: The recommended alternative in the Gateway Business Park Plan identifies a need for water, sewer, and street reconstruction, zone changes and landscaping. City funds must be expended in order to implement the preferred alternative. City funds for water and sewer construction have been programmed and are currently being spent. The City has also programmed an expenditure of approximately 70% of the street reconstruction costs over the next 5 to 7 years. The remaining 30% will be met through Special Improvement District assessments. The cost of the zone change will be handled internally by the Planning Division. Landscaping costs may be met through donations and grant funding.

RECOMMENDATION

On a vote of 9-0, the Planning Board recommends that Council adopt the Gateway Business Park Plan with Alternative #2 as the preferred implementation strategy. The Plan will be adopted as an amendment to the 2003 City-County Growth Policy.

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

ATTACHMENT

- A. Resolution to Adopt
- B. Gateway Business Park Plan – final draft dated August, 14, 2005.

INTRODUCTION

On August 18, 2003, the draft Gateway Business Park Plan was presented to the City Council at a work session after over twenty-five meetings were held with the community and individual property owners. The plan was not considered by the City Council for adoption at that time, but steps were taken to begin the implementation of at least one recommended strategy: reconstruction of sewer, water and streets. Early this year, the ConocoPhillips Advisory Council (CAC) requested that the plan be adopted in order to officially recognize this blueprint for future development. The Planning Department updated the draft Gateway Business Park Plan based on recommendations from the CAC and presented it to the Planning Board at a public hearing held on July 11, 2006. The Planning Board unanimously recommended that City Council approve the Gateway Business Park Plan with some minor changes.

PROCEDURAL HISTORY

March 6, 2003	Community Forum #1 held at ConocoPhillips Learning Center
June 25, 2003	Community Forum #2 held at ConocoPhillips Learning Center
August 18, 2003	Draft plan presented at City Council work session.
July 11, 2006	Board of Planning public hearing and recommendation
August 14, 2006	City Council public hearing and action

BACKGROUND

The Preface in the Gateway Plan summarizes the reasons why the Plan was developed:

“The area within South Billings known as the “Triangle” has, over the years, been an area of transition. Although possessing a very strategic and visible location, it has been effectively separated from the mainstream vitality of the South Park neighborhood by a busy South 27th Street and separated from the downtown business district by the railroad tracks. The character of the area is influenced by the industrial character of the ConocoPhillips Refinery, but perhaps most significantly the character of the area is defined by the visibly poor condition of the area’s public streets and infrastructure.

Local residents and business owners have stated time and time again throughout this project, that the Triangle area has been forgotten and passed over by City government. To address this issue, the City of Billings plans to upgrade the water, sewer, and streets in the Triangle area. However, the question was raised, *“does it make sense to invest in new infrastructure that follows the historic residential street grid, or is the community better served to establish a new development concept that would support new businesses and general economic development in the area?”*

To address this challenge, the City of Billings, with funding supplied by ConocoPhillips, retained a consulting group consisting of Engineering, Inc., JGA Architects-Engineers-Planners, and Land Design, Inc., to facilitate a process of investigation and open discussion to determine a realistic vision and direction for

the future development and improvement of the area. The outcome of this planning process has been to prepare this *Gateway Business Park Plan*.

This plan is both a vision and a roadmap for the Triangle's revitalization. The recommended development concept can be achieved through investment in improved infrastructure, community cleanup, and the recognition and delineation of implementation strategies and costs."

ALTERNATIVES ANALYSIS

The draft Plan outlined three alternatives that addressed capital improvements, landscaping, and land use and zoning. Alternative #1 is a “do nothing” option which would result in no changes in the neighborhood. Alternative #2 outlines specific strategies to improve the area infrastructure, create and implement a landscaping plan, implement an overlay zoning district and rezone the area from Community Commercial to Controlled Industrial. Alternative #3 is aimed at designating the Gateway area as an “Opportunity Zone” by modifying the zoning and street configuration to support multi-use development. The ConocoPhillips Advisory Council met in May and June of this year and identified Alternative #2 as the preferred alternative. The recommendation is based on the public input heard at several public meetings and familiarity with the area. The CAC is not representative of the business and property owners in the area, but has a long history and background of the infrastructure and land use needs. The final draft of the Gateway Business Park Plan was modified to reflect this preference for Alternative #2.

STAKEHOLDERS

The public involvement process involved over twenty-five meetings with organizations and individuals and two community forum meetings. The Planning Board held a public meeting as required by state statute on July 11, 2006. A few property owners and ConocoPhillips Advisory Council members attended and commented at that meeting. Nobody spoke in opposition of the Plan. Most of the comments were in support and focused on the need to quickly implement the Plan. A few property owners asked specific questions on street closures, ownership, and construction timing. The following people commented at the meeting:

- Wallace Hall, Ed’s Hydraulic Jack Repair, 317 S. 25th Street
- JD Adkins, Representing ConocoPhillips Refinery
- Terry Steel, 211 S. 24th Street
- Connie Wardell, 1302 S. 24th Street West
- Jim Ronquillo, 820 S. 28th Street
- Peggy Gaghen, 87 Mountain View
- Jake Romero, no address given
- Joan Hurdle, 210 Nall Street

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The 2003 City-County Growth Policy recommends preparing neighborhood plans as a means to identify specific needs within small geographic areas. State law permits neighborhood plans to be included as part of the Growth Policy (76-1-601, MCA). If adopted, this plan would be amended to the Growth Policy as allowed by law.

RECOMMENDATION

On a vote of 9-0, the Planning Board recommends that Council adopt the Gateway Business Park Plan with Alternative #2 as the preferred implementation strategy. The Plan will be adopted as an amendment to the 2003 City-County Growth Policy.

ATTACHMENTS

- A. Resolution to Adopt
- B. Gateway Business Park Plan – final draft dated August, 14, 2005.

ATTACHMENT A

RESOLUTION 06-_____

RESOLUTION TO ADOPT THE GATEWAY BUSINESS PARK PLAN AS PART OF THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2003 GROWTH POLICY.

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desire to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 11th day of July, 2006, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Gateway Plan:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the Gateway Business Park Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 14th day of July, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMCCITY CLERK

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Public Hearing and Resolution - Tax Incentive for Golden Recycling & Salvage, Inc.

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Council adopted three tax incentive programs in 2005 and agreed that BSEDA would process all applications for the incentives. BSEDA is recommending that the City favorably consider an incentive application from Golden Recycling. The City Council must conduct a public hearing and then act to approve or deny the application.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the application
- Conditionally approve the application
- Deny the application

FINANCIAL IMPACT: The new and expanding industry incentive program exempts 50% of the taxable value of the improvement from local school and local government tax levies for five (5) years. Ten percent (10%) is added to the taxable value each year after five years until the full value is taxed in the tenth and subsequent years. The estimated savings in City taxes is \$1,500 in the first year. The incentive value will change each year because the equipment value will depreciate and the City's levy will change.

RECOMMENDATION

Staff recommends that Council conditionally approve the application from Golden Recycling and Salvage, Inc. for a tax incentive under City Resolution 05-18376 and 15-24-1401 MCA.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Application

B: Resolution

C: Site photos

INTRODUCTION

The Council adopted three tax incentive programs in 2005 and agreed that BSEDA would process all applications for the incentives. BSEDA is recommending that the City favorably consider an incentive application from Golden Recycling. The City Council must conduct a public hearing and then act to approve or deny the application.

BACKGROUND

In 2005 the City adopted three tax incentive programs that are authorized by state law; for new and expanding industries; for remodeling or expanding buildings or structures and; for remodeling or expanding certain commercial buildings or structures. Golden Recycling and Salvage, Inc., located at 1100 Sixth Avenue North, has applied through BSEDA for a tax incentive for new and expanding industries. The company plans to replace a metal shear with a new and heavier machine. The machine allows the company to process metals to meet mill specifications. The company estimates that it will spend \$1,035,000 on the project and will hire 1-2 additional employees after the new equipment is installed. If approved by all government entities, the first year of exemption will be for tax year 2007. Construction is underway and should be completed by September. If the Council chooses to grant the incentive, the following conditions should apply:

- Construction must be substantially complete by December, 2006.
- Applicant must submit copies of any building permits and County Treasurer certification that all taxes have been paid in full.
- The work must be completed in substantial conformance with the application.

RECOMMENDATION

Staff recommends that Council conditionally approve the application from Golden Recycling and Salvage, Inc. for a tax incentive under City Resolution 05-18376 and 15-24-1401 MCA.

ATTACHMENTS

- A: Application
- B: Resolution
- C: Site photos

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P. 1

(As allowed under City of Billings Resolution 05-18376, Yellowstone County Resolution 94-92 and 15-24-1401 and 15-24-1402 MCA)

1. Name of Business: Golden Recycling & Salvage, Inc.,
dba: Golden Steel & Recycling, Inc.
2. ___ New Business: Start of construction (date) _____
End of construction (date) _____
3. X Expanding Business: Start of construction (date) July/August of 2006,
End of construction (date) August/Sepetember of 2006
4. Address of business: P.O. Box 1154, Billings, MT 59103

Actual location of business: 1100 6th Ave. N., Billings, MT 59103

Tax Code: D05863 / A02139
- Within city limits of Billings ☒ YES ☐ NO
5. Person representing business and responsible for application:
Name: Jim Gallup Title: President
Address: 1100 6th Ave. No., Billings, Telephone: 406-252-8080
MT. 59103
6. Amount of capital investment for new or expanded industry in Billings / Yellowstone County: \$1,035,000.00 (Attach detailed costs of new construction or expansion including land, materials, labor, equipment, and dates of construction. The County Commissioners and/or City Council may request further information, such as financial statements, business references, or other documents, prior to acting on this request.): _____

7. Explain business activity - what business does: Golden Steel & Recycling, Inc. purchases ferrous and non-ferrous scrap metals. Metals are prepared to meet mill specifications and resold.

8. How long has this business been located in Billings and/or Yellowstone County: _____
Since 1991

9. At the time of application, how many employees does the business have:
24 Full-time; 0 Part-time.
10. How many employees will the applicant have after completion of construction:
25-26 Full-time; 0 Part-time.
11. Describe job skills required for all new employees, both full and part time.
Heavy Machine Operators
12. What is hourly pay scale of both full and part-time employees to include benefits (new employees only): \$13.00 - \$15.00 per hour / plus \$2.25 benefits
13. Economic impact of capital investment:

14. Planned hiring schedule:
September 2006
15. List other property tax benefits business currently receives or has applied for:
We currently have two other tax incentives under this program.
16. If applicant is transporting, wholesaling, providing services, warehousing, or distributing commercial products or materials, proof must be provided that fifty percent or more of the applicant's gross sales or receipts are earned from outside the State, or that fifty percent or more of applicant's annual gross income is from out-of state sales.
17. Building permit (attach copy or explain absence): n/a
18. City/County Planning Department or Laurel-Yellowstone City/County Planning Board certifies that the business conforms with zoning regulations: n/a
19. City/County Health Department certifies that if a non-public water or sewer system is used (i.e., septic tank and water well) that system conforms to acceptable standard, or will do so on the completion of construction: n/a
20. County Treasure's Office certifies that City and County taxes have been paid in full or otherwise satisfied:



STEEL & RECYCLING, INC 406-252-8090 • Fax 406-252-0843 • 1-800-209-8003 • E-mail: sales@goldensteel.com

1100 6th Avenue N. • P.O. Box 1154 • Billings, MT 59103

**Golden Steel and Recycling, Inc
New Capital Investment**

EQUIPMENT	DATE	COST
Sierra 700 Ton Shear	9/1/2006	\$ 670,000
Concrete Slab	7/1/2006	\$ 35,000
Site Work	7/1/2006	\$ 73,000
Electrical	8/1/2006	\$ 25,000
Liebherr Scrap Handler	7/1/2006	\$ 232,000
TOTAL COST		\$ 1,035,000

ATTACHMENT B

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, APPROVING TAX BENEFITS FOR GOLDEN RECYCLING AND SALVAGE, INC.

WHEREAS, Resolution 05-18376 provides for granting tax incentives for new or expanding industries pursuant to Section 15-24-1401, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, Golden Recycling and Salvage, Inc. has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of Golden Recycling and Salvage, Inc. and has determined that said application meets all qualifications for the tax incentive and should be approved

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

That the application for tax benefits made by Golden Recycling and Salvage, Inc., dated June 21, 2006 is APPROVED. The tax benefits approved are those provided in Resolution 05-18376. The property receiving the tax benefits is described as follows:

Tax Code #D05863 and A02139, Tracts 2&3, C/S 1680, Tracts 4 &5, C/S 2124, Highway parcels 3 &5, lots 2-23 block 352 and lots 2-23 block 353 Billings 1st Addition

PASSED AND APPROVED by the City Council this 14th day of August, 2006.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AE, City Clerk

ATTACHMENT C
Site Photos



New shear machine site



Existing shear that will be replaced



Scrap handler

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AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Zone Change #784: Continuation of Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant, City of Billings, is requesting to rezone Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision from Residential 9600 (R-9600) to Residential 6000 Restricted (R-6000R). Lot 1, Block 1, is located on the west side of Zimmerman Trail between Colton Boulevard (south) and Poly Drive (north); Lot 1, Block 2, is located on east side of Zimmerman Trail, adjacent to the south of Poly Drive. The Zoning Commission conducted a public hearing on July 5, 2006, and forwarded no recommendation to the City Council based on a 2-2 tie vote. Staff recommended approval of the proposed zone change.

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. Since that meeting, staff has determined that the petition is valid, as 33% of the property owners within 150 feet of the subject property signed it.

ALTERNATIVES ANALYZED: Pursuant to Section 76-2-305(2) of the Montana Code Annotated (MCA), in the event of a protest petition against a zone change signed by the owners of twenty-five (25) percent or more of those lots located 150 feet from a lot included in a proposed change, such proposed amendment shall not become effective except by the favorable vote of two-thirds ($\frac{2}{3}$) of the present and voting members of the City Council.

RECOMMENDATION

The Zoning Commission forwards no recommendation to the City Council for Zone Change #784, as the result was a 2-2 tie vote.

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

ATTACHMENT:

A: Ordinance

ATTACHMENT A

Zone Change #784

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision,
containing approximately 6.86 acres

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

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

2. DESCRIPTION. A tract of land known as Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision, containing 6.86 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Residential 6000 Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6000 Restricted** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading 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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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

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

DEPARTMENT: Public Works & Planning and Community Development

PRESENTED BY: David D. Mumford, P.E., Public Works Director &
Candi Beaudry, AICP, Interim Planning Director

PROBLEM/ISSUE STATEMENT: This project will construct the Big Ditch Trail, Phase I, which extends a multi-use path from the Shiloh Road bike/ped underpass as far as Larchwood Lane (see the attached area map). Included in the base bid was a concrete path connecting the main trail with Rangeview Court, an alternate bid for a path extension to Larchwood Lane, and an alternate for trailhead signage. Bids were opened for the project on July 10, and, on July 24, Council delayed action on this award until staff provided them with a complete plan for developing all connecting links to adjoining subdivisions. Attachment A provides an overview of the entire trail connections plan. A presentation of this plan will also be made at this Council meeting.

FINANCIAL IMPACT: Project funding for Phase I is available from a federal CTEP grant (86.58% of the total funds), and required local match funds (13.42% of the total funds) pledged by BIKENET, a local nonprofit group.

Location of Work: Platted park land between Shiloh Road and Larchwood Lane
Funding Sources: CTEP Grant (\$135,167), and required local match (\$20,950) pledged by BIKENET, a local non-profit group

Approved Dollar Amount for Project: \$156,117
Spent (and obligated) to date: \$ 33,356
Funding available: \$122,761

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

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

RECOMMENDATION

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

ATTACHMENT

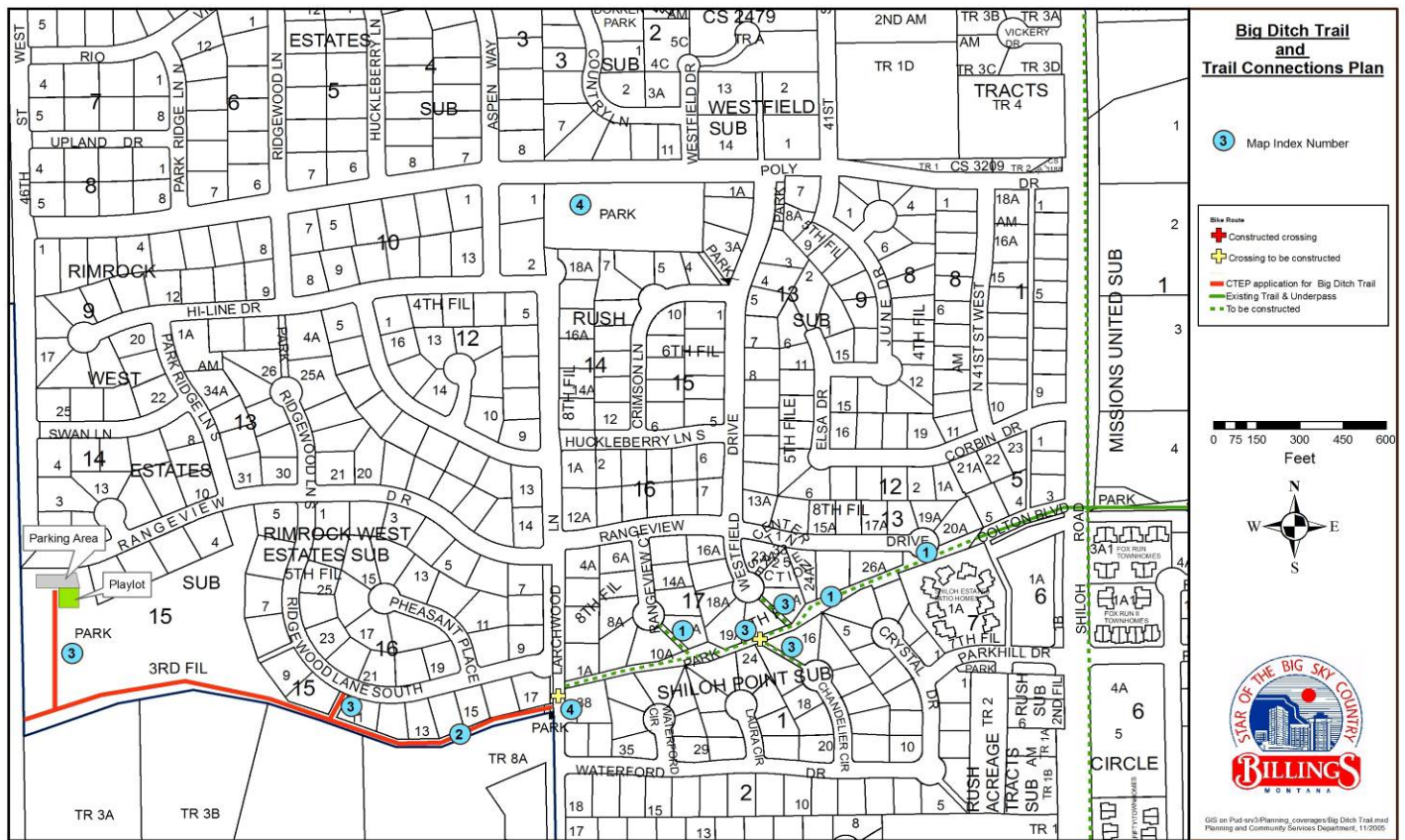
A. Big Ditch Trail and Trail Connections Plan (2 pages)

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

Big Ditch Trail and Trail Connections Plan

Map Index Number	Item	Description	Funding Sources	Expected Completion Date
1	Big Ditch Trail, Phase I	Ten-foot multi-use concrete path from the Shiloh Road bicycle/pedestrian underpass to Larchwood Lane. Bid includes a concrete path connecting the main trail with Rangeview Court. A connection will also be made at Rangeview Drive.	CTEP (\$135,167) BikeNet (\$20,950)	10/31/06
2	Big Ditch Trail, Phase II	Ten-foot multi-use concrete path from Larchwood Lane to 46 th Street West and an eight-foot multi-use concrete path connection from Ridgewood Lane South to main path.	CTEP, PPL and Bikes Belong grants (\$170,500)	10/31/07
3	Big Ditch Crossing and Connections	Concrete culvert across the Big Ditch connecting the main trail with Chandelier Circle. Four eight-foot multi-use concrete path connections from Chandelier Circle to main path, from Westfield Drive to main path, from Ridgewood Lane to main path, and from the Park Playlot to the main path.	CTEP and private funding or grant for matching funds (\$85,000)	10/31/08*
4	Big Ditch Crossing at 43 rd Street West and Larchwood Lane	Concrete culvert across the Big Ditch at 43 rd Street West and Larchwood Lane.	SID (in conjunction with the development of Rush Park)	10/31/08

* Timing of construction is based on receiving CTEP grant funds. If private funding is available, the connections could be constructed sooner.



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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

SUBJECT: Proposal to Finance the Park II Expansion
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City is seeking \$5.93 million in debt service funding to build the Park II expansion.

ALTERNATIVES ANALYZED: Two methods of financing were analyzed:

- 1) Sell revenue bonds.
 - a. Issuing bonds would not be feasible for this project because Parking won't generate enough revenue for 1.5 bond coverage after the reduction of the Parking rate increase. The 1.5 coverage means that the Parking Fund would need to generate 50% more revenue than the debt service payment. Potential investors would likely not buy the bonds.
 - b. Estimated interest rate of 5.75%
- 2) Direct lease financing by a lease purchase agreement with Koch Financial.
 - a. No debt service reserve required
 - b. No continuing disclosure requirements
 - c. Estimated \$75,000 savings in bond issuance costs
 - d. No bond coverage required
 - e. Interest rate of 5.48% held until August 18th

FINANCIAL IMPACT: There currently is \$2.2 million in the Parking fund reserves. The remaining work for Park II expansion will be paid for using \$1.7 million in reserves and \$5.93 million in debt proceeds. The remaining \$500,000 in reserves will be reserved for the first principle and interest payment on September 1, 2007. The debt will result in an annual payment of \$495,395.36 over 20 years.

RECOMMENDATION

Staff recommends that City Council accept the proposal from Koch Financial Corporation at a rate of 5.48% and authorize the Mayor to execute the required documents.

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

ATTACHEMENTS

- A- Resolution
- B- Ground Lease Agreement
- C- Lease Purchase Agreement
- D- Escrow Agreement

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO A LEASE-PURCHASE FINANCING; APPROVING THE TERMS AND CONDITIONS OF THE FINANCING AND AUTHORIZING THE EXECUTION OF DOCUMENTATION RELATING THERETO" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on August 14, 2006 , and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

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

(SEAL)

City Clerk

RESOLUTION NO. 06-_____

**RESOLUTION RELATING TO A LEASE-PURCHASE
FINANCING; APPROVING THE TERMS AND CONDITIONS
OF THE FINANCING AND AUTHORIZING THE EXECUTION
OF DOCUMENTATION RELATING THERETO**

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

Section 1. Authorization.

1.01. The City is authorized by Title 7, Chapter 14, Part 45, M.C.A. to acquire by lease, gift, or purchase lots or lands for use as parking areas for motor vehicles and to construct and maintain therefor suitable parking facilities for the use of the public.

1.02. The City is further authorized by Title 7, Chapter 14, Part 45, M.C.A. to pledge the revenues derived from the parking facilities to the repayment of obligations issued to finance the parking facilities.

1.03. This Council has previously determined to expand the Park II parking garage which would provide a drive thru for Wells Fargo and an additional 238 public parking spaces for the City (the “Park II Facility”). The City has available and plans to use the following sources of funds for the Park II Facility:

Parking Reserves – For Construction	\$1,700,000
Parking Reserves – For First Debt Service Payment	\$ 500,000

In order to pay the remainder of the Park II Facility costs, this Council determined that it is necessary and desirable and in the best interests of the City to finance such costs through a lease-purchase agreement in the principal amount of \$5,930,00 over a term of twenty (20) years at an annual rate of interest of 5.480%.

1.04. The City has determined that there will be adequate parking revenues to be generated by the City’s Parking Operations to provide net parking revenues in an amount sufficient to make the annual lease payments for the Park II Facility in the annual amount of \$495,400, all as more specifically provided in the documents described herein.

1.05. All acts, conditions and things which are required by the Constitution and laws of the State of Montana to be done prior to the execution of the lease-purchase agreement having been done, existing and having happened, it is necessary for this Council to establish the terms thereof, to approve the execution of documentation relating thereto and to direct the execution of the lease-purchase agreement forthwith.

Section 2. Documentation; Execution and Delivery; Terms.

2.01. There have been prepared and presented to this Council copies of the following documents, all of which are now and/or shall be placed on file in the office of the City Clerk:

- a) Ground Lease Agreement dated as of September 1, 2006 (the “Ground Lease”), by and between the City and the Purchaser; and
- b) Lease-Purchase Agreement dated as of September 1, 2006 (the “Lease”), by and between the City and the Purchaser; and
- c) Escrow Agreement dated as of September 1, 2006 (the “Escrow Agreement”), among and between the City, the Purchaser and Bank of New York Trust Company, a national banking association with a corporate trust office in St. Louis, Missouri, as escrow agent.

The forms of such documents are approved, with such variations, insertions and additions as are deemed appropriate by the parties and approved by the City Attorney.

2.02. Upon finalization of the Leases and Escrow Agreement and the execution thereof by the other parties thereto, the Mayor, City Administrator and Financial Services Manager shall execute and deliver the Ground Lease, Lease and Escrow Agreement on behalf of the City. The Mayor, City Administrator and Financial Services Manager shall execute on behalf of the City such other contracts, certifications, documents or instruments as Dorsey & Whitney LLP, bond counsel to the City, shall require, and all certifications, recitals, warranties and representations therein shall constitute the certifications, recitals, warranties and representations of the City. Execution of any instrument or document by one or more appropriate officers of the City shall constitute and shall be deemed conclusive evidence of the approval and authorization by the City and this Council of the instrument or document so executed.

2.03. The City’s payment obligations under the Lease shall be payable in equal annual installments, due each September 1, commencing September 1, 2007 and ending on September 1, 2026.

Section 3. Not a General Obligation. The City’s payment obligations under the Lease are payable solely from the Net Revenues of the City’s Parking Operations as more particularly described in the foregoing documents. The Lease Payments shall not constitute a general obligation of the City and shall not constitute a debt of the City within the meaning of the statutory debt limit.

Passed by the City Council of the City of Billings, Montana, this 14th day of August, 2006.

Mayor

Attest: _____
City Clerk

When Recorded Please Return to: Koch Financial Corporation
Attn: Lori J. Phillips
17767 North Perimeter Drive, Suite 101
Scottsdale, AZ 85255

GROUND LEASE AGREEMENT

BETWEEN

CITY OF BILLINGS, as ground lessor,

AND

KOCH FINANCIAL CORPORATION, as ground lessee

Dated as of September 1, 2006

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT, made and entered into as of the 1st day of September, 2006 (the "*Ground Lease*"), by and between CITY OF BILLINGS, as lessor (the "*Ground Lessor*"), a body politic and corporate of the State of Montana, whose mailing address is 210 North 27th Street, Billings, MT 59103, and KOCH FINANCIAL CORPORATION, as lessee (the "*Ground Lessee*"), a Kansas Corporation, whose mailing address is 17767 North Perimeter Drive, Scottsdale, Arizona 85255.

WITNESSETH:

WHEREAS, the Ground Lessor is the owner of certain land located in Yellowstone County, State of Montana, as more particularly described in *Exhibit A* attached hereto and made a part hereof by this reference (the "*Real Estate*"); and

WHEREAS, the Ground Lessor is of the opinion that the Real Estate should be developed by the acquisition of certain structures, facilities and improvements consisting of Part II Expansion of a Parking Structure (collectively, the "*Improvements*"), for the performance of essential governmental functions by or on behalf of the Ground Lessor; and

WHEREAS, to finance the acquisition of the Improvements on the Real Estate, the Ground Lessor desires to enter into this Ground Lease to lease the Real Estate to the Ground Lessee who will, simultaneously with the execution hereof, execute that certain Lease Purchase Agreement dated as of September 1, 2006 (the "*Lease*"), by which (among other things) the Ground Lessor will sublease the Real Estate back from the Ground Lessee and lease the Improvements from the Ground Lessee (the Real Estate and the Improvements are collectively referred to herein as the "*Leased Property*"); and

WHEREAS, the Ground Lessor intends that the Leased Property (including the leasehold estate created hereunder) will provide security to the Ground Lessee and its assignees; and

WHEREAS, the Ground Lessor and the Ground Lessee are each empowered to enter into this Ground Lease pursuant to applicable law;

NOW, THEREFORE, for and in consideration of the payment of rental and the performance of the mutual promises and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. All capitalized terms used and not otherwise defined in this Ground Lease shall have the meanings ascribed thereto in the Lease, unless the context shall otherwise clearly require.

ARTICLE II

REPRESENTATIONS AND DISCLAIMERS

Section 2.01. Representations of the Ground Lessor. The Ground Lessor represents, covenants and warrants to the Ground Lessee as follows:

(a) The Ground Lessor has good and marketable fee title to the Real Estate subject only to Permitted Encumbrances, has the full power and authority to enter into the transactions contemplated by this Ground Lease and the Lease and to carry out its obligations hereunder and thereunder, and has been duly authorized to execute and deliver this Ground Lease and the Lease and by proper action has duly authorized the execution and delivery of this Ground Lease and the Lease;

(b) Neither the execution and delivery of this Ground Lease nor the Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Ground Lessor is now a party or by which the Ground Lessor or the Real Estate is bound;

(c) Except for Permitted Encumbrances, the Real Estate is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance that would prohibit or materially interfere with the construction or usage of Improvements or the use of the Real Estate to support the financing as contemplated by this Ground Lease and the Lease;

(d) If a problem with the title to the Real Estate or the use thereof should develop, the Ground Lessor shall undertake all actions necessary to defend title including exercising its condemnation powers to the extent necessary and as permitted by law to obtain the necessary rights in the Real Estate that will enable the parties hereto to perform the transactions contemplated by the Lease and this Ground Lease;

(e) The Real Estate is public property exempt from *ad valorem* property taxes and other assessment of any kind or all taxes, assessments or impositions of any kind with respect to the Real Estate, except current taxes, have been paid in full;

(f) The Real Estate is properly zoned for the construction and use of the Improvements for their intended purposes;

(g) The lease of the Real Estate by the Ground Lessor to the Ground Lessee, as provided in this Ground Lease, and the lease and sublease back of the Leased Property by the Ground Lessee to the Ground Lessor, as provided in the Lease, is necessary, desirable and in the public interest, and the Ground Lessor hereby declares its need for the Leased Property in order for the Ground Lessor to perform a governmental function;

(h) The Ground Lessor has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the Ground Lessor's interest in any property now or hereafter included in the Leased Property shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Ground Lease and the Lease;

(i) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal relating to the Real Estate or challenging the validity of the proceedings of the Ground Lessor authorizing this Ground Lease or the Lease or the power or authority of the Ground Lessor to enter into the Lease or this Ground Lease or the validity or enforceability of the Lease or this Ground Lease or which, if adversely determined, would adversely affect the transactions contemplated by the Lease or this Ground Lease or the interest of the Ground Lessor under the Lease or this Ground Lease; and

(j) The Ground Lessor's past and current uses of the Real Estate and, to the best of the Ground Lessor's knowledge, all past and current uses of the Real Estate have complied and currently comply with all federal, state and local environmental laws, rules, regulations and ordinances. Neither the Ground Lessor nor anyone on behalf of the Ground Lessor has received notice of any violations of any environmental law, rule, regulation or ordinance. No actions or lawsuits have been commenced or threatened by a governmental agency or any other person or entity claiming non-compliance with any environmental law, rule, regulation or ordinance. The Ground Lessor has never applied for environmental liability insurance or, if it has so applied, it has never been denied such coverage. The Ground Lessor has no knowledge or notice of any emission, discharge, seepage, release or pollutant in or upon the Real Estate.

Section 2.02. Representations of the Ground Lessee. The Ground Lessee represents, covenants and warrants to the Ground Lessor that the Ground Lessee has the authority to execute and to deliver this Ground Lease and the Lease and to perform all of its obligations hereunder and thereunder, has duly authorized the execution and the delivery of this Ground Lease and the Lease and shall permit this Ground Lease or a memorandum thereof to be recorded in Yellowstone County, State of Montana.

Section 2.03. Waiver of Personal Liability. All obligations or liabilities under this Ground Lease on the part of the Ground Lessee are solely corporate liabilities of the Ground Lessee as a corporation, and, to the extent permitted by law, the Ground Lessor hereby releases each and every duly authorized director, officer, agent or employee of the Ground Lessee of and from any personal or individual liability under this Ground Lease. No director, officer, agent or employee of the Ground Lessee shall at any time or under any circumstances be individually or personally liable under this Ground Lease for anything done or omitted to be done by the Ground Lessee hereunder.

Section 2.04. Taxes. The Ground Lessor covenants and agrees to pay any and all taxes and assessments levied or assessed upon the Real Estate or any portion thereof.

ARTICLE III

LEASE OF THE REAL ESTATE

Section 3.01. Demise. The Ground Lessor hereby demises and leases to the Ground Lessee and the Ground Lessee hereby takes and leases from the Ground Lessor for the sum of \$1.00 and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the Real Estate described in *Exhibit A* attached hereto and by this reference made a part hereof, including without limitation, all improvements and all rights, powers, licenses, easements, rights-of-way, privileges, hereditaments and franchises now or hereafter situated thereon or pertaining thereto.

Section 3.02. Term. The term of this Ground Lease shall commence on the Funding Date and shall end on the first to occur of the following events: (a) September 1, 2036 or (b) the payment or prepayment in full of all Rent Payments plus any and all other amounts whatsoever owing to the Ground Lessee (as Lessor under the Lease) pursuant to the terms of the Lease.

ARTICLE IV

PURPOSE, USE AND CONDEMNATION

Section 4.01. Purpose. The Ground Lessee shall use the Real Estate solely for the purpose of (a) permitting the acquisition of the Improvement on the Real Estate and (b) leasing the Leased Property to the Ground Lessor pursuant to the Lease and for such purposes as may be incidental thereto; *provided*, that in the event of the occurrence of an Event of Default under the Lease, the Ground Lessee and any successor or assign thereof may (i) exercise the remedies provided in the Lease, (ii) use the Real Estate for any lawful purpose, subject to any applicable legal limitations or restrictions, and (iii) exercise all options provided herein.

Section 4.02. Quiet Use and Enjoyment. Subject to the terms of the Lease, the Ground Lessor hereby covenants to provide the Ground Lessee at all times during the term of this Ground Lease with quiet use and enjoyment of the Real Estate, and the Ground Lessee during such term shall have, shall hold and shall enjoy the Real Estate peaceably and quietly, without suit, trouble or hindrance from the Ground Lessor.

Section 4.03. Condemnation. In the event of condemnation of the Real Estate and the Improvements, the proceeds of such condemnation will belong to the Ground Lessor to be applied as provided in the Lease. The Ground Lessor hereby assigns to the Ground Lessee its interest in any condemnation award or title insurance proceeds respecting the Leased Property to the extent necessary to provide for the payment of the Rent Payments payable under the Lease.

Section 4.04. Environmental Conditions. The Ground Lessee shall not be obligated to monitor compliance of the Leased Property with applicable environmental or other laws. The Ground Lessee shall not have any obligations or responsibility to foreclose or otherwise further involve itself with the Leased Property under any circumstances, including any instance where the Ground Lessee is notified of any non-compliance of the Leased Property with applicable

environmental laws. The Ground Lessor represents that the Real Estate is currently in full compliance with all applicable Federal, State and local environmental laws. It is expressly understood that the Ground Lessee shall not have the right or the obligation to monitor the Ground Lessor's compliance with environmental laws.

ARTICLE V

SURRENDER, ASSIGNMENT, SUBLETTING AND NO MERGER

Section 5.01. Surrender of Real Estate and Improvements. The Ground Lessee agrees that upon the termination or expiration of this Ground Lease as provided in Section 3.02 hereof it will surrender the Leased Property to the Ground Lessor free and clear of all liens and encumbrances created by or through the Ground Lessee, except the Permitted Encumbrances.

Section 5.02. Assignment. The Ground Lessee shall have the right, during the term hereof, to assign its rights under this Ground Lease without the consent of the Ground Lessor in connection with any assignment of its rights under the Lease.

Section 5.03. Subletting or Sale to Other Parties. It is agreed that, upon the occurrence and the continuance of an Event of Default under the Lease, the Ground Lessee, in its sole discretion, shall have the right to sell, or to sublease its interest hereunder in the Leased Property to any other person or party for any purpose authorized by applicable law or otherwise exercise its rights and remedies under this Ground Lease, the Lease or otherwise as provided by law.

Section 5.04. No Merger. Neither this Ground Lease, the Lease nor any provisions hereof or thereof shall be construed to effect a merger of the title of the Ground Lessor to the Real Estate under this Ground Lease and the Ground Lessor's leasehold interest therein under the Lease.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Severability. If any term or provision of this Ground Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Ground Lease or the application of such term or provision to persons or to circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 6.02. Notices and Demands. Any notice, demand or other communication under this Ground Lease by either party to the other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested, or delivered personally and, in the case of the Ground Lessor, addressed to its mailing address set forth above and in the case of the Ground Lessee addressed to its mailing address as set forth

above, or at such other address with respect to which either party, from time to time, may designate in writing and may forward to the other party as provided in this Section.

Section 6.03. Binding Effect. This Ground Lease shall inure to the benefit of and shall be binding upon the Ground Lessee and the Ground Lessor and their respective successors and assigns.

Section 6.04. Counterparts. This Ground Lease may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 6.05. Applicable Law. This Ground Lease shall be interpreted and enforced in accordance with the laws of the State in which the Real Estate is located.

Section 6.06. Amendments. The parties hereto, from time to time, may enter into any amendment hereto under the same circumstances, in the same manner, and subject to the same conditions as are applicable to amendments of the Lease as set forth in the Lease.

Section 6.07. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provisions of this Ground Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease by their respective officers thereunto duly authorized as of the date first above written.

ATTEST:

CITY OF BILLINGS, as Ground Lessor

Name: _____
Title: _____

By _____
Name: _____
Title: _____

[SEAL]

ATTEST:

KOCH FINANCIAL CORPORATION, as Ground
Lessee

Name: _____
Title: _____

By _____
Name: _____
Title: _____

[SEAL]

ACKNOWLEDGMENTS

STATE OF _____)

:SS

COUNTY OF _____)

On the ____ day of _____, 2006, personally appeared before me _____ and _____, who, being by me duly sworn (or affirmed), did say that they are the _____ and _____, respectively, of the CITY OF BILLINGS, the body corporate and politic described in, and that executed, the foregoing instrument, and that said instrument was signed on behalf of said body corporate and politic by due authority, and said _____ and _____, respectively, acknowledged to me that said body corporate and politic executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year in this certificate first above written.

My Commission Expires: _____

NOTARY PUBLIC

Residing at:_____

[SEAL], State of _____

STATE OF _____)

:SS

COUNTY OF _____)

On the ____ day of _____, 2006, personally appeared before me _____ and _____, who, being by me duly sworn (or affirmed), did say that they are the _____ and _____, respectively, of KOCH FINANCIAL CORPORATION, the person described in and that executed the foregoing instrument, and that said instrument was signed on behalf of said person by due authority, and said _____ and _____, respectively, acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year in this certificate first above written.

My Commission Expires: _____

NOTARY PUBLIC

Residing at:_____

[SEAL], State of _____

When Recorded Please Return to: Koch Financial Corporation
Attn: Lori J. Phillips
17767 North Perimeter Drive, Suite 101
Scottsdale, AZ 85255

EXHIBIT A

DESCRIPTION OF THE REAL ESTATE

LTS 1-4 19-24 s130.3' of 20' of ABDN Alley BLK 91 Billings Original Townsite

LTS 5-7 Amend BLK 91 Billings Original Town

LTS 7A & 8 BLK 91 Billings Original Town

LTS 9-12 BLK 91 Billings Original Town

When Recorded Please Return to: Koch Financial Corporation
Attn: Lori J. Phillips
17767 North Perimeter Drive, Suite 101
Scottsdale, AZ 85255

LEASE PURCHASE AGREEMENT

BETWEEN

KOCH FINANCIAL CORPORATION,
as Lessor

AND

CITY OF BILLINGS, as Lessee

Dated as of September 1, 2006

LEASE PURCHASE AGREEMENT

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EXHIBIT A — DESCRIPTION OF THE REAL ESTATE

LEASE PURCHASE AGREEMENT

This LEASE PURCHASE AGREEMENT dated as of September 1, 2006 (this or the "*Lease*"), entered into by and between KOCH FINANCIAL CORPORATION, as lessor (the "*Lessor*"), a Kansas corporation whose mailing address is 17767 North Perimeter Drive, Scottsdale, Arizona 85255, and CITY OF BILLINGS, as lessee (the "*Lessee*"), a body politic and corporate of the State of Montana, whose mailing address is 210 North 27th Street, Billings, MT 59103.

WITNESSETH:

WHEREAS, the Lessee is authorized by law to acquire, lease, purchase, erect, repair and maintain buildings and other facilities necessary for its essential governmental purposes; and

WHEREAS, the Lessee is contemporaneously herewith acquiring a leasehold estate in and to certain land located in Yellowstone County, State of Montana, as more particularly described in *Exhibit A* attached hereto and made a part hereof by this reference and the existing buildings and improvements thereon (the "*Real Estate*") and desires to the extent funds are available to undertake the acquisition of certain structures, facilities and improvements consisting of Part II Expansion of a Parking Structure subject to that certain Lease Purchase Agreement dated September 1, 2006 between Lessee and Lessor (collectively, the "*Improvements*"), as authorized by Montana law, for the performance of essential governmental functions by or on behalf of the Lessee. The Real Estate and any Improvements as defined herein are collectively referred to as the "*Leased Property*"; and

WHEREAS, the Lessee, as ground lessor, and the Lessor, as ground lessee, on this day will have entered into the Ground Lease whereby the Lessee has leased or will lease to the Lessor the Real Estate for the term and under the conditions as specified therein for purposes of this Lease; and

WHEREAS, pursuant a resolution or other official action duly adopted by its governing body, the Lessee has determined that it is in the best interest of the Lessee and its inhabitants for the Lessee to enter into and to execute and deliver this Lease and certain related documents thereto for the purpose of leasing the Improvements and subleasing the Real Estate from the Lessor; and

WHEREAS, in exchange for the Lessor depositing or causing to be deposited an amount equal to \$5,930,000.00 to be used for the payment of the costs of acquiring the Leased Property, the Lessee will enter into this Lease and the Ground Lease and will pay the Lessor Rent Payments during the Lease Term as provided herein;

NOW, THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.01. Definitions. Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Lease shall have the respective meanings set forth below.

“Authorized Representative” shall mean (a) with respect to the Lessor: the President, Senior Vice President/COO or Vice President, Operations of the Lessor or any other person authorized to act on behalf of the Lessor for purposes of this Lease and designated as an Authorized Representative of the Lessor by a certificate of the Lessor signed by any two of such above-named officers; and (b) with respect to the Lessee; the Mayor.

“Business Day” shall mean any day except Saturday, Sunday or any day on which banks located in the city in which the Lessee’s offices are located are required or are authorized by law to remain closed.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations proposed or promulgated thereunder from time to time.

“Contractor” or *“Contractors”* shall mean the contractors and vendors selected by the Lessee to acquire, construct and install the Improvements or a portion thereof on the Real Estate.

“Costs” shall mean all costs that the Lessee is entitled to incur under applicable State law for acquiring, constructing, furnishing, equipping and installing the Improvements, including architectural, engineering and design costs, financing costs, including capitalized interest, and Costs of Issuance and all fees and costs incidental or related thereto.

“Costs of Issuance” shall mean all items of expense directly or indirectly payable by or reimbursable to the Lessee or to the Lessor and related to the authorization, the execution and delivery of the Ground Lease and the Lease, including but not limited to printing costs, costs of preparation and reproduction of documents, filing and recording fees, all initial fees and charges of the Lessor, the fees to be paid to any placement agent, fees to be paid to any financial advisor to the Lessee, title insurance, legal fees of parties to the transaction and all initial charges and all other initial fees and disbursements contemplated by this Lease.

“Event of Default” shall mean an Event of Default as described in Section 8.01 hereof.

“Fiscal Period” shall mean the fiscal year or fiscal biennium, as applicable, of the Lessee for its financial and budgeting purposes. The Lessee’s Fiscal Period begins on July 1 of each calendar year and ends on the next succeeding June 30.

“Funding Date” shall mean that date on which the Lessor and the Lessee execute and deliver this Lease and the Interest Portion or Rent Payments begins to accrue.

“Gross Revenues” shall mean Parking Revenues, revenues received from sales of property acquired for the Parking Operations and any income received from the investment of such gross revenues.

“Ground Lease” shall mean the Ground Lease Agreement dated as of the date hereof, between the Lessee, as ground lessor, and the Lessor, as ground lessee, as it may be amended in accordance with its terms, with respect to the lease of the Real Estate for purposes of the lease back pursuant to this Lease.

“Improvements” shall mean the acquisition of certain structures, facilities and improvements consisting of Part II Expansion of a Parking Structure on the Real Estate.

“Interest Portion” shall mean, with respect to each Rent Payment, the portion thereof identified as such in the Rent Payment Schedule.

“Lease” shall mean this Lease Purchase Agreement between the Lessee and the Lessor dated as of September 1, 2006, as it may be amended in accordance with its terms.

“Lease Rights” shall have the meaning provided in Section 7.01 hereof.

“Lease Term” or *“Term”* shall mean the period specified in Section 4.02 hereof.

“Leased Property” shall mean the Real Estate and the Improvements, collectively.

“Lessee” shall mean CITY OF BILLINGS.

“Lessor” shall mean KOCH FINANCIAL CORPORATION and its successors and assigns.

“Net Revenues” or *“Net Parking Revenues”* shall mean, shall mean the Parking Revenues less the amount necessary to pay the Operating Expenses and maintenance of the Parking Operations.

“Off-Street Parking Facilities” shall mean all surface lots now existing, all additions thereto and replacements and improvements thereof, all off-street parking garages and ramps and other surface lots and additions thereto or replacements or improvements thereof heretofore owned or hereafter acquired by the City on all real and personal properties incidental thereto or used in connection therewith.

“On-Street Parking Facilities” shall mean all parking meters or similar devices now or hereafter located on public streets and roads within the City.

“Operating Expenses” shall mean expenses which under sound accounting practice are current, reasonable and necessary costs of the operation and maintenance of the Parking Operations and to establish and maintain a reserve therefor; including but not limited to City administrative expenses relating solely to the Parking Operations, premiums for insurance on its properties and against liability in connection with its operation, and labor, material and supplies used for operation and maintenance, including current repairs. Operating Expenses do not include any allowance or payment for depreciation, renewal or replacement or any salary or wages of any City officer or employee except such part thereof as represents reasonable compensation for the performance of duties necessary to the current operation and maintenance of the Parking Operations.

“Optional Prepayment Date” shall mean any date specified as such in the Rent Payment Schedule.

“Parking Facilities” shall mean the Off-Street Parking Facilities and On-Street Parking Facilities.

“Parking Operations” shall mean the operation of all Off-Street Parking Facilities and all On-Street Parking Facilities.

“Parking Revenues” shall mean all revenues received by the City from the Parking Operations, including but not limited to revenues derived by the City from contracted services or otherwise, including gross income and receipts from rates, tolls, charges and rentals for the availability and use of services furnished by all Off-Street Parking Facilities of the City, and all penalties and interest thereon, gross income and receipts from all On-Street Parking Facilities including fines and penalties thereon, and gross income and receipts from any special parking permit program administered by the City including fines and penalties thereon..

“Permitted Encumbrances” shall mean as of any particular time:

- (a) determined liens and charges incident to construction or maintenance now or hereafter filed on record that are being contested in good faith and have not proceeded to judgment, *provided* that the Lessee shall have set aside adequate reserves with respect thereto;

- (b) the lien of taxes and assessments that are not delinquent;

- (c) the lien of taxes and assessments that are delinquent but the validity of which is being contested in good faith and with respect to which the Lessee shall have set aside adequate reserves unless, in the opinion of

independent counsel, that thereby any of the Leased Property or the interest of the Lessor may be in danger of being lost or forfeited;

(d) minor defects and irregularities in the title to the Real Estate, in the opinion of independent counsel, that do not in the aggregate materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;

(e) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, materials, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment that the Lessee certifies in writing do not materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;

(f) rights reserved to or vested in any municipality or governmental or other public authority to control, to regulate or to use in any manner any portion of the Real Estate that do not materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;

(g) any obligations or duties affecting any portion of the Leased Property or any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit;

(h) present or future zoning laws and ordinances;

(i) the rights created under the Ground Lease;

(j) the rights created under this Lease; and

(k) any exceptions that are acceptable to the Lessor and are noted in the title insurance policy delivered with respect to this transaction.

“Principal Portion” shall mean, with respect to each Rent Payment, the portion thereof identified as such in the Rent Payment Schedule.

“Real Estate” shall mean the land together with existing facilities thereon described in *Exhibit A* to this Lease and in the Ground Lease.

“Rent Payment” shall mean the respective amounts (consisting of a Principal Portion and an Interest Portion) to be paid by the Lessee on each Rent Payment Date pursuant to Section 3.01 hereof, and identified in the Rent Payment Schedule.

“*Rent Payment Date*” shall mean the dates identified as such in the Rent Payment Schedule, or if any such date is not a Business Day, the first Business Day preceding any such date until the Lease is paid in full.

“*Rent Payment Schedule*” shall mean that certain Rent Payment Schedule attached hereto as *Exhibit B*, as it may be modified from time to time in accordance with this Lease.

“*Resolutions*” shall mean the resolutions or other official action adopted by the governing body of the Lessee authorizing this Lease and the Ground Lease.

“*Special Counsel*” shall mean any attorney at law or any firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions thereof and duly admitted to practice law before the highest court of any state.

“*State*” shall mean the State of Montana.

“*Montana Code*” shall mean the Montana Code Annotated, as amended.

“*State and Federal Laws*” shall mean the constitution and the laws of the State, any ordinance, rule or regulation of any agency or political subdivision of the State, any law of the United States and any rule or regulation of any federal agency.

“*Termination Date*” shall mean the day prior to the first day of the Fiscal Period for which an Event of Default, as set forth in Section 8.01 hereof, has occurred.

“*Title Insurance Policy*” shall mean the lender’s policy of title insurance policy, with extended coverage and such endorsements as the Lessor shall reasonably require, issued by American Title and Escrow in connection with the Real Estate.

Section 1.02.Exhibits. The following Exhibits are attached to this Lease and by this reference are made a part of this Lease:

EXHIBIT A: LEGAL DESCRIPTION OF THE REAL ESTATE

EXHIBIT B: RENT PAYMENT SCHEDULE AND PURCHASE OPTION PRICE

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS

Section 2.01. Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants to the Lessor as follows:

(a) The Lessee is a public body corporate and politic duly created and existing under, and governed by its home rule charter, the Constitution and the laws of the State.

(b) The Lessee is authorized under applicable State law, to acquire, lease, purchase, construct, operate, equip and maintain the Leased Property on the Real Estate; to enter into this Lease and the Ground Lease and the transactions contemplated hereby and thereby and to carry out its obligations under this Lease and the Ground Lease.

(c) The officers or officials of the Lessee executing this Lease and the Ground Lease have been duly authorized to execute and to deliver this Lease and the Ground Lease as provided in the Resolutions.

(d) The Lessee has complied and will comply with all open meeting laws, all public bidding laws and all other State and Federal Laws applicable to it with respect to this Lease and the Ground Lease, the acquisition and the conveyance of the Real Estate or any rights in the Real Estate and the acquisition, construction and installation of the Improvements on the Real Estate.

(e) Except as provided under the terms of this Lease and the Ground Lease, the Lessee will not transfer, lease, assign, mortgage or encumber the Leased Property or any portion thereof or take any other action contrary to the rights of the Lessor created under this Lease and the Ground Lease.

(f) The Leased Property is essential for the Lessee to perform its governmental purpose of providing public parking. The Lessee will use the Leased Property during the Lease Term only to perform a governmental function.

(g) Upon the execution and delivery of this Lease, the Lessee will provide to the Lessor opinions of its legal counsel and such other certificates and documents as are customary and as reasonably may be requested by the Lessor to evidence the validity of the transaction contemplated by this Lease and the Ground Lease, including (but not limited to) a Phase I environmental assessment, a Title Insurance Policy, a survey of the Real Estate locating any structures thereon and an appraisal, each in form and substance acceptable to the Lessor.

(h) During the Term of this Lease, the Lessee will comply with the requirements of the Code applicable to this Lease in order to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion and will not take any action or fail to take any action that would cause the loss of such exclusion or cause the Interest Portion to be treated as an item of tax preference under Section 57 of the Code, insofar as it has the power and the authority to do so under applicable State law.

(i) There are no outstanding obligations, other than Operating Expenses, that are payable from the Net Parking Revenues of the City.

(j) Information supplied and statements made by the Lessee in any financial statement or current budget dated or prepared prior to or contemporaneously with this Lease present such information fairly and accurately.

(k) The execution and delivery by the Lessee of the Ground Lease and this Lease, and the compliance by the Lessee with the provisions thereof and hereof, will not conflict with or constitute on the part of the Lessee a violation of, breach of or default under its charter or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Lessee is bound, or, to the best of the Lessee's knowledge, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Lessee or any of its activities or properties, and all consents, approvals, authorizations and orders of governmental or regulatory authorities that are required for the consummation of the transactions contemplated hereby and thereby have been obtained.

(l) The Lessee agrees that it shall not authorize any action or act in any way that would cause any charge or claim to exist on the Leased Property or the Net Parking Revenues other than Permitted Encumbrances or authorize any other action or act in any way that would adversely impact the rights of the Lessor hereunder.

Section 2.02. Representations, Covenants and Warranties of the Lessor. The Lessor represents, covenants and warrants to the Lessee as follows:

(a) The Lessor is a Kansas corporation, has full and complete power to enter into this Lease and the Ground Lease, to enter into and to carry out the transactions contemplated of it hereby and thereby and to carry out its obligations under this Lease and the Ground Lease is possessed of full power to own and to hold real and personal property and to lease the same, and has duly authorized the execution and delivery of this Lease and the Ground Lease and all other agreements, certificates and documents contemplated hereby and thereby.

(b) Neither the execution and delivery of this Lease or the Ground Lease nor the fulfillment of or the compliance with the terms and the conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby conflicts with or results in a breach of the terms, the conditions or the provisions of any restriction, any agreement or any instrument to which the Lessor is now a party or by which the Lessor or its property is bound, constitutes a default under any of the foregoing or results in the creation or the imposition of any lien, charge or encumbrance whatsoever upon any of the property or the assets of the Lessor or upon the Leased Property, except Permitted Encumbrances.

(c) If the Lessee elects to prepay this Lease pursuant to Section 6.01 hereof, the Lessor will deliver, or will cause to be delivered, to the Lessee all documents that are or may be necessary to vest all of the Lessor's rights and interests in and to the Leased Property in the Lessee and will release all liens and encumbrances created under this Lease or the Ground Lease with respect to the Leased Property.

Section 2.03. Disclaimers of the Lessor. (a) THE LESSOR BY DELIVERY HEREOF MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS OF THE LEASED PROPERTY FOR THE USE CONTEMPLATED BY THE LESSEE UNDER THIS LEASE.

(b) THE LESSOR LEASES THE LEASED PROPERTY AS IS AND, NOT BEING ANY CONTRACTOR'S AGENT, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, THE FITNESS FOR A PARTICULAR PURPOSE, THE DESIGN OR THE CONDITION OF THE LEASED PROPERTY, OR AS TO THE QUALITY, THE CAPACITY OF THE MATERIAL OR THE WORKMANSHIP OF THE LEASED PROPERTY OR THE ABILITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF TO SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SET OF SPECIFICATIONS OR CONTRACT THAT MAY BE APPLICABLE THERETO. It is agreed that all such risks, as between the Lessor, on the one hand, and the Lessee on the other hand, are to be borne by the Lessee at its sole risk and expense. The Lessee agrees to look solely to the Contractors of the Leased Property for such warranties, and all warranties made by the Contractors, to the degree possible, are hereby assigned to the Lessee for the Term.

(c) THE LESSOR MAKES NO PATENT WARRANTIES OR REPRESENTATIONS WHATSOEVER. THE LESSOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES WITH RESPECT TO THE LEASED PROPERTY.

(d) THE PROVISIONS OF THIS SECTION ARE APPLICABLE TO ALL PORTIONS OF THE LEASED PROPERTY CONSTRUCTED, ACQUIRED OR INSTALLED UNDER THIS LEASE.

ARTICLE III

RENT; PAYMENT OF RENT; PLEDGE OF PARKING REVENUES

Section 3.01. Rent Payments. The Lessee agrees to pay to the Lessor, but solely from Net Parking Revenues, as rent for the Leased Property the total amount of all Rent Payments on the respective Rent Payment Dates. THE RENT PAYMENTS SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE LESSEE, THE STATE OR ANY AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION THEREOF AS CONTEMPLATED WITHIN ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION PROVISION; THE LESSEE'S OBLIGATION TO MAKE RENT PAYMENTS IS A SPECIAL OBLIGATION OF THE LESSEE, PAYABLE SOLELY FROM NET PARKING REVENUES OF THE CITY'S PARKING OPERATIONS.

Section 3.02. Parking Fund. A fund to be designated as the Parking Fund is established and shall be maintained as a separate and special bookkeeping account on the official books of the City until all rent Payments hereunder have been fully paid. All Gross Revenues are irrevocably pledged and appropriated and shall be credited to the Parking Fund as received. All Parking Revenues received by the City and credited to the Parking Fund shall be used to pay the Operating Costs of the Parking Facilities and then to make the Rent Payments hereunder as due. Net Parking Revenues in excess of the amounts required to make the Rent Payments may be used for other parking facilities, projects, or costs.

Section 3.03. Covenant to Maintain. The City covenants and agrees with the Lessor that until all such Rent Payments are fully paid, the City will continue to hold, maintain and operate the Parking Facilities as a public utility and convenience, free from all liens thereon or on the income therefrom other than the liens herein granted or provided for, and will maintain, expend and account for its Parking Fund, and will issue no other obligations constituting in any manner a lien or charge on the Parking Revenues.

Section 3.04. The City will not establish or authorize the establishment of any public Off-Street Parking Facilities in competition with any or all of the services and facilities of the Parking Facilities unless such Off-Street Parking Facilities are designated a part of the Parking Facilities and the revenues therefrom are available to make the Rent Payments.

Section 3.05. The City will prescribe, revise and collect, directly or through leases, agreements or licenses, and agrees to charge and maintain reasonable rates, fees, charges and rentals for all services, facilities and commodities furnished and made available by the Parking Operations sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Parking Operations and to produce Net Revenues sufficient to pay the Rent Payments.

Section 3.06. Rental Payments to be Unconditional; No Abatement or Setoff. The obligation of the Lessee to pay Rent Payments when due hereunder constitutes a firm lease and is not subject to nonappropriation risk. The Lessee's obligation to make Lease Payments is absolute and unconditional in all events, from Net Parking Revenues. Notwithstanding any dispute between the Lessee and the Lessor, any Contractor or any other person, the Lessee shall pay all Rent Payments when due and shall not withhold any Rent Payment pending final resolution of such dispute, nor shall the Lessee assert any right of set-off or counterclaim against its obligation to pay Rent Payments when due. The Lessee's obligation to pay Rent Payments during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release the Lessor from the performance of its obligations hereunder; and if the Lessor should fail to perform any such obligation, the Lessee may institute such legal action against the Lessor as the Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

Section 3.07. Rental Payment Obligation after Event of Default. Notwithstanding the termination of the Lease Term, as provided in Section 4.02 hereof, the Lessee's obligation to pay Rent Payments and any other amounts whatsoever due to the Lessor prior to the Termination Date solely from Net Parking Revenues shall continue until such obligations have been paid pursuant to Section 3.02 of the Ground Lease.

Section 3.08. Return of Leased Property. Upon the termination of the Lease Term without the payment of all Rent Payments due and unpaid and all other amounts whatsoever due hereunder and under the Ground Lease, whether at or prior to the stated Rent Payment Date, the Lessee immediately shall surrender possession of the Leased Property peacefully and properly to the Lessor in the condition, the repair, the appearance and the working order required under this Lease.

The Lessor's rights in and to the Leased Property thereafter shall be governed by the terms and the conditions of this Lease and the Ground Lease, and the Lessor may lease, sublease or sell its rights in the same in such manner as it sees fit, not inconsistent with the terms of this Lease and the Ground Lease. In the event that the Leased Property shall be leased or subleased or the Lessor's rights therein shall be sold and the amounts received from such lease, sublease or sale of leasehold rights meet the requirements of Section 3.02 of the Ground Lease, then all further proceeds of any such lease or sublease shall be the property of the Lessee and the Ground Lease shall terminate, all as provided in the Ground Lease.

Section 3.09. Damages for Failure to Make Timely Surrender of Leased Property. If after an Event of Default the Lessee has not delivered possession of the Leased Property to the Lessor in accordance with Section 3.08 hereof, the Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rent Payments thereafter stated to come due under the Rent Payment Schedule that are attributable to the number of days during which the Lessee fails to take such actions.

ARTICLE IV

LEASE OF LEASED PROPERTY; LEASE RIGHTS AND OBLIGATIONS

Section 4.01. Lease of Leased Property. The Lessor hereby leases and sells the Leased Property to the Lessee, and the Lessee hereby leases and purchases from the Lessor, the Leased Property on the terms and subject to the conditions set forth in this Lease.

Section 4.02. Lease Term. The Term of this Lease shall commence on the Funding Date. The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) an Event of Default, in accordance with Section 8.01 hereof, by the Lessee and the Lessor's election to terminate this Lease pursuant to Section 8.03 hereof; or
- (b) the payment by the Lessee of an amount equal to all Rent Payments stated to be paid by the Lessee hereunder, *plus* all other amounts whatsoever due hereunder.

Section 4.03. Net Lease. The Lessee intends the Rent Payments to be net to the Lessor. The obligation of the Lessee to pay Rent Payments shall be absolute and unconditional and shall in no way be reduced, released, discharged or otherwise affected for any reason (except as set forth in Section 3.03, including without limitation (a) any defect in the condition, the quality or the fitness for use of, or the title to, any portion of the Leased Property or (b) any damage to, or abandonment, destruction, requisition or taking of any portion of the Leased Property. The Lessee shall comply with and shall pay all local, state and federal taxes, including without limitation, income, franchise, gross receipts, sales, use, documentary stamp, excise and real and personal property taxes, payments in lieu of taxes, assessments, licenses, registration fees, freight and transportation charges and any other charges imposed or liabilities incurred with respect to the ownership, the possession or the use of the Leased Property, any payment of Rent Payments or any other payments by the Lessee and any penalties, fines or interest imposed on any of the foregoing during the Lease Term, and the Lessee shall pay all reasonable expenses incurred by

the Lessor in connection with all filings or recordings of any documents relating to this Lease and the Ground Lease or the Lessor's rights hereunder, *provided, however*, that the Lessee shall have no obligation to pay as Rent Payments any amounts constituting or deemed to be federal or state income or corporate taxes attributable to or due and payable by the Lessor. This Section does not relieve the Lessee from any obligations under this Lease. The Lessor shall have the right to make any of the payments required of the Lessee, but shall not be obligated to pay the same, and shall have the right to charge such payment with interest (at a rate equal to the Lessor's cost of funds, but in no event to exceed the maximum rate permitted by applicable State law) from the due date thereof through the date of payment, with any such amounts to be paid by the Lessee solely from Net Parking Revenues with the next Rent Payment due under this Lease.

Section 4.04. Real Estate and Improvements.

(a) *Title to Real Estate.* Title to the Real Estate remains vested in the Lessee subject to the Ground Lease.

(b) *Title to Improvements.* Title to the Improvements shall vest immediately in the Lessor subject, however, in all respects to the leasehold interest of the Lessee granted to it in this Lease.

Section 4.05. Leasehold Rights in the Real Estate. The leasehold rights granted to the Lessor pursuant to the Ground Lease shall convey all rights and interests in the Real Estate granted therein. Such leasehold interest shall be recordable, and the Lessee agrees to execute and to deliver all documents necessary to effectuate a valid and binding conveyance of leasehold rights in and to the Real Estate to the Lessor pursuant to the Ground Lease for the term thereunder.

Section 4.06. Liens. (a) The Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property other than the Permitted Encumbrances. Except as expressly provided in this Article IV, the Lessee, at its own expense, promptly shall take such action as may be necessary duly to discharge or to remove any such mortgage, pledge, lien, charge, encumbrance or claim that may arise at any time. The Lessee shall reimburse the Lessor for any expense incurred by the lessor in order to discharge or remove (and the lessor is not obligated to take any such action) any such mortgage, pledge, lien, charge, encumbrance or claim however nothing contained herein shall impact any obligation upon the Lessor to take any such action.

(b) At the Lessee's expense and in the Lessee's name, the Lessee may contest any taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee in writing that in the opinion of an independent counsel by nonpayment of any such items, the interest of the Lessor in the Leased Property will be endangered materially or the Leased Property or any part thereof will be subject to loss or to forfeiture by the assessment of any such items, in which case the Lessee promptly shall pay such taxes, assessments or charges or shall provide the Lessor with full

security against any loss that may result from such nonpayment, in form satisfactory to the Lessor.

Section 4.07. Care and Use of Leased Property. The Lessee, at its sole expense, shall maintain the Leased Property (or the portion thereof, as the case may be), in good operating condition and appearance and shall protect it from deterioration other than normal wear and tear; shall cause the Leased Property (or any portion thereof) to be used in a proper and safe manner within its normal capacity, without abuse and in the manner contemplated by the manufacturer's or Contractor's specifications and in compliance with the requirements of applicable laws, ordinances and regulations, the requirements of any warranties applicable thereto and the requirements of any insurance program required under Article IX hereof; shall cause the Leased Property (or any portion thereof, as the case may be), to be operated by or under the direction of competent persons only; and shall obtain, at the Lessee's sole expense, all registrations, permits and licenses, if any, required by law for the construction and operation of the Leased Property or any portion thereof, as the case may be. In case any equipment, appliance or alteration is required to be made or installed on the Leased Property in order to comply with any applicable governmental laws, regulations, requirements and rules, the Lessee agrees to make or to install such equipment, appliance or alteration at its own cost and expense, and any such equipment, appliance or alteration shall be considered part of the Leased Property for all purposes of the Lease without any further act of the Lessor or the Lessee. All modifications, repairs, alterations, replacements, substitutions, accessories and controls to any portion of the Leased Property shall be deemed part of the Leased Property for all purposes of this Lease. Any parts or accessories provided by the Lessee in the course of repairing or maintaining the Leased Property shall be considered accessions to the Leased Property and form a part thereof. The lien created herein in the Leased Property shall attach to such accession and shall be vested immediately in the Lessor without cost or expense to the Lessor.

Section 4.08. Possession and Enjoyment of Leased Property. The Lessee shall have the quiet use and enjoyment of the Leased Property and shall peaceably and quietly have, hold and enjoy the Leased Property during the Lease Term, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Lease and the Ground Lease.

Section 4.09. Lessee's and Lessor's Responsibilities for Leased Property. (a) The Lessee assumes all risks and liabilities for loss or damage to the Leased Property or to any portion thereof and for injury to or death of any person or damage to any property that is proximately caused by the negligent conduct of the Lessee, its officers, employees and agents whether such injury or death be with respect to agents or employees of the Lessee or of third parties, whether such property damage be to the Lessee's property or the property of others and whether or not such risks or liabilities are covered by insurance. The Lessee hereby assumes responsibility for and agrees, to the maximum extent permitted by law, to reimburse the Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature including, but not limited to, those relating to bidding procedures undertaken in connection with the Leased Property, imposed on, incurred by or asserted against the Lessor that in any way relate to or arise out of a claim, suit or proceeding related to the Leased Property and the operation and maintenance thereof, but excluding gross negligence or willful misconduct of the Lessor.

(b) THE LESSOR SHALL NOT BE RESPONSIBLE FOR ANY DEFECTS, WEAR AND TEAR OR GRADUAL DETERIORATION OR LOSS OF SERVICE OR USE OF THE LEASED PROPERTY OR ANY PORTION THEREOF. The Lessor shall not be liable to the Lessee or to anyone else for any liability, injury, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the inadequacy of the Leased Property or any portion thereof, any interruption of use or loss of service, use or performance of the Leased Property or any portion thereof or other consequence or damage, whether or not resulting directly or indirectly from any of the foregoing except to the extent that any of the foregoing is a direct and proximate result of the willful misconduct or gross negligence of the Lessor.

Section 4.10. Duty to Dismiss. With respect to the Leased Property, the Lessee acknowledges that the Lessor under this Lease is without any title to the Real Estate and the Lessee hereby agrees to use its best efforts, at its own expense, to have the Lessor dismissed from any lawsuit brought by any party arising out of or in any way relating to this Lease, the Ground Lease or the ownership, rental, possession, operation, condition, sale or return of the Leased Property but only to the extent that such suit does not arise out of a willful or grossly negligent act of the Lessor. This covenant by the Lessee to cooperate and to use its best efforts to dismiss the Lessor from any such action shall include the Lessor's successors and assigns and its agents, employees, officers and directors. In the event that despite compliance with this covenant the Lessor is not dismissed from such action, the Lessor shall have the right to appear in its own name in the defense of such claim with its reasonable legal expenses to be paid by the Lessee and with the cooperation of the Lessee.

Section 4.11. Indemnification. To the extent and subject to limits permitted by applicable laws of the State as in effect from time to time during the Term of this Lease, the Lessee shall (a) indemnify and save harmless the Lessor and its agents, employees, officers and directors from and against claims, demands, liabilities, damages, losses, costs, charges and any and all expenses (including but not limited to reasonable attorneys' fees) that the Lessor may incur or be subject to as a consequence, directly or indirectly, of any breach or non-performance by the Lessee of its obligations under this Lease or the Ground Lease, or a willful or grossly negligent act of the Lessee in connection with such performance or non-performance, or the ownership, rental, possession, operation, condition, sale or return of the Leased Property and (b) reimburse the Lessor for all losses, costs, charges and expenses (including reasonable attorneys' fees) that the Lessor may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing. All amounts which become due from the Lessee under this Section 4.11 shall be credited against any amounts received by the Lessor from insurance provided by the Lessee and shall be payable by the Lessee within 30 days following demand therefor by the Lessor and shall survive the termination or expiration of this Lease; *provided, however*, that the obligations of the Lessee under this Section 4.11 are specifically limited to payment from such moneys of the Lessee as are available at such time from the proceeds of insurance, self insurance and Net Parking Revenues (other than those required to pay Rent Payments).

ARTICLE V

CONSTRUCTION OF LEASED PROPERTY

Section 5.01. Design of Leased Property. The Lessee will assume responsibility for approving the design of any Improvements and the selection of any Contractors and materials.

Section 5.02. Implementation of the Leased Property. The Lessee shall solicit or shall cause to be solicited bids for the construction, installation and acquisition of the Improvements in accordance with applicable State law.

ARTICLE VI

PREPAYMENTS

Section 6.01. Option to Prepay. The Lessee shall have the option to prepay and to purchase the Lessor's interest in the Leased Property in whole at any time by paying the purchase option price set forth in the Rent Payment Schedule.

ARTICLE VII

LEASE RIGHTS, ASSIGNMENT AND SUBLEASING, MORTGAGING AND SELLING

Section 7.01. Lease Rights. This Lease and any or all of the Lessor's rights and interests hereunder including, without limitation, the right to receive the Rent Payments and the Lessor's rights as a Lessor with respect to the Leased Property created hereunder (collectively referred to herein as the "*Lease Rights*") and the Lessor's rights in the leasehold estate created under the Ground Lease shall be vested in the Lessor throughout the Lease Term.

Section 7.02. Assignment and Subleasing. (a) This Lease may not be assigned and the Leased Property may not be subleased or otherwise transferred by the Lessee without the prior written consent of the Lessor in each instance.

(b) The Lessor's right, title and interest in, to and under this Lease may be assigned and reassigned in whole or in part to one or more assignees or subassignees by the Lessor and, to the extent of its interest, without the necessity of obtaining the consent of the Lessee; *provided* that any assignment shall not be effective until the Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. The Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or subassignee designated in such register. The Lessee agrees to execute all documents, including notices of assignment or financing statements, that may be reasonably requested by the Lessor or any assignee to protect its interests in this Lease.

Section 7.03. Intentionally left blank.

Section 7.04. Restriction on Mortgage or Sale of Leased Property by the Lessee. The Lessee shall not mortgage, sell, assign, transfer or convey the Leased Property or any portion thereof during the Term of this Lease without the prior written consent of the Lessor in each instance.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES

Section 8.01. Events of Default. An Event of Default hereunder means the occurrence of any one or more of the following events:

(a) The Lessee fails to make any Rent Payment or any portion thereof as it becomes due;

(b) The Lessee fails to perform or to observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within 30 days after written notice thereof by the Lessor; *provided, however*, that if such observance or performance requires work to be done, actions to be taken or conditions to be remedied, which by their nature cannot reasonably be accomplished within such 30-day period, if the Lessee shall commence such observance or performance within such period and shall be proceeding diligently with respect thereto, then the fact that the same shall not have been corrected during such period shall not constitute an Event of Default; *provided, further*, that such default shall be cured within 90 days of such notice;

(c) The Lessee becomes insolvent, admits in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for the Lessee or for a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, a receiver or a custodian is appointed for the Lessee or a substantial part of its property and is not discharged within 60 days; or any bankruptcy, reorganization, debt arrangement, moratorium, any proceeding under bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or, if permitted by law, against the Lessee and, if instituted against the Lessee, is consented to or acquiesced in by the Lessee or is not dismissed within 60 days;

(d) The discovery by the Lessor that any material statement, representation or warranty made by the Lessee in this Lease, or in any writing delivered by the Lessee pursuant thereto or in connection herewith is false, misleading or erroneous in any material respect.

Upon the occurrence of an Event of Default, the Lessee shall provide prompt written notice thereof to the Lessor.

Section 8.02 Intentionally left blank

Section 8.03. Remedies and Rights.

(a) *Remedies Available upon an Event of Default.*

(i) *Real Estate and Improvements.* Whenever any Event of Default shall have happened and shall be continuing, the Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(A) With or without terminating this Lease, re-enter and take possession of the Real Estate and the Improvements and exclude the Lessee from using them; *provided, however,* that if this Lease has not been terminated, the Lessor shall return possession of the Real Estate and the Improvements to the Lessee when the Event of Default is cured; and *provided, further,* that the Lessee shall continue to be responsible for the Rent Payments due during the Fiscal Period then in effect; or

(B) With or without terminating this Lease, re-enter and take possession of the Real Estate and the Improvements and use, sublease or sell the leasehold interest in the Real Estate and the Improvements or any part thereof in accordance with the provisions of the Ground Lease, holding the Lessee liable for the difference between (i) the rent and other amounts paid by a sublessee pursuant to such sublease, if any (net of expenses incurred in subleasing the Real Estate and the Improvements), and (ii) the balance of the Rent Payments owed by the Lessee during its then current Fiscal Period, which amount payable hereunder shall be limited to Net Parking Revenues; *provided, however,* that nothing contained herein shall impose an obligation upon the Lessor so to sublease or sell the leasehold interest on the Leased Property, but that if subleased or sold it shall be done in a commercially reasonable manner, and *provided* that any excess proceeds from such disposition shall be applied in accordance with the provisions of the Ground Lease.

(ii) *Other.* The Lessor shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the Rent Payments then due and thereafter to become due during the then current Fiscal Period with respect to the Leased Property or any part thereof or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

(b) For purposes of exercising any of the foregoing remedies and rights, the Lessee hereby grants to the Lessor an easement for ingress and egress over the Real Estate upon which the Leased Property is situated, as more particularly described in *Exhibit A* hereto, which easement is limited to the Leased Property which is the subject of this Lease.

Section 8.04. Election of Remedies; No Waiver of Elected Remedies. No failure on the part of either party to exercise and no delay in exercising any right or remedy so provided for herein shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right or remedy so provided hereunder preclude any other right or further exercise of any other right or remedy provided hereunder.

Section 8.05. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder, and shall not be construed to be an implied term thereof or a course of dealing between the parties hereto.

Section 8.06. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement, the performance or the observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that on demand therefor it will pay to the nondefaulting party the reasonable fee of such attorneys and such other expenses so incurred by the nondefaulting party.

Section 8.07. Redelivery of Possession of Leased Property upon Expiration of Term and Payment of Rent Payments. Upon the payment of all Rent Payments and all other amounts whatsoever due and owing under this Lease and the Ground Lease, the Lessor shall take all actions necessary to authorize, execute and deliver to the Lessee any and all documents and instruments necessary to vest in the Lessee all of the Lessor's right, title and interest in and to the Leased Property, free and clear of all liens, leasehold interests and encumbrances (excepting Permitted Encumbrances and any liens, leasehold interests or encumbrances that may have been present prior to the date the Lessor and the Lessee entered into the Ground Lease), including, if necessary, a release of any and all liens or interest created under the provisions of this Lease or the Ground Lease.

ARTICLE IX

RISK OF LOSS; INSURANCE

Section 9.01. Risk of Loss. The Lessee hereby assumes the entire risk of loss of the Leased Property and every portion thereof from any and every cause whatsoever, including, but not limited to, damage to or destruction of the Leased Property or any portion thereof by fire or any other casualty, or the taking of title to or the temporary use of the Leased Property or any portion thereof or of the leasehold interest of the Lessor or the Lessee therein under the exercise of the power of eminent domain by any governmental body *de jure* or *de facto* or by any person, firm or corporation acting under governmental authority.

Section 9.02. Public Liability and Property Damage Insurance. The Lessee shall maintain or shall cause to be maintained, throughout the Term of this Lease, a standard comprehensive general liability insurance policy or policies in protection of the Lessee, the Lessor and their respective members, officers, agents and employees. Such policy or policies shall provide for indemnification of such parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by the operation or the ownership of the Leased Property. Such policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$2,000,000 for personal injury or deaths of two or more persons in a single accident or event, and

in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$25,000) resulting from a single accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$2,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Lessee. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the net proceeds of such insurance shall have been paid.

Section 9.03. Fire and Extended Coverage Insurance. The Lessee shall procure and shall maintain, or shall cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any part of the Leased Property by fire or lightning, with extended coverage and vandalism and malicious mischief insurance. Such extended coverage insurance shall, as nearly as practicable, also cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to 100% of the replacement cost of the Leased Property, or the aggregate coverage of all such policies on the Leased Property shall at least equal the aggregate Principal Portion of the Rent Payments then remaining unpaid, whichever is greater (except that such insurance may be subject to deductible clauses of not to exceed \$50,000 for any one loss). Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the Lessee. The net proceeds of such insurance shall be applied as provided in Section 9.07(b) hereof.

Section 9.04. Worker's Compensation Insurance. If required by State law, the Lessee shall carry or shall require the Contractors to carry Worker's Compensation Insurance covering all employees on, in, near or about the Leased Property and upon request shall furnish to the Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 9.05. Other Insurance and Requirements for All Insurance. All insurance required by this Article IX may be carried under a separate policy or a rider or an endorsement; shall be taken out and shall be maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the Lessee and the Lessor 30 days before the cancellation or the revision becomes effective; and shall name the Lessee, the Lessor and their assigns as additional insureds or loss payees, as their interests may appear in policies evidencing any such insurance procured by it. On or before the Funding Date, the Lessee shall provide the Lessor with a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, the Lessee shall furnish the Lessor satisfactory evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article IX unless such insurance is no longer obtainable at a reasonable rate, in which event the Lessee shall notify the Lessor of this fact. The Lessee shall cause to be delivered to the Lessor on each anniversary of the Funding Date a certificate of an Authorized Representative of the Lessee satisfactory to the Lessor that the insurance policies required by this Lease are in full force and effect.

Section 9.06. Flood Insurance. In the event that any portion of the Leased Property during the Lease Term shall be located in an area for which flood insurance is required by the United States of America or the State, the Lessee shall obtain and maintain flood insurance with respect to that portion of the Leased Property in an amount equal to the lesser of the full replacement value of that portion of the Leased Property or sufficient to pay the Rent Payments under the Lease. Such flood insurance shall be provided in accordance with the rules and regulations of the United States Government.

Section 9.07. Proceeds of Insurance. (a) The net proceeds of the insurance carried pursuant to the provisions of Article IX hereof, to the extent it relates to public liability insurance or worker's compensation, shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

(b) The net proceeds of the insurance carried with respect to damage to the Leased Property pursuant to the provisions of Article IX hereof, to the extent it does not relate to public liability insurance or worker's compensation, shall be paid to the Lessor and applied as follows:

(i) If the amount of the net proceeds does not exceed \$25,000 and there is no Event of Default outstanding and uncured, the net proceeds shall be turned over to the Lessee and the Lessee shall either: (A) apply such proceeds to pay Rent Payments; or (B) apply such proceeds together with other Net Parking Revenues of the Lessee necessary therefor, to the repair, replacement, renewal or improvement of the Leased Property; and

(ii) If the amount of the net proceeds equals or exceeds \$25,000 or if an Event of Default has occurred and has not been cured, the net proceeds shall be turned over to the Lessor immediately upon receipt and held in escrow by the Lessor in a special account pending receipt of written instructions from the Lessee. At its option, to be exercised within 30 days after the receipt by the Lessor of such net proceeds, or portion thereof, the Lessee shall advise the Lessor in writing that (A) the Lessee (with the consent of the Lessor if there is an Event of Default) will use such net proceeds or portion thereof for the repair, replacement, renewal or improvement of the Leased Property, or (B) such net proceeds or portion thereof will be deposited in a special account with such other funds of the Lessee as may be necessary and applied for the prepayment of the unpaid Rent Payments due under the Lease. This provision is not intended to be applicable if the Lessee itself should attempt to exercise eminent domain over the Leased Property or any interest therein.

The Lessee shall be entitled to the net proceeds of any insurance, or from any eminent domain proceeding, settlement or compromise, relating to property of the Lessee not included in the Leased Property and after giving effect to the payment of all Rent Payments under the Lease.

Section 9.08. No Waiver of Lessee's Rights Against Vendors or Contractors. Notwithstanding the provisions of Section 9.01 hereof, the Lessee shall not be deemed to have waived any rights or remedies it may have against a Contractor with respect to the Leased Property.

Section 9.09. Uninsured Loss. In the event of any uninsured loss, the Lessee at its expense and at the Lessee's option without reimbursement from the Lessor or any diminution in the Rent Payments due with respect to the Leased Property shall either: (a) repair the Leased Property or such portion thereof, returning it to its previous condition; (b) replace the Leased Property or portion thereof with a like Leased Property or portion thereof in good operating condition and of equivalent value that shall become the Leased Property or a portion thereof, subject to this Lease; or (c) furnish to the Lessor: (1) a certificate stating that: (i) the value of the Leased Property or a portion thereof exceeds \$25,000; (ii) the Lessee has determined not to repair or replace the Leased Property or the portion thereof as the case may be; and (iii) that the Leased Property or portion thereof so damaged, lost or destroyed is no longer needed for the Lessee's governmental purposes; and (2) an independent appraiser's verification that the value of the remaining portion of the Leased Property is greater than the aggregate Principal Portion of Rent Payments due under the Lease. Nothing in this Section shall alter the obligations of the Lessee under this Lease.

ARTICLE X

ADMINISTRATIVE PROVISIONS

Section 10.01. Notices. (a) Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto in connection with this Lease must be in writing and may be delivered personally or by certified or registered mail. If so mailed, a notice shall be deemed to have been given and received 48 hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail. If given other than by mail, a notice shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other address as either party hereafter may designate to the other party in writing:

If to Lessor: Koch Financial Corporation

Attn: Investment Coordinator

17767 North Perimeter Drive

Scottsdale, Arizona 85255

If to the Lessee: City of Billings

Attn: Financial Services Manager

210 N. 27th Street

Billings, Montana 59103

Section 10.02. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.03. Further Assurances and Corrective Instruments. The Lessor and the Lessee agree that, if necessary, they will execute, acknowledge and deliver or will cause to be executed, acknowledged and delivered such supplements hereto and such further instruments as reasonably may be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

Section 10.04. Applicable Law. This Lease shall be governed by and shall be construed in accordance with the laws of the State.

Section 10.05. Lessor and Lessee Authorized Representatives. Whenever under the provisions of this Lease the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor for the Lessor and by an Authorized Representative of the Lessee for the Lessee. Any party hereto shall be authorized to rely upon any such approval or request.

Section 10.06. Captions. The captions or the headings in this Lease are for convenience only and in no way define, limit or describe the scope or the intent of any provisions or sections of this Lease.

Section 10.07. Lease Is Original. Each fully executed copy of this Lease shall be deemed an original for all purposes.

Section 10.08. Binding; Counterparts. This Lease shall be binding upon the parties hereto only when duly executed on behalf of both the Lessee and the Lessor together; *provided, however,* that each set of counterparts taken together shall constitute a single agreement.

Section 10.09. Tax Ownership in Lessee. The Lessor warrants and represents that it shall not at any time during the Term of the Lease claim depreciation, cost recovery deductions or tax credit for federal income tax purposes with respect to the Leased Property or a portion thereof and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

Section 10.10. Inspections Permitted. The Lessor and the Lessee, as the case may be, shall permit inspections of the Leased Property and the books and the records of the Lessee with respect thereto at all reasonable times and upon reasonable notice, subject to any legal restrictions under applicable law relating to privacy or security.

Section 10.11. Time Is of the Essence. Time is of the essence for this Lease and no covenant or obligation hereunder to be performed by the Lessee may be waived except by the written consent of the Lessor, and waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation or any other covenant or obligation as to any other occasion and shall not preclude the Lessor from invoking such remedy at any later time prior to the Lessee's cure of the condition giving rise to such remedy. Each of the Lessor's rights hereunder is cumulative to its other rights hereunder and not alternative thereto.

Section 10.12. No Personal Liability or Accountability. No covenant or agreement contained in this Lease shall be deemed to be the covenant or the agreement of any present, past or future officer, agent or employee of the Lessee or the Lessor in his or her individual capacity, and neither the officers, the agents or the employees of the Lessee or the Lessor nor any official executing this Lease shall be liable personally on this Lease or be subject to any personal liability or accountability by reason of any transaction or activity relating to this Lease.

Section 10.13. Environmental Conditions. The Lessor shall not be obligated to monitor compliance of the Leased Property with applicable environmental or other laws. The Lessor shall not have any obligations or responsibility to foreclose or otherwise further involve themselves with the Leased Property under any circumstance, including any instance where either the Lessor is notified of any non-compliance of the Leased Property with applicable environmental or other laws. The Lessee represents that the Real Estate is currently in full compliance with all applicable federal, state and local environmental laws. It is expressly understood that the Lessor shall not have the right or the obligation to monitor the Lessee's compliance with environmental laws. The Lessee hereby indemnifies and holds harmless, to the fullest extent permitted by applicable State law, the Lessor from all liability, damage and costs caused by the Lessee's failure, for any reason, to comply with environmental laws, rules and regulations.

Section 10.14. No Merger. Neither this Lease, the Ground Lease nor any provisions hereof or thereof shall be construed to effect a merger of the title of the Lessee to the Real Estate under the Ground Lease and the Lessee's leasehold interest thereon under this Lease.

Section 10.15. Gender. Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

Section 10.16. Dated Date. The use of the "dated as of date" herein is for convenience of reference only and the actual date of execution hereof by each party hereto is set forth below their respective signatures. THE PARTIES HERETO EACH ACKNOWLEDGE RECEIPT OF A SIGNED, TRUE AND EXACT COPY OF THIS LEASE.

IN WITNESS WHEREOF, the Lessor has caused this Lease Purchase Agreement to be executed in its corporate name by its duly Authorized Representative, and the Lessee has caused this Lease Purchase Agreement to be executed in its name by its duly Authorized Representative, as of the date first above written but on the date set forth below.

KOCH FINANCIAL CORPORATION, as Lessor

Date of Execution: _____, 2006

By _____

Name: _____

Title: _____

ATTEST: _____

[SEAL]

CITY OF BILLINGS, as Lessee

Date of Execution: _____, 2006

By _____

Name: _____

Title: _____

ATTEST: _____

[SEAL]

ACKNOWLEDGMENTS

STATE OF _____)

:SS

COUNTY OF _____)

On the ____ day of _____, 2006, personally appeared before me _____ and _____, who, being by me duly sworn (or affirmed), did say that they are the _____ and _____, respectively, of the CITY OF BILLINGS, the body corporate and politic described in, and that executed, the foregoing instrument, and that said instrument was signed on behalf of said body corporate and politic by due authority, and said _____ and _____, respectively, acknowledged to me that said body corporate and politic executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year in this certificate first above written.

My Commission Expires: _____

NOTARY PUBLIC

Residing at: _____

[SEAL], State of _____

STATE OF _____)

:SS

COUNTY OF _____)

On the ____ day of _____, 2006, personally appeared before me _____ and _____, who, being by me duly sworn (or affirmed), did say that they are the _____ and _____, respectively, of KOCH FINANCIAL CORPORATION, the person described in and that executed the foregoing instrument, and that said instrument was signed on behalf of said person by due authority, and said _____ and _____, respectively, acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year in this certificate first above written.

My Commission Expires: _____

NOTARY PUBLIC

Residing at: _____

[SEAL], State of _____

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL ESTATE

LTS 1-4 19-24 s130.3' of 20' of ABDN Alley BLK 91 Billings Original Townsite

LTS 5-7 Amend BLK 91 Billings Original Town

LTS 7A & 8 BLK 91 Billings Original Town

LTS 9-12 BLK 91 Billings Original Town

EXHIBIT B

RENTAL PAYMENT SCHEDULE AND PURCHASE OPTION PRICE

Pmt #	Payment Date	Payment Amount	Interest	Principal	Purchase Price	Outstanding Balance
	9/1/2006					\$5,930,000.00
1	9/1/2007	\$495,395.36	\$324,964.00	\$170,431.36	\$5,874,760.01	\$5,759,568.64
2	9/1/2008	\$495,395.36	\$315,624.36	\$179,771.00	\$5,691,393.59	\$5,579,797.64
3	9/1/2009	\$495,395.36	\$305,772.91	\$189,622.45	\$5,497,978.69	\$5,390,175.19
4	9/1/2010	\$495,395.36	\$295,381.60	\$200,013.76	\$5,293,964.65	\$5,190,161.43
5	9/1/2011	\$495,395.36	\$284,420.85	\$210,974.52	\$5,078,770.65	\$4,979,186.91
6	9/1/2012	\$495,395.36	\$272,859.44	\$222,535.92	\$4,851,784.01	\$4,756,650.99
7	9/1/2013	\$495,395.36	\$260,664.47	\$234,730.89	\$4,612,358.51	\$4,521,920.10
8	9/1/2014	\$495,395.36	\$247,801.22	\$247,594.14	\$4,359,812.48	\$4,274,325.96
9	9/1/2015	\$495,395.36	\$234,233.06	\$261,162.30	\$4,093,426.94	\$4,013,163.67
10	9/1/2016	\$495,395.36	\$219,921.37	\$275,473.99	\$3,812,443.47	\$3,737,689.67
11	9/1/2017	\$495,395.36	\$204,825.39	\$290,569.97	\$3,516,062.10	\$3,447,119.71
12	9/1/2018	\$495,395.36	\$188,902.16	\$306,493.20	\$3,203,439.03	\$3,140,626.50
13	9/1/2019	\$495,395.36	\$172,106.33	\$323,289.03	\$2,873,684.23	\$2,817,337.48
14	9/1/2020	\$495,395.36	\$154,390.09	\$341,005.27	\$2,525,858.85	\$2,476,332.21
15	9/1/2021	\$495,395.36	\$135,703.00	\$359,692.36	\$2,158,972.65	\$2,116,639.85
16	9/1/2022	\$495,395.36	\$115,991.86	\$379,403.50	\$1,771,981.08	\$1,737,236.35
17	9/1/2023	\$495,395.36	\$95,200.55	\$400,194.81	\$1,363,782.38	\$1,337,041.54
18	9/1/2024	\$495,395.36	\$73,269.88	\$422,125.48	\$933,214.38	\$914,916.06
19	9/1/2025	\$495,395.36	\$50,137.40	\$445,257.96	\$479,051.26	\$469,658.10
20	9/1/2026	\$495,395.36	\$25,737.26	\$469,658.10	-\$0.00	-\$0.00
Totals:		\$9,907,907.23	\$3,977,907.23	\$5,930,000.00	Rate 5.480%	

CITY OF BILLINGS, as Lessee

Date of Execution: _____, 2006

By: _____

Name: _____

Title: _____

ESCROW AGREEMENT

This Escrow Agreement, dated as of September 1, 2006 by and among Koch Financial Corporation, a Kansas corporation ("Lessor"), City of Billings ("Lessee"), and Bank of New York Trust Company, N.A., a national banking association with a corporate trust office in St Louis, MO, as Escrow Agent (the "Escrow Agent"):

In consideration of the mutual covenants and agreements herein set forth, the parties hereto do hereby covenant and agree as follows:

1. This Escrow Agreement relates to the Lease Purchase Agreement dated as of the date hereof, between Lessor and Lessee (the "Lease") and the Ground Lease Agreement dated as of the date hereof between Lessor and Lessee (the "Ground Lease").
2. Except as otherwise defined herein, all terms defined in the Lease shall have the same meaning for the purposes of this Escrow Agreement as in the Lease.
3. Lessor, Lessee and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall not be deemed to be a party to the Lease and this Escrow Agreement shall be deemed to constitute the entire agreement among Lessor, Lessee, and Escrow Agent.
4. There is hereby established in the custody of Escrow Agent a special trust fund designated the "City of Billings Acquisition Fund" (the "Acquisition Fund") to be held and administered by the Escrow Agent in trust for the benefit of Lessor and Lessee in accordance with the Escrow Agreement.
5. (a) Lessor shall deposit **\$5,930,000.00** in the Acquisition Fund. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon order of a representative of Lessee in Qualified Investments (as hereinafter defined) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. Such investments shall be held by the Escrow Agent in the Acquisition Fund, and any interest earned on such investments shall be paid to Lessee.

(b) The parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relative to either the investment of the Acquisition Fund or the purchase, sale, retention or other disposition of any Qualified Investment. The Lessee warrants that the investments directed to be purchased by the Escrow Agent pursuant to this paragraph 5 are Qualified Investments as defined in paragraph 6 of this Escrow Agreement. The Lessee will give at least ten (10) business days advance notice for the purchase of United States Treasury Obligations-State and Local Government Series time/demand deposit securities.

(c) Any loss or expense incurred from an investment will be borne by the Acquisition Fund. If the Escrow Agent does not receive directions to invest the monies held in the Acquisition Fund, its only obligation with respect to the Acquisition Fund shall be to hold it or deposit uninvested without liability for interest or other compensation to either party.

(d) The Escrow Agent is hereby authorized to execute purchase and sales of Qualified Investments through the facilities of its own trading or capital markets operations. The Escrow Agent shall send statements to each of the parties periodically reflecting activity for the Escrow Account for the preceding month.

6. "Qualified Investments" means, for purposes of this Escrow Agreement, to the extent the same are at the time legal for investment of the funds being invested: (i) United States Treasury Bills or United States Treasury Notes traded on an open market or issued directly by the United States at a yield not exceeding 5.48% per annum, (ii) United States Treasury Obligations - State and Local Governmental Series time deposit securities with a yield not exceeding 5.48% per annum, (iii) obligations the interest of which is not includable in the gross income of the owner thereof for federal income tax purposes under Section 103 of the Code and which are rated AA or better by Standard & Poors Corporation or Aa or better by Moody's Investors Service, Inc., (iv) shares of qualified regulated investment companies which distribute exempt-interest dividends within the meaning of Section 852 of the Code and which are rated AA or better by Standard & Poors Corporation or Aa or better by Moody's Investors Service, Inc. (tax-exempt mutual funds), (v) United States Treasury Obligations - State and Local Government Series demand deposit securities, or (vi) Money Market Fund or such other fund as agreed to by the Lessee. Lessee does hereby direct and authorize Escrow Agent to purchase the Qualified Investment listed in subparagraph (vi) above if the Lessee does not direct Escrow Agent in writing otherwise.

7. Moneys in the Acquisition Fund shall be used to pay for the cost of the acquisition of the Improvements. Payment shall be made from the Acquisition Fund for the cost of acquisition of part or all Improvements upon presentation to the Escrow Agent of one or more properly executed Payment Request and Acceptance Certificates, a form of which is attached hereto as Exhibit A, executed by Lessee and approved by Lessor, together with an invoice for the cost of the acquisition of the Improvements for which payment is requested and a written approval by Lessor of the Vendor to be paid.

8. Concerning the Escrow Agent.

Notwithstanding any provision contained herein to the contrary, the Escrow Agent, including its officers, directors, employees and agents, shall:

(a) not be liable for any action taken or omitted under this Escrow Agreement so long as it shall have acted in good faith and without negligence; and shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder;

(b) be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind; and have no liability for acting upon any written and/or facsimile instruction presented by lessee/lessor/Koch in connection with this Escrow Agreement which the Escrow Agent in good faith believe to be genuine.

(c) be entitled to refrain from taking any action contemplated by this Escrow Agreement in the event that it becomes aware of any disagreement between the parties hereto as to any facts or as to the happening of any contemplated event precedent to such action;

(d) have no responsibility or liability for any diminution in value of any assets held hereunder which may result from any investments or reinvestment made in accordance with any provision which may be contained herein;

(e) be entitled to compensation for its services hereunder as per Exhibit B, which is attached hereto and made a part hereof, and for reimbursement of its out-of-pocket expenses including, but not by way of limitation, the fees and costs of attorneys or agents which it may find necessary to engage in performance of its duties hereunder, all to be paid by Lessee, and the Escrow Agent shall have, and is hereby granted, a prior lien upon any property, cash, or assets of the Acquisition Fund, with respect to its unpaid fees and nonreimbursed expenses, superior to the interests of any other persons or entities, and shall be entitled and is hereby granted the

right to set off and deduct any unpaid fees and/or nonreimbursed expenses from amounts on deposit pursuant to this Escrow Agreement.

(f) be under no obligation to invest the deposited funds or the income generated thereby until it has received a Form W-9 or W-8, as applicable, from each of the parties hereto, regardless of whether any party is exempt from reporting or withholding requirements under the Internal Revenue Code of 1986, as amended;

(g) have no liability for acting upon any written instruction presented by Lessor in connection with this Escrow Agreement which the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Agreement except for its own negligence, willful misconduct or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Acquisition Fund as a result of the investments made by the Escrow Agent;

(h) in the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to same;

(i) only have those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document between the other parties hereto, in connection herewith, including, without limitation, the Lease referred to in the preamble or the body of this Escrow Agreement. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other Agreement. **IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (i) DAMAGES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES WHICH RESULT FROM THE ESCROW AGENT'S FAILURE TO ACT IN ACCORDANCE WITH THE REASONABLE COMMERCIAL STANDARDS OF THE BANKING BUSINESS, OR (ii) SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;**

(j) have the right, but not the obligation, to consult with nationally-recognized counsel of its choice and shall not be liable for action taken or omitted to be taken by the Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel to Lessor addressed and delivered to the Escrow Agent;

(k) have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees; and

(l) shall not be required by any provision of this Escrow Agreement to expend or risk its own funds in the performance of its duties if it shall have reasonable grounds for believing that repayment of such funds is not reasonably assured to it.

Any banking association or corporation into which the Escrow Agent (or substantially all of its corporate trust business) may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

9. Tax Matters.

a) Reporting of Income: The Escrow Agent shall report to the Internal Revenue Service, as of each calendar year-end, all income earned from the investment of any sum held in the Escrow Fund against Lessee, whether or not said income has been distributed during such year, as and to the extent required by law.

b) Preparation and Filing of Tax Returns: Any tax returns required to be prepared and filed will be prepared and filed by Lessee with the Internal Revenue Service in all years income is earned, whether or not income is received or distributed in any particular tax year, and **Escrow Agent shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned by the Acquisition Fund.**

c) Payment of Taxes: Any taxes payable on income earned from the investment of any sums held in the Acquisition Fund shall be paid by Lessee, whether or not the income was distributed by the Escrow Agent during any particular year.

10. The Acquisition Fund shall terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate with the portion thereof designated "Final Acceptance Certificate" properly executed by Lessee, or (b) the presentation of written notification by the Lessor, or if the Lessor shall have assigned its interest under the Agreement, then the assignees or subassignees of all of Lessor's interest under the Lease or an Agent on their behalf, that an Event of Default has occurred or that Lessee has terminated the Lease pursuant to Section 7 of the Lease. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund shall be used to prepay, in the sole discretion of the Lessor, either (i) principal payments thereafter due under the Lease in the inverse order or their maturities, or (ii) proportionately to each principal payment thereafter due under the Lease. In the event that Lessor elects to apply such amounts in accordance with clause (i) of the preceding sentence, Lessee shall continue to make Rental Payments as scheduled under the Lease. In the event that Lessor elects to apply such amounts in accordance with clause (ii) of this Section 10, Lessor shall provide Lessee with a revised payment schedule which shall reflect the revised principal balance and reduced Rental Payments due under the Lease. Upon termination as described in clause (b) of this paragraph, any amount remaining in the Acquisition Fund shall immediately be paid to Lessor or, pro rata, to any assignees or subassignees of Lessor.

11. The Escrow Agent may at any time resign by giving at least 39 days written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by the Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee, and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trust, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement, and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent.

12. The Escrow Agent incurs no liability to make any disbursements pursuant to the Escrow Agreement except from funds held in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Improvements or as to the performance of any obligations of Lessor or Lessee. In the event the Escrow Agent becomes involved in litigation by reason of the administration of the Acquisition Fund, it is hereby authorized to deposit with the appropriate Clerk of the District Court, Yellowstone County, Montana, in which the litigation is pending, any and all funds, securities or other property held by it pursuant hereto, less its reasonable fees, expenses and advances, and thereupon shall stand fully relieved and discharged of any further duties regarding the Acquisition Fund. Also, in the event the Escrow Agent is threatened with litigation by reason of this Escrow Agreement regarding the Acquisition Fund, it is hereby authorized to file an interpleader action in any court of competent jurisdiction and to deposit with the Clerk of such Court, any funds,

securities, or other property held by it, less its reasonable fees, expenses and advances, and thereupon shall stand fully relieved and discharged of any further duties regarding the Acquisition Fund.

13. Notices.

Any notice, consent or request to be given in connection with any of the terms or provisions of this Escrow Agreement shall be in writing and be given in person, by facsimile transmission or courier delivery service or by mail, and shall become effective (a) on delivery if given in person, (b) on the date of delivery if sent by facsimile with receipt confirmed by telephone or by courier delivery service, or (c) four business days after being deposited in the mails, with proper postage prepaid for first-class registered or certified mail.

Notices shall be addressed as follows:

- (i) if to Lessor: Koch Financial Corporation
17767 N. Perimeter Drive, Suite 101
Scottsdale, AZ 85255
Attention: Investment Coordinator
Fax Number: 480.419.3603
- (ii) if to Lessee: City of Billings
210 North 27th Street
Billings, MT 59103
Attention: Financial Services Manager
Phone Number: 406-657-8209
Tax ID: # 816001237
- (iii) if to the Escrow Agent: Bank of New York Trust Company, N.A.,
911 Washington Ave.
St. Louis, MO 63101

14. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. This Escrow Agreement may not be amended except by a written instrument executed by Lessor, Lessee and the Escrow Agent.

16. Governing Law, Counterparts.

This Agreement shall be construed in accordance with the laws of the State of Montana. It may be executed in several counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

IN WITNESS WHEREOF, Lessor, Lessee and the Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

Koch Financial Corporation
Lessor

By: _____

Title: _____

Bank of New York Trust Company, N.A.
Escrow Agent

By: _____

Title: _____

City of Billings
Lessee

By: _____

Title: _____

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

(SEAL)

City Clerk

Exhibit A
Escrow Agreement
Payment Request and Acceptance Certificate

To: Bank of New York Trust Company, N.A.
Attn: James Agnew
911 Washington Ave.
St. Louis, MO
Phone Number: 314.613.8203 Fax Number: 314.613.8228

and Koch Financial Corporation
17767 N. Perimeter Drive, Suite 101
Scottsdale, AZ 85255

RE: City of Billings

The Escrow Agent is hereby requested to pay from the Acquisition Fund to the person or corporation designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the acquisition of the improvements described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the improvements and has not formed the basis of any prior request for payment. The improvements described below is part or all of the "Improvements" listed in the **Exhibit A to the Lease Purchase Agreement** dated **September 1, 2006** (the "Lease").

<u>Quantity</u>	<u>Serial Number/Description:</u>
	<u>Amount:</u>

Payee:

Payee's Federal ID Number: _____

Lessee hereby certifies and represents to and agrees with Lessor as follows:

- (1) The improvements described above has been delivered, installed and accepted on the date hereof.
- (2) Lessee has conducted such inspection and/or testing of said improvements as it deems necessary and appropriate and hereby acknowledges that it accepts said improvements for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by Section 17 of the Agreement.

(4) No event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default (as such term is defined in the Lease) exists at the date hereof.

Dated: _____ City of Billings
LESSEE

By _____

Title _____

Approved:

Koch Financial Corporation
Lessor

By _____

Title _____

FINAL ACCEPTANCE CERTIFICATE

(THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL IMPROVEMENTS HAVE
BEEN ACCEPTED)

The undersigned hereby certifies that the improvements described above, together with the improvements described in and accepted by Payment Request and Acceptance Certificates previously filed by Lessee with the Lessor pursuant to the Agreement, constitutes all of the Improvements subject to the Lease.

Dated: _____ City of Billings
LESSEE

By _____

Title _____

Exhibit B
Escrow Agreement
(Escrow Agent Fee Schedule)

The Escrow Agent shall be entitled to fees for its ordinary services as follows:

A one-time fee of \$750.00 upon receipt of the Final Acceptance Certificate signed by Lessor/Lessee. This fee may be paid from interest earnings.

In addition, the Escrow Agent shall be entitled to compensation and reimbursement of expenses for any extraordinary service provided pursuant to this Escrow Agreement. The foregoing right shall include the costs of any additional services performed by Escrow Agent which is not customarily considered to be a usual service provided in the administration of this escrow.

CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT

To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

What this means to you: When you establish a relationship with The Bank of New York, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

TITLE: Lockwood Sewer District Wastewater Agreement
 DEPARTMENT: Public Works
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. In preparation for again pursuing a bond election the District requested that the City enter into a new agreement for wastewater service. After meeting with District personnel city staff drafted a new agreement. That agreement was approved by the District and Public Utilities Board. The Council discussed this agreement at the July 10 regular meeting and July 31 work session and suggested changes to that agreement. The agreement before the Council incorporates those changes.

ALTERNATIVES ANALYZED: Staff has identified the following alternatives:

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

FINANCIAL IMPACT: Staff has identified the following financial impacts:

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

RECOMMENDATION

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

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

ATTACHMENTS

Attachment A – Wastewater Service Agreement

INTRODUCTION

The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated after the District was unable to meet certain agreement conditions. In preparation for again pursuing a bond election the District requested that the City enter into a new agreement for wastewater service. After meeting with District personnel city staff drafted a new agreement. That agreement was approved by the District and Public Utilities Board. The Council discussed this agreement at the July 10 regular meeting and July 31 work session and suggested changes to that agreement. The agreement before the Council incorporates those changes.

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

PROCEDURAL HISTORY

- The Public Utilities Board recommended approval of the original service agreement on August 26, 1999.
- The City Council approved the original agreement on September 13, 1999.
- The District requested a 3 year extension of the agreement and waiver of the reserve plant capacity charge by letter dated March 11, 2004.
- City Administrator Kristoff Bauer responded to the District on November 1, 2004 indicating that, for various reasons, the agreement should be allowed to lapse.
- The Public Utilities Board, at the June 15, 2006 meeting, recommended approval by the City Council of the new agreement.
- At the July 10, 2006 meeting the Council delayed action on the agreement for one month to allow further discussion.
- The Council further discussed the agreement at the July 31 work session with District board members in attendance.
- The action before the Council is to act upon the agreement at the August 14 meeting.

BACKGROUND

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

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

- Sewer Use Regulations (Section 9) – the old agreement prohibited the discharge of wastewater from vehicle washing facilities, RV dumps and vehicle maintenance floor drains. The new agreement requires that discharges from these types of facilities be done in accordance with the policies and practices as applied within the city limits.

- Reserve Plant Capacity Charge – the old agreement contained time deadlines requiring that the District begin discharging wastewater to the City within 5 years or within 7 years if their wastewater facilities were under construction at the 5 year point. Failure to meet these deadlines required that the District pay a reserve plant capacity charge to maintain the agreement in effect beyond those deadlines. The District did not pay the reserve charge. The new agreement allows the District 2 years from approval of the agreement to approve a financing program and 3 years from the approval of the agreement to begin construction (Section 25, Milestones). With this shorter time period staff believes a reserve plant charge is not necessary and has not been included.

ALTERNATIVES ANALYSIS

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

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

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The City's annexation policy anticipates that property receiving municipal services will be annexed as a condition of receiving services. At the time the original service agreement was negotiated and approved, the various city departments did not want to annex the Lockwood area. A study of the advisability of annexing Lockwood is being conducted by the staff; however, there are departments, such as Public Works and Police, which have concerns with immediate

annexation. These concerns include the lack of or condition of facilities in Lockwood, such as storm drainage and streets and because of the demand for additional services. While not allowing for immediate annexation, a provision for waivers of annexation, should the Council choose to include such a provision, will give the City the option for future annexation.

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

RECOMMENDATION

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

Wastewater Service Agreement

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

W I T N E S S E T H

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

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

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

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

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

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

herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either party.

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

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

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

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

The DISTRICT shall not sell nor transfer to any other party all or any portion of this reserve capacity. Any reserve capacity not being used by the DISTRICT at the termination of this Agreement (measured by utilizing the last 365 days of flow data as well as BOD and TSS Loading data) shall revert back to the CITY at no cost or charge to the CITY.

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

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

A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing Wastewater Service or any future amendments thereto;

B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto; and

C. Any special conditions set forth in this Agreement.

If DISTRICT violates any of said codes, regulations and/or special conditions, the indemnification provisions set forth in Paragraph 28 shall apply.

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

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

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

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

A mutually acceptable DEQ-certified testing laboratory (CTL) shall perform all the sampling and testing of the District's wastewater required under this Agreement. The CTL shall perform said sampling and testing in accordance with 40 Code of Federal Regulations (CFR) Part 136, *Guidelines Establishing Test Procedures for the Analysis of*

Pollutants. The CTL shall provide the CITY and DISTRICT with a written copy of the results of each test within 30 days of performing the test. The DISTRICT shall bear all costs associated with such testing and sampling. Reasonable, estimated adjustments shall be made for incorrect test results.

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

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

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

10. Construction Standards: The DISTRICT shall adopt the CITY'S construction, testing and inspection standards that govern the installation of its sanitary sewers, the purpose of which shall be to ensure proper installation of said sewers and to ensure compliance with infiltration/inflow (I/I) requirements set forth herein. Plumbing

systems and building sewers serving property within the DISTRICT'S Service Area shall comply with the Uniform Plumbing Code prior to connection with the DISTRICT'S wastewater system. I/I in the DISTRICT'S sanitary sewers and building sewers shall not exceed, at any time, 100 gallons per day, per inch-diameter, per mile of sewer pipe.

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

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

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

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

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

14. Odor and Corrosion Control: The DISTRICT recognizes the CITY'S concern of the potential for odor generation and facility corrosion at the point of

connection between the DISTRICT'S force main and the municipal wastewater system as well as downstream thereof. Accordingly, the DISTRICT shall construct adequate facilities to control such odors and corrosion using the Best Available Technology prior to beginning discharge of its wastewater into the municipal wastewater system. All odor and corrosion facility plans shall be reviewed and approved by the CITY prior to construction.

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

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

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

18. Degree of Treatment: It is understood by the parties hereto that the CITY can only treat the DISTRICT'S wastewater to the extent the CITY is presently capable of treating said wastewater utilizing the existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a greater degree of treatment, the

CITY shall comply with such requirements and DISTRICT shall be assessed a higher rate for the disposal as agreed by the parties or as set forth in paragraph 21 and 22 herein.

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

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

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

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

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

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

E. The cost of performing the rate study, unless arrangements are made between the CITY and DISTRICT for payment otherwise.

The rate expert shall also take into consideration the fact that the DISTRICT is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. Moreover, the return on investment paid by the DISTRICT shall be based, among other things, upon the depreciated cost of the facilities needed to provide the reserve capacity the CITY has set aside for the DISTRICT'S exclusive use. Finally, the rate of return to be used to calculate the return on investment shall be a minimum of 15% in order to recognize the risks incurred by the CITY in serving the DISTRICT as well as the fact that the replacement cost of the reserve capacity the CITY has set aside herein for the DISTRICT will greatly exceed its original cost as a result of inflation, etc.

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

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

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

The CITY reserves the right to periodically adjust the rates set forth herein under the procedures set forth in paragraph 21 and 22.

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

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

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

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

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

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

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

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

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

23. Annexation and Dissolution of District: Should fifty-five (55) percent or more of the property within the DISTRICT'S Service Area become annexed either voluntary or by election into the corporate city limits, the DISTRICT shall take, at the CITY'S sole discretion and with the CITY'S written consent, whatever steps are legally necessary to transfer its assets and liabilities to the CITY and dissolve the DISTRICT. Failure to timely comply with this section shall be sufficient grounds to terminate this agreement.

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

25. Milestones: The DISTRICT shall have two (2) years from the date this agreement is initially signed to successfully approve a financing program that will allow construction of a wastewater system. Construction of the wastewater improvements shall commence within three (3) years from the date this agreement is initially signed. Should the DISTRICT fail to meet either of these milestones, this agreement shall terminate immediately.

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

internal costs of mediation including attorney fees and costs, if any. Each party shall pay 50% of any and all fees and costs charged by the selected mediator.

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

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

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

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

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

Agreement; or (2) any negligent or willful act or omission of the CITY or it's employees or agents.

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

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

City of Billings, Montana

Lockwood Area/Yellowstone
County Water & Sewer District

By: _____
Mayor

By: _____
Chairman

By: _____
City Attorney

By: _____
District Attorney

Attest:

Attest:

City Clerk

Secretary

ATTACHMENT I

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

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

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

Footnotes:

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

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AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, Aug. 14, 2006

TITLE: Resolution on Energy & Conservation Commission Creation & Appointments

DEPARTMENT: Mayor's Office

PRESENTED BY: Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: The Mayor proposed and the Council agreed to the creation of a Mayor's Commission on Energy & Conservation to review the City government's current policies and practices regarding energy conservation and consumption. The commission is to identify ways the City can reduce both what it spends on energy and what its impact is on the environment, and how the City can assist citizens in minimizing pollution and energy consumption.

ALTERNATIVES ANALYZED:

- Approve the resolution;
- Modify the resolution;
- Do not approve the resolution.

FINANCIAL IMPACT: No financial impacts from the resolution are anticipated, although energy programs may have an affect on future City budgets.

RECOMMENDATION

Staff recommends that Council approve the resolution establishing the Energy & Conservation Commission.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

A- Resolution

Attachment A

RESOLUTION NO. 06- _____

**A RESOLUTION OF THE BILLINGS, MONTANA, CITY COUNCIL,
ESTABLISHING A MAYOR'S COMMISSION ON ENERGY &
CONSERVATION, AND APPOINTING MEMBERS THERETO.**

WHEREAS, the Mayor has proposed and the Council has approved the establishment of a Mayor's Commission on Energy and Conservation to review the City of Billings' current policies and practices regarding energy consumption and conservation, and to make recommendations to the City Council and City Administrator for future action; and

WHEREAS, the purpose of the commission will be to consider ways to conserve energy including areas where the city might reduce the amount of money it spends on energy and ways to limit the city's energy use impact on the environment; and

WHEREAS, the commission may also recommend additional areas where city government could assist citizens in minimizing pollution and energy consumption; and

WHEREAS, the cost of implementing strategies will always be a consideration but should not necessarily limit the discussion, which could include recycling, alternate fuels, alternate transportation, alternate energy sources, building and road construction, etc.; and

WHEREAS, the commission shall consist of 10 citizen members to be appointed by the Mayor and confirmed by the City Council, five of whom initially will be appointed to terms of two years and five of whom will be appointed to terms of four years, with all subsequent appointments to be for staggered, 4-years terms; and

WHEREAS, the commission also may include up to 10 ex-officio representatives of city departments, who shall be nominated by the City Administrator, appointed by the Mayor, and approved by the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA, AS FOLLOWS:

1. CREATION. There is hereby created the Mayor's Commission on Energy and Conservation.

2. 2-YEAR APPOINTMENTS. Members appointed to two-year terms will serve from Aug. 14, 2006, to Dec. 31, 2008.

3. 4-YEAR APPOINTMENTS. Members appointed to four-year terms will serve from Aug. 14, 2006, to Dec. 31, 2010. The appointments are:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Russ Doty	Energy & Conservation	08/14/06	12/31/08
2.	Deborah Singer	Energy & Conservation	08/14/06	12/31/08
3.	John Delvo	Energy & Conservation	08/14/06	12/31/08
4.	Joseph Keel	Energy & Conservation	08/14/06	12/31/08
5.	Bernard Rose	Energy & Conservation	08/14/06	12/31/08
6.	Mary McNally	Energy & Conservation	08/14/06	12/31/10
7.	Robert Lubbers	Energy & Conservation	08/14/06	12/31/10
8.	David Fishbaugh	Energy & Conservation	08/14/06	12/31/10
9.	Ed Gulick	Energy & Conservation	08/14/06	12/31/10
10.	Ron Fenex	Energy & Conservation	08/14/06	12/31/10

4. STAFF APPOINTMENTS. The following department representatives are appointed as ex-officio members: Mark Evangeline, Airport, Saree Couture, Facilities, Sandy Raymond, Library, Larry Deschene, Motor Pool, Gene Blackwell, Parks, Recreation & Public Lands, Wyeth Friday, Planning, Barbara Butler, Public Works, and Scott Baker, Transit.

APPROVED AND ADOPTED this 14th day of August, 2006.

THE CITY OF BILLINGS

BY:

Ron Tussing, Mayor

ATTEST:

Marita Herold, CMC/AAE, City Clerk

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 14, 2006

SUBJECT: Awarding Sale of Bonds Relating to \$380,000 Pooled Sidewalk Issue Series 2006

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved the authorization for the sale of bonds relating to Pooled Sidewalk Issue Series 2006. This staff memo recommends award of the sale of bonds totaling \$380,000 for the financing of construction for sidewalks WO 2-14, WO 03-02, WO 04-02.

BACKGROUND INFORMATION: Bids on \$380,000 in bonds will be received August 14 2006.

RECOMMENDATION

A recommendation will be made at the Council meeting

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

ATTACHMENTS

A – Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$380,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER, AND ALLEY APPROACH BONDS, SERIES 2006; AWARDING THE SALE THEREOF AND APPROVING CERTAIN MATTERS WITH RESPECT THERETO" (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 14, 2006, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

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

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$380,000 POOLED SPECIAL SIDEWALK,
CURB, GUTTER, AND ALLEY APPROACH BONDS, SERIES 2006;
AWARDING THE SALE THEREOF AND APPROVING CERTAIN
MATTERS WITH RESPECT THERETO

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

1. This Council on July 24, 2006 adopted Resolution No. _____ providing for the public sale of \$380,000 Pooled Special Sidewalk, Curb, Gutter, and Alley Approach Bonds (the "Bonds") to finance the costs of certain local improvements to be undertaken in or for the benefit of certain property owners. Notice of the sale has been duly published in accordance with Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. Pursuant to the notice of sale, _____ (_____) bid[s] for the purchase of the Bonds were received at or before the time specified for receipt of bids. The bid[s] [has][have] been opened or accessed and publicly read and considered, and the purchase price, interest rates and net interest cost under the terms of each bid have been determined.

2. The bid of [_____] of [_____, _____] (the "Purchaser"), attached as Exhibit A, to purchase the Bonds of the City, is hereby determined to comply with the notice of sale, and to be the lowest, most reasonable bid for the purchase of the Bonds. The bid of the Purchaser is hereby accepted by the Council and the sale of the Bonds is hereby awarded to the Purchaser. The bid security of the Purchaser shall be retained pending delivery of the payment for the Bonds and the bid security of all other bidders shall be promptly returned.

3. The Mayor and City Clerk are hereby authorized and directed to execute a purchase contract with the Purchaser with respect to the Bonds.

4. The Preliminary Official Statement relating to the Bonds, dated _____, 2006, is hereby approved. The officers of the City are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

5. This Council shall prescribe the form and security for the Bonds in a subsequent resolution.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this 14th day of August, 2006.

Mayor

Attest: _____
City Clerk

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