

PLEASE NOTE: The supporting documents are available following the agenda and in the order they appear on the agenda.

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

**“THE MAGIC CITY – A VIBRANT, WELCOMING PLACE WHERE
PEOPLE FLOURISH AND BUSINESS THRIVES”**

COUNCIL CHAMBERS **July 28, 2008** **6:30 P.M.**

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Clark

ROLL CALL

ROLL CALL

MINUTES COURTESIES

COURTESIES PROCLAMATIONS

PROCEDURES ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, and 3

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:

Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Gay Easton	Yellowstone Soil Conservation District	07/01/08	06/30/11

B. Bid Awards:

(1) W.O. 07-22, King Avenue East Street

Improvements. (Opened 7/1/08). Delayed from 7/14/08. Recommend Knife River contingent upon receipt of Letter of Credit securing the improvements, \$3,068,058.05.

(2) W.O. 02-08, Milton Lane School Route –

Billings. (Opened 7/15/08). Recommend Knife River, \$339,595.55.

(3) MET Transit Downtown Transfer Center.

(Opened 7/15/08). Recommend Fisher Construction, \$3,153,100.

C. Contract with Montana Department of Transportation for FY 2009 Operating Assistance through the Federal Transit Administration Section 5317 New Freedom Grant Program, \$10,401 grant revenue.

D. Approval of Assignment of B & J Properties Limited, LLC West End Hangar Ground Lease and Non-Commercial Aviation Ground Lease to First Interstate Bank for financing purposes, with no financial impact to the City.

E. Approval of two West End Hangar Ground Leases with Pacific Tank and Pipeline, Lots 1 and 2, Taxilane "D"; revenue first year \$1,022.12 each.

F. Landfill Gas Sales Agreement with Montana Dakota Utilities, estimated annual net revenue to the City - \$500,000. (Delayed from 6/23/08).

G. Reimbursement Agreement for Private Contract No. 594; Lot 1, Block 1 of Arlene Subdivision, Phase I – Zimmerman Homes, \$17,701 total reimbursement to Best Development Corp.

H. Grant Acceptance and Approval of the Billings West Wicks Lane Water, Sanitary Sewer, and Storm Sewer Design and Construction Agreement between the Department of the Army and the City of Billings, estimated cost to the City - \$122,500.

I. Amendment No. 6, W.O. 04-12- Alkali Creek Road Slope Stability, Professional Services Agreement with Kadrmas, Lee & Jackson, \$156,700.

J. Acknowledge Receipt of Petition to Vacate a portion of North 19th Street and set a public hearing for August 25, 2008.

K. Approval and Acceptance of Quitclaim Deed from Yellowstone County, Certificate of Survey 2350, Tract 2.

L. Declaring Surplus Property and authorizing the Police Department to release one Whelen lightbar with control box and two red lenses to the rural fire fighting unit in Waco, MT.

M. Approval of Downtown Revolving Loan Fund recommendation for Steven J. and Joni Harman for purchase and renovation of buildings located at 2605 Minnesota Avenue; lesser amount of \$250,000 or 20% of total project costs.

N. Street Closures:

(1)

Billings Association of Realtors Quality of Life Run

– August 23, 2008; 5:00 a.m. to 10:00 a.m.; 5-mile: start at Masterson Circle, east along Airport Road, down North 27th Street, west on Rimrock Road, south on Virginia Lane, through Pioneer Park, north on 3rd Street West, east on Parkhill Drive, south on N. 32nd Street, finish at N. 32nd Street and Division; 2 mile: start at MSU-B on Rimrock Road, south on Virginia Lane, through Pioneer Park, north on 3rd Street West, east on Parkhill Drive, south on N. 32nd Street, finish at N. 32nd Street and Division.

(2)

Montana Marathon – September 21, 2008; 5:00

a.m. to 2:30 p.m.; start on Molt Road, east along Sam Snead Trail and Walter Hagen Drive, south on 54th Street West, east on Rimrock Road, south on 46th Street West, east on Rangeview, north on 38th Street West, east on Poly Drive, south on Patricia Lane, east on Colton Boulevard, south on 17th Street West, east on Parkhill Drive, south on 3rd Street West, finish at Daylis Stadium.

O. Approval of Donation from Ales for Trails for Swords Park Trail, Phase II, \$25,000.

P. Resolution clarifying the legal description of the South Billings Boulevard Urban Renewal District.

Q. Preliminary Subsequent Minor Plat of Gabel Subdivision, 3rd Filing, located on approximately 11.35 acres on the south side of Gabel Road south of the intersection of Transtech Way and Gabel Road, conditional approval of the plat and adoption of the Findings of Fact.

R. Final Plat of Amended Lot 2A, Block 1, Shiloh Crossing Subdivision.

S. Final Plat of Foxtail Village Subdivision, 2nd Filing.

T. Bills and Payroll

1. June 27, 2008

REGULAR AGENDA:

2. **RESOLUTION APPROVING AND ADOPTING FOURTH QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2007/2008** (Budget Item #3 delayed from 6/23/08 and 7/14/08). Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
3. **RESOLUTION RELATING TO \$7,400,000 SEWER SYSTEM REVENUE BOND SERIES 2008; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS**

AND CONDITIONS. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

4. **PUBLIC HEARING FOR SPECIAL REVIEW #863:** A special review to allow the location of a beer and wine license with gaming on a 42,148 square-foot parcel of land in a Controlled Industrial zone described as Lot 4A, Studer Acreage Subdivision, located on the southeast corner of the intersection of Cel Avenue and South 32nd Street West. George Frank, owner; Design Lab Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)
5. **PUBLIC HEARING FOR SPECIAL REVIEW #864:** A special review to allow an all-beverage liquor license with gaming on a 38,072 square-foot parcel of land in a Controlled Industrial zone described as Lot 6A, Block 3, Midland Subdivision, 4th Filing, located on the southeast corner of the intersection of South 29th Street West and King Avenue West. Eagle-Fairview Investment Company LLC, owner; Montana Stewards, LLC (Town Pump), agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #845:** A zone change from Residential 9600 to Residential 6000 on a .85-acre parcel located on the southeast corner of the intersection of Monroe Street and Madison Avenue and addressed as 203 Monroe Street. Daniel Dimich and Patricia Rodriguez, applicants; Charles Hamwey, agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #846:** A zone change from Residential 9600 to Residential Professional on a 16,843 square-foot parcel generally described as Lots 1 and 2, Block 20, Kober Subdivision, 4th Filing, and located at 1702 Colton Boulevard. Sunday Creek Land Company, Ronald Scariano, owner; Heather McDowell, Crowley Law Firm, agent. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)
8. **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

A



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 28, 2008

TITLE: Yellowstone Soil Conservation District Re-Appointment

DEPARTMENT: City Administrator's Office

PRESENTED BY: wynnette Maddox, Administration

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

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Gay Easton	Yellowstone Soil Conservation District	07/01/08	06/30/11

Approved By: City Administrator ____ City Attorney ____

Attachment



RECEIVED

JUN - 2 2008

Mayor

Boards and Commissions

Re-appointment Form

Date: 6/2/08

Name of Member: Gay Easton

I presently serve on the Yellowstone County Soil Conservation Dist and
(Board/Commission)

wish to be considered for re-appointment for a second term.

Signature:

Date: 6/2/08

Please submit this form to: **City Administration Office**
PO Box 1178
Billings MT 59101



CITY OF BILLINGS

RON TUSSING, MAYOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8296
FAX (406) 657-8390

May 27, 2008

Gay Easton
1011 4th Avenue
Laurel MT 59044

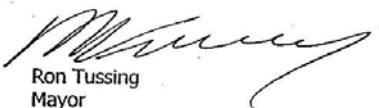
Dear Mr. Easton:

Thank you for the time and effort you gave our community as a member of the Yellowstone County Soil Conservation District. Your term expires on June 30, 2008. If you are interested in being re-appointed, please complete the enclosed application and return it to:

Mayor's Office
City of Billings
210 N. 27th Street
PO Box 1178
Billings MT 59103

We appreciate your willingness to be on the Commission and commend you for your involvement. Again, thank you.

Sincerely,



Ron Tussing
Mayor

RT/wjm

2nd Term Expires: 06/30/08

CC: File



B1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: WO 07-22 King Avenue East Bid Award

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: WO 07-22 King Avenue East was bid on Tuesday, July 1, 2008. This project will construct King Avenue East to a five-lane section from Orchard Lane to South Billings Boulevard. Included in the construction will be the conversion of South Billings Boulevard from two lanes to four lanes south of King Avenue East and the installation of traffic signals at the intersection of Calhoun Lane and King Avenue East and Orchard Lane and King Avenue East. This construction becomes necessary due to the development along King Avenue East, including construction of a new Cabelas. The widening of King Avenue East will be complete by November 15, 2008, with the signals and ditch crossings being completed in the Spring of 2009.

ALTERNATIVES ANALYZED:

1. Award WO 07-22 King Avenue East or;
2. Do not award WO 07-22 King Avenue East.

FINANCIAL IMPACT: The total estimated costs of the Improvements plus alternate #1 will be paid for utilizing TIFD (Tax Increment Finance District) financing and water replacement funds. Alternate #1 was to replace the oil in the asphalt mix with PG 64-22. We received two bids for the project as follows:

	Base Bid	Alternate #1	Total Bid
Engineer's Estimate	\$3,278,045.05	-\$234,000.00	\$3,044,045.05
Knife River-Billings	\$3,250,058.05	-\$182,000.00	\$3,068,058.05
Riverside Sand & Gravel	\$3,837,604.10	-\$321,880.00	\$3,515,724.10

RECOMMENDATION

Staff recommends that Council award WO 07-22 King Avenue East plus Alternate #1 to Knife River – Billings in the amount of \$3,068,058.05 contingent on receipt of letter of credit securing the improvements.

Approved By: City Administrator City Attorney

B2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 28, 2008

TITLE: Work Order 02-08 Milton Lane School Route – Billings

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for WO 02-08, Milton Lane School Route on July 15, 2008. This project involves the construction of an enhanced school crossing, storm drain pipe, widening the pavement section, and installing curb, gutter, and sidewalk within Milton Lane between Lake Elmo Drive and the easterly property line of Bench Elementary School.

ALTERNATIVES ANALYZED:

3. Award Work Order 02-08, Milton Lane School Route, to Knife River Corporation in the amount of \$339,595.55; or
4. Not award Work Order 02-08, Milton Lane School Route.

FINANCIAL IMPACT: Funding for Work Order 02-08, Milton Lane School Route, will be provided from Gas Tax, CTEP, Storm Drain, CDBG, and Property assessments. We received one responsive bid for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 383,784.03
Knife River	\$ 339,595.55

RECOMMENDATION

Staff recommends that Council approve the construction contract for Work Order 02-08, Milton Lane School Route, with Knife River Corporation in the amount of \$339,595.55.

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

B3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Approval of Award of the Billings MET Downtown Transfer Center Project

DEPARTMENT: Aviation and Transit

PRESENTED BY: Tom Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: One of the City's approved Capital Improvement Program projects this year is the construction of a new MET Downtown Transfer Center located at 220 North 25th Street. This project will combine the existing downtown transfer areas located along 3rd Avenue North and North 26th Street into one location to enhance customer convenience and safety. The completed site will have 15 bus parking stalls, individual passenger shelters, a covered passenger waiting area, and a driver break facility. The facilities and site will be constructed in accordance with the Leadership in Energy and Environmental Design (LEED) standards. These standards suggest a variety of design and building material options for environmentally sustainable construction, which has an added benefit of reducing our on going operation and maintenance costs. This project was advertised in the *Billing Times* and on the City's Web site. On July 15, 2008, we received the following bids for this project.

<u>COMPANY</u>	<u>BASE BID</u>	<u>BASE BID WITH ALTERNATES</u>
Fisher Construction*	\$2,882,000	\$3,153,100
Hardy Construction*	2,994,000	3,249,000
DPS Company*	2,990,000	3,250,800
General Contractors	3,058,065	3,389,934
ESTIMATE	3,335,654	3,707,154

*Failed to sign Affidavit of Non-Collusion prior to bid opening

Three of the four bidders, including the low bidder, failed to sign an Affidavit of Non-Collusion that was included in the contract specifications. The City Attorney's Office has reviewed this Affidavit and the project bid documents, and has determined that the low bidder's failure to sign this Affidavit prior to the bid opening is a minor irregularity that can be waived in accordance with our project specifications. They suggested that if we recommend award to the low bidder (Fisher Construction) that we have them sign the Affidavit of Non-Collusion prior to the award

being made. Fisher Construction has now signed the Affidavit and staff recommends that they be awarded the contract.

We are also recommending the inclusion of the four alternate bid items for this project, as there are sufficient funds within the Federal Grant to include these items. These items are photovoltaic panels that will help reduce our electrical costs, a green roof over the driver break area and covered passenger waiting area, and the addition of glass blocks and a glass wind screen in the passenger waiting area.

FINANCIAL IMPACT: The total cost of the project is \$3,153,100. This project will be funded through a Federal Transit Administration (FTA) Discretionary Grant with an 80% Federal, 20% local share. The FTA's portion will be \$2,522,480, and the City's match is \$630,620, which is identified in Transit's approved budget.

RECOMMENDATION

Staff recommends that the City Council approve the award of the Billings MET Transit Downtown Transfer Center project to the low bidder Fisher Construction, for the amount of \$3,153,100.

Approved By: City Administrator City Attorney

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 28, 2008

TITLE: Acceptance of Contract with Montana Department of Transportation for FY 2009 Operating Assistance through the Federal Transit Administration Section 5317 New Freedom Grant Program

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The City of Billings MET Transit Division was eligible this year to apply for new federal grant operating assistance funds (Section 5317 New Freedom) to help supplement operating expenses for paratransit service provided to the newly annexed areas of the City. The acceptance of this contract with the Montana Department of Transportation will provide reimbursement of \$10,401 of operating expenses to the MET on a 50% grant, 50% local basis for FY 08/09. Sufficient eligible operating dollars are contained in the budget so no additional revenue for the match is needed.

The MET will pursue this grant revenue again next year; however, these funds are allocated by the State on a year by year basis so continued funding is unknown at this time.

FINANCIAL IMPACT: This contract will allow the MET to access \$10,401 in grant revenue to help offset paratransit operating expenses to the newly annexed areas of the City.

RECOMMENDATION

Staff recommends that Council approve the execution by the Mayor of the attached Section 5317 Operating Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration New Freedom Program.

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

ATTACHMENT:

A. Section 5317 Operating Contract

Contract #104078

SECTION 5317 OPERATING CONTRACT
CFDA #20.521 – New Freedom Program

THIS Contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana (State) and City of Billings, PO Box 1178, Billings, Montana, 59103-1178 (Grantee). Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Ronald Wenger.

The State, having received grant monies from the Federal Transit Administration (FTA), through Section 5317 of the Federal Transit Act for the Federal Fiscal Year of 2008 (October 1, 2007 – September 30, 2008), as amended, and desiring to assist the Grantee, enters into the following Contract with Grantee.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance for the Grantee to implement New Freedom services.

SECTION 1.2 Scope of Project. Grantee shall implement a New Freedom service in accordance with the budget, goals and plans outlined in its 2009 Operating Application and in accordance with the regulations of the Section 5317 program. The Grantee shall use its best efforts to efficiently and economically complete the Project.

SECTION 1.3 Project Description. Reimbursement of operating expenses described in Grantee's Application for the period July 1, 2008 through June 30, 2009.

SECTION 1.4 Period of Performance. This Contract will be effective from July 1, 2008 to June 30, 2009.

SECTION 1.5 Cost of Project. The total cost of the Project shall be \$20,802.00. The cost of the Project shall be shared as follows:

50% Federal Share	\$10,401.00
50% Local Match	\$10,401.00
	\$20,802.00

The Grantee agrees to provide matching funds to assure payment of Project costs. Grantee shall provide these funds when necessary to meet Project costs. The Grantee will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State.

Up to one-half of the Grantee share for capital, administrative, and operating expenses may be provided from unrestricted federal funds. At least one-half of the Grantee share must be from sources other than federal funds.

State will make quarterly grant payments to Grantee based upon the State's approval of reports and invoices submitted by the Grantee.

SECTION 1.6 Purchase of Project Equipment. The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the

Uniform Administration Requirement for Grant and Cooperative Agreement to State and Local Government (49 CFR PART 18). PROJECT equipment shall be purchased in conformity with the latest approved Cost of Project as shown in Section 1.5.

SECTION 1.7 Title to Project Equipment. The Grantee shall hold title to Project equipment. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in Project equipment.

SECTION 1.8 Use of Project Equipment. The Grantee shall use Project equipment for transportation service described in the Project Application and in compliance with FTA Circular 9045.1. If any Project equipment is no longer needed for this service, the Grantee shall immediately notify the State and the State shall dispose of such Project equipment.

SECTION 1.9 Maintenance. During the contract period Grantee shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. This includes but is not limited to lifts, securement devices, elevators and signage. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project vehicle covered under this agreement, after proper application by Grantee and approval by the State.

SECTION 1.10 Insurance. During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the federal share portion of Project facilities and equipment. Grantee will furnish proof of such insurance for the State's approval.

SECTION 1.11 Records, Reports and Information Access.

1.11.1 **Recordkeeping.** The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances, and such records as the State and the Federal Transit Administration (FTA) may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

1.11.2 **Reporting.** Grantee shall advise the State in writing of Project progress at such times and in such manner as the State and FTA may require, but not less than on a quarterly basis.

1.11.3 **Information Access.** The Grantee shall permit the State, FTA, or their authorized representatives, to inspect all vehicles, facilities and equipment purchased for the Project, and all transportation services provided through the Project. The Grantee shall also permit the above-named persons to examine the books, records, data and accounts pertaining to the Project.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Grantee shall account for any Project property in its possession.

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this Agreement, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance
This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Transit Administration.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Agreement, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FTA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of the Grantee's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The Grantee's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that he or any subcontractor or

suppliers to him, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Prohibition Against Use of Federal Funds for Lobbying. The Grantee or its subcontractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508, 7324-7326 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, *et seq.*, and/or 49 U.S.C. 5307(n)(1), as may be deemed by FTA to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No Government Obligations to Third Parties. The State and Federal Government shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Elderly and Handicapped. The Grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The Grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 3.19 Buy America Provision. The Grantee agrees that, in its execution of this Contract, it will comply with the requirements of 49 U.S.C. 5323(j), with the FTA regulations "Buy America Requirements at 49 CFR part 661, and with any implementing guidance that the FTA may issue.

SECTION 3.20 Pre-award and Post-delivery Audit. The Grantee shall comply with any regulations that may be issued to implement 49 U.S.C. 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

SECTION 3.21 School Bus Operations. The Grantee, or any operator of mass transportation acting on its behalf, shall not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided under 49 U.S.C. 5323(f) and applicable regulations, "School Bus Operations," set forth at 49 C.F.R. Part 605, as amended. Any school bus agreement entered into under these regulations is incorporated into this Contract by reference.

SECTION 3.22 Charter Service Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

SECTION 3.23 Air Pollution. No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the grantee obtains satisfactory assurances that they are (or will be) designed and equipped to limit air-pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s), appropriate FTA directives and all other applicable standards.

SECTION 3.24 Energy Conservation. The Grantee and its third party contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.).

SECTION 3.25 Federal Changes. Grantee shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Grantee's failure to so comply shall constitute a material breach of this contract.

SECTION 3.26 Authority. The Grantee warrants that it has the lawful authority to enter this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Agreement, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this Agreement on behalf of Grantee.

SECTION 3.27 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby

incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Grantee shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

SECTION 3.28 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Grantee is solely responsible for its lawful compliance with them.

SECTION 3.29 Drug and Alcohol Compliance. The Grantee shall comply with USDOT Federal Transit Administration drug and alcohol rules as established in the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace act. Grantee understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 3.30 Privacy Act. The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION 3.31 Audit Requirement. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee will provide the MDT Transit Section with a copy of the audit report for each fiscal year FTA funds are received by the Grantee.

SECTION 3.32 FTA Master Agreement The Grantee understands that this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the Grantee or its project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(12) at the FTA website <http://www.fta.dot.gov/documents/13-Master.doc>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements.

ARTICLE 4. NON-DISCRIMINATION NOTICE

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

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

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

directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FTA may direct to enforce such provisions including sanctions for noncompliance. Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

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

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

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

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

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

CITY OF BILLINGS

BY: _____

DATE: _____

MONTANA DEPARTMENT OF TRANSPORTATION

BY: _____
Sandra S. Straehl, Administrator

DATE: _____

Approved for Legal Content by:



A handwritten signature in black ink, appearing to read "Sandra S. Straehl".

Approved for Civil Rights Content by:



A handwritten signature in black ink, appearing to read "Shirley Cozzin".

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Assignment of B & J Properties Limited, LLC West End Hangar Ground Lease and Non-Commercial Aviation Ground Lease to First Interstate Bank for Financing Purposes

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: B & J Properties Limited, LLC currently lease two (2) separate Airport properties from the City of Billings, on which they have constructed aircraft hangars. B & J Properties Limited, LLC has a loan with First Interstate Bank in which the two airplane hangars are pledged as collateral.

The Assignment language has been reviewed by staff and the City Attorney, and is similar to language used in the past. The City has approved a number of these financing assignments over the years as a means for the banks to secure the loans they provide to the Airport tenants for their hangar facilities. This is the case with the B & J Properties Limited, LLC hangars, as First Interstate Bank seeks to secure its loan for the costs of the hangar construction.

FINANCIAL IMPACT: There would be no financial impact to the City, as B & J Properties Limited, LLC will still be required to pay the annual ground lease rentals as established in the two existing Leases that were approved by the City Council on May 10, 2004 and March 27, 2000 respectively.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the two (2) B & J Properties Limited, LLC Ground Leases to First Interstate Bank, for the purpose of securing the loan for the costs of the hangar construction.

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

E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Approval of two West End Hangar Ground Leases with Pacific Tank and Pipeline, on Lots 1 and 2 – Taxilane "D"

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Mr. Landan Cheney of Pacific Tank and Pipeline desires to construct a sixty-foot (60') by one hundred twenty-foot (120') duplex-style aircraft hangar in the City's west end General Aviation (GA) area located at Billings Logan International Airport. This will be the fourth duplex-style hangar constructed in the GA area. The proposed hangar will have a steel partition wall that separates the hangar into two separate units, similar to a duplex. Each hangar unit will have its own hangar door. This will allow Mr. Cheney the flexibility to sell each side of the hangar in the future. This area was specifically developed in the early 1990's to accommodate the GA tenants with this type of lease and hangar construction. The twenty (20) year ground Leases will each be for 5,525 square foot parcels on the north side of GA Taxilane "D." The Leases will be the first two lots leased adjacent to the new taxilane. The ground lease rate of \$0.1850 per square foot per annum is very similar to the rate paid by the other ground lease tenants in this area. We have compared our ground lease rates with other commercial service airports and have found that our ground lease rates are comparable. The Leases identify that the tenant is responsible for maintaining the leaseholds, and includes the appropriate insurance coverage requirements and indemnification language.

FINANCIAL IMPACT: The ground Leases will each generate \$1,022.12 in the first year of the Lease. Future Lease rents will be adjusted annually by the Consumer Price Index (CPI-U) on the anniversary date of the Leases.

RECOMMENDATION

Staff recommends that Council approve the authorization for the Mayor to execute new twenty-year West End Hangar Ground Leases at Billings Logan International Airport with Pacific Tank and Pipeline, for a term beginning August 1, 2008, and ending July 31, 2028.

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

F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 28, 2008

TITLE: MDU Landfill Gas Sales Agreement

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Solid waste landfills naturally produce methane gas, for which the Montana Department of Environmental Quality (MDEQ) and Federal Environmental Protection Agency (EPA) require monitoring and proper disposal. The methane gas produced at the Billings Regional Landfill has remained within MDEQ and EPA allowable levels. The Solid Waste Division has retained \$725,000 in reserves to begin extraction of the methane gas when it becomes necessary. Last year, the Public Works Department began discussing with other cities their long-term strategies for removing methane gas. One option was to remove the gas for sale as either clean natural gas or to power an electrical generator for power sales. In subsequent discussions with Montana- Dakota Utilities (MDU), they agreed to assist in funding a feasibility study of the landfill's methane gas.

The feasibility study concluded that there is sufficient methane gas in the existing landfill to support commercial production and sales. Based on the data provided in the feasibility study, MDU has requested to contract with the City of Billings for the rights to extract, clean, and distribute the methane gas.

ALTERNATIVES ANALYZED: The Public Works Department has reviewed the following alternatives for disposal of the landfill methane gas:

- Continue our current practice of monitoring the methane gas release from the landfill site and dispose of the gas in the future when the gas release exceeds MDEQ and EPA requirements. This will require the City to retain reserves for future gas extraction.
- Proceed independently in developing the gas extraction process for sale as electricity or natural gas. The start up costs is estimated to be \$8 million. This would require the City of Billings to hire staff knowledgeable in natural gas production, develop a distribution system, and market the clean gas or electricity.
- Distribute the gas directly to an end user. This would require the City of Billings to develop the gas extraction process and find and end user in the local vicinity to purchase

the gas. Currently there are no users in the area that could utilize the projected volume of gas from the landfill.

- Distribute the gas directly to MDU for use in their distribution system. The proposed contract would require MDU to provide the start up costs, operate the collection system, and purchase the gas for distribution in their system.

FINANCIAL IMPACT:

- Continuing to monitor the methane gas for removal when it exceeds state and federal guidelines requires the City of Billings to carry reserves for future disposal of the methane. The exact cost of the disposal system is not known at this time. There would be no revenue for the City of Billings from the gas removal.
- Development and operation of gas extraction process using City of Billings resources and staff. This would require the City of Billings to fund the development and ongoing operational costs. The City would be required to market and operate the gas or electric production. This would place all the financial risk on the City of Billings.
- Contracting with MDU would require MDU to assume the financial risk for the development of the gas production, operating costs, and purchase the gas for market value. The City of Billings would receive 15% of the net revenues from the sales. This is estimated to be \$19 million over 40 years or approximately \$500,000/annually. These funds would be placed in the City's General Fund account.

RECOMMENDATION

Staff recommends that Council approve the Landfill Gas Sales Agreement with Montana-Dakota Utilizes Co.

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

ATTACHMENTS

A. MDU Landfill Gas Sales Agreement

LANDFILL GAS SALES AGREEMENT

This LANDFILL GAS SALES AGREEMENT ("Agreement"), dated as of _____, _____, 2008, is by and between the City of Billings ("City"), a Montana municipal corporation, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation organized under the laws of Delaware ("MDU").

WITNESSETH:

WHEREAS, the City owns a landfill site that contains methane gas located at Sections 29 and 30, Township 1 South, Range 26 East, Yellowstone County, Montana ("Landfill")

WHEREAS, MDU wants to test the concentration of methane gas and, if economically feasible, to extract, condition, transport and purchase the methane gas for commercial use; and

WHEREAS, the City is willing to allow MDU to test for, extract, condition, transport and purchase such methane gas on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

SECTION 1 – DEFINITIONS

- 1.1 **Certain Definitions.** For purposes of this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:
 - 1.1.1 **"Commission"** shall mean to install Facilities at the Landfill and utilizing said Facilities, to begin extracting methane gas on a sustained basis.
 - 1.1.2 **"Commissioning Date"** shall mean the day Facilities installed at the Landfill begin to extract methane gas on a sustained basis.
 - 1.1.3 **"Landfill"** shall mean the landfill of the City located at Sections 29 and 30, Township 1 South, Range 26 East, Yellowstone County, Montana.
 - 1.1.4 **"Landfill Easement Agreement"** means an easement agreement between the City and MDU substantially in the form attached as Exhibit 2.
 - 1.1.5 **"Facilities"** shall mean the methane gas wells, piping, conditioning, metering equipment, and any other equipment owned and installed by MDU at the Landfill required for the extraction, conditioning, recovery, metering and transportation of methane gas in accordance with this Agreement. The Facilities are more particularly described in Exhibit 3.
 - 1.1.6 **"Force Majeure"** shall have the meaning set forth in Section 13.2.
 - 1.1.7 **"MDU Indemnitees"** shall have the meaning set forth in Section 12.3.
 - 1.1.8 **"MDU Personnel"** shall have the meaning set forth in Section 11.2.
 - 1.1.9 **"Prudent Practice"** shall mean the exercising of the same degree of care and control considered reasonable in similar circumstances by other entities of a size comparable to the City or MDU as the case may be, when confronting the same or similar circumstances. In applying the standard of Prudent Practice, equitable consideration should be given to

the circumstances, the complexity of the equipment or the tasks involved, the facts known by the Parties at the time, the fact that neither Party is in a position or in the business of being an insurer or guarantor, the then-current state of technology, and with respect to MDU's Facilities at the Landfill, recognizing that the equipment will not always operate as designed and that construction and erection of equipment will not always be performed perfectly with the result that modifications and improvements may have to be made and sometimes at substantial cost to MDU.

1.1.10 "Methane Gas Payment" shall have the meaning set forth in Section 4.1.1.

1.2 Other Terms

References herein to Exhibits are to the Exhibits attached to this Agreement which are incorporated into this Agreement by this reference. Other terms used in this Agreement are defined in the context in which they are used and shall have the meaning therein indicated.

SECTION 2 - TERM

2.1 Interim Term

The Interim Term of this Agreement shall commence on the date first written above and shall terminate on the first day of the Initial Term, unless cancelled or terminated as provided herein.

2.2 Initial Term

The Initial Term of this Agreement shall commence on the Commissioning Date, and shall terminate forty (40) years thereafter, unless earlier terminated as provided herein.

2.3 Extension

The Agreement shall be renewable at the end of the Initial Term for successive five-year terms subject to prior written approval by the City and MDU. Upon renewal, all applicable terms of the Agreement will apply.

SECTION 3 – METHANE GAS TESTING AND FACILITIES

3.1 Methane Gas Testing

During the Interim Term, MDU will drill and monitor test wells within the vertical and horizontal boundaries of the Landfill to confirm the availability of sufficient quality and quantity of recoverable methane gas on a sustained basis to economically support the construction and operation of the Facilities. If MDU determines in its sole discretion from the test well results that a sufficient commercial quality and quantity of recoverable methane gas on a sustained basis exists within the Landfill to economically support the construction and operation of the Facilities, MDU shall proceed with the design and construction of

the Facilities. Payment shall not be required for methane gas extracted prior to the Commissioning Date except to the extent such methane gas is gathered for transportation and commercial use by MDU. If MDU determines, in its sole discretion, from the test well results that a sufficient commercial quality and quantity of recoverable methane gas on a sustained basis does not exist at the Landfill, MDU shall notify the City in writing of MDU's determination and this Agreement shall terminate.

3.2 Design and Construction

MDU shall be responsible for the design, construction, and operation of the Facilities.

3.3 Facilities and Site Easement

The City and MDU shall execute a Facilities Easement Agreement so as to allow MDU to locate and construct the Facilities on the Landfill and such other area as described in the Facilities Easement Agreement. Upon termination of this Agreement, MDU shall (i) execute such waivers, releases or other instruments in recordable form as may be necessary to evidence such termination, (ii) release any interest which MDU may have in and to the Facilities Easement Agreement, and (iii) remove the Facilities from the Landfill site and restore the Landfill site to its pre-construction condition unless otherwise agreed by MDU and the City.

SECTION 4 – METHANE GAS PURCHASE TERMS

4.1 Rates and Payments

4.1.1 Methane Gas Payment

Beginning with the Commissioning Date of the Facilities, MDU will pay to the City a payment monthly for methane gas ("Methane Gas Payment") extracted and transported from the Landfill, net of losses, equal to fifteen percent (15%) of the Colorado Interstate Gas Co. Index ("CIG Index") per MMBtu, as reported in the first issue of the month of delivery of Inside FERC's Gas Market Report in the table "Prices of Spot Gas delivered to Pipelines" or another mutually agreed upon pricing mechanism. The measurement of the total recovered methane gas extracted and transported from the Landfill, net of losses, shall be the meter readings at the meter located at the interconnection point between the Facilities and MDU's natural gas distribution system or other commercial use transportation system. Such meter shall be calibrated and maintained in accordance with Prudent Practice. Measurement and payment shall be on a net MMBtu basis after conditioning of the methane gas to remove impurities to meet MDU's natural gas specifications for commercial use.

4.1.2 Title Transfer of Methane Gas

Title transfer of the methane gas between the parties shall occur at the MDU measurement facilities identified in section 4.1.1.

4.2 Carbon Credits

The Parties agree that all carbon credits, renewable energy credits, emission credits, or other certification of emission reduction or carbon methane destruction or displacement attributable to the extraction of methane gas from the Landfill (hereinafter "Credits") shall inure to the benefit of and be the property of MDU or its assignee or designee. The City agrees to execute any assignment, or other document reasonably requested by MDU transferring any right of the City in the credits or acknowledging MDU's interest and ownership in the Credits.

4.3 Taxes

The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

4.3.1 Personal, Property and Income Taxes

Each Party shall be responsible for any personal or real property taxes on property it owns or leases, and taxes based on its receipt of the Methane Gas Payment.

4.3.2 Sales, Use, Excise and Value-Added Taxes

MDU shall be responsible for any sales, use, excise, value-added, services, consumption, and other taxes and duties payable by MDU on any goods or services used or consumed by MDU in the methane gas extraction process where the tax is imposed on MDU's acquisition or use of such goods or services and the amount of tax is measured by MDU's costs of acquiring such goods or services.

4.3.3 Production Taxes

MDU and the City agree to jointly petition the Montana Department of Revenue for a declaratory ruling that methane gas extracted from the Landfill under the Agreement is not natural gas for purposes of taxation under the Montana Oil and Gas Production Tax. If it is determined the methane gas extracted from the Landfill under this Agreement is subject to the Montana Oil and Gas Production Tax or any other current or future local, state or federal production, severance, extraction, or similar tax, the tax shall be paid by the City or deducted from the Methane Gas Payment if the tax is paid by MDU. MDU will cooperate with the City to seek exemption for taxation of the methane gas under any such current or future production, severance, extraction, or similar tax.

4.4 Payments

4.4.1 Billings and Statements

Beginning the month following the Commissioning Date, MDU will prepare and deliver each month to the City a written statement for the preceding month prepared in accordance with, and subject to the terms and conditions in the Agreement. Such statement shall be dated and delivered to the City on or before the 10th day of the month in which it is prepared (e.g. the month following the delivery of the methane gas reflected therein) and shall set forth the total amount due by MDU under Section 4.1.1. Amounts due and owed shall be paid by MDU not later than fifteen (15)

days after the date of such statement. Amounts not paid when due under this section, shall accrue interest at one hundred five percent (105%) of the Federal Reserve Prime Rate of interest, as quoted in the *Wall Street Journal*. Such interest due shall accrue from the due date to the date of payment.

In the event any portion of any statement submitted is disputed, the undisputed amount shown to be due shall be paid by the due date. Any additional amount subsequently determined to be due shall be paid with interest at the rate stated above upon determination of the correct amount due. Any amount of an invoice determined to have been overpaid shall be refunded with interest at the rate stated above.

The Parties shall have one (1) year after receipt or delivery of any statement to question the correctness thereof. If a statement has not been challenged in writing by either Party during such one-year period, then such statement shall become final for all purposes and no longer subject to challenge or adjustment.

SECTION 5 – OPERATION OF FACILITIES

5.1 Operational Responsibilities

5.1.1 Operation and Maintenance

MDU shall be responsible for the operation and maintenance of the Facilities in accordance with Prudent Practice.

5.1.2 Personnel

MDU shall ensure that all operational personnel working on the Facilities are trained and experienced in the operation of gas facilities.

5.1.3 Utility Expense

MDU shall be responsible for arranging direct utility hook-ups (electricity, water, communications, etc.) needed for the Facilities and for paying any utility expenses associated with the operation of the Facilities directly to utility suppliers.

5.1.4 Curtailments

MDU, in its sole discretion, may determine that regulatory requirements, market conditions, flow conditions or other operational considerations require the curtailment or the shut down of any of the Facilities for any period of time. Further, industry and market conditions may require MDU to curtail or shutdown the Facilities for equipment upgrades and replacement. Such curtailments and shut-downs shall not be considered a breach or event of default under this Agreement.

5.1.5 Operational Emergency

If, in MDU's reasonable judgment, it determines that any of the operations of the Facilities is creating an emergency or safety concern, endangering the Facilities or MDU's gas transportation or distribution system, or other

equipment or personnel, then MDU may cease operations until the emergency or safety concern ceases to exist.

5.2 Permits and Approvals

5.2.1 Permits

MDU shall be responsible for obtaining any permits and clearances necessary for the construction and operation of the Facilities from any governmental authority having jurisdiction.

5.2.2 Regulatory Approval and Treatment

This Agreement may be subject to review and/or approval by the state regulatory commissions for the states in which MDU operates its natural gas distribution system. If a regulatory commission disapproves this Agreement for any reason, or at any time determines the capital and operational costs of the Facilities and extracted gas are not fully recoverable by MDU through its retail rates, MDU may terminate this Agreement upon written notice to the City.

SECTION 6 – INSURANCE

6.1 Delivery of Certificates of Insurance

MDU shall insure that all of its employees as well as its contractors, subcontractors and their employees performing services in accordance with this Agreement have in effect Commercial General Liability Insurance, Workers' Compensation Insurance, Automobile Liability Insurance and Excess Liability Insurance with the coverage limits set forth in Exhibit 4.

6.2 Proof of Insurance

Upon request of the City, MDU shall provide certification of insurance for coverage in types and amounts set forth in Exhibit 4 respectively for itself and any contractor or subcontractors engaged by it at the Landfill.

SECTION 7 – PERIODIC REVIEWS; AUDIT RIGHTS

7.1 Annual Reviews

MDU agrees to maintain its books and records in accordance with generally accepted accounting principles. No more than once each year, the City shall have the right to inspect and audit those books and records and other supporting evidence of MDU that the City deems necessary to verify: (i) the quantity and quality of methane gas extracted, conditioned and transported from the Landfill, and (ii) that MDU is in compliance with the terms of this Agreement, regulatory authorities, or other laws and regulations that govern the operation of the Facilities.

SECTION 8 – TERMINATION FOR CAUSE

In the event that MDU or the City commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of breach, the other Party may terminate this Agreement in whole or in part, as of the date specified in the notice of breach.

SECTION 9 – RELATIONSHIP OF THE PARTIES

Nothing in this Agreement will imply a joint venture, partnership, or principal-agent relationship between the Parties. Neither Party will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party, pursuant to this Agreement.

SECTION 10 – REPRESENTATIONS AND WARRANTIES

10.1 Work Standards

MDU represents and warrants that design, construction and operation of the Facilities shall be performed with promptness and diligence and shall be executed in a workmanlike manner, in accordance with the practices and high professional standards used in methane gas extraction and recovery operations performing similar services. MDU represents and warrants that an adequate number of qualified individuals with suitable training, education, experience, and skill shall be utilized to perform such services.

10.2 Compliance with Laws and Regulations

MDU shall construct and operate the Facilities in accordance with all laws, rules, regulations, certificates, orders, ordinances, codes and directives of all applicable authorities with jurisdiction over the Landfill or the Facilities.

10.3 Title

The City represents and warrants that it is the sole owner of the Landfill and has exclusive title to the methane gas extracted from the Landfill and the authority to allow extraction of the methane gas and to sell the methane gas to MDU under this Agreement.

SECTION 11 – INDEMNIFICATION

11.1 MDU shall defend, protect, indemnify, and hold harmless the City, its officers, and employees, (collectively the "City Indemnitees") from and against all liabilities, claims, costs, expenses, demands, suits and causes of action of every kind and character arising in favor of any person, corporation or other entity, on account of personal injuries or death or damages to property to the extent caused by the acts or omission of MDU, its employees, contractors, subcontractors or agents.

- 11.2** MDU further agrees, except as may be otherwise specifically provided herein, that the obligation of indemnification hereunder shall include, but not be limited to, expenses, claims, fines, and penalties or other enforcement charges, resulting from the failure of MDU to abide by any and all valid and applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction.
- 11.3** The City shall defend, protect, indemnify, and hold harmless MDU and its directors, officers, and employees (herein referred to as the "MDU Indemnitees") from and against all liability, claims, costs, expenses, demands, suits and causes of action of every kind and character arising in favor of any person, corporation or other entity, on account of personal injuries or death or damages to property to the extent caused by acts or omission of the City, its employees, contractors, subcontractors or agents.
- 11.4** The City further agrees, except as may be otherwise specifically provided herein, that the obligation of indemnification hereunder shall include, but not be limited to, expenses, claims, fines, and penalties or other enforcement charges, resulting from the failure of the City to abide by any and all valid and applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction.
- 11.5** The City further agrees to indemnify the MDU Indemnitees from any claim by any third party asserting title or interest in the methane gas, or the right of additional compensation for the methane gas, recovered from the Landfill.
- 11.6** In connection with any claim or action described in this Section 11, the Party seeking indemnification will (a) give the indemnifying Party prompt written notice of the claim, (b) cooperate with the indemnifying Party (at the indemnifying Party's expense) in connection with the defense and settlement of the claim, and (c) permit the indemnifying Party to control the defense and settlement of the claim, provided that the indemnifying Party must diligently defend the claim and may not settle the claim without the indemnified Party's prior written consent (which will not be unreasonably withheld or delayed). Further, the indemnified Party (at its cost) may participate in the defense and settlement of the claim.

SECTION 12 – LIABILITY

12.1 Liability Restrictions

12.1.1 IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, ARISING OUT OF OR IN CONJUNCTION WITH THIS AGREEMENT.

12.2 Force Majeure and Other Events Excusing Performance

12.2.1 No Party shall be liable for any default or delay in the performance of its obligations under this Agreement (i) if and to the extent such default or delay is caused, directly or indirectly by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, explosions, breakage, accident or repairs to machinery, equipment or lines of pipe, inability to obtain or unavoidable delay in obtaining pipe, materials, equipment for Facilities, or compliance with any order or request of any governmental authority, or any other cause, whether similar or dissimilar to any above enumerated beyond the reasonable control of such Party (a Force Majeure event), (ii) provided the non-performing Party is without fault in causing such default or delay, and (ii) such default or delay could not have been prevented by reasonable precautions and can not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means.

12.2.2 In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances detailed above prevail and such Party continues to use its reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall promptly as reasonably possible notify the Party to whom performance is due and describe at a reasonable level of detail the circumstances causing such delay.

SECTION 13 – DISPUTE RESOLUTION

13.1 Negotiation of Disputes and Disagreements

In the event of any dispute or disagreement arising out of or relating to the performance of this Agreement, which the Parties hereto have been unable to settle or agree upon within a period of sixty (60) days after the dispute or disagreement arises, either party may then by notice to the other submit the dispute to arbitration in accordance with the provisions of Section 13.2.

13.2 Arbitration Resolution

Any claim, dispute or controversy arising out of or relating to this Agreement, shall be submitted to binding arbitration by the American Arbitration Association at a location in Billings, Montana, in accordance with the Commercial Rules of the American Arbitration Association then in effect. There shall be three arbitrators, with each party selecting one; the third arbitrator, who shall be the chairman of the panel, shall be selected by the two party-appointed arbitrators. The claimant shall name its arbitrator in the demand for arbitration and the responding party shall name its arbitrator within thirty (30) days after receipt of the demand for arbitration. The third arbitrator shall be named within thirty (30) days after the appointment of the second arbitrator. The American Arbitration Association shall be empowered to appoint any arbitrator not named in accordance with the procedures set forth herein. The decision of the arbitration

panel shall be final and binding upon the Parties without the right of appeal to the courts and judgment thereon may be entered by any court having jurisdiction thereof. The arbitrators' fees and other costs of the arbitration shall be shared by the parties. Each party shall bear the costs of its attorney fees, expert witness fees, and costs.

13.3 Continuation of Service

Pending final resolution of any dispute, whether or not submitted to arbitration hereunder, the City and MDU shall continue to fulfill their respective obligations under this Agreement.

SECTION 14 – MISCELLANEOUS

14.1 Notices under this Agreement shall be sufficient only if personally delivered by a commercial prepaid delivery or courier service or mailed by certified or registered mail, return receipt requested to a Party at its address set forth below or as amended by notice pursuant to this Section 14.1. If not received sooner, notice by mail shall be deemed received five (5) business days after deposit in the U.S. mail. All notices shall be delivered as follows:

If to the City:

Office of the City Attorney
City of Billings
210 North 27th Street
Billings, Montana 59101

If to MDU:

Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, ND 58501
Attention:
Fax No.: (701) 222-7606

14.2 Binding Nature; Entire Agreement

The City and MDU acknowledge (i) that each has read and understands the terms and conditions of this Agreement and agrees to be bound by such terms and conditions, (ii) that this Agreement is the complete and conclusive statement of the agreement between the Parties, and (iii) that this Agreement sets forth the entire agreement and understanding between the Parties relating to the subject matter hereof. All understandings and agreements, oral and written, heretofore made between the City and MDU relating to the subject matter hereof are merged in this Agreement which alone, fully and completely expresses their agreement on the subject matter.

14.3 Amendment

No modification of, additions to or waiver of this Agreement shall be binding upon the City or MDU unless such modification is in writing and signed by an authorized representative of each Party.

14.4 Severability

If any term or provision of this Agreement shall to any extent be held by a court or other tribunal to be invalid, void or unenforceable, then that term or provision shall be inoperative and void insofar as it is in conflict with law, but the remaining terms and provisions of this Agreement shall nevertheless continue in full force and effect and the rights and obligations of the Parties shall be deemed to be restated to reflect nearly as possible the original intentions of the Parties in accordance with applicable law.

14.5 Headings

Headings used in this Agreement are for reference and convenience only and are not to be deemed or construed to be part of this Agreement.

14.6 Compliance with Laws and Regulations

Each Party shall perform its obligations in a manner that complies with the laws, rules, certificates, regulations, ordinances codes, orders and directives of all applicable authorities with jurisdiction over the Landfill or the Facilities. If a Party is charged with a failure to comply from any such applicable authority, the Party charged with such non-compliance shall promptly notify the other Party of such charges in writing.

14.7 Governing Law and Venue

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana, and not, by the application of choice of law principles, the laws of any other state. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14.8 Nondiscrimination

MDU agrees that all hiring of persons performing work pursuant to this Agreement or any sub-agreements by MDU and/or its contractors and subcontractors will be on the basis of merit and qualification and MDU will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

14.8 Binding Nature and Assignment

This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may or shall have the power to assign this Agreement without the prior written consent of the other, except that MDU may assign its rights and obligations under this Agreement without the approval

of the City to an entity which acquires all or substantially all of its assets of MDU, or to any subsidiary or affiliate or successor in a merger or acquisition of MDU. In no event shall any assignment or partial assignment hereunder relieve the assigning Party of its obligations under this Agreement and any assignment or partial assignment hereunder is subject to the written assumption by the assignee of the obligations of the assigning Party.

14.9 No Waivers

Failure or delay on the part of the City or MDU to exercise any right, power or privilege under this Agreement shall not constitute a waiver of any right, power or privilege of this Agreement.

14.10 Survival

Any provision of this Agreement which contemplates performance or observance subsequent to any terminations or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

IN WITNESS WHEREOF, the City and MDU have caused this Agreement to be executed effective as of the date first written above.

CITY OF BILLINGS

**Montana-Dakota Utilities Co., a
Division of MDU Resources Group,
Inc.**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibits:

- Exhibit 1: Landfill Description
- Exhibit 2: Compressor Site Easement Agreement
- Exhibit 3: The Facilities
- Exhibit 4: Minimum Insurance Requirements

Exhibit 1

Landfill Description

C/S 1098 Tract 1 Amended in the south ½ of Section 30, 1 South, 26 East
C/S 796 Tract 1 in the west ½ of Section 29, 1 South, 26 East
C/S 1130 in the south ½ of the southwest corner of Section 29, 1 South, 26 East

Exhibit 2

FACILITIES EASEMENT AGREEMENT

The Facilities Easement Agreement ("Agreement") dated as of _____, ___, 2008 is by and between the City of Billings ("City"), a Montana municipal corporation, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation organized under the laws of Delaware ("MDU").

WITNESSETH:

WHEREAS, MDU and the City entered into a Landfill Gas Sales Agreement dated as of _____, ___, 2008, the ("Landfill Gas Agreement") pursuant to which the City granted MDU the right to extract, condition, transport and purchase methane gas from a Landfill owned by the City, and

WHEREAS, the Landfill Gas Agreement requires that the City grant an easement to MDU in the form of this Agreement. Any capitalized term used in this Agreement and not defined herein shall have the meaning assigned to such term in the Landfill Gas Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the Parties agree as follows:

1. Subject to the terms and conditions hereinafter set forth, the City hereby grants to MDU the right, privilege and easement, hereinafter referred to as "Easement," to use, operate, construct, reconstruct, repair, maintain and have access for the Facilities on, over, under and across that real property as described in Exhibit A, attached hereto and incorporated herein, to as the "Landfill Site" including the right of ingress and egress from the real property.

2. The Easement hereby granted shall be non-exclusive, and the City, its successors and assigns, shall reserve the right to use and to grant to others, subject to the terms hereof, the right to use the property encumbered by the Easement for any and all purposes, including the right to cross over or under the Easement for any purposes, provided that the exercise by City or others of such rights to use, and the use of the land encumbered by the Easement shall not be for the purpose of constructing or operating methane gas recovery facilities and shall not be inconsistent with the grant of the Easement to MDU. Subject to the limitations set forth in the foregoing sentence, but without otherwise limiting the foregoing, the City shall have the right to use the property encumbered by the Easement and to cross over the Easement for the operation and maintenance of its Landfill consistent with the terms and conditions of the Landfill Gas Agreement.

3. MDU covenants and agrees that it will not permit or suffer any lien to be put upon or to arise on or accrue against the Easement in favor of any person or persons, individual or corporate, furnishing either labor or material in connection with any work done or permitted to be done by MDU on the Facilities, and MDU further covenants and agrees to hold the City harmless against and to keep the Easement free from any and all liens or claims of liens which may or might arise or accrue or be based upon any mechanic's lien law of the State of Montana, now in force or hereinafter

enacted, by reason of MDU's exercise of the rights and privileges granted hereunder, and in the event any such lien shall arise or accrue against the Landfill Site, MDU agrees to promptly cause the release of same.

4. Provided that MDU is in full compliance with the terms and conditions of the Landfill Gas Agreement and this Agreement, the City agrees that MDU may enforce this Agreement by a suit for specific performance.

5. In the event of damage to or destruction of the Facilities, MDU agrees to promptly repair and restore the same. MDU shall keep the Facilities and the Easement free of any trash or debris.

6. Notwithstanding the grant of the Easement, but subject to the provisions of the Landfill Gas Agreement, MDU shall at all times and at its sole cost and expense keep the Facilities in good repair and in compliance with all applicable governmental rules and regulations. MDU shall procure, at its sole cost and expense, any permits or licenses necessary for the use and operation of the Facilities and will pay any and all taxes assessed thereon or attributable thereto.

7. The Easement hereby granted shall cease and terminate in its entirety (except as to any indemnities or warranties herein contained) upon the first to occur of the following:

- a. the mutual agreement of the City and MDU,
- b. non-use of the Facilities for a period of two consecutive years, or
- c. the date which is twelve months after the expiration or termination of the Landfill Gas Agreement.

8. Upon any such termination, MDU agrees to: (i) execute such waivers, releases or other instruments in recordable form as may be necessary to evidence such termination, (ii) release any interest which MDU may have in and to the Easement by reason of this Agreement, and (iii) remove the Facilities from the Landfill Site and restore the Landfill Site to its pre-construction condition.

9. This Agreement and the covenants and conditions herein contained shall run with the land and shall be binding upon the successors and assigns of the parties hereto.

10. Except as otherwise provided in this Agreement, neither party shall assign this Easement or any of its rights or obligations hereunder except with the consent of the other party, which consent shall not be unreasonably withheld. Any such assignment is subject to the written assumption by the assignee of the obligations of such party hereunder. Any company or other entity succeeding by purchase, merger or consolidation to the properties, substantially as an entity, of MDU shall be entitled to the rights and be subject to the obligations of its predecessor under this Agreement without the necessity of obtaining the consent of the City.

11. Any notice, demand or election under this Agreement shall be deemed properly given if sent by United States mail and addressed as follows:

If to the City: Office of the City Attorney
 City of Billings
 210 North 27th Street
 Billings, Montana 59101

If to MDU: Montana-Dakota Utilities Co.
 400 North 4th Street
 Bismarck, ND 58501
 Attention:
 Fax No.: (701) 222-7606

or as otherwise provided by notice given as herein provided.

12. This Agreement may not be modified or amended except by written agreement of the parties.

13. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana and not, by the application of choice of law principles, the laws of any other state.

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

CITY OF BILLINGS

By: _____
Name: _____
Title: _____

Montana-Dakota Utilities Co., a division
of MDU Resources Group, Inc.

By: _____
Name: _____
Title: _____

State of Montana)
)
County of _____)

On the _____ day of _____, 2008, before me personally appeared _____ to me personally known, who, having been by me first duly did say: is the _____ of City of Billings, the municipality described in and which executed the foregoing instrument and that said instrument was signed and sealed in behalf of said by authority of its governing body as the free act and deed of said municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and the year in this certificate first above written

_____ (Signature)

(NOTARIAL SEAL)

_____ (Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: _____

State of North Dakota)
)
County of Burleigh)

On the _____ day of _____, 2008, before me personally appeared _____ to me personally known, who, having been by me first duly sworn, did say: That he/she is the _____ of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., the corporation described in and which executed the foregoing instrument and that said instrument was signed and sealed in behalf of said corporation as the free act and deed of said municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and the year in this certificate first above written

Notary Public

(Seal)

Exhibit A

LANDFILL SITE DESCRIPTION:

C/S 1098 Tract 1 Amended in the south ½ of Section 30, 1 South, 26 East
C/S 796 Tract 1 in the west ½ of Section 29, 1 South, 26 East
C/S 1130 in the south ½ of the southwest corner of Section 29, 1 South, 26 East

Exhibit 3

FACILITIES

Gas wells

Gas piping

Condensate tanks

Blower and Flare

Compressor

Gas treatment system

Concrete foundation for equipment

Building to house equipment

Gathering pipeline and equipment to interconnect to MDU natural gas distribution system

Exhibit 4

MINIMUM INSURANCE REQUIREMENTS

Workers Compensation and Employers Liability Insurance

MDU agrees to comply with Workers Compensation laws of the state where any work or services are performed, and to maintain a Workers Compensation and Employers Liability policy.

Workers Compensation Statutory

General Liability

MDU shall maintain a General Liability insurance, endorsed to provide coverage for explosion, collapse and underground damage hazards to property of others; Contractual Liability (particularly the applicable provisions of the "General Indemnity" section of this Agreement):

Bodily Injury \$1,000,000 Each Occurrence (Minimum)
Property Damage \$1,000,000 Each Occurrence (Minimum)

or

Bodily Injury and Property Damage \$1,000,000 Combined Single Limit Each Occurrence

Automobile Liability Insurance

MDU shall also maintain Automobile Liability Insurance which shall include coverage for all owned, non-owned and hired vehicles.

Bodily Injury	\$1,000,000 Each Person (Minimum)
	\$1,000,000 Each Occurrence (Minimum)
Property Damage	\$1,000,000 Each Occurrence (Minimum)

or

**Bodily Injury and
Property Damage
(Minimum)** \$1,000,000 Combined Single Limit Each Occurrence

Excess Umbrella Liability Coverage

Bodily Injury and Property Damage (Minimum)	\$1,000,000 Combined Single Limit Each Occurrence
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Additional Requirements

Upon request at the time this Agreement is executed, MDU shall submit a Certificate of Insurance, evidencing that satisfactory coverages of the type and limits set forth hereinabove are in effect. Policies providing such coverages shall contain provisions that no cancellation or material changes in the policies shall become effective except on thirty (30) days advance written notice thereof to the other Party. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Party, the failure of any insurance company to pay claims accruing, or the inadequacy of the limits of the insurance, shall not affect, negate or waive any to the provisions of this Agreement including, without exception, the indemnity obligations of the Parties.

MDU agrees to require any policies of insurance, except Workers Compensation coverages, which are in any way related to the Facility and that are secured and maintained by MDU to include the City, its officers, employees and agents, as Additional Insured.

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Reimbursement Agreement for Private Contract No. 594
Lot 1, Block 1 of Arlene Subdivision, Phase I; Zimmerman Homes

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: In order to obtain city water service for the referenced project, the Developer, Best Development Corp. (Jim Pickens), is extending a 12-inch (interior) water main in Colton Boulevard. City water service is not desired by the property owner on the south side of Colton Boulevard at the present time; so, the Developer is paying the entire cost of the project. At such time that the owner to the south requests to connect to this new main, the Developer desires to be reimbursed a portion of his construction costs. Under the above-described conditions, established Public Works Department (PWD) policy calls for reimbursement to be accomplished through the attached Reimbursement Agreement.

FINANCIAL IMPACT: Based on the Engineer's estimate of probable cost for P-594, the PWD has determined that half of the cost of the water main construction--\$17,701.00--is eligible to be recovered by the Developer. In accordance with a PWD standard Reimbursement Agreement, reimbursement fees paid to the City are accumulated and paid to the Developer annually on each November 1st following acceptance of the constructed utilities. Payments are limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance.

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

Attachment A--Reimbursement Agreement

BACKGROUND

A 12-inch city water main stub exists in Colton Boulevard at its intersection with Zimmerman Trail. The Developer must connect to this stub and extend the 12-inch water main west across his frontage to Green Valley Drive in order to obtain service and create a water main loop in the distribution system serving that area of town. The property owner on the other side of Colton Boulevard along this project frontage does not desire water service at the present time and is not participating in the cost to construct the project.

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

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

Based on the Engineer's estimate of probable cost for P-594, the PWD has determined that half of the cost of the water main construction--\$17,701.00--is eligible to be recovered by the Developer. Actual final project costs will determine the exact compensation amount.

RECOMMENDATION

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

ATTACHMENT

Attachment A--Reimbursement Agreement

AGREEMENT

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

WITNESSETH:

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

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

WHEREAS, Developer has agreed to extend a special benefit facility for the purpose of providing water and/or wastewater service through plans and specifications approved by the City on the 19th day of May, 2008. Said plans and specifications generally provide for the construction of special benefit facilities which are specifically described in Exhibit 1 attached hereto; and

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

WHEREAS, the City is desirous of reimbursing the Developer for a portion of such special benefit facilities.

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

1. The special benefit facilities which are eligible for reimbursement to the extent set forth in this agreement are specifically described in Exhibit 1 attached hereto and by this reference incorporated herein as if fully set out.
2. With respect to Developer's entitlement to reimbursement, the City and Developer agree that the conditions specified in Section 26-504 BMCC, and the further conditions set forth hereinafter must be met before Developer is entitled to or will receive any reimbursement. Said conditions are:
 - A. Special benefit facilities, off site or perimeter, which front and abut property not owned by the Developer must be extended by the Developer at his expense. Costs of special benefit facilities, which are financed through special improvement districts, shall not be reimbursed.
 - B. The extension of special benefit facilities must be for the purpose of serving property located within the corporate limits of the City. Costs of extensions of special benefit facilities to serve property outside the City limits shall not be reimbursed.
 - C. Total project costs for the extension of the special benefit facilities must be at least \$10,000.00.
 - D. Developer shall provide to the City sufficient verifiable cost data to determine the appropriate reimbursement fee to be charged to prospective customers under Section 26-503 BMCC within 30 days of final inspection of the special benefit facilities and approval and acceptance by the City that all construction was completed according to the approved plans and specifications.

- E. Developer shall enter into a standard reimbursement agreement with the City at the time the City approves the Developer's application for extension of special benefit facilities.
- F. Upon completion of the extension of the special benefit facilities, the Developer must convey all right, title, and interest in the facilities to the City.
- G. Developer shall at all times provide to the City a current address for purposes of mailing reimbursement payments to Developer.
- H. Extension of special benefit facilities must be done in compliance with all rules, regulations, resolutions, and ordinances of the City, including but not limited to standards for design and construction of the facilities.

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

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

- A. Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in Article 26-500 BMCC. Reimbursement payments are limited to reimbursement fees actually collected for connections with the special benefit facilities described in Exhibit 1, less all administrative costs incurred by the City. In no event will reimbursement payments exceed the actual cost to the Developer of extending the special benefit facilities.
- B. Reimbursement fees paid to the City shall be accumulated and paid to the Developer annually on each November 1st following acceptance of the special benefit facilities by the City beginning on November 1, 20⁰⁹, and ending on November 1, 20¹⁶.
- C. Reimbursement payments shall not include any interest charges.
- D. Reimbursement payments to the Developer shall be limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance by the City of the special benefit facilities described in Exhibit 1 attached hereto. Any reimbursement fees paid to the City after said anniversary date shall be retained by the City and used for construction of additional water and/or wastewater system facilities.

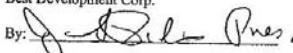
Acceptance of the special benefit facilities for purposes of reimbursement as set forth in this agreement shall be evidenced by written notice or a letter from the Public Works Department of the City and directed to the Developer at the address set forth in the first paragraph of this agreement.

- 4. The City agrees that it will require prospective customers owning property located outside a Developer's subdivision and desiring to connect a service line or lines to any special benefit facilities which has been extended at the Developer's expense to pay a reimbursement fee to the City in compliance with Section 26-503 BMCC.
- 5. The City by this agreement is not guaranteeing that reimbursement fees in a sufficient amount to fund full reimbursement to the Developer will be collected within the seven-year period. The City is agreeing only that it will develop a plan under Section 26-503 BMCC that will assure that prospective customers owning

property located outside a Developer's subdivision and desiring to connect a service line or lines to the special benefit facility described in Exhibit 1, which has been extended at the Developer's expense, shall pay a fee and said fee shall be distributed as set forth herein. This fee applies only to connections and does not apply to additional extensions of the special benefit facility. The fee to be charged said prospective customers shall be based upon the final total project costs and Lineal Footage (basis for assessment - square foot or lineal footage).

6. The address for mailing the reimbursement payment to the Developer shall be that address specified in the first paragraph of this agreement. Any change in address of the Developer shall be sent to the Public Works Director of the City of Billings at P.O. Box 30958, Billings, Montana 59111. The designation of a new address shall be accompanied by a copy of this agreement.
7. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

Dated this 21 day of April, 2008.

DEVELOPER
Best Development Corp.
By: 

CITY OF BILLINGS

By: _____

ATTEST:

City Clerk _____

U-30-64 (01/87) NO11587

04116.03

EXHIBIT 1

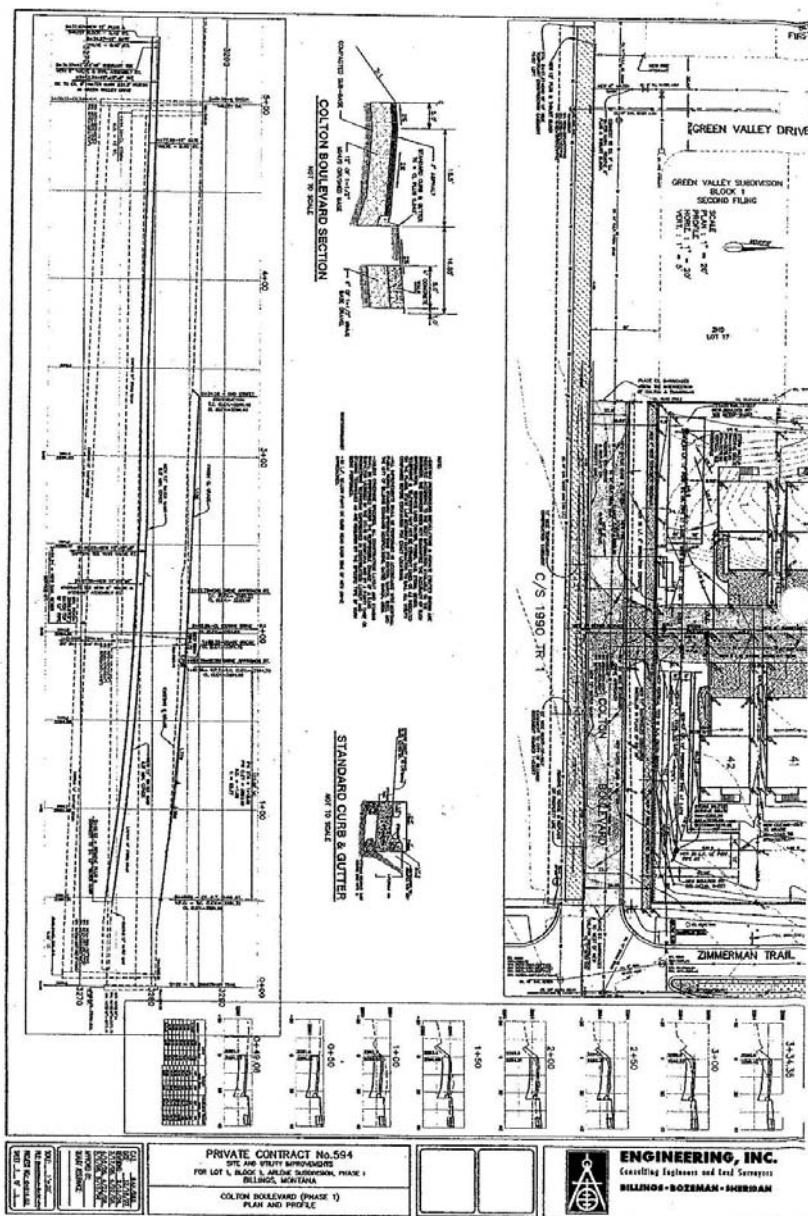
ENGINEER'S OPINION OF PROBABLE COSTS
FOR: **P-594**

12-INCH WATER MAIN EXTENSION IN COLTON BLVD.

(Zimmerman Homes)
March 30, 2008
(rev 6/25/8)

TO PROVIDE WATER IN COLTON BOULEVARD FROM ZIMMERMAN TRAIL TO GREEN VALLEY DRIVE
BILLINGS, YELLOWSTONE COUNTY, MONTANA.

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
SCHEDULE I - UTILITIES - PHASE I					
WATER					
COLTON BLVD. WATER EXTENSION					
101	1 EA		CONNECT TO 12-INCH MAIN	② \$500.00 /EA=	\$500.00
102	490 LF		12-INCH WATER MAIN	② \$44.00 /LF=	\$21,560.00
103	1 EA		12-INCH PLUG & THRUST BLOCK	② \$600.00 /EA=	\$600.00
104	2 EA		12-INCH GATE VALVE	② \$1,800.00 /EA=	\$3,600.00
105	2 EA		12 X 6 TEE	② \$500.00 /EA=	\$1,000.00
106	1 EA		12 X 8 TEE	② \$550.00 /EA=	\$550.00
107	2 EA		8-INCH GATE VALVES (PRIVATE SERVICE LINE)	② \$0.00 /EA=	\$0.00
108	40 LF		8-INCH WATER MAIN (PRIVATE SERVICE LINE)	② \$0.00 /LF=	\$0.00
109	2 EA		6" HYDRANT ASSEMBLY	② \$3,000.00 /EA=	\$6,000.00
110	52 LF		6" HYDRANT PIPE	② \$21.00 /LF=	\$1,082.00
111	1 EA		CONNECT TO 8-INCH MAIN	② \$500.00 /EA=	\$500.00
<hr/>					
SUBTOTAL - WATER					
<hr/>					
Reimbursement Amount					
<hr/>					



H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 28, 2008

TITLE: Grant Acceptance and Approval of the Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Design and Construction Agreement Between the Department of the Army and the City of Billings

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Section 595 of the Water Resources Development Act of 1999 provides Federal funds authorized to be appropriated for design and construction assistance for projects undertaken in Montana. A grant for \$256,000 of this funding has been allocated for new water, sanitary sewer and storm drain mains and appurtenances on West Wicks Lane. The new water main will be extended from the end of the existing main northwest of Sierra Boulevard to Sierra Granda Boulevard. The new sanitary sewer main will be extended from the end of the existing main northwest of Sierra Boulevard to Siesta Boulevard. This work will consist of approximately 2,100 linear feet of new 12 inch diameter water main, 1,200 linear feet of 8-inch diameter sanitary sewer main, and nearly 1,800 linear feet of 18-inch diameter storm drain main. City property is located on the west side of Wicks Lane for the entire length of this project. Atonement Lutheran Church and Harvest Church own the property on the east side of Wicks Lane. Signing of this agreement is necessary to utilize this grant funding for this project.

ALTERNATIVES ANALYZED:

- Approve the Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Design and Construction Agreement between the Department of the Army and the City of Billings
- Do not approve this agreement.

FINANCIAL IMPACT: The Army has indicated that they must utilize \$11,000 of the grant for \$256,000 leaving \$245,000 of the grant amount available for the project. The total project cost is estimated at \$440,000 and the local funding required is approximately \$245,000. The City Of Billings will be responsible for 50% of this local funding amount, Atonement Lutheran will be responsible for approximately 19% and Harvest Church will be responsible for approximately 31%. The City Of Billings funding amount will be paid from water, sanitary sewer and storm water funding. This is consistent with the subdivision agreement for the amended lot 1, block 4, second filing of the High Sierra Subdivision for the Harvest Church. There is an existing

subdivision improvement agreement (SIA) for the Atonement Lutheran Church property requiring that they pay their portion of the required local funding.

RECOMMENDATION

Staff recommends that Council approve the Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Design and Construction Agreement between the Department of the Army and the City of Billings.

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

ATTACHMENT

- A. Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Design and Construction Agreement Between the Department of the Army and the City of Billings

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF BILLINGS, MONTANA FOR
DESIGN AND CONSTRUCTION
ASSISTANCE
FOR THE
BILLINGS WEST WICKS LANE WATER, SANITARY SEWER AND STORM SEWER
IMPROVEMENT PROJECT, YELLOWSTONE COUNTY, BILLINGS, MONTANA

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U. S. Army Engineer, Omaha District and the City of Billings, Montana (hereinafter the "Non-Federal Sponsor"), represented by the Mayor, City of Billings, Montana.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, and rural Utah (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

WHEREAS, Section 595 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

WHEREAS, Section 595 provides that \$25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Montana pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, Omaha District (hereinafter the "District Engineer") has determined that Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Improvement Project in Yellowstone County, Billings, Montana (hereinafter the "Project", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

WHEREAS, Section 595 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Improvement Project in Yellowstone County, Billings, Montana as generally described in the Scope of Work, dated July 11, 2008 and approved by the District Engineer on

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation

in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.E. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or

construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

H. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term "*sufficient invoice*" shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

J. The term "*Section 595 Program Limit for Montana*" shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Montana pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$25,000,000.

K. The term "*Section 102 Limit*" shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

L. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article XI of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

C. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design and construction of the *Project*, subject to the conditions and limitations of this paragraph.

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

2. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total project costs*.

6. The Government shall not include in *total project costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the *Section 595 Program Limit for Montana*

E. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$4,681,000 of Federal funds have been provided by the Congress of the United States (hereinafter the "Congress") for the Section 595 Program in Montana of which \$256,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in Montana or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the Government's future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph D. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in Montana has reached the *Section 595 Program Limit for Montana*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 595 Program Limit for Montana* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 595 Program Limit for Montana*, the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

H. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor's costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of such legal and institutional structures.

K. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

5. The Government shall not include in *total project costs* any costs for *pre-
Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless
the Federal agency providing the Federal portion of such funds verifies in writing that
expenditure of such funds for such purpose is expressly authorized by Federal law.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands,
easements, and rights-of-way required for construction, operation, and maintenance of the
Project, including those required for *relocations*, the borrowing of material, and the disposal of
dredged or excavated material. Upon reaching such determination, the Government shall provide
written confirmation to the Non-Federal Sponsor thereof including a description of the lands,
easements, and rights-of-way jointly determined to be required. Prior to the issuance of the
solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor
incurring any financial obligations for construction of a portion of the *Project* using the Non-
Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and
rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal
Sponsor must provide for that work and shall certify in writing to the Government that said
interests have been acquired. Furthermore, prior to the end of the *period of design and
construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way
required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor
shall ensure that lands, easements, and rights-of-way required for the *Project* and that were
provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the
authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations*
necessary for construction, operation, and maintenance of the *Project*, including those necessary
to enable the borrowing of material or the disposal of dredged or excavated material. Upon
reaching such determination, the Government shall provide written confirmation to the Non-
Federal Sponsor thereof including a description of the *relocations* jointly determined to be
necessary. Prior to the issuance of the solicitation for each contract for construction of the
Project, or prior to the Non-Federal Sponsor incurring any financial obligations for construction
of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor
shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the
performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine
to be necessary for that work and certify in writing to the Government that said work has been
performed. Furthermore, prior to the end of the *period of design and construction*, the Non-
Federal Sponsor shall perform or ensure performance of all *relocations* necessary for
construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform
Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646,
as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24,
in acquiring lands, easements, and rights-of-way required for construction, operation, and

maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* or the costs of obtaining permits paid using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. **Date of Valuation.** The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. **General Valuation Procedure.** Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. **Eminent Domain Valuation Procedure.** For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government

notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Montana would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article V.L.D. of this Agreement. In addition, the value to be included in *total project costs* in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing

pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c) for *relocations* and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good

faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement, and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$341,333; the Government's share of *total project costs* is projected to be \$256,000; the Non-Federal Sponsor's share of *total project costs* is projected to be \$85,333; *total project costs* to be incurred by the Government are projected to be \$11,000; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$330,333; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$245,000; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be \$0; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be \$0; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$0; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$0; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By 30 September 2008 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.D. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of *total project costs* and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the "payment amount") if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the *Section 595 Program Limit for Montana* or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the "payment period"), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the

payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor's account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government's future performance or during suspension of only the Government's future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article XIII of this Agreement.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by *Section 595 Program Limit for Montana* and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal

Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, Omaha District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.I. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, Omaha District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being

conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Omaha District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article

II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in

accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.E. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design and construction of the *Project*, at no cost to the Government.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal

Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Vern Heisler
Deputy Director, Public Works
510 N Broadway – 4th Floor
Billings, Montana 59101

If to the Government:

U. S. Army Corps of Engineers
Omaha District
District Engineer
1616 Capitol Avenue
Omaha, Nebraska 68102

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in Montana implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in Montana. None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF BILLINGS, MONTANA

BY:

David C. Press
Colonel, Corps of Engineers

BY:

Ron Tussing
Mayor City of Billings, Montana

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, BRENT BROOKS, do hereby certify that I am the principal legal officer of the City of Billings, Montana, that the City of Billings, Montana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Billings, Montana in connection with the Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Improvement Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Billings, Montana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

17th day of JULY 2008


Brent Brooks
Attorney, City of Billings, Montana

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

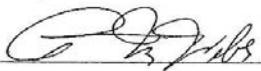
Ron Tussing
Mayor
City of Billings, Montana

DATE: _____

NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS

I, Patrick M. Weber, do hereby certify that I am the Chief Financial Officer [OR TITLE OF EQUIVALENT OFFICIAL] of the City of Billings (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the City of Billings West Wicks Lane Water, Sanitary Sewer and Storm Sewer Improvement Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Agreement Between the Department of the Army and the City of Billings, Montana for Design and Construction Assistance for the West Wicks Lane Water, Sanitary Sewer and Storm Sewer Improvement Project, Yellowstone County, Billings, Montana.

IN WITNESS WHEREOF, I have made and executed this certification this 16 day of
July, 2008

BY: 
TITLE: Financial Services Manager
DATE: 7/16/08



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: W.O. 04-12—Alkali Creek Road Slope Stability, Professional Services Contract with Kadrmas, Lee & Jackson, Inc.—Amendment No. 6

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings and Kadrmas, Lee & Jackson, Inc. (KLJ) agreed to a Professional Services Contract on April 26, 2004, to cover the design of reconstruction of Alkali Creek Road between Senators Blvd. and Airport Road. Subsequent amendments were passed to encompass different phases of the project (W.O. 04-12). The City is recommending an amendment to the original contract to cover the Professional Services fees for another phase of W.O. 04-12, the construction of slope stability structures between Black Pine Street and Airport Road.

ALTERNATIVES ANALYZED:

- Approve Amendment 6 to the Professional Services Agreement with Kadrmas, Lee & Jackson for the construction of slope stability structures on Alkali Creek Road between Black Pine Street and Airport Road.
- Do not approve Amendment 6 to the Professional Services Agreement with Kadrmas, Lee & Jackson, do not construct slope stability structures on Alkali Creek Road, and gamble that no further erosion will occur that could potentially result in any or all of the following: wash out parts of Alkali Creek Road, wash out the existing guard rail, undermine the existing water main.

FINANCIAL IMPACT: The project is being funded by Arterial fees and Storm Water funds. The associated FY 2009 CIP has been approved by the Mayor and City Council. Amendment No. 6 represents an increase in the amount of the contract by \$156,700.00. There are funds available to cover the increase.

Funding Sources: Arterial Road Improvements (account #845-3186-431-9310)
Storm Water Funds

Approved Dollar Amount:

Arterial Road Improvements (account #845-3186-431-9310):	\$ 1,000,000.00
Storm Water Funds:	\$ 600,000.00
Spent (and obligated) to date:	\$ 0.00
Amount being requested:	\$ (156,700.00)
Remaining Funding:	\$ 1,443,300.00

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 6 to the Professional Services Contract with Kadrmas, Lee & Jackson, Inc., in the amount of \$156,700.00.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

Attachment 'A': Contract Amendment No. 6 (10 pages)

INTRODUCTION

The City of Billings and Kadrmas, Lee & Jackson, Inc. (KLJ) agreed to a contract on April 26, 2004. This original contract for Professional Services covers reconstruction of Alkali Creek Road between Senators Blvd. and Airport Road. Subsequent amendments were passed to encompass different phases of the project (W.O. 04-12). The City is recommending an amendment to the original contract to cover the Professional Services fees for another phase of W.O. 04-12, the construction of slope stability structures between Black Pine Street and Airport Road.

The Consultant(s) for these types of projects are selected on a basis of qualifications criteria. A notice of Request For Proposal is published or sent to various firms that do work similar to what is needed for a specific project. All firms that submit proposals are evaluated and/or interviewed by a selection committee. After a firm is selected, a fee is negotiated for their services. If a reasonable fee cannot be agreed upon with the selected firm, negotiations then start with the second highest ranked firm. This continues until a contract is agreed upon or the City decides to cancel or modify the project.

After a fee is agreed to, a contract is drafted and executed by both parties. Most professional services contracts include a table showing the fees charged by various positions within the firm. These fees are typically those recommended for additional services above and beyond the original scope of work in the contract. Additional services must be approved by a contract amendment, which is also negotiated to a reasonable cost.

The budget for phase 3 of W.O. 04-12—Alkali Creek Road Slope Stability is \$1,600,000. Ten percent of this budget (\$160,000) was allotted for design, so KLJ's proposed cost of \$156,700.00 is reasonable for the scope of services being requested and within the amount allotted in the budget. Therefore, Staff recommends approval of Amendment No. 6.

BACKGROUND

The original plan for W.O 04-12 was to reconstruct Alkali Creek Road between Senators Blvd. and Airport Road. In addition to a reconstructed street section, the project was also to include storm drainage, water and sewer mains, a multi-use path, sidewalk and curb & gutter improvements. The first two phases of the project were started in the summer of 2005 and completed in the summer of 2006. These phases encompassed the stretch between Senators and the BBWA Canal siphon crossing near Black Pine Street. The multi-use path constructed during these phases stretches from Alkali Creek Elementary School and Black Pine Street.

During a preliminary design field review in July 2007 for phase 3 (Black Pine to Airport Rd.), a major slope failure was discovered. This failure was quickly corrected, but the failure caused Staff to re-examine the conclusion of a previous geotechnical report done for the affected area. A “second opinion” was received from a different geotechnical firm. The second report, dated December 17, 2007, determined that 385 linear feet of actual failed slopes exist along this stretch of road, which represents over one-fourth of the total stretch (approximately 1,350 linear feet).

The recommendation was to fix these failed areas as soon as possible. Amendment No. 5, approved February 18, 2008, includes the preliminary engineering tasks needed to evaluate potential slope stability options and present recommended alternatives to the City. These tasks have been completed, with soldier piles with lagging being the recommended option of providing the necessary slope stability.

Amendment No. 6 includes providing Professional Engineering Services for design of soldier piles with lagging (slope stability structures) between Black Pine Street and Airport Road. Tasks include, but are not limited to:

- Structural design, including design of new guardrail;
- Erosion control design (temporary and permanent);
- Plan for reestablishing vegetation;
- Coordination with MDT, MDU, BBWA, and others;
- Traffic control;
- Obtaining necessary permits;
- Preparation of plan and specifications (bid package);
- Bidding services.

Design will be done for the slope stability structures needed along the entire stretch of roadway (approximately 1,350 linear feet) between Black Pine Street and Airport Road. Due to budget constraints, only a portion will actually be constructed in 2009, with primary emphasis put on completing those areas that represent the greatest and most imminent danger. It is estimated that approximately half of entire stretch will be able to be constructed in 2009 with the existing budget. All remaining portions will be constructed in the future when funding is available.

Amendment No. 6 does NOT provide construction administration services. These services will be negotiated and included in another forthcoming amendment. In addition to the attached draft, a copy of Amendment No. 6 is on file in the City Clerk's office.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 6 to the Professional Services Contract with Kadrmas, Lee & Jackson, Inc., in the amount of \$156,700.00.

ATTACHMENT

Attachment 'A': Contract Amendment No. 6 (10 pages)

ATTACHMENT 'A'

AMENDMENT NO. 6

TO

**CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND
ENGINEERING SERVICES**

CITY OF BILLINGS WORK ORDER 04-12,

Alkali Creek Road – Senators Blvd. To Airport Road

THIS AGREEMENT, made and entered into on _____, 2008, by and between the following:

CITY OF BILLINGS, a Municipal Corporation,
Billings, Montana 59103,
Hereinafter designated the City

and

Kadrmas, Lee & Jackson, Inc.
PO Box 80303
Billings, Montana 59108
Hereinafter designated the Contractor

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated April 26, 2004, for Contractor to provide engineering services to the City for Work Order 04-12, Alkali Creek Road – Senators Blvd. To Airport Road, and;

WHEREAS, the City has need for additional engineering services, and;

WHEREAS, the City has authority to contract for consulting engineering services, and;

WHEREAS, the Contractor represents that he is qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

Appendix A, Section 3 is amended as follows:

The attached scope of work (8 pages) for Amendment No. 6 engineering services, plus attachments, is hereby made a part of this contract.

Appendix B, Section 1, Part A, second paragraph, is amended as follows:

For Design Engineering from Appendix A, as amended:

Previous total contract amount for Phases 1, 2, and 3 design of streets, sanitary sewer and water main (including Amendments 1-5)	\$359,676.57
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plus,

Phase 3 slope stability design engineering tasks as per the scope of work attached to and made a part of this Amendment No. 6	\$156,700
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Total Engineering	\$ 516,376.57
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All other terms and conditions of the contract to which this amendment applies shall remain in full effect.

CONSULTANT

NAME: Kadmas, Lee & Jackson, Inc.
BY: _____
TITLE: Chief Engineer
DATE: _____

CITY OF BILLINGS, MONTANA
BY: _____
TITLE: _____
DATE: _____

KADRMAS, LEE & JACKSON, INC.
SCOPE OF WORK
AMENDMENT NO. SIX (6) TO WORK ORDER #04-12,
PROJECT DESIGN FOR PHASE 3 OF THE
ALKALI CREEK ROAD RECONSTRUCTION PROJECT

BLACK PINE STREET TO
APPROXIMATELY 450 FEET EAST OF MORNINGSIDE LANE

July 24, 2008

K. I. PROJECT DESCRIPTION

This is an amendment to the existing Alkali Creek Road Reconstruction Contract, hereinafter referred to as "Project."

Phase 3 of the Project begins near the BBWA Canal siphon crossing and extends easterly along Alkali Creek Road approximately 1,350 feet to its east terminus. During preliminary engineering for road reconstruction, it was determined that embankment slopes on the north side of Alkali Creek Road require unforeseen improvements due to recent isolated slope failures and growing concern of additional slope instability. As such, the scope of Phase 3 has changed to address slope stability improvements.

Preliminary engineering for slope stability improvements occurred between March and July 2008 under Amendment No. 5, culminating with a geotechnical report that evaluated slope stabilization measures and presented a recommended alternative to the City. This scope of work is based on the preferred alternative, which is a soldier pile wall system with grouted tie-back. The parties hereto agree that Amendment No. 6 services are to perform Phase 3 slope stabilization design engineering for the preferred alternative selected by the City.

To distinguish Amendment No. 6 services from previous contract amendments the task numbers have been changed from 3-digit numbers to 4-digit numbers, with the first digit corresponding to the amendment number.

L. II. SERVICES TO BE PERFORMED

The following services to be performed are outlined to coordinate with task items included in the schedule of fees, submitted along with this scope of work. It is anticipated that a 75% complete design submittal and review process will be completed prior to final design and bidding. The Project will be designed and plans produced with AutoCAD and Eagle Point software using Kadrmas, Lee & Jackson plan preparation (CADD) standards.

6100 PROJECT MANAGEMENT

Project management is crucial to the success of all projects; specifically it is crucial to this project. KL&J has identified the project manager as, Carl Jackson, for the Alkali Creek Road project. Project management is the discipline of planning, organizing, and managing resources to successfully meet this project's objectives and goals.

Project management addresses and allocates resources on a wide range of activities from conception to completion of a project, including: developing a project plan and a project team; defining project goals and objectives; specifying tasks and resources; and creating budgets and timelines. The project manager handles all day to day activities and coordination for all actions throughout the duration of the project. One of the most critical components of project management is communication between the client and to the project team. Essentially, the project manager is the liaison between the external and the KL&J team.

It is the project manager's responsibility to notify the client of any issues, problems, or concerns regarding the project; the delegation of all activities to the project team; and handling all subconsultant coordination. In addition, if any items arise during the duration of the project that are outside this scope of work, the project manager will address them with the City. Ultimately, the project manager is accountable for delivering a successful project.

6101 Work Plan

Prepare a project work plan and provide to Kadrmas, Lee & Jackson, SK Geotechnical, and City of Billings project team members. The work plan includes design and CADD standards, communication protocol, scope of work, time charge guidelines, schedules, and other pertinent information used by the project team.

6102 Kick-off Meeting

Facilitate a kick-off Meeting between the City of Billings, Kadrmas, Lee & Jackson and SK Geotechnical to review and finalize direction moving forward with design. Verify the parties' concurrence with the scope of work and project timeline.

6103 Coordination

Coordinate with the City, Kadrmas, Lee & Jackson and SK Geotechnical design team members, utility owners, and other interested parties throughout the design and bidding processes.

6104 Schedule and Budget

Manage the timeline and budget, prepare invoices and progress reports according to City requirements

6105 QA/QC Plan and Production Supervision

Supervise quality assurance and quality control activities, and monitor progress and overall production of the design team.

6106 City Staff Presentation

Prepare materials for the use at a staff presentation to City Council.

6107 Unscheduled Meetings and Field Reviews

Attend unscheduled meetings and field reviews with the City or other stakeholders. The scope of work and associate fee anticipates that four (4) unscheduled meetings will occur.

6200 PUBLIC INVOLVEMENT

Public involvement services are not included in this scope of work. This includes work associated with preparing materials for or attending meetings related to public involvement, public information,

and public awareness. If required, these services would be considered extra work and would be negotiated at a later date.

6300 DESIGN ENGINEERING AND REVIEWS

6301 Pick-Up Survey

Limited pick-up survey of areas identified during preliminary design as needing additional information. Locate the additional borings identified in Task 6900. Locate the water main exposed by the City and update base mapping.

6302 Soldier Pile Wall Design

Perform and check pile structural calculations based on earth pressures outlined in the final geotechnical report. This scope of work and the corresponding fee is based on performing up to three (3) typical wall designs with maximum retained heights of 10 feet, 15 feet, and 20 feet.

6303 Tie Back System Design

Calculate, check, and list on the plans all tie back forces needed for use in contractor designed proprietary tie back systems.

6304 Wall Façade Design

This item will include developing up to three (3) conceptual designs and associated costs for the wall facing. It is anticipated that these options will consist of shotcrete, cast in place concrete, and precast concrete panels. We will then complete the detailed design and plan preparation for the preferred alternative.

6305 Preliminary Multi-Use Path Evaluation

Evaluate the base of the wall system for accommodating a future multi-use path. Check alignment, grades, and width requirements and the ability of the proposed wall system to accommodate a multi-use path. Evaluate future needs for railing and lighting.

This contract does not include detailed design or plan preparation of a multi-use path. It provides for a cursory review of the proposed wall system to determine if a multi-use path can be accommodated, at the base of the wall, in a future design and construction project. This contract only includes evaluating a multi-use path at the base of the proposed soldier pile wall; it does not include analysis or design related to other multi-use path locations along the roadway or elsewhere.

6306 Stream Hydraulic Analysis

Analyze stream hydraulic parameters to correlate water surface elevations with preliminary multi-use path design criteria.

6307 Culvert Design

This task is limited to analysis and design necessary for replacing the existing culverts or improving the outlet structures to reduce erosion potential.

6308 Temporary Erosion Control Analysis and Construction Measures

Evaluate the proposed improvements and construction activities for temporary erosion control measures. Incorporate recommended practices in a temporary erosion control plan, which will be recommended to the contractor.

6309 Permanent Erosion Control Analysis and Design

Evaluate the proposed improvements for permanent erosion control requirements and incorporate the measures into construction drawings.

6310 Guardrail Design

Design metal guardrail to accommodate the proposed improvements and future Alkali Creek Road pavement overlay.

6311 Landscaping Design

Evaluate the disturbed area for recommended vegetation re-establishment, and provide drawings and specifications required for construction.

6312 Construction Traffic Control Evaluation and Plan

Identify a construction traffic control plan based on maintaining at least one lane of traffic open throughout construction. Coordinate the plan with the City Traffic Engineer, and other affected stakeholders. Provide construction traffic control requirements in bidding documents.

6313 Miscellaneous Roadway Design

Design and plan preparation for miscellaneous pavement repairs, signs, pavement markings, and other required improvements resulting from the soldier pile wall construction.

6314 Plan View, Plan & Profile, and Elevation View Drawings

Create plan view, plan & profile, and elevation view drawings based on the structural design and other design calculations.

6315 Typical Sections and Cross Section Drawings

Create typical section and cross section drawings of the structural design.

6316 Detail Drawings

Create detail drawings of supplemental design information required for construction.

6317 Specifications and Project Manual

Prepare a project manual to include contractual requirements and technical specifications required for bidding and contract documents.

6318 Quantities and Opinion of Cost

Complete quantity take-offs and associated opinion of probable construction cost and provide with the 75% completion submittal.

6319 Preliminary Quality Assurance Review

Conduct internal quality assurance review according to the Kadrmas, Lee & Jackson Quality Assurance and Quality Control Procedures Manual.

6320 Preliminary Construction Documents Submittal (75% Completion)

Submit two (2) copies of the project manual, construction drawings, and opinion of probable cost to the City for review and comment, prior to commencing with final design.

6321 Preliminary Construction Documents Review Meeting

Attend one (1) meeting to review the City's comments of the preliminary construction documents.

6400 ENVIRONMENTAL DOCUMENTATION AND PERMITTING

The following tasks are intended to address reviewing existing reports, studies, or other documentation, and then completing application forms and submitting them for agency approval. Based on initial conversations with agency officials it is anticipated that permits are a formality, that they will be approved with the initial submittal, and re-submittal will not be required; as such, this scope of work does not include time for re-submittals or related work other than formalities. This scope of work does not include any field reconnaissance, report preparation, studies, or other supplemental work necessary to obtain required permit information.

6401 U.S. Army Corps of Engineers Nationwide Permit 13

Coordinate obtaining a Nationwide Permit 13 – Bank Stabilization from the USACE Billings Regulatory Office. Wetland delineation and wetland mitigation is not included in the scope of work. The permit application entails review of nearby wetland delineations performed by others and providing recommendations to satisfy USACE requirements.

6402 Floodplain Permit

Complete Yellowstone County and City of Billings floodplain permit applications.

6403 SPA 124 Permit

Complete a Montana Stream Protection Act (SPA 124) permit application from MT Fish, Wildlife, & Parks.

6500 FINAL PLANS AND SPECIFICATIONS

The following tasks will not commence until receiving the City's comments from the preliminary construction documents review period. Once the following tasks commence, the scope of work does not allow for additional review and comment iterations by the City. If additional review and comment periods ensue, an amendment to the contract may be required to account for the possible additional work.

6501 Final Structural Design

Address comments from 75% plan review. Make necessary design changes for the final plan

submittal.

6502 Temporary Transition Design

It is anticipated that only select segments of the wall systems will be constructed initially. After completing the 75% cost analysis, plan submittal and review process, and determining initial construction limits, temporary transitions will be designed from the new soldier pile wall to original ground. A maximum of three (3) transition details will be designed to accommodate anticipated variations in wall heights.

6503 Final Roadway, Drainage, and Guardrail Design

Address comments from 75% plan review. Make necessary design changes for the final plan submittal.

6504 Final Landscaping Plan

Complete the landscaping plan based on comments received from the City, and based on final analysis of the appropriate vegetation re-establishment requirements.

6505 Final Erosion Control Plans

Complete the temporary and permanent erosion control plans based on comments received from the City, and based on final analysis of the appropriate erosion control measures.

6506 Final Construction Traffic Control Plan

Complete the construction traffic control plan based on comments received from the City Traffic Engineer and based on final analysis of the construction traffic control measures necessary to accommodate final design and anticipated construction sequences.

6507 Temporary Construction Easements

Identify and obtain temporary construction easements required to access properties necessary to accomplish the proposed improvements.

6508 Final Construction Drawings

Prepare, review, and stamp final construction drawings for bidding purposes.

6509 Final Specifications and Project Manual

Complete the project manual and technical specifications based on comments received from the City, and based on the required information to proceed with bidding and construction.

6510 Final Quantities and Opinion of Construction Cost

After completing final changes to drawings and specifications, and prior to bidding, update the quantity take-offs and opinion of probable construction cost.

6511 Final Quality Assurance Review

Conduct internal quality assurance review according to the Kadrmas, Lee & Jackson Quality Assurance and Quality Control Procedures Manual.

6600 BIDDING

6601 Prepare Bid Documents

Assemble bid documents and coordinate with the City and other entities required for the advertisement and bidding periods.

6602 Address RFIs and Issue Addenda

Answer contractor questions and issue addenda as needed.

6603 Prepare for and Attend Pre-Bid Meeting

Facilitate the pre-bid meeting and respond to questions as needed.

6604 Attend Bid Opening

Attend the bid opening and collect copies of the bids.

6605 Prepare Bid Tabulation and Award Recommendation

Review the bids received, prepare a tabulation of bids, and based on conformance with the contract requirements prepare a Notice of Award recommendation to the City.

6606 Prepare and Circulate Contract Documents

Upon dissemination of the Notice of Award assemble, distribute, and coordinate execution of the contract documents.

6607 Issue Conformed Drawings and Project Manual

Produce the appropriate number of conformed drawings and project manual copies requested by the City and contractor.

6700 CONSTRUCTION ADMINISTRATION

Construction administration services are not included in this scope of work. The parties agree that these services will be negotiated at a later date and included in a future contract amendment.

6800 RIGHT OF WAY

Right of way services are not included in this scope of work. This includes all title work; right of way plats, legal descriptions and other acquisition services. If required, these services would be considered extra work and would be negotiated at a later date.

6900 GEOTECHNICAL ENGINEERING

A sub-consultant agreement with SK Geotechnical will be executed to complete one (1) additional boring and provide engineering services during final design. This task includes related traffic control, laboratory analysis, testing, and geotechnical design consultation and plan review.

III. DELIVERABLES

The following deliverables will ultimately be provided by Kadrmas, Lee & Jackson.

- Meeting minutes and other appropriate documentation
- A maximum of three (3) wall facing alternatives for the City's consideration and selection of preferred alternative
- Preliminary (75% complete) drawings and specifications
- Final drawings and specifications
- Temporary construction easement descriptions and exhibits
- Copies of permits
- Quantities and opinion of costs (2 iterations)
- Bid tabulation and award recommendation
- Contract documents
- Conformed drawings and specifications

IV. EXCLUSIONS

This scope of work contains specific information regarding design tasks, number of iterations, and deliverables included in the Agreement. Additional work beyond this scope of work is extra and will be negotiated as a separate amendment. The following list summarizes exclusions from Amendment No. 6 tasks. This list is not intended to be exclusive.

- Water distribution system analysis and design
- Storm drain system analysis and design (beyond culvert design)
- Sanitary sewer collection system analysis and design
- Geometric road design (plan, profile, typical sections, etc.) beyond pavement repairs
- Multi-use path design beyond the preliminary evaluation described herein
- Rock excavation analysis and design related to road design
- Street lighting design
- Traffic signal design
- Right-of-way acquisition
- Wetland delineation
- Archaeology/Cultural/Historic/etc. studies and impacts
- Stream relocation analysis and/or design

AGENDA ITEM: **J**



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 28, 2008

TITLE: Acknowledge Receipt of Petition to Vacate a portion of North 19th Street and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Aaron Sparboe, owner of the property fronting North 19th Street, has petitioned to vacate a portion of North 19th Street from 6th Avenue North to the rail tracks. Mr. Sparboe owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. There is an existing sanitary sewer main within North 19th Street and 20 feet of right of way will remain in place. The total amount of right of way to be vacated is 15,683 square feet.

ALTERNATIVES ANALYZED:

1. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for August 25, 2008.
2. Do not approve acknowledgement of petition.

FINANCIAL IMPACT: At the March 24, 2008, City Council Meeting, Council agreed to vacate a portion of the alley within Block 261 of Billings Original Townsite for \$1.25 per square foot. This was based on a comparison land sales report done by Charles H. Hamwey. The petitioner is offering the same amount for this right of way. With 15,683 square feet of right of way proposed to be vacated, Mr. Sparboe is offering the city \$19,603.75.

RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petition to vacate a portion of North 19th Street and set a public hearing for August 25, 2008.

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

ATTACHMENT

A. Map Depicting Areas to be Vacated

EXHIBIT A

PARTIAL SICKNESS VACATION

PARTIAL STREET VACATION

RESONANCE

A tract of land situated in
B. 26 E. P.M. in the City of
[Redacted]

on 33, T. 1 N.

DESCRIPTION - BABCEI 6

K



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Approval and Acceptance of the Quitclaim Deed from Yellowstone County of Certificate of Survey 2350, Tract 2

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: City Council approved the annexation of Certificate of Survey 2350, Tract 1 at the May 27, 2008, council meeting. With the annexation of Certificate of Survey 2350, Tract 1, the City was required to annex Certificate of Survey, Tract 2, a street tract encompassing the western half of Calhoun Lane and the northern half of King Avenue East. On June 17, 2008, the Yellowstone County Board of County Commissioners approved a resolution transferring Certificate of Survey 2350, Tract 2 to the City of Billings.

ALTERNATIVES ANALYZED:

1. Approve quitclaim deed of Certificate of Survey 2350, Tract 2.
2. Do not approve quitclaim deed of Certificate of Survey 2350, Tract 2.

FINANCIAL IMPACT: There is no financial impact to the City with acceptance of this quitclaim deed. Yellowstone County is deeding the above mentioned property for no cost to the City of Billings.

RECOMMENDATION

Staff recommends that Council approve a quitclaim deed for Certificate of Survey 2350, Tract 2.

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

ATTACHMENT:

- A. Resolution to Transfer Certificate of Survey 2350, Tract 2
- B. Quitclaim Deed
- C. Exhibit of Certificate of Survey 2350

Resolution No. 08-48

Resolution to Transfer Portion of Calhoun Lane and King Avenue East to the City of Billings

WHEREAS, pursuant to Section 7-8-101(1) of the Montana Code Annotated, if it would be in the best interest of the public, a board of county commissioners may transfer real property to another government entity when the property is no longer needed for county operations. To transfer property to another government entity, a board must pass a resolution of intent to transfer the property, publish notice of intent to transfer the property and pass a resolution to transfer the property.

WHEREAS, in 1985, Beverly Anderson and Dorothy Medvec filed with the Yellowstone County Clerk and Recorder Certificate of Survey No. 2350 (Doc. No. 1372518) that created Tract 2. Tract 2 is a road tract. Tract 2 contains a portion of Calhoun Lane and King Avenue East. In 1986, Anderson and Medvec filed a deed that conveyed Tract 2 to the Yellowstone County (Doc. No. 1372518, Book 1299, Page 2436). It cannot be determined whether the County ever accepted Tract 2. The County could not find any record that it ever accepted Tract 2.

WHEREAS, the City of Billings has requested Yellowstone County transfer to it the western half of Calhoun Lane and the northern half of King Avenue East depicted on Certificate of Survey No. 2350 as Tract 2. The transfer would place the City in compliance with Section 7-2-4211 of the Montana Code Annotated that requires the City to annex the entire width of a road with the properties it annexes. It would also allow the City to maintain the roads.

WHEREAS, on June 3, 2008, the Yellowstone County Board of County Commissioners passed a resolution of intent to transfer a portion of Calhoun Lane and King Avenue East to the City of Billings, set a public hearing on the transfer for June 17, 2008 and ordered the Yellowstone County Clerk and Recorder to provide notice of the hearing.

WHEREAS, the Yellowstone County Clerk and Recorder provided notice of the hearing. On June 6, 2008 and June 13, 2008, the Clerk and Recorder published notice of the hearing in the *Billings Gazette*.

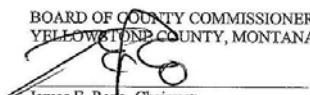
WHEREAS, on June 17, 2008, the Yellowstone County Board of County Commissioners held a public hearing on the proposed transfer of the roads. The Board received comments on the proposed transfer of the roads. The Board considered the comments and determined it would be in the best interest of the public to transfer the roads. The transfer would allow the City to come into compliance with Section 7-2-4211 of the Montana Code Annotated. It would also allow the City to maintain the roads. The roads are no longer needed for the operation of the County.

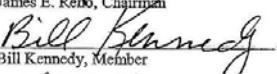
NOW THEREFORE, BE IT RESOLVED,

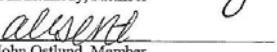
The Yellowstone County Board of County Commissioners transfers to the City of Billings the western half of Calhoun Lane and the northern half of King Avenue East depicted on Certificate of Survey No. 2350 as Tract 2. The Board shall execute a quitclaim deed for the roads.

Passed and Adopted on the 17th day of June 2008.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA


James E. Rebo, Chairman


Bill Kennedy, Member


John Ostlund, Member

ATTEST:


Tony Nave, Clerk and Recorder
Yellowstone County, Montana

Resolution No. 08-48
Resolution to Transfer Portion of Calhoun Lane and King Avenue East to the City of Billings
1 of 1

Return to:
City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings, Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

Tract 2, Certificate of Survey No. 2350, Recorded November 18, 1985, Under Document No. 1372518, Records of Yellowstone County, Montana.

Said Tract containing 0.662 acres.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(i) of the Montana Code Annotated (2005) at its June 17, 2008 meeting.

Dated this 17th day of June 2008.

James E. Reno, Chairman
Yellowstone County Commissioner

Bill Blane
Bill Kennedy, Member
Yellowstone County Commission

Absent
John Ostlund, Member
Yellowstone County Commissioner

Attest: Tony Nave
Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
County of Yellowstone }
ss.

On June 17, 2008, before me, personally appeared James E. Reno, Bill Kennedy and John Ottolini, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires 2-27-2010

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledges receipt of this deed and hereby accepts the property interest conveyed through this instrument.

Ron Tussing, Mayor, City of Billings

ATTEST:

By: _____, City Clerk

State of Montana }
ss. }
County of Yellowstone }

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and Cari Martin known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

(Notarial Seal)

Notary Public for the State of Montana
Residing in Billings, Montana
My commission expires



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Declaring Surplus Property
DEPARTMENT: Billings Police Department
PRESENTED BY: Chief Rich St. John

PROBLEM/ISSUE STATEMENT: The Billings Police Department has been replacing the 20 year old Whelen lightbars with new LED lightbars, and there are approximately 25 old lightbars currently in storage at Motor Pool. The City has been approached by a rural fire fighting unit in Waco, Montana, for one of those Whelen lightbars. We are requesting City Council declare this Whelen lightbar as surplus property and authorize the Billings Police Department to release one (1) Whelen lightbar with control box and 2 red lenses to the rural fire fighting unit in Waco, Montana.

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

RECOMMENDATION

Staff recommends that Council declare one (1) Whelen lightbar with control box and 2 red lenses as surplus property and authorize the Billings Police Department to release the lightbar to the rural fire fighting unit in Waco, Montana.

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

Attachment

A – Release of all Claims with rural fire fighting unit of Waco, Montana (1 page)

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to the rural Waco, Montana fire fighting unit, one (1) Whelen lightbar with control box and 2 red lenses, receipt of which is hereby acknowledged. The Waco, Montana fire fighting unit hereby releases the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the use of this lightbar.

The fire fighting unit of Waco, Montana, on behalf of itself, its agents, employees, representatives and insurance companies understands; that this donated lightbar has been in service, is not in new condition, and any manufacturer warranties have expired; that there are no guarantees, warranties or promises, written or implied by the City of Billings, Montana; that it is unknown if the lightbar will function properly; and, that the rural fire fighting unit of Waco, Montana is solely responsible for contacting the manufacturer and determining whether this lightbar is fit for use prior to using same.

The rural fire fighting unit of Waco, Montana agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgements, losses, liabilities, payments, recoveries and suits of any kind by reason of the use, misuse or failure of this lightbar.

IT. THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS

DATED this 8th day of July, 2008

The Rural Fire Fighting Unit of Waco, Montana

BY: Ruth Ann Patterson
John Patterson, Fire Chief Waco Initial Attack or
Ruth Ann Patterson

STATE OF MONTANA)

:ss.

County of Yellowstone)

On this 1st day of July, 2008 before me a Notary Public for the State of Montana, personally appeared Ruth Ann Patterson, known to me to be the Co - Fire chief of the Waco Initial Attack Unit and acknowledged to me that (s)he executed the foregoing instrument.

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



Deborah J. Durack (Signature)

Deborah J. Durack (Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: June 26, 2009

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 28, 2008

SUBJECT: Downtown Revolving Loan Fund Recommendations for Steven J. and Joni Harman

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Downtown Revolving Loan Committee met on June 27, 2008, and approved a loan to Steven J. and Joni Harman for the lesser amount of \$250,000 or 20% of total project costs. The loan is for the purchase and renovation of buildings located at 2605 Minnesota Avenue. The land is under lease from Montana Rail Link, Inc. The main project is the purchase and renovation of a 12,000 square foot, two-story building into nine loft apartments. An adjacent prefabricated metal building will be renovated for secured parking.

FINANCIAL IMPACT: Subsequent to approval of this loan, the loan fund will have a balance available of approximately \$2,000,000.

RECOMMENDATION

The Downtown Revolving Loan Committee recommends that council approve a loan to Steven J. and Joni Harman for the lesser amount of \$250,000 or 20% of total project costs.

Approved By: City Administrator City Attorney

ATTACHMENT
A-Loan Description

Attachment A

Revolving Loan Fund Loan

Monday, July 28, 2008

The Steven J. and Joni Harman loan terms are as follows:

Loan	The lesser of \$250,000 or 20% of total project costs.
Interest Rate	5.75% Adjusted annually.
Term	Amortized over twenty years with a balloon payment at maturity (ten years from loan).
Payments	Minimum Payments calculated at a rate of 5.75% over a twenty year term.
Collateral	Second mortgage on the land improvements.
Disbursement	The City will disburse funds to the borrower after the project is complete and all costs have been paid.

This loan is for the purchase and renovation of two buildings located at 2605 Minnesota Avenue. The main project is the purchase and renovation of a 12,000 square foot, two-story building into nine loft apartments. An adjacent prefabricated metal building will be renovated for secured parking.

N1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Billings Association Quality of Life Run
DEPARTMENT: Public Works Department-Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Billings Association of Realtors request partial street closures on Saturday, August 23, 2008, from 5:00 am to 10:00 am for their 2 mile and 5 mile run. The 5-mile begins atop the Rims near Masterson Circle while the 2-mile starts near MSU-Billings. The racing path - down the Rims via Airport Road, through the Pioneer Park area and ending at the Transwestern Parking Lot - will be marked with orange cones, but will not obstruct traffic. A barricade will be in place to prohibit traffic from entering Rimrock Road off of Airport Road until all runners have passed that point.

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 and remove barricades during the duration of run.

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 other than administrative time to process the application. Police, traffic control and litter removal for are to be paid for by the Billings Association of Realtors.

RECOMMENDATION

Staff recommends that Council approve the temporary street closures for the Billings Association of Realtors 2 and 5 Mile Run on Saturday, August 23, 2008.

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

ATTACHMENTS

- A. Letter outlining event
- B. Right of Way Special Activity Permit Application
- C. Course/Barricade map
- D. Certificates of insurance
- E. Cleanup Plan Information



1645 Lewis Avenue, Suite 12 ♦ Billings, Montana 59102
Phone: 406.248.7145 ♦ Fax: 406.248.7478
www.Billings.org ♦ BoardOffice@Billings.org

June 19, 2008

Attn: Susan
Public Works Department – Engineering Division
510 North Broadway, 4th Floor
Billings, MT 59101

Dear Susan,

Please find enclosed a Right-of-Way Special Activity permit application for the *Quality of Life* Run organized by the Billings Association of Realtors®.

This is an annual event aimed at raising money for non-profits in our community. This year, the proceeds will benefit Yellowstone CASA (Court Appointed Special Advocates).

The *Quality of Life* Run is slated for Saturday, August 23, 2008, beginning at 8 a.m., with all activities concluded by 10 a.m. The race includes two starting points, one for the 5-mile run and another for a 2-mile walk/run. The 5-mile begins atop the Rims near Masterson Circle while the 2-mile starts near MSU-Billings.

The racing path – down the Rims via Airport Road, through the Pioneer Park area and ending at the Transwestern Parking Lot – will be marked with orange cones, but will not obstruct traffic. A barricade will be in place to prohibit traffic from entering Rimrock Road off of Airport Road until all runners have passed that point.

Thank you for your consideration of this permit. If you have any questions, please contact me at 248-7145 or by email at amber@billings.org.

Sincerely,

A handwritten signature in black ink that reads "Amber Sundsted".

Amber Sundsted
Government Affairs Director

REALTOR® is a registered collective membership which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.





**City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION**

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party
Submit this application with attachments to either the Parks, Recreation and Public Lands office, 390 North 23rd Street, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Amber Gundsted

ORGANIZATION MAKING APPLICATION Billings Association of Realtors

PHONE 406.248.7145

ADDRESS 1643 Lewis Ave, Ste 12, Billings, MT 59102

EMAIL ADDRESS amber@billings.org

APPROXIMATE TIME EVENT WILL:

Assemble 5 a.m. Start 8 a.m. Disband 10 a.m.

DATE OF EVENT Saturday, August 23, 2008

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)

The Quality of life Run benefits non-profit organizations that improve quality of life in our community. This year's proceeds benefit Yellowstone CASA. The run includes a 5-mile and 2-mile event and will attract approximately 200 runners.

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

The run will have two starting locations - one atop the rims and one at the base of the rims. The run then winds through the Piñon Park area and ends in the Central Business District at the Transwestern parking lot.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

CLEAN UP IMPLEMENTATION: (Company contracted or services you will provide)

Volunteers from the Association provide cleanup at the start points, race route and finish line. Cones and barricades also are promptly removed from the race route.
(Cleanup plan attached)

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance *is not required* for Block Parties)

NOTICE: ANY MARKINGS (NO PAINT ALLOWED) TO BE PLACED ON PUBLIC RIGHT-OF-WAY MUST BE APPROVED BY THE CITY TRAFFIC/ENGINEERING DEPARTMENT PRIOR TO PLACEMENT, BE ENVIRONMENTALLY SAFE, AND NOT CONFLICT WITH EXISTING MARKINGS.

FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

IF USING THE ESTABLISHED EVENT ROUTE, THE CITY WILL PROVIDE TWO POLICE OFFICERS WITH VEHICLES TO START THE EVENT, AND A STREET SWEEPER, IF NECESSARY, TO FOLLOW THE EVENT.

**COORDINATOR OF EVENTS AT WHICH ALCOHOL WILL BE CONSUMED IN PUBLIC RIGHT-OF-WAY
ARE REQUIRED TO OBTAIN AN OPEN-CONTAINER PERMIT FROM THE POLICE DEPARTMENT**

UPON SIGNING OF THIS APPLICATION, THE APPLICANT AGREES NOT TO VIOLATE ANY STATE OR CITY CODES IN THE PRESENTATION OF THE REQUESTED SPECIAL ACTIVITY.

In consideration for permission to conduct its activity as requested, applicant agrees to indemnify, defend and hold harmless the City of Billings, its officers, agents, employees and volunteers from damage to property and for injury to or death of any person and from all liability claims, actions or judgments which may arise from the activity.

Applicants also agree to obtain valid "save or hold harmless agreements" from all participants in its activity, protecting the City of Billings from all losses arising out of its activity, including damages of any kind or nature.

APPLICANT SIGNATURE Wendy Ted DATE June 19, 2008

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

ADDITIONAL RESTRICTIONS OR SPECIAL CONDITIONS: YES NO
(IF YES, ATTACH COPY)

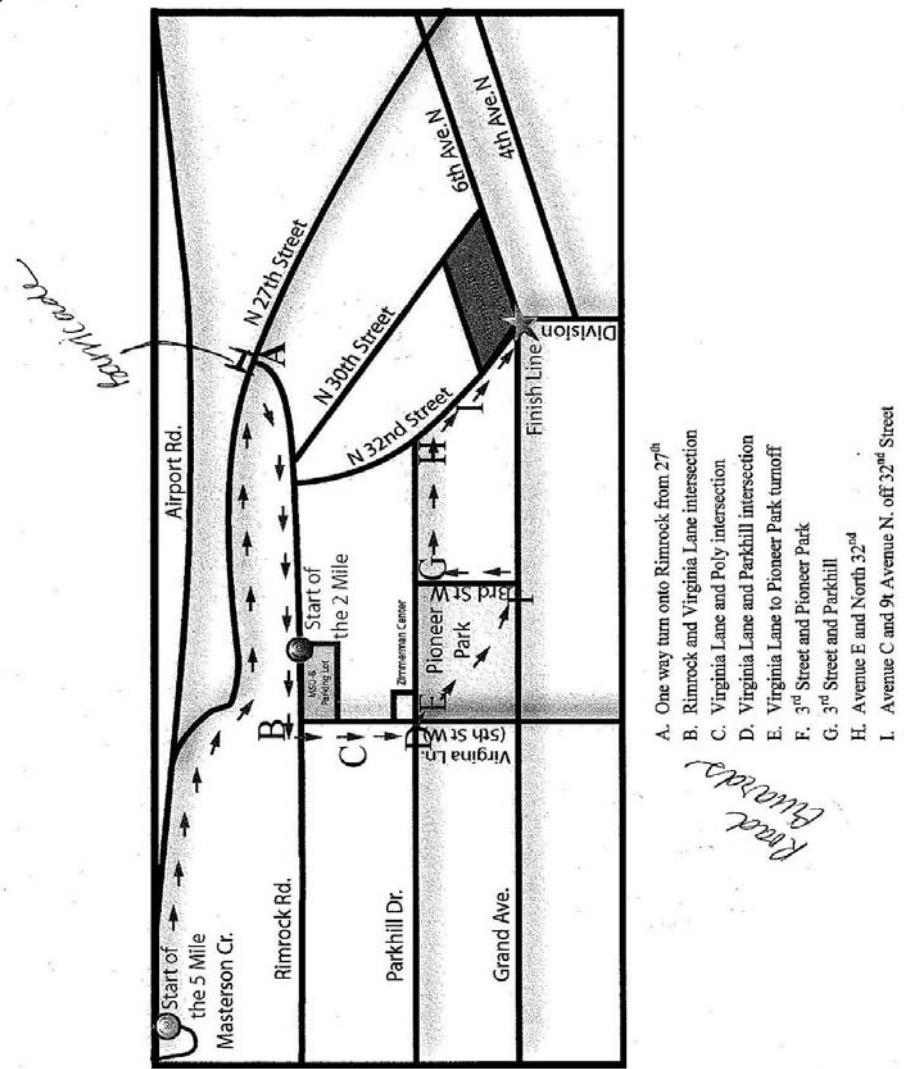
FOR CITY USE ONLY

FEES: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

COPIES TO:
CITY ADMINISTRATOR
DEPUTY CITY ADMINISTRATOR
POLICE CHIEF
FIRE CHIEF
FIRE MARSHALL
MET TRANSIT MANAGER
STREET/TRAFFIC SUPERINTENDANT
TRAFFIC ENGINEER
PRPL DIRECTOR
PARKING SUPERVISOR
CITY ATTORNEY



A. One way turn onto Rimrock from 27th
 B. Rimrock and Virginia Lane intersection
 C. Virginia Lane and Poly intersection
 D. Virginia Lane and Parkhill intersection
 E. Virginia Lane to Pioneer Park turnoff
 F. 3rd Street and Pioneer Park
 G. 3rd Street and Parkhill
 H. Avenue E and North 32nd
 I. Avenue C and 9th Avenue N. off 32nd Street

ACORD - CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY)	
INSURER: (260) 482-5455 FAX: (260) 483-6297 TAR Insurance - Fort Wayne Office 2526 Scotswoode P.O. Box 8517 Fort Wayne IN 46898		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED: ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 19990 W. PINE WOOD DRIVE NEW BERLIN WI 53146		INSURERS AFFORDING COVERAGE NAIC #			
		INSURER A: NATIONAL CASUALTY COMPANY INSURER B: NATIONWIDE LIFE INSURANCE INSURER C: INSURER D: INSURER E:			
COVERAGES: THESE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	KRO0000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ex. Residential) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADY INJURY \$ 1,000,000 GENERAL AGGREGATE \$ NONE PRODUCTS - COM/PROP AGG \$ 1,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> LEGAL LIABILITY TO PART \$1,000,000 GENL AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PRO- Sect <input type="checkbox"/> LOC				
A	AUTOMOBILE LIABILITY	KRO0000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	COMBINED SINGLE LIMIT (Ex accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				
A	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	<input type="checkbox"/> ANY AUTO				
A	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				
B	WORKERS COMPENSATION AND EMPLOYER LIABILITY AND DIRECTOR/ATTNR/EX-EXECUTIVE OFFICER/OWNER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	SPX0000003149700	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	WC STATUTORY LIMITS OTHER EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
	OTHER EXCESS ACCIDENT & MEDICAL				
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED. DATE & EVENT: 08/23/08 QUALITY OF LIFE RUN - 2 MILE AND 5 MILE RUNS INSURED CLUB: QUALITY OF LIFE MONTANA REALTOR RUN; ATTN: AMBER SUNDSTED; 1643 LEWIS AVE.; SUITE 12; BILLINGS, MT 59102					
CERTIFICATE HOLDER		CANCELLATION			
(406) 247-8641 08/23/08 CITY OF BILLINGS, DEPARTMENT OF PARKS & RECREATION ATTN: MIKE WHITAKER 390 N. 23RD STREET BILLINGS, MT 59101		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE John Lefever/LROHR			
John Lefever © ACORD CORPORATION 1988 Datas 1 of 2					

CERTIFICATE OF INSURANCE						03/28/2008
PRODUCER American Specialty Insurance & Risk Services, Inc. 142 North Main Street Roanoke, Indiana 46783				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICY BELOW.		
INSURED USA Track & Field, Inc. 1 RCA Dome, Suite 140 Indianapolis, IN 46225-0120				INSURERS AFFORDING COVERAGE INS. A: Philadelphia Indemnity Insurance Company INS. B: INS. C:		
BILLINGS ASSOCIATION OF REALTORS 1643 LEWIS AVE, STE 12 BILLINGS, MT 59102						
CERT NUMBER: 1000618741 EVENT CODE: 08-31-008						
COVERSAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITION OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INS LTR	POLICY TYPE	POLICY NUMBER	POLICY EFFECTIVE	POLICY EXPIRATION	LIMITS	
A	GL	PHPK262716	11/01/2007 12:01 a.m.	11/01/2008 12:01 a.m.	General Aggregate - Per Event	2,000,000
					Products-Completed Operations Aggregate	1,000,000
					Personal and Advertising Injury	1,000,000
					Each Occurrence	1,000,000
					Damage to Premises Rented to You (Any One Premises)	1,000,000
					Medical Expense Limit (Any One Person)	Excluded
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS						
- The Certificateholder is an Additional Insured in accordance with the provisions and limitations of Form PI-AM-002 - Additional Insured - Certificateholders with respect to the QUALITY OF LIFE RUN on August 23, 2008.						
- Coverage applies to USA Track & Field sanctioned events and registered practices, including any directly related activities, such as event set-up and tear-down, participant check-in and award ceremonies.						

CERTIFICATE HOLDER		CANCELLATION
CITY OF BILLINGS, DEPARTMENT OF PARKS & RECREATION 390 N 23RD STREET BILLINGS, MT 59101		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE		

Quality of Life Run Cleanup Plan

1. Cleanup crews will be provided along the entire race route and at the finish line.
2. Volunteers man five water stations throughout the race route. Once all runners have passed, the volunteers disassemble the water station and provide cleanup up to the location of the next water station.
3. The finish line and Transwestern Parking Lot are cleaned up immediately following the end of the awards ceremony.
4. The one barricade used during the race is removed once all runners have passed.
Additionally, all cones are picked up immediately following the awards ceremony.

N2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 28, 2008

TITLE: Montana Marathon Street Closure Request
DEPARTMENT: Public Works Department-Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Montana Marathon requests partial street closures for its annual Marathon event on Sunday, September 21, 2008, from 5:00 am to 2:30 pm. The route begins on Molt Road and disbands at Daylis Stadium. (Course attached) Volunteers will secure the course and provide crossing guards.

Recommended conditions of approval include Montana Marathon:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above for the Annual Montana Marathon.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Flyer information outlining event
- C. Course map and directions
- D. Certificate of insurance
- E. Letter outlining event



**City of Billings
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION**

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Parks, Recreation and Public Lands office, 390 North 23rd Street, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Kate Novakovich / Cindy Thompson

ORGANIZATION MAKING APPLICATION Montana Marathon

PHONE 672-1772 / 245-9735 - Time Out Sports

ADDRESS Time Out Sports 1603 Gearl Ave, Billings MT 59102

CITY Billings STATE MT ZIP 59102

EMAIL ADDRESS timeout@bresnan.net

APPROXIMATE TIME EVENT WILL:

Assemble 5:00 AM Start 7:00 AM Disband 2:30 PM

DATE OF EVENT Sunday, September 21, 2008

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)

Marathon, Half-marathon RELAY, 10K race run/walk. Kids 100yd run in Daylis Stadium at finishline. Route starts in Molt and ends in Daylis Stadium. Marathon starts at 7:00 AM, Half at 8:00 AM, 10K at 9:00 AM, Kids run @ 11:00.

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

attached

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

CLEAN UP IMPLEMENTAION: (Company contracted or services you will provide)

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance is not required for Block Parties)

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FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

IF USING THE ESTABLISHED EVENT ROUTE, THE CITY WILL PROVIDE TWO POLICE OFFICERS WITH VEHICLES TO START THE EVENT, AND A STREET SWEEPER, IF NECESSARY, TO FOLLOW THE EVENT.

**COORDINATOR OF EVENTS AT WHICH ALCOHOL WILL BE CONSUMED IN PUBLIC RIGHT-OF-WAY
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UPON SIGNING OF THIS APPLICATION, THE APPLICANT AGREES NOT TO VIOLATE ANY STATE OR CITY CODES IN THE PRESENTATION OF THE REQUESTED SPECIAL ACTIVITY.

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APPLICANT SIGNATURE *Kate Novakovich* **DATE** 4/18/08

APPLICATION APPROVED _____ **DATE** _____

APPLICATION DENIED _____ **DATE** _____

ADDITIONAL RESTRICTIONS OR SPECIAL CONDITIONS: YES [] NO []
(IF YES, ATTACH COPY)

FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

COPIES TO:
CITY ADMINISTRATOR
DEPUTY CITY ADMINISTRATOR
POLICE CHIEF
FIRE CHIEF
FIRE MARSHALL
MET TRANSIT MANAGER
STREET/TRAFFIC SUPERINTENDANT
TRAFFIC ENGINEER
PRPL DIRECTOR
PARKING SUPERVISOR
CITY ATTORNEY



Montana Marathon

■ Home ■ Marathon Course ■ Training ■ Where To Stay/What To Do ■ Register Online ■ Registration Form ■ Schedule

PRESENTED BY:



Road Runners Club of America

Yellowstone Rimrunners



Billings Clinic.



EBMS
Employee Benefit Management Services, Inc.



"The marathon is a charismatic event. It has everything. It has drama. It has competition. It has camaraderie. It has heroism. Every jogger can't dream of being an Olympic champion, but he can dream of finishing a marathon." Fred Lebow, road racing pioneer and founder of the New York City Marathon.

The Montana Marathon proudly supports the athletes of Special Olympics. Give thanks for the healthy kids in your life and give to those who are not.

The marathon championship also supports the running athletes of Montana State University-Billings, and Rocky Mountain College, Billings, Montana. The Montana Marathon also gives back to the running community by establishing the "Shoe Fund", to help any underprivileged middle and high school student succeed in cross country and track and field. They are the future.

Marathon Course Description

From an elevation of 4,200 to 3,130 feet above sea level, the 26.2 mile course travels through breathtaking countryside with a panoramic mountain view. Beginning at Molt, Montana, winding through Billings, and ending at Daylis Stadium in Billings, Montana, the scenic course is certified by USATF, #MT06011-MF. Check out the new course!

Half Marathon

The 13.1 mile course starts at the half-way mark of the (full) Marathon and follows the Marathon Course to the finish line at Daylis Stadium in Billings, certified by USATF #MT06012-MF.

Marathon Relay

Follows the same start time and course as the marathon, and also finishes in Daylis Stadium. Open to teams of all men, all women, and

COMMUNITY SPONSORS:

MDU Resources

Energy Labs

BioMet

Subway

Prairie Winds Cafe

Montana Stars

<http://montanamarathon.org/>

4/16/2008

coed.

10 K - The Virgil Naldrett Memorial 10K
The 6.2 mile course is new this year. The 10K starts on Rangeview Drive and follows the half marathon and marathon course along Parkhill Drive to finish in Daylis Stadium on the track. The 10K starts at 9:00 AM, walkers in this event at 9:05.

Registration Information
PLEASE USE THE ONLINE REGISTRATION
Electronic registration via www.active.com closes Wednesday, September 17 at 12:00 PM, Pacific Standard Time.

Early Registration Fee Schedule
Marathon: \$65.00
Half Marathon: \$45.00
Relay: \$90.00
10K: \$25.00

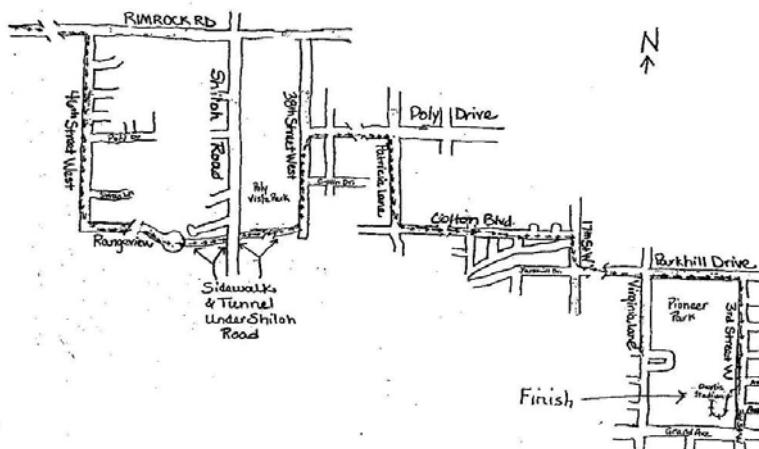
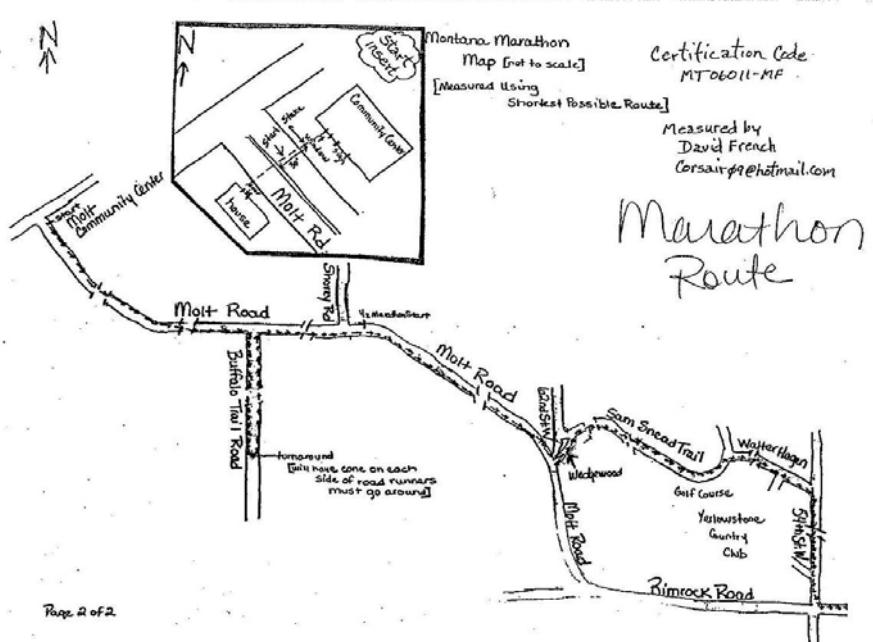
Fee Schedule After September 17
Marathon: \$75.00
Half: \$55.00
Relay: \$100.00
10K: \$35.00

Kids Run is free, please register to get a kids t-shirt.

406-248-1685
Fax: 406-248-3450
Copyright 2008 Montana Marathon
[Powered by Vertex Consulting](#)

<http://montanamarathon.org/>

4/16/2008



ATTACHMENT C

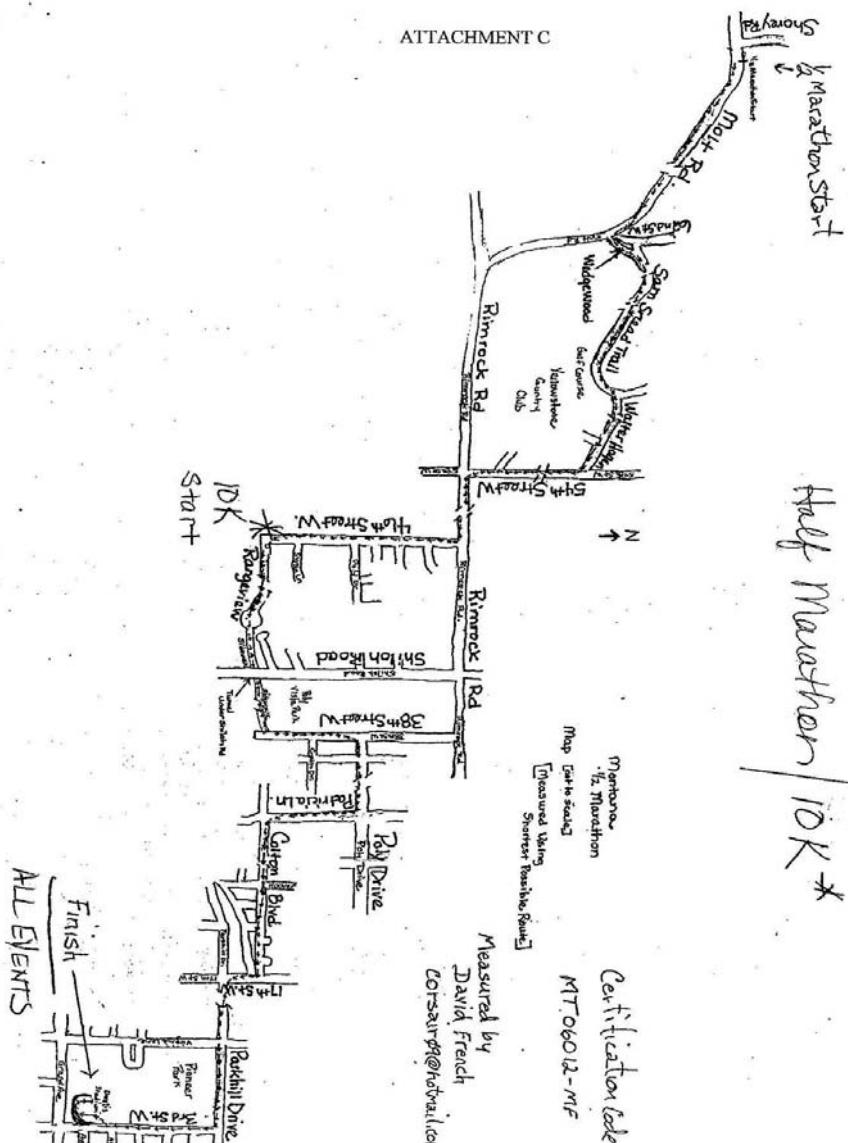
Half Marathon
10K *

Certification Code

Half Marathon

Shortest Possible Route

Measured by
David French
consair99@hotmail.com



ACORD CERTIFICATE OF LIABILITY INSURANCE					DATE (MM/DD/YYYY)	
PRODUCER PH (260) 467-5690 Fax (260) 467-5691 STAR Insurance Agency Fort Wayne Office 2130 Dupont Road Fort Wayne IN 46825					12/12/2007	
INSURED ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 19550 W. PINE WOOD DRIVE NEW BERLIN WI 53146					THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURERS AFFORDING COVERAGE					NAIC #	
INSURER A: NATIONAL CASUALTY COMPANY						
INSURER B: NATIONALWIDE LIFE INS. CO.						
INSURER C:						
INSURER D:						
INSURER E:						
COVERAGE(S)						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSURER/AD'L LTD. (INSURER)	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	KR000000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EACH OCCURRENCE	\$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY				DAMAGES TO RELATED PROPERTY (Per occurrence)	\$ 300,000
	<input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
	X LEGAL LIABILITY TO PART.				PERSONAL & ADV. INJURY	\$ 1,000,000
\$1,000,000		GENERAL AGGREGATE	\$ NONE			
GENL AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC		PRODUCTS - COMP/PROP AGG	\$ 1,000,000			
A	AUTOMOBILE LIABILITY	KR000000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	COMMON SINGLE LIMIT (Per accident)	\$ 1,000,000
	ANY AUTO				BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
A	Hired Autos				AUTO ONLY - EA ACCIDENT	\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				OTHER THAN AUTO ONLY: AGG	\$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY: AGG	\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
B	WORKERS COMPENSATION AND EMPLOYER LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	SPX00000003149700	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	WCS STATUTORY LIMITS EL: EACH ACCIDENT	\$
					EL: DISEASE - EA EMPLOYEE	\$
					EL: DISEASE - POLICY LIMIT	\$
B	OTHER EXCESS ACCIDENT & MEDICAL	SPX00000003149700	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EXCESS MEDICAL: \$250 DEDUCTIBLE: AD & SPECIFIC LOSS:	\$10,000 PER CLAIM \$2,500
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS						
MEMBER CLUB CERTIFICATE						

ACORD 25 (2001/08)
INS025

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAKE 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

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Road Running Technical Council
USA Track & Field



recognized by

Measurement Certificate

Name of the course Montana Marathon (city) Ballings Distance 42.195 km
Location (state) Montana
Type of course: road race X cross country O calibration O track O Configuration: Point-to-point
Type of surface: paved 99 % dirt 0 % gravel 0 % grass 0 % track 1 %
Elevation (metres above sea level) Start 1216 Finish 955 Highest 1292 Lowest 995
Straight line distance between start & finish 32.5 km Drop 6.2 m/m Separation 77 %
Measured by (name, address, & phone) David French, 3121 Foresthills, Ballings, MT 59102
Race contact (name, address, & phone) Jennifer Anderson, 402 N 32nd, Ballings, MT 59101
Race date: 9-17-2006 Course paperwork submission date: 8-10-06
Replaces: MT98002-07 (if applicable)

Use this Certification Code in all public
announcements relating to your race.

Be It Officially Noted That

Based on examination of data provided by the above named measurer, the course described above and road marked is hereby certified as reasonably accurate in measurement according to the standards adopted by the Road Running Technical Council. If any changes are made to the course, this certification becomes void, and the course must then be rescertified.

Validation of Course — In the event a National Open Record is set on this course, or at the discretion of USA Track & Field, a validation measurement will be required to be performed by a member of the Road Running Technical Council. If such a re-measurement shows the course to be short, then all pending records will be rejected and the course certification will be canceled.

This Certification expires on December 31 in the year

AS NATIONALLY CERTIFIED BY:

David French
Date:

Michael Franke — USAFTRTC National Committee
3824-51st Street, Des Moines, IA 50310 (515) 276-3140
Email: mfranke@atc.net

Mile 18000 Sun Street, 20 feet west of fire hydrant on north side of street
Mile 18302 54th Street, in line with front corner of house
Mile 18700 RR#1, between telephone pole and phone box, east side of Dead End sign
Mile 20455 Rangeview, east side of mailbox
Mile 21000 sidewalk west of 32nd Street, behind Poly Vista Apartments, 7th line in sidewalk, north of 2 yellow posts
Mile 185 East side of intersection of 30th & 32nd Street, sidewalk square on east side of 32nd, even with log in wood fence
Mile 23 West side of intersection of Bernwood & Colton, on north side of road, parallel to east side of garage
Mile 26915 Pritchell, 1/2 way between west window and front door
Mile 28200 block of intersection of Avenue D & Third Street
Finish: On the west side of the track, in line with the middle of the 2nd set of stairs from the west end of the bleachers on the west side of Dugout Stadium.

Road Running Technical Council
USA Track & Field

registered by


Measurement Certificate

Name of the course	Montana Half Marathon	Distance	21.0975 km.					
Location (state)	Montana	(city)	Billings					
Type of course	road race	O cross country	O offcourse	O track	O configuration: <input checked="" type="checkbox"/> point-to-point			
Type of surface	paved	99 % dirt	0 % gravel	0 % grass	1 % track			
Elevation (metres above sea level)	Start	1140	Finish	955	Highest	1140	Lowest	955
Straight line distance between start & finish	11.3 km	Drop	6.9 m	mean gradient	5.3 %			
Measured by (name, address, & phone)	David French, 3121 Forsythia, Billings, MT 59102							
Race contact (name, address, & phone)	Jenniffer Anderson, 402 N 32 nd , Billings, MT 59101							
Race date:	406-248-1635							
Measuring Methods	bicycle X steel tape O electronic distance meter O							
Number of measurements of entire course:	2							
Date(s) when course measured:	6-19-06; 7-2-06							
Course paperwork submitted date:	8-10-06; 8-24-06							
Certification code:	MT06012-HG							
Replaces:	9-17-2006 (if applicable)							

Notice to Race Director:
 Use this Certification Code in all public announcements related to your race.

Notice to Race Director:
 Use this Certification Code in all public announcements related to your race.

Page 132 of 211

Be It Officially Noted That

Based on examination of data provided by the above named measurer, the course described above and in the map attached is hereby certified as reasonably accurate in measurement according to the standards adopted by the Road Running Technical Council. If any changes are made to the course, this certification becomes void, and the course must then be re-certified.

Validation & Control – In the event a National Open Record is set on this course, or at the discretion of USA Track & Field, a validation measurement may be required to be performed by a member of the Road Running Technical Council. If such a re-measurement shows the course to be short, then all preceding records will be rejected and the course certification will be cancelled.

This Certification expires on December 31 in the year

2016

AS NATIONALLY CERTIFIED BY:

David French Date: 8-30-2006

Michael French – USA TRTC National Captain
 3024-51st Street, Des Moines, IA 50310 (515) 276-3140
 Email: mfrance@mt.net

The runners will run on the north side of the road (against traffic) from Molt. When they reach the 62 St. W. turn into the Country Club, they will not be crossing the road, as they will take a left. We provide trained road guards with vests (we work very closely with the Rimrunners) to help runners make the left hand turn, which is usually not a problem as they are already on that side of the road.

(Going through the Country Club was chosen, as in 2005 there were problems with keeping the runners on Molt Rd into Rimrock road, as the road is very narrow.)

The runners will then exit the Country Club at 54th and Rimrock just as in 2006 (when we introduced the new course) with help from 2 Sheriff vehicles and 4 road guards and 2 bikers. They then run with traffic 8 blocks with the traffic in a small path on the side of the road coned off by Chief Construction and also assisted by the Sheriff Department. We do not cone off an entire lane, just the very edge of the road so runners do not run into the lane of traffic. They then make a right hand turn onto 46th St. West (they are already on the right hand side of the road).

All intersections through Billings have either a Sheriff or very well-trained road guards at intersections. This is the same course as last year and we had a very safe and successful run.

AGENDA ITEM: **O**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: BikeNet Matching Funds for Swords Park Trail, Phase 2

DEPARTMENT: Planning and Community Services

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is planning to construct the second phase of the trail through Swords Park. BikeNet has been raising funds for the Billings' bike trail system through its annual Ales for Trails event. It should be noted that CTA, Architects and Engineers, has been a major contributor to this event over the years, having given over \$15,000 in cash and in-kind services. Without CTA's generosity and help, this gift would not be possible. At the April BikeNet meeting, the Board of Directors voted to approve a \$25,000 match for the construction of Swords Park Trail, Phase 2. This trail project is part of the City approved Capital Improvements Program and received funding of \$63,919 through the CTEP (Community Transportation Enhancement Program) process for the engineering design. Council approval is needed to accept the BikeNet contribution for this gift of \$25,000 to be used for construction. The Planning Division working through the Policy Coordinating Committee process will apply for additional CTEP funds for the construction of this trail, but a local match is required and this gift will help provide that match.

ALTERNATIVES ANALYZED: If the City Council does not approve this gift of \$25,000, funding would need to be secured from another source to provide match for the CTEP grant.

FINANCIAL IMPACT: There is no financial impact to the City of Billings since this is a financial gift to the City for the Swords Park Trail, Phase 2.

RECOMMENDATION

Staff recommends that Council approve the donation of \$25,000 from BikeNet for a portion of the match for the Swords Park Trail, Phase 2 project.

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

P

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 28, 2008

TITLE: Resolution Clarifying the Legal Description of the South Billings Boulevard Urban Renewal District

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Director

PROBLEM/ISSUE STATEMENT: On May 12, 2008, the City Council adopted Ordinance 08- 5462 repealing Ordinance 07-5441 and subsequently recreating the South Billings Boulevard Urban Renewal District and adopting the South Billings Boulevard Urban Renewal Plan. The subsequent ordinance referenced the corrected legal description for the Urban Renewal District adopted by Council on March 10, 2008. A review of the corrected description by the Montana Department of Revenue identified an incongruity caused by a recent annexation. The description references the city limit boundaries following the south edge of the South Frontage Road. Between the time the original legal description was adopted and the adoption of the corrected legal description, a property was annexed into the City in this vicinity. A literal interpretation of the legal description would include the recently annexed property. This was not the intent of the corrected legal description. To eliminate any incongruity between the adopted Urban Renewal Plan and the legal description of the Urban Renewal District, it is advisable that Council adopt a resolution that clearly defines the District boundary as it was originally intended.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the resolution clarifying the legal description of the South Billings Boulevard Urban Renewal District.
- Deny the resolution clarifying the legal description of the South Billings Boulevard Urban Renewal District.

FINANCIAL IMPACT: None.

RECOMMENDATION

Staff recommends that Council adopt the resolution clarifying the legal description of the South Billings Boulevard Urban Renewal District.

Approved by: City Administrator City Attorney

ATTACHMENTS:

A: Resolution

ATTACHMENT A

RESOLUTION NO: 08-

A RESOLUTION CLARIFYING THE BOUNDARIES OF THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT AS DESCRIBED IN RESOLUTION 08-18687.

WHEREAS, on November 13, 2007, the City Council adopted Resolution 07-18627 that declared blight, stated the intent to create an urban renewal district and set a date of a public hearing;

WHEREAS, on December 10, 2007, the City Council adopted Ordinance 07-5441 declaring blight and creating an urban renewal district after held a public hearing was held, and;

WHEREAS, on January 28, 2008, the City Council approved the annexation of Tract 2-B-1 Certificate of Survey 1121, located in Section 16, Township 1S, Range 26E south of the South Frontage Road, but outside of the South Billings Boulevard Urban Renewal District, and;

WHEREAS, on March 10, 2008, City Council adopted Resolution 08-18687 correcting the original legal description contained in Resolution 07-18627, and;

WHEREAS, after the City reviewed the documents creating the South Billings Boulevard Urban Renewal District a public notification error was discovered. The public notification for the public hearing held December 10, 2007 was published one time in a newspaper of general circulation and notices were mailed to each property owner within the district. State statute requires publication of two public notices in a newspaper of general circulation at least six days apart (7-1-4127, MCA), and;

WHEREAS, on April 14, 2008, City Council repealed Resolution 08-18687 and adopted Resolution No. 08-18697 declaring the City Council's intent to create a South Billings Boulevard Urban Renewal District with tax increment authority, declaring the existence of blight within the South Billings Boulevard Urban Renewal area, setting a public hearing date for April 28, 2008, and requiring publication and mailing of the notice of hearing, and;

WHEREAS, a notice advertising the public hearing to be held on April 28, 2008, was published in the Billings Times on April 10 and April 22, 2008, pursuant to 7-1-4127, MCA, and;

WHEREAS, on April 28, 2008, the City Council held a public hearing and repealed Ordinance 07-5441 and adopted Ordinance 08-5462 creating the South Billings Boulevard Urban Renewal District for the purpose of complying with the public notice requirement pursuant to 7-1-4127, MCA, and;

WHEREAS, in June, 2008, the Montana Department of Revenue reviewed the City's documentation related to the creation of the South Billings Boulevard Urban Renewal District and found the documentation to be complete and without errors with the exception of the corrected legal description. The corrected legal description referenced the existing city limits at the point where the district's southern boundary follows the South Frontage Road. The reference was accurate at the time the district was created in December, 2007, but between adoption of the original ordinance creating the district and the resolution correcting the legal description, the aforementioned property was annexed to the City in this vicinity. A literal interpretation of the corrected legal description would include the annexed property;

WHEREAS, the intent of the City Council upon adopting the Ordinance 08-5462 was to comply with the requirements of the public notification process and not change the boundary of the Urban Renewal District;

NOW, THEREFORE, the City Council of the City of Billings, Montana, declares and resolves as follows:

1. Description of South Billings Boulevard Urban Renewal District The area designated as the South Billings Boulevard Urban Renewal District is described as:

Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to the intersection of the centerline of Washington Street and the existing City of Billings city limit boundary, extending southerly and westerly along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street and its projection across the Interstate 90 right-of-way, to its intersection with South Frontage Road, thence in a westerly direction following the south right-of-way boundary of the South Frontage Road to the northeast corner of Lot 1, Block 1, Willowbrook

Subdivision, thence in a southerly and westerly direction following the existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of Block 4 of Weil Subdivision to the intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to its intersection with State Avenue, extending northeast and east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary and Tract 1, C/S 2350.

APPROVED AND PASSED by the City Council of the City of Billings this 28th day of July, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 28, 2008

TITLE: Preliminary Subsequent Minor Plat of Gabel Subdivision, 3rd Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On June 16, 2008, the subdivider applied for preliminary subsequent minor plat approval of Gabel Subdivision, 3rd Filing, which contains five lots on approximately 11.35 acres for commercial development. The subject property is located on the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road. The owner is Bottrell Family Investments, LP, and Engineering, Inc. is the agent. The subject property currently has a building on proposed Lot 3, with the rest of the site being undeveloped. The property is zoned Controlled Industrial (CI).

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 4, 2008. 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: Should the City Council approve the preliminary plat, the subject property may further develop under private ownership, resulting in additional tax revenues.

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Gabel Subdivision, 3rd Filing, and adopt the Findings of Fact as presented in the staff report.

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

ATTACHMENTS

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

INTRODUCTION

On June 16, 2008, the subdivider applied for preliminary subsequent minor plat approval of Gabel Subdivision, 3rd Filing, which contains five lots on approximately 11.35 acres for commercial development. The subject property is located on the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road. The owner is Bottrell Family Investments, LP, and Engineering, Inc. is the agent. The subject property currently has a building on proposed Lot 3, with the remainder of the proposed subdivision being undeveloped, the property is zoned Controlled Industrial (CI).

PROCEDURAL HISTORY

- On May 15, 2008, a pre-application meeting was held for the proposed subsequent minor subdivision.
- On June 16, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On July 28, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

BACKGROUND

General location:

On the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road

Legal Description:

Lot 14A-1, Block 1, of the Amended Plat of Lots 4 and 14A, Block 1, of Gabel Subdivision, 2nd Filing.

Subdivider/Owner:

Bottrell Family Investments, LP

Engineer and Surveyor:

Engineering, Inc.

Existing Zoning:

CI

Existing land use:

Commercial Development/Vacant

Proposed land use:

Business Park

Gross area:

11.35 acres

Net area:

11.35 acres

Proposed number of lots:

5

Lot size:

Max: 130,655 square feet
Min.: 61,313 square feet

Parkland requirements:

A parkland dedication is not required, as this is a commercial minor subdivision.

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potential negative effects of the 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 Division 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 easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the local office of the United States Postal Service. *(Recommended by the United States Postal Service)*
3. 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.
4. 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

There are no variances requested.

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 Division 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.

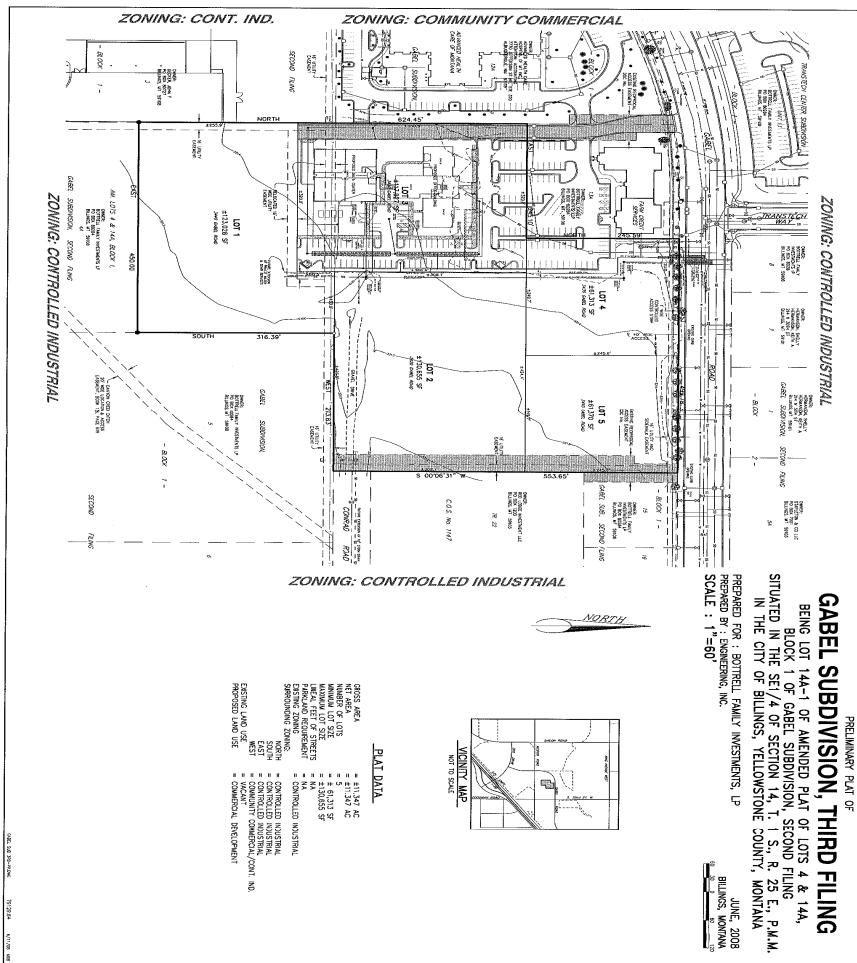
RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Gabel Subdivision, 3rd Filing, and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

Preliminary Plat of Gabel Subdivision, 3rd Filing



ATTACHMENT B

Findings of Fact

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Gabel Subdivision, 3rd 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 (23-303(H)(2), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

2. Effect on local services

- a. **Utilities** –Currently there is a 12 inch water main in Gabel Road adjacent to this subdivision. Internal, domestic and fire service will be provided by an extension of an 8 inch main from Gabel Road through a meter vault and south to a second vault at the existing 6 inch service located in Lot 4A, Gabel Subdivision, 2nd Filing, adjacent to Hesper Road. Separate domestic water service and fire sprinkler lines will be provided for each building from this private main within the subdivision.

Currently there is an 8 inch sanitary sewer main in Gabel Road adjacent to the proposed subdivision. Lot 5 of the subdivision will be serviced by the existing service off of the Gabel Road main and Lots 1 through 4 will be served from a new 8 inch private main which will be extended from the Gabel Road main south to Lots 1 through 4 within an easement.

- b. **Stormwater** – Stormwater will be handled on site through surface flow on the streets and parking lots, collected through a network of catch basins, inlets, and piping. There will be required detention areas that will be discharged to the existing storm stubs on Gabel Road. As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via private internal subdivision streets from Gabel Road. As specified in the SIA, the subdivider will build all streets to a minimum width of 34 feet of paved surface, and all internal streets will be constructed to city

standards. A site plan of the proposed subdivision will be reviewed by all applicable city reviewing divisions before construction begins. A reciprocal access easement document was submitted for the shared driveways and parking lots for the proposed commercial subdivision.

Access to this proposed subdivision shall be through three existing accesses from Gabel Road as outlined in the SIA Section III E. All internal roads shall provide interconnectivity between lots in accordance with the reciprocal easement provision included in the Fourth Amendment of Covenants and Restrictions for Gabel Subdivision, Second Filing and Third filing, to be filed with the final plat of this proposed subdivision.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5).
- f. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The location of this centralized delivery box is to be approved by the local office of the United States Postal Service prior to installation, (see Condition #2).

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

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

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

An Environmental Assessment is not required, as this is a commercial minor plat within the City Limits.

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

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

The proposed subdivision is consistent with the surrounding commercial development that is taking place in the Transtech Center and will be compatible with the standards that are required by that development.

- 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 compatible with the commercial development within Gabel Subdivision inside the Transtech Center that is a commercial development in this area of the City of Billings.

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

A Heritage Trail corridor is identified along the Hogan Slough and a portion of Gabel Road through the Transtech Center. The section fronting this proposed subdivision has been constructed and in use at this time. No further trail improvements are anticipated at this time.

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

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

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

The property will be served by public water and sewer services from Gabel Road.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI zoning district and all other applicable zoning regulations.

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 City Engineering Division will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Access to the lots will be via private internal streets from Gabel Road as stated in the SIA Section III E.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Gabel Subdivision, 3rd 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, July 28, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

July 28, 2008

Bottrell Family Investments, LP
Attn: Jerry Thomas
P.O. Box 80284
Billings, MT 59108

Dear Mr. Thomas:

On July 28, 2008, the Billings City Council conditionally approved the preliminary plat of Gabel Subdivision, 3rd Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the local office of the United States Postal Service. *(Recommended by the United States Postal Service)*
3. 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.
4. 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 David Green with the Planning Division at 247-8654 or by email at greend@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

pc: Robert Sanderson, Engineering, Inc.

R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Final Plat of Amended Lot 2A, Block 1, Shiloh Crossing Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Amended Lot 2A, Block 1, Shiloh Crossing Subdivision, is being presented to the City Council for approval. The subject property is zoned Controlled Industrial (CI) and is located on the southeast corner of the intersection of King Avenue West and Shiloh Road. Amended Lot 2A, Block 1, Shiloh Crossing received preliminary plat approval on May 27, 2008. The City Council conditionally approved the 5-lot subsequent minor plat on 20.59 acres of land for commercial development. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent.

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 Amended Lot 2A, Block 1, Shiloh Crossing Subdivision.

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

ATTACHMENT

A: Final Plat

PLAT OF AMENDED LOT 2A OF AMENDED PLAT OF LOTS 1 AND 2, BLOCK 1,
SHILOH CROSSING SUBDIVISION
CITATED IN THE NAME OF SECTION 16, T. 1 S. 1, P. 1, OF FARMLAND

SITUATED IN THE NW1/4 OF SECTION 14, T. 1 S., R. 25 E., P.M.M.
BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: SHILOH CROSSING, LLC
PREPARED BY : ENGINEERING, INC.
SCALE: 1" = 60'

SCALE: 1" = 60'

J. Clin. Psychol. 2000, 56(1), 1–10

JUNE, 2008
INGS, MONTANA

110

CERT. of SURVEY No. 1349 AMENDED

446

238

CERT. of SURVEY No. 1349

436

M.C.

1349

BASIS OF BEARING: PLAT OF SHILCH CROSSING SUBDIVISION.

- = FOUND REBAR WITH CAP MARKED "ENGINEERING INC".
- = SET 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC BILLINGS MT"

SHEET 1 OF 2

S

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 28, 2008

TITLE: Final Plat of Foxtail Village Subdivision, 2nd Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Foxtail Village Subdivision, 2nd Filing is being presented to Council for approval. On September 12, 2005, the City Council conditionally approved 25 lots on approximately 6.6 acres for single-family and two-family residential development. The subject property is located on the northeast corner of the intersection of Grand Avenue and 60th Street West. The property is zoned R-9600 and R-7000. The subdivider is Kenmark Corporation and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

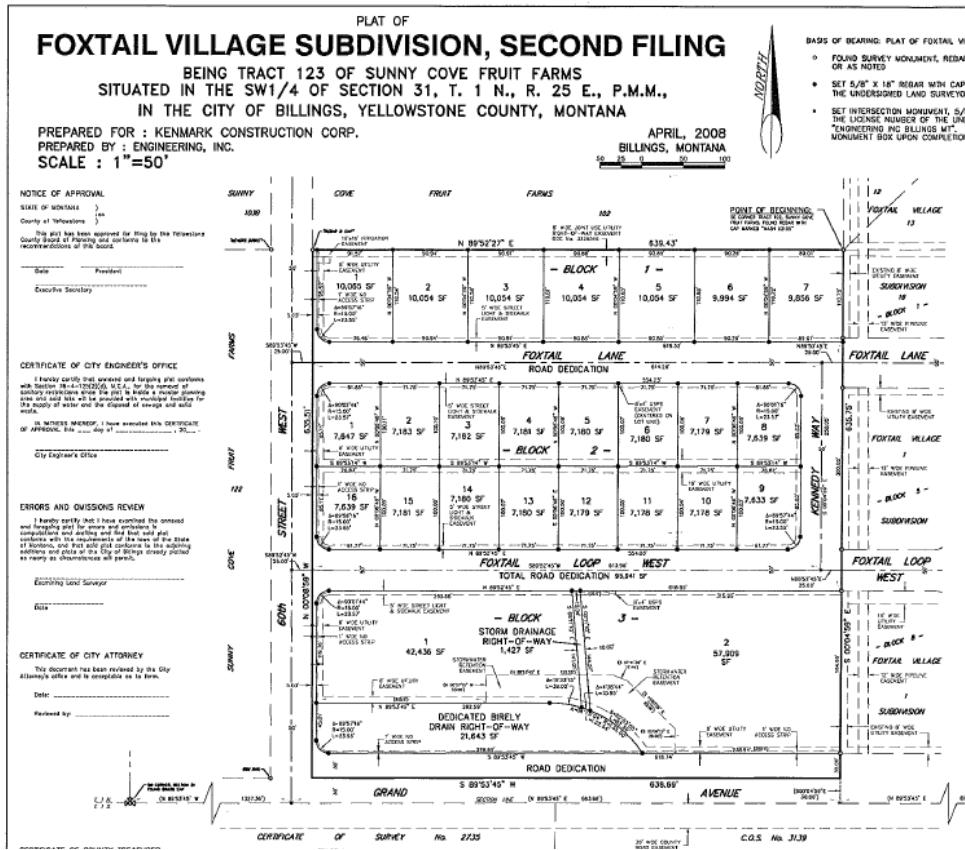
Staff recommends that the City Council approve the final plat of Foxtail Village Subdivision, 2nd Filing.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Plat

ATTACHMENT A



T1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,842,674.36 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 27, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, JULY 28, 2008**

SUBJECT: **FY 2008** Budget Amendment Resolution Item #3, postponed from the July 14th Council Meeting

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Staff requests that the City Council approve a FY 2008 4th quarter budget amendment that will transfer funds from the General Fund to the HOME Program. The amendment is needed to reimburse the HOME Program for \$135,461 of expenses that were not paid by federal grants. The City's FY 2006 audit revealed that the HOME program expended funds that may not have been or were never reimbursed by state or federal grants. The funds were spent for appropriate housing development purposes and there is no evidence of embezzlement or other criminal activity. Staff erred by not requesting reimbursements or not accurately tracking grant draws against eligible expenses. These issues occurred as early as the early 1990s. Council considered this amendment at its June 23 and July 14 meetings and postponed action to this meeting.

ALTERNATIVES ANALYZED:

1. Approve the budget amendment, transfer the funds and correct the problem. The amendment will not exceed the total FY 2008 Non-departmental budget, but because it is a large amount, accounting standards recommend that the Council approve this transfer.

2. Do not approve the transfer and continue loaning General Fund cash to the HOME Program to avoid violating state law by having a negative fund balance. The City's auditors allowed time for the City to correct the problem, but for the FY 08 financial report, will take exception to not clearing a Due To and Due From in a timely manner. Choosing this alternative will probably not jeopardize future state or federal grants because all expenses were legal and documented and the errors of not tracking or not requesting reimbursements resulted in lower

grant expenditures than were authorized by granting agencies. Staff will track and report this item indefinitely or the transfer could be included in the FY 2010 budget.

RECOMMENDATION

Staff recommends that the City Council approve the FY 2008 4th quarter budget amendment resolution, item number three (3).

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

ATTACHMENTS

A: July 14th staff report

B: Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

ATTACHMENT A
AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JULY 14, 2008

SUBJECT: Postponement of Budget Amendment Resolution Item #3 from the June 23rd Council Meeting

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: General Fund (010)-Nondepartmental (14)/Development Services Grants (280)-Home Program – A transfer from the General Fund to the Home Program is needed to reimburse it for expenditures that were not paid by federal grants. ~~Money was spent on Kings Green in the early 2000's from the Home Program. The criterion was never met to allow a reimbursement from the grant program.~~ The HOME program was audited for compliance by EideBaily the fall of 2006 at which time they discovered that the program balance did not equal the balance in the City's financial software. The City started researching the difference to attempt to draw any funds that were eligible. Most of the outstanding amounts were ineligible to be drawn from grant money. The council is being asked to approve a budget amendment transferring money from the General Fund to bring the HOME program into balance. Following are the outstanding problems in the HOME program. First, a project named Spring Gardens was funded prior to 1994 which utilized some HOME funds in addition to State HOME funding. This project accounted for \$240,000 in expenditures which was billed to the HOME program, \$100,000 of which was to come from the State HOME program. Staff is uncertain if the funds were not drawn or not properly coded and deposited and the age of records prevents accurately reconstruction of the event. Second, in 2000, a project was started with an environmental assessment and wetlands delineation on City-owned land located along Covert Lane. HOME recipients can only draw funding from HUD's IDIS system if the project results in actual housing, thus the \$18,251.22 could not be drawn. Last, an additional \$17,209.78 was expended on other various projects which cannot be drawn due to project closure and may be contributed to allocation of administration funding from previous years or errors in reporting program income. This budget amendment request increases the General Fund-Nondepartmental budget by ~~\$150,000~~ \$135,461 for the transfer to the Home Program. The Home Program revenue item increases by the same amount. Reserves will be used since there won't be any additional revenue.

RECOMMENDATION

Staff recommends that the City Council approve number three (3) of the fourth quarter budget amendment resolution approving and adopting the budget amendments for Fiscal Year 2007/2008 per attached.

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

ATTACHMENT

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

ATTACHMENT B EXHIBIT A

Revenue Expenditure

010- General Fund-City Attorney (16)

This request is to increase payroll for City Attorney in the General Fund. There is no increase in the revenue budget.

010-1611-416 1110 65,000 Salaries

010- General Fund – Municipal Court (12)

This request is to increase the budget for Municipal Court for teamster overtime, temporary wages, contract labor, advertising, telephone, employee parking, and transfer to other funds. There is no increase in the revenue budget, general fund reserves will be used.

010-1212-412	1240	20,000	Teamster Overtime
010-1220-412	1240	12,000	Teamster Overtime
010-1220-412	1160	13,000	Temporary wages
010-1220-412	3581	24,000	Contract Labor
010-1220-412	3370	10,000	Advertising
010-1220-412	3450	3,500	Telephone
010-1220-412	3963	1,700	Employee Parking
010-1220-412	8225		Transfer to other
		9,600	Funds

010- General Fund – Nondepartmental (14)

280 – Development Services Grants Fund - Home Program

A transfer from the General Fund to the Home Program is needed to reimburse it for expenditures that were not paid by federal grants. This budget amendment request is an increase to the General Fund-Nondepartmental budget for the transfer to the Home Program. The Home Program has a revenue transfer from the General Fund.

010-1412-414	8225	135,461	Transfer to other
280-6581-383	7515	135,461	Funds
			Transfer from
			General Fund

EXHIBIT A (continued)

Revenue Expenditure

010- General Fund – Nondepartmental (14)

This request is to increase the budget for Nondepartmental for Website services by \$17,500. There is no increase in the revenue budget, general fund reserves will be used.

010-1412-414 3552 17,500 Website Services

010- General Fund – Code Enforcement (43)

The contracted service for mowing weeds needs additional budget of \$62,000. About \$42,000 of this budget increase is from mowing services during July, August, and September of 2007. The other \$20,000 of the budget is from mowing services to be paid for in May and June of 2008. Training services are over budget by \$1,000. Also, Salaries are projected to be over budget by \$7,000 and the related benefits are projected to be over budget by \$3,000. General fund reserves will be used to pay for theses additional costs.

010-4321-419	3586	62,000	Mowing / weed abatement
010-4321-419	3822	1,000	Technical training
010-4321-419	1110	7,000	Salaries
010-4321-419	1430	3,000	Benefits

150- Public Safety Fund - Police (21)

This request is to increase the Public Safety Fund / Police department sick & vacation payoff budget to pay accumulated sick and vacation time to police department employees retiring in fiscal year 2008. There is no increase in the revenue budget, general fund reserves will be used, general fund reserves will be used.

150-2111-421 1500 50,000 Sick & Vacation
Payoffs

EXHIBIT A (continued)

Revenue Expenditure

150– Public Safety Fund - Fire (22)

221 – Fire Programs Fund

The FEMA grant for the confined space equipment has a 20% local match. The budget amendment is requested for \$5,062 to transfer the local match from the Public Safety Fund to the Fire Programs Fund.

150-2229-422	8225	5,062	Transfer to other Funds
221-2238-383	7553	5,062	Transfer from Public Safety

248 – Municipal Court Drug Grant Fund

The DUI Task Force from Yellowstone County has donated \$5,000 for Drug Court. The money will be spent on medical services.

248-1252-334	2060	5,000	Intergovernmental revenue
248-1252-419	3910	5,000	Medical services

718 – Police Programs Fund-Drug Fines and Forfeitures

The Police department is requesting that money collected from drug fines and forfeitures be spent on training, DNA testing, small items of equipment, and computer equipment. Revenue will not increase because there is sufficient cash to cover these expenditures.

718-2160-421	3824	4,000	Training
718-2160-421	3569	5,000	DNA testing
718-2160-421	2120	28,000	Small Items
718-2160-421	9480	17,700	Computer Equipment

EXHIBIT A (continued)

Revenue Expenditure

769– Parks Programs Fund

The Parks department is requesting an increase to the budget for the Parks Program Fund for ground maintenance for Dehler Park and Park & Recreation Capital Improvements for completion of the Central Park Playground. Revenue will not increase because there is sufficient cash to cover these expenditures.

769-5182-452	3650	33,000	Ground Maintenance
769-5182-452	9370	58,000	Parks & Recreation Capital Improvements

872 - Parks Maintenance District Fund

Parks Maintenance District Fund – PMD – (872) – The PMD budget is projected to need additional budget authority in electricity of \$12,000. Water services for the parks are over budget by \$15,000. Due to increasing costs in the ground maintenance line item, this line item needs additional budget of \$15,000. The parks charge for services budget for charges from other city departments needs additional budget of \$43,000. Also, the special assessments for the parks annual taxes needs additional budget of \$1,000. Reserves will be used to pay for additional costs.

872-5198-452	3410	12,000	Electricity
872-5198-452	3420	15,000	Water
872-5198-452	3650	15,000	Ground maintenance
872-5198-452	3968	43,000	Parks charges for services
872-5198-452	5410	1,000	Special assessments

EXHIBIT A (continued)

Revenue Expenditure

810 – Street Light Maintenance Districts Fund

Due to increased electricity costs, the Street Light Maintenance Districts Fund requests a budget increase. There is sufficient cash to fund the budget increase.

810-3183-431 3410 35,000 Electricity

605 – Central Services Fund

This budget amendment is requested to add budget authority for a copier in the office equipment account. One of the copiers failed unexpectedly and needed replaced immediately. Reserves will be used to pay for additional costs.

605-1516-483 9470 8,500 Office machines / equipment

432 –South Tax Increment #5 Construction Fund

This capital expenditure is for right-of-way purchases, easements, equipment and financing costs in the amount of \$300,000 for King Avenue East. There is no revenue budget because financing will not occur until July 2008. In the interim, expenditures will be covered by interfund loans from the Gas Tax Fund.

432-3110-431 9310 300,000 Capital outlay

EXHIBIT A (continued)

Revenue Expenditure

493 - Public Works - 2004A Street Improvements Construction Fund

The final payment from this fund for construction for Alkali Creek Road Improvements has been determined. Budget authority of \$7,700 is needed.

493-3112-431 9310 7,700 Capital outlay

550 - Golf Course Fund

The debt service was completed from the loan for the construction of the club house at the Exchange Club Par 3 Golf Course. Principle and interest payments of \$44,000 were paid in advance in FY2008 to save on interest in future years and additional budget authority is needed for \$44,000.

550-5152-451 6100 44,000 Principal and interest



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

SUBJECT: Resolution Relating to \$7,400,000 Sewer System Revenue Bond Series 2008; Authorizing the Issuance and Fixing the Terms and Conditions

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: On July 14, 2008, the council authorized a commitment agreement for the issuance of Department of Natural Resources and Conservation revenue bonds to pay for the cost of extending the Briarwood sanitary sewer main. The resolution authorizes the issuance and fixes the terms and conditions of the bond.

FINANCIAL IMPACT: DNRC offers low interest loans that fund water and wastewater projects with no closing costs. The Briarwood loan is \$7,400,000 at 3.75% for 20 years. Debt service payments will be made from wastewater revenues.

RECOMMENDATION

It is recommended that the City Council approve the attached resolution.

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

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney (available for viewing in the City Clerk's Office)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Public Hearing for Special Review #863 - 1101 South 32nd Street West
DEPARTMENT: Planning and Community Services
PRESENTED BY: Dave Green, Planner I

PROBLEM/ISSUE STATEMENT: This is a special review request to allow the location of a beer and wine license with gaming on a 42,148 square foot parcel of land in a Controlled Industrial (CI) zone, on Lot 4A, Studer Acreage Tracts Subdivision. The property is addressed as 1101 South 32nd Street West. The lot is on the southeast corner of the intersection of Cel Avenue and South 32nd Street West and currently has two small office buildings on the site. George Frank is the owner and Design Lab Architects is the agent. The Zoning Commission held a public hearing on this request on July 1, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

FINANCIAL IMPACT: The special review, if approved, should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #863 on a 5-0 vote.

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

ATTACHMENTS

A: Zoning/Location Map.
B: Site Plan

INTRODUCTION

This is a special review request to allow the location of a beer and wine license with gaming on a 42,148 square foot parcel of land in a Controlled Industrial (CI) zone, on Lot 4A, Studer Acreage Tracts Subdivision. The property is addressed as 1101 South 32nd Street West and currently has two small office buildings on the site.

PROCEDURAL HISTORY

- A special review to allow the location of a beer and wine license with gaming on a 42,148 square foot parcel of land in a Controlled Industrial (CI) zone was submitted on June 2, 2008.
- The City Zoning Commission held a public hearing on July 1, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on July 28, 2008.

BACKGROUND

This is a special review request to allow the location of a beer and wine license with gaming at 1101 South 32nd Street West and is legally described as Lot 4A, Studer Acreage Tracts Subdivision. The property is zoned CI. The lot is on the southeast corner of the intersection of Cel Avenue and South 32nd Street West. The site currently has two small office buildings on it. The building on the west side of the lot is currently vacant the one on the east side is being used as an office. Golden Meadows manufactured home park is a residential development to the west of this parcel. All other surrounding development is commercial in nature. The owner states in the application letter that it is his intent to convert the building on the east side of the lot into a casino. The owner also states that he plans to install landscaping and do improvements to the lot to make it look better than it currently does. The applicant feels that this will be a good use of the property and "will provide jobs and recreation facilities for residents and motel patrons in the area".

There are several casinos in the surrounding area. To the south of the subject property is Doc & Eddy's West Casino, constructed in 2005. Special Review #788 granted conditional approval to this property for a beer and wine license with gaming on June 27, 2005. Property about one mile south of the subject property at 3178 Gabel Road, on the southeast corner of the intersection of South 32nd Street West and Gabel Road, received special review approval for an all beverage license with gaming and a restaurant as Special Review #854 on February 25, 2008. To the north of the subject property on the southeast corner of the intersection of King Avenue West and South 32nd Street West, there is a Town Pump gas station/convenience store/casino. Special review #784 granted conditional approval for an all-beverage liquor license with gaming on June 27, 2005 for the Town Pump gas station/convenience store/casino. To the north east is Johnny Carino's on King Avenue West Special Review #757 granted conditional approval for a beer and wine license with gaming on May 24, 2004. Also north east of this property is Western Empire Emporium which opened before the special review requirement for alcohol sales and gaming went into effect.

The Planning Division did receive comments from one residential neighbor expressing concern with a casino across the street from residential development and the traffic that may mistakenly go into the residential area where there are small children playing. They also expressed concern with the possibility of crime associated with casinos. One question from the citizen was, "How many casinos does this town need?"

There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular zoning district. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns, which is primarily commercial in nature. The application does encourage land uses that are compatible with the character of the surrounding commercial neighborhood.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The zoning regulations adopted by the City Council require separation of uses and also include requirements for landscape and fencing to provide separation from non-compatible uses. There is an existing residential development immediately west of this property across South 32nd Street West.

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

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

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #863 on a 5-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 4A, Studer Acreage Tracts Subdivision located at 1101 South 32nd Street West.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. Applicant must install all street improvements on Cel Avenue required by City Engineering.
8. Applicant must meet the current storm water management requirements of the City of Billings on their site.
9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on July 1, 2008, and forwarded a recommendation of conditional approval to the City Council on a 5-0 vote. The applicant was not present at the Zoning Commission meeting.

Meredith Cox a property owner in Golden Meadows stood and spoke in opposition of Special Review 863. She expressed concern with a casino across the street from residential development and the traffic that may mistakenly go into the residential area where there are small children

playing. Ms. Cox also expressed concern with the possibility of crime associated with casinos. She also felt that the letter submitted by the applicant stating that this will provide jobs and recreational opportunities was not correct. An additional casino will only provide minimal employment and recreation to only a small portion of the population, according to Ms. Cox. Ms. Cox also stated there are currently four casinos in the area. She feels the city should re-look at the casino overlay and do something to limit how many and where casinos are located.

Zoning Commission member Thomas Grimm stated that the city should look at the casino overlay again. This many casinos in one area may be too many, according to Grimm

Zoning Commission member Michael Larson stated that the 600 foot separation has clumped the casinos together along arterial streets, especially with the current criteria. Also there is nothing that would allow a denial of this application based on current criteria.

There was no further discussion from the zoning commission; a motion to forward a recommendation of conditional approval to the City Council was made a seconded followed by a vote of 5-0 to approve.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- New Development that is compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

RECOMMENDATION

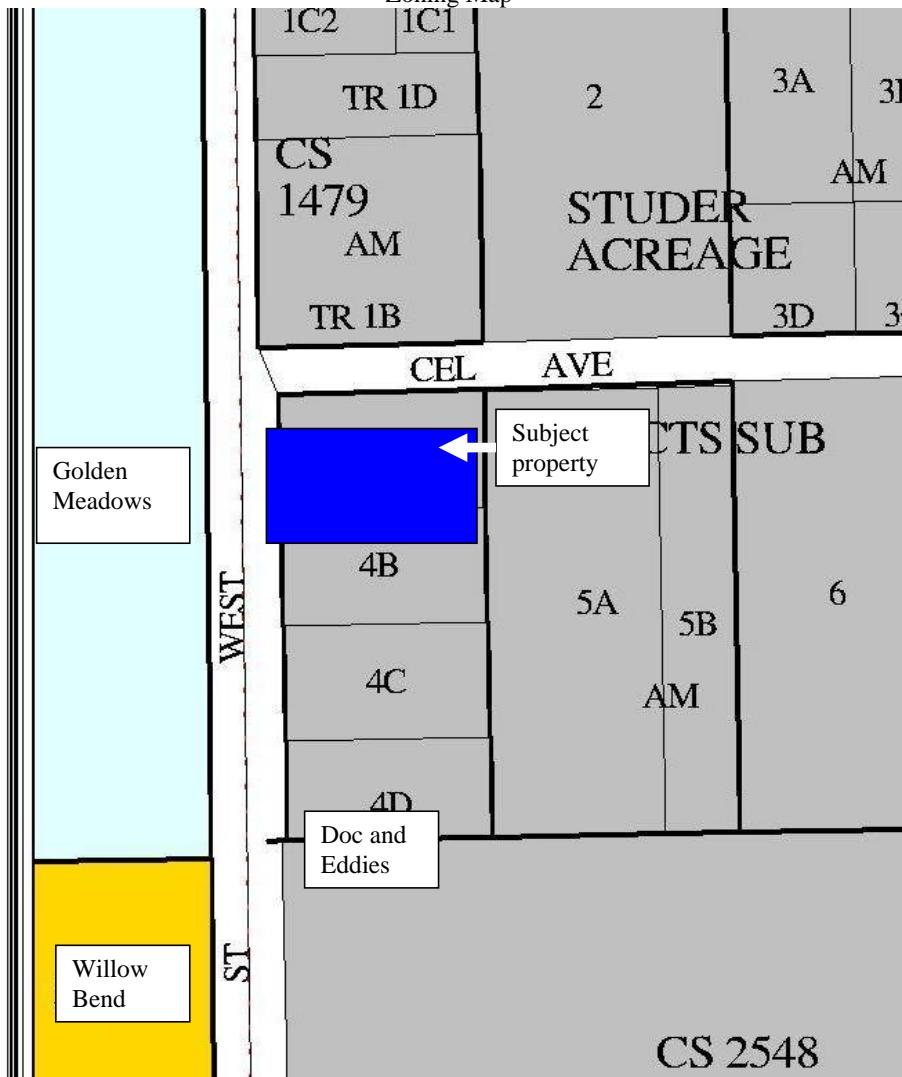
The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #863 on a 5-0 vote.

ATTACHMENTS

A: Zoning/Location Map.
B: Site Plan

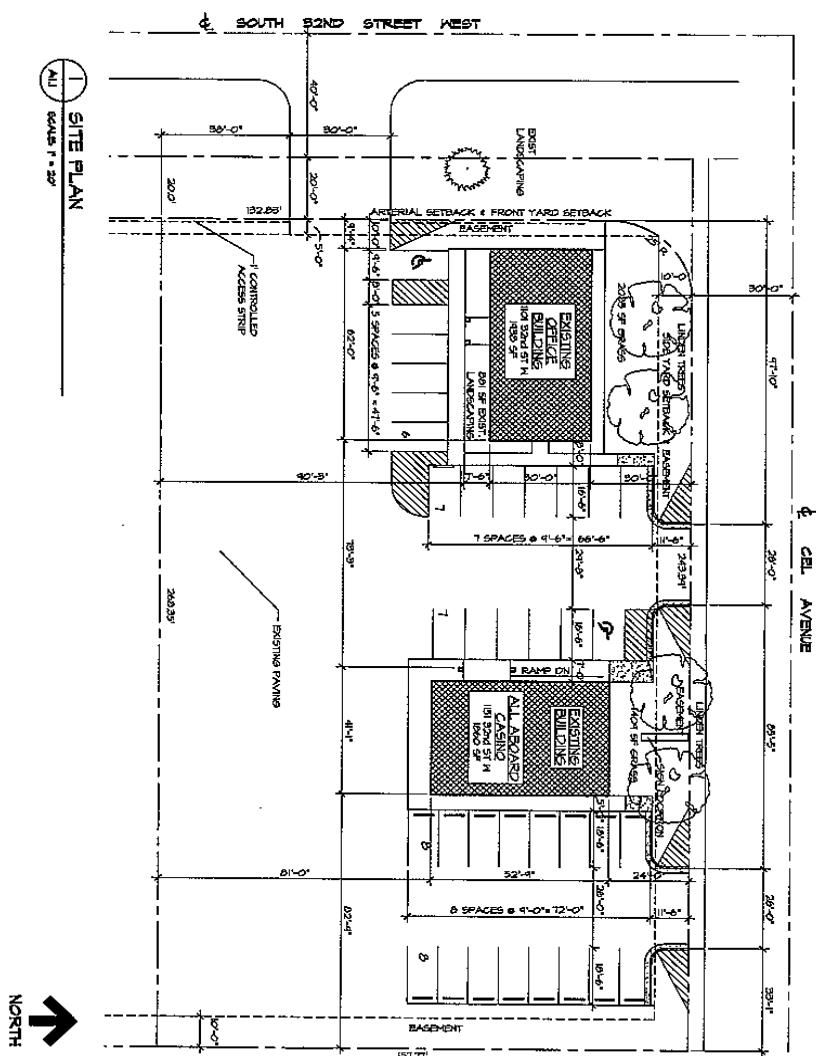
ATTACHMENT A

Zoning Map



ATTACHMENT B

Site Plan





CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Public Hearing for Special Review #864 – 1101 South 32nd Street West
DEPARTMENT: Planning and Community Services
PRESENTED BY: Dave Green, Planner I

PROBLEM/ISSUE STATEMENT: This is a special review request to allow the location of an all beverage liquor license with gaming on a 38,072 square foot parcel of land in a Controlled Industrial (CI) zone, on Lot 6A, Block 3, of Midland Subdivision, 4th Filing. The property is addressed as 2850 King Avenue West and is the former Krispy Kreme Donuts building. The lot is on the southeast corner of the intersection of South 29th Street West and King Avenue West. Eagle-Fairview Investment Company, LLC is the owner, and Montana Stewards, LLC (Town Pump) is the agent. The Zoning Commission held a public hearing on this request on July 1, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote

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

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

FINANCIAL IMPACT: The special review, if approved, should benefit the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #864 on a 5-0 vote.

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

ATTACHMENTS

A: Zoning/Location Map.
B: Site Plan

INTRODUCTION

This is a special review request to allow the location of an all beverage liquor license with gaming on a 38,072 square foot parcel of land in a Controlled Industrial (CI) zone, on Lot 6A, Block 3, of Midland Subdivision, 4th Filing. The property is addressed as 2850 King Avenue West and is the former Krispy Kreme Donuts building.

PROCEDURAL HISTORY

- A special review request to allow the location of an all beverage liquor license with gaming on a 38,072 square foot parcel of land in a Controlled Industrial (CI) zone was submitted on June 2, 2008.
- The City Zoning Commission held a public hearing on July 1, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on July 28, 2008.

BACKGROUND

This is a special review request to allow the location of an all beverage liquor license with gaming at 2850 King Avenue West. The site is legally described as Lot 6A, Block 3, of Midland Subdivision, 4th Filing, and is zoned CI. The lot is on the southeast corner of the intersection of South 29th Street West and King Avenue West. The site is the former location of Krispy Kreme Donuts. Surrounding development is all commercial in nature with a mix of retail sales and eating establishments. The applicant states in the application letter that market surveys show there is a demand for services of a casino in the area, also they are re-using an existing building that is currently empty. They also state that it will provide jobs and tax revenue for the community and that they would like to expand their businesses in a Montana community that they already do business in.

There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location, which is surrounded by commercial development. The

application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are compatible with the character of the adjacent neighborhood.

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

The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages may be allowed. There are no existing residential developments immediately adjacent to this property.

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

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

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #864 on a 5-0 vote.

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 6A, Block 3, of Midland Subdivision, 4th Filing, located at 2850 King Avenue West.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
5. The existing drive-up lane on the west side of the building must be blocked or removed. The drive-up window on the west side of the building must be removed.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).

8. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on July 1, 2008, and forwarded a recommendation of conditional approval to the City Council on a 5-0 vote. The applicants' agent, Rick Leuthold, was present at the Zoning Commission meeting. Mr. Leuthold stated that the demographics show the quota for casinos is exceeded but there is still a high demand in the area for more of them.

Chuck O'Brien, construction manager for Town Pump, stated there will be no outdoor patio with this application and he also reiterated what Mr. Leuthold stated that Town Pump casino marketing shows there is a high demand for more casinos.

There was discussion among the Zoning Commission members stating that the city should look at the casino overlay again. This particular subdivision, Midland, has had nine special reviews for liquor licenses with gaming since 1996 that have all been approved. This special review will be the tenth special review for a liquor license with gaming. The Zoning Commission expressed the concern that this seems like quite a few casinos in one area of town. The Zoning Commission members also noted there is nothing that would allow a denial of this application based on current criteria.

There was no further discussion from the zoning commission; a motion to forward a recommendation of conditional approval to the City Council was made a seconded followed by a vote of 5-0 to approve.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- New Development that is compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the

neighborhood character and land use patterns.

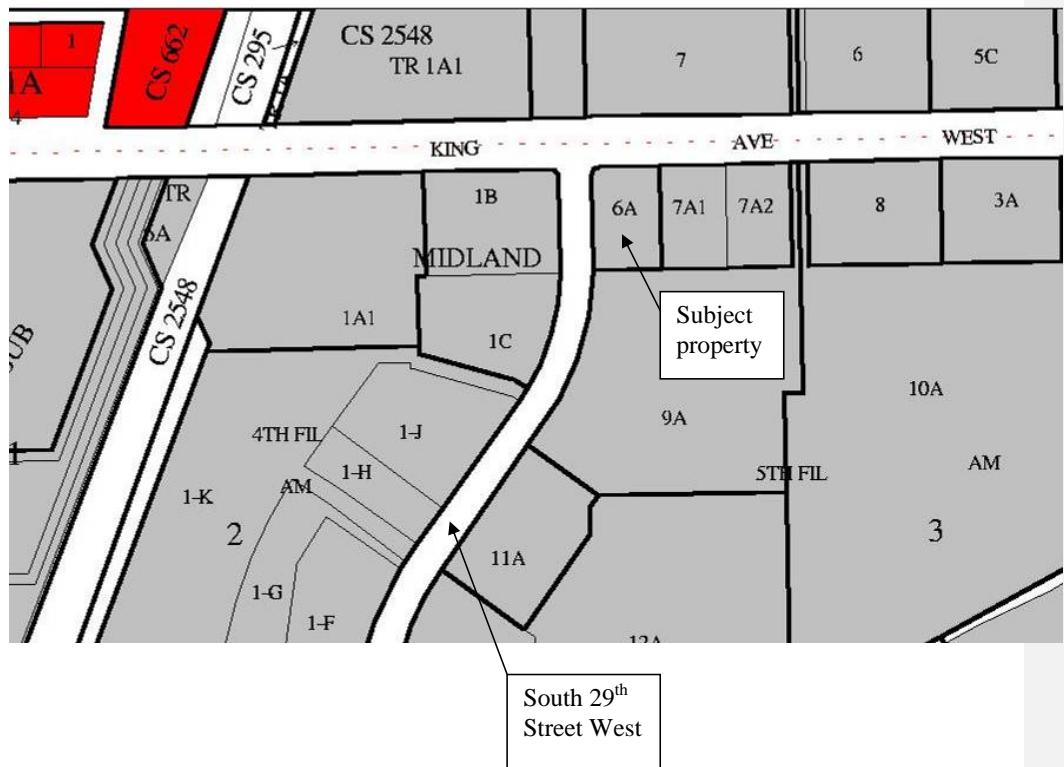
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #864 on a 5-0 vote.

ATTACHMENTS

A: Zoning/Location Map.
B: Site Plan

ATTACHMENT A
Zoning Map



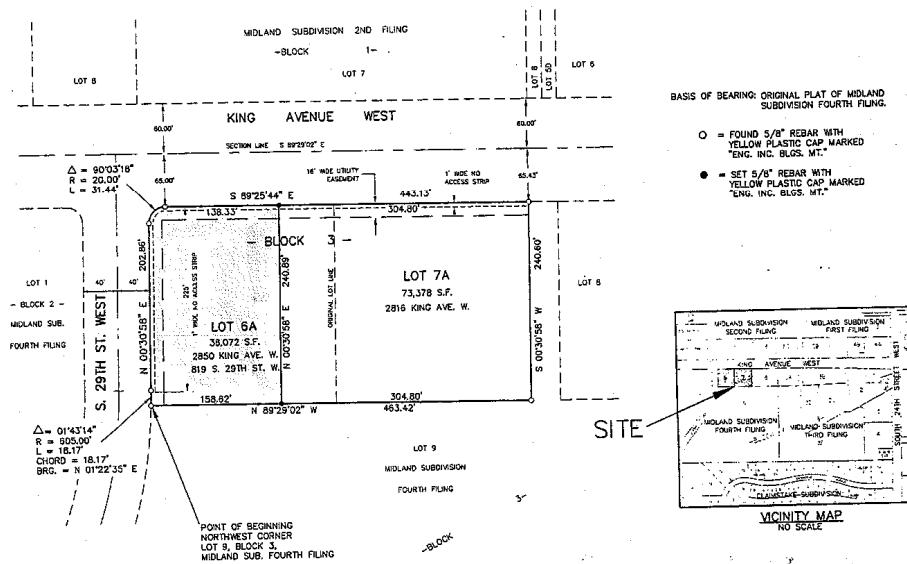
ATTACHMENT B

Site Plan

PLAT OF AMENDED LOT 6 AND LOT 7, BLOCK 3
MIDLAND SUBDIVISION FOURTH FILING
SITUATED IN THE NE 1/4 OF SECTION 13, T. 1 S., R. 25 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: UNITED INDUSTRY, INC.
PREPARED BY : ENGINEERING, INC.
SCALE: 1" = 50'

OCTOBER, 1995
BILLINGS, MONTANA



6

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 28, 2008

TITLE: Zone Change #845 Public Hearing and 1st Reading of Ordinance – 203 Monroe Street

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential 6,000 (R-60) on a .85 acre parcel of land on the south east corner of the intersection of Monroe Street and Madison Avenue, legally described as the North 147.55 feet of the E1/2NWSWNW1/4 – West of the Drain in Section 10 of Township 1 South, Range 26 East and located at 203 Monroe Street. The applicants are Daniel Dimich and Patricia Rodriguez and the agent is Charles Hamwey. A pre-application neighborhood meeting was held at the South Side Cop Shop at 80 Hallowell Lane on May 20, 2008. The Zoning Commission conducted a public hearing on July 1, 2008, and is forwarding a recommendation of approval on a 5-0 vote.

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 should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #845 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

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

ATTACHMENTS:

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

INTRODUCTION

The applicant is requesting to rezone an unplatted parcel of land on the south east corner of the intersection of Monroe Street and Madison Avenue. In November of 2007, Charles Hamwey, agent for the owner, requested a review of the zoning for this parcel. It was discovered during this research that the parcel was incorrectly shown in the Public zoning district. There are 3 parcels west of Riverside Middle School that were incorrectly shown as Public zoning. The map was corrected and the parcels are now zoned R-96. There was an attempt to re-zone these parcels from R-150 to R-60 in 1982 but that zone change ultimately failed. The parcels were annexed and remained in the R-150 zoning district until 1986 when the R-150 zoning district was eliminated as a residential zoning district within the city. All of the adjacent and neighboring subdivisions are zoned R-60. The current property owner intends to retain the current single family homes and contemplates re-development of the parcel in the near future.

PROCEDURAL HISTORY

- On May 20, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at the South Side Cop Shop at 80 Hallowell Lane.
- On June 2, 2008, a zone change application was submitted to the Planning Division.
- On July 1, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On July 28, 2008, the City Council will conduct the public hearing for the the zone change.
- On August 11, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The 2003 Growth Policy supports predictable land uses in existing neighborhoods that are compatible with the existing land uses. The proposed zoning will allow the property to better conform to the surrounding neighborhood and encourages the future re-development of this lot. The two homes on the property are well maintained and additional area may be available for additional dwellings. A pre-application neighborhood meeting was held on May 20, 2008, at the Cop Shop at 80 Hallowell Lane, approximately 1 mile from the subject property. There were no concerns expressed at the pre-application neighborhood meeting. The Planning Division has not received any phone calls or letters regarding the application.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The subject property is surrounded by R-60 zoning and a well developed neighborhood that has a mixture of single family and two-family homes. The proposed zoning is compatible with the surrounding zoning and neighborhood character. The Zoning Commission concurred with this recommendation. Staff based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

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

1. *Is the new zoning designed in accordance with the Growth Policy?*

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*
The proposed zoning would allow the two single family homes to continue and allow additional development or re-development of the lot. The existing neighborhood has a mixture of single family and two-family homes. R-60 zoning surrounds this property.
- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*
The proposed zoning is consistent with the surrounding character of the intersection. Any re-development of the property will require some improvements to the adjacent right of way.

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

The proposed zoning should have no immediate or significant impact on vehicle traffic in this area. Monroe Street south of the parcel is an unpaved dead-end street. Madison Avenue is a paved city street and does provide an east-west traffic route from Riverside Middle School to the neighborhood.

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

The subject property is currently serviced by City Fire and Police. There were no concerns from public safety agencies with this proposed zoning.

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

The current and proposed zoning have identical building height limits (34 feet). The R-60 allows a 15 foot front setback and 40% lot coverage. The new zoning promotes the health and general welfare.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The current R-96 zone allows 30% lot coverage and the proposed R-60 allows 40% lot coverage. The proposed increase in lot coverage should not overcrowd the property.

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

The proposed zoning could allow multi-family residences by special review approval. The maximum density on this parcel would be 19 dwelling units through a special review approval. It is not likely this density could be achieved based on the maximum building height of 34 feet, the maximum lot coverage of 40% and the requirements for off-street parking, drive aisles and landscaping. The maximum density on this parcel without special review approval is 10 dwellings (5 two-family dwellings). This may also be difficult to achieve given the maximum building height, lot coverage and site development requirements.

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

Transportation: The proposed zoning will have little impact on the surrounding streets.

Water and Sewer: The City currently provides water and sewer to the property through existing lines.

Schools and Parks: There should be no impact on schools or parks.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

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

The new zoning is in character with the surrounding neighborhood and would allow the property to add additional dwellings in the future.

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

The subject property is suitable for the requested zoning district. This .85 acre parcel has the potential to provide additional homes in the area as an in-fill development.

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

The value of the two-existing dwellings on the property will be preserved and re-development of the parcel for in-fill housing will increase values within the general area.

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

The proposed zoning will encourage the most appropriate use of this land at the intersection and throughout the district.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan and discussed within the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on July 1, 2008, and forwarded a recommendation of approval to the City Council on a 5-0 vote. The agent, Charles Hamwey and

applicant Patricia Rodriquez were present at the Zoning Commission meeting and explained the application. There was no further public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #845 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

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

Attachment A

Site Photographs, Zone Change #845 – 203 Monroe Street



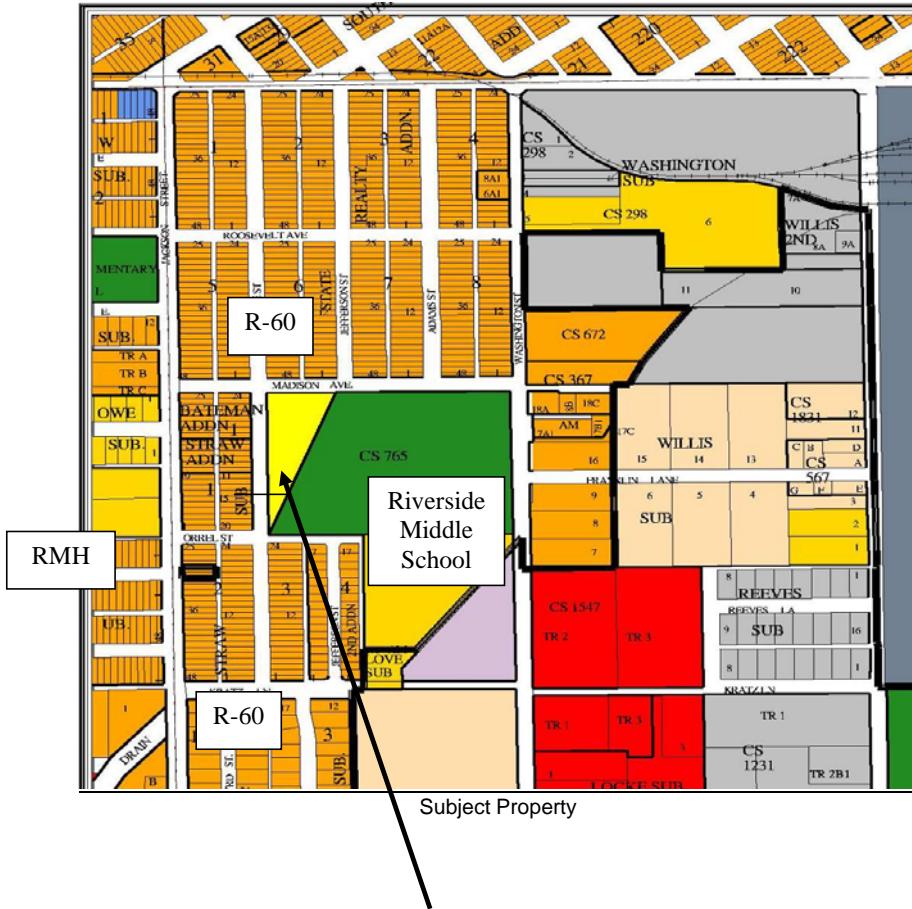
Subject Property with existing single family home – Madison Avenue (left) frontage



View south and east across Monroe Street frontage

Attachment B

Surrounding Zoning - Zone Change #845 – 203 Monroe Street



Attachment C
ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR the North 147.55 feet of the E1/2NWSWNW1/4 – West
of the Drain in Section 10 of Township 1 South, Range 26
East containing 37,026 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 the North 147.55 feet of the E1/2NWSWNW1/4 – West of the Drain in Section 10 of Township 1 South, Range 26 East containing 37,026 square feet and is presently zoned Residential 9,600 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 9,600** 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 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading August 11, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 28, 2008

TITLE: Zone Change #846 Public Hearing and 1st Reading of Ordinance, 1702 Colton Boulevard

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential Professional (RP) on Lots 1 and 2, Block 20 of Kober Subdivision, 4th Filing located at 1702 Colton Boulevard. This site is a 16,843 square foot parcel of land. The property is owned by Sunday Creek Land Company, Ronald Scariano, owner and Heather McDowell of the Crowley Law Firm, agent. The owner conducted two pre-application neighborhood meetings. The Zoning Commission conducted a public hearing on July 1, 2008, and is forwarding a recommendation of approval on a 3-2 vote.

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, if approved, could increase the City's tax base if the property is re-developed. Denial of the proposed zone change should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #846 and adoption of the 12 Zoning Commission Determinations on a 3-2 vote.

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

ATTACHMENTS:

- A: Surrounding Zoning
- B: Photographs of Subject Property
- C: Pre-application Meeting Summary and Concept Site Plans
- D: Ordinance

INTRODUCTION

The applicant is requesting to rezone this property on the south west corner of the intersection of 17th Street West and Colton Boulevard. Two special review requests and two zone change requests have been submitted on behalf of several owners over the past 11 years. The building on the property was originally constructed to serve as the district offices for the Assemblies of God churches. The church vacated the building in 2001 and several other types of businesses, conducted as “home occupations”, have been occupants since that time. The current owner uses the property as a rental property. Most of the surrounding property is zoned R-96 and R-60. The Second Assembly of God Church, in an R-96 zone, is located just south of the subject parcel across the BBWA canal. Property to the south and east across the BBWA canal is zoned RP (1645 Parkhill Drive) and developed for professional offices.

PROCEDURAL HISTORY

- On April 3, 2008, the first pre-application neighborhood meeting for the proposed zoning application was conducted at the Assembly of God Church at 1707 Parkhill Drive.
- On April 29, 2008, the second pre-application meeting for the proposed zoning application was conducted at the Assembly of God Church at 1707 Parkhill Drive.
- On June 2, 2008, a zone change application was submitted to the Planning Division.
- On July 1, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and is forwarding a recommendation of approval to the City Council on a 3-2 vote.
- On July 28, 2008, the City Council will conduct the public hearing and first reading of the zone change.
- On August 11, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The proposed RP zoning district could allow professional offices and certain types of service businesses in the existing building or in a new structure on this 16,843 square foot property. The applicant, Sunday Creek Land Company, is proposing to update the building and sell or lease it for professional office space. The applicant conducted two pre-application neighborhood meetings. A summary of the neighborhood meeting minutes are attached (Attachment C). The primary concern voiced at the meeting was how the zone change may affect surrounding residential homes, the current lack of maintenance on the property and the permanence of a zone change from residential to commercial uses. The owner presented two concept site plans (Attachment C) that showed the existing building, garage and parking area. The owner stated the re-development might include the removal of the existing roof and replacement with a more conventional roof style similar to surround residential structures.

Colton Boulevard is a collector street and 17th Street West is a minor arterial street. The intersection has been developed with a full traffic control light, primarily due to the geography of the intersection and traffic counts. Colton Boulevard carries an average 5,310 vehicle trips per day and 17th Street West handles approximately 9,500 vehicle trips per day. The average daily

traffic on both streets has not increased more than 6% in the past 15 years. The area is a fully developed neighborhood. The 2003 Growth Policy encourages the location of commercial nodes at the intersection of arterial streets with professional offices or higher density residential along arterials between intersections. This goal must be balanced with existing and potential future land uses and compatible with current neighborhood character. There is similar zoning in the immediate area, however all property north of the BBWA canal along 17th Street West is zoned for residential uses. The intersection of 17th Street West and Poly Drive is primarily zoned or used for commercial purposes and professional offices. In January 2008, the City Council approved a zone change for 1701 Poly Drive from R-96 to RP to accommodate the redevelopment of the 17th Street Conoco gas station property. Poly Drive is a minor arterial street.

The proposed RP zoning district could allow professional office uses as well as single family residential, churches, day care centers, banks or financial offices, beauty shops, funeral services, and dance studios. If the zoning is approved, the owner would be allowed to use the property for any of these uses provided the structure can meet building codes and the site can accommodate the required off-street parking. The building height and setbacks are identical to the current R-96 zoning. The proposed zoning does allow an increase from 30% lot coverage to 50% lot coverage in the RP zone. Any development of the property for commercial uses would require the provision of adequate off-street parking and landscaping to commercial development standards.

Planning staff forwarded a recommendation of denial to the Zoning Commission for this application. The Planning Division believes this zone change may constitute a spot zoning. Due to the size and location of the parcel, this proposal may meet the criteria for the creation of a spot zoning. Spot zoning - as defined by the Montana Supreme Court - is a three-prong test and each prong should be evaluated separately but weighed as a whole. A "yes" answer to each of the three tests is usually required before determining that a spot zoning has occurred. The precedent case is *Little v Board of County Commissioners of Flathead County* in 1981. The first test or criteria to determine a spot zoning is whether the requested use is significantly different than the prevailing use in the area. The Planning staff believes the requested use is significantly different than the prevailing single family use in the area. The majority of the Zoning Commission members believe the use – professional offices – has existed on the property for nearly three decades and the zone change would bring the property in to conformance with the zoning regulations. The applicant has rented the building since 2004 for residential purposes but the style and construction was intended for professional office space. The Zoning Commission believes this use is not significantly different from the existing and prevailing uses in the area along 17th Street West.

The second criterion is whether the area for the requested use is small. This factor is more concerned with the number of benefited landowners rather than physical size of the property. The Planning staff believes the requested use only applies to the owner's property of less than 1/2 acre and the physical area affected is rather small. The majority of the Zoning Commission believes the area benefited will include all surround property owners by increasing investment in the existing structure and re-use of the building for its intended purpose.

The third criterion is whether the zoning is designed to benefit only one landowner at the expense of the surrounding property owners or the general public. The Planning staff believes the re-zoning does benefit one land owner and it appears that the request is at the expense of the surrounding property owners. The surrounding market values of single family homes may be detrimentally affected by the new zoning. A majority of the Zoning Commission disagreed with this opinion. The members believe that many property owners will benefit from the new zoning and that it provides an opportunity to revitalize this property.

The Zoning Commission conducted a public hearing on July 1, 2008 and is forwarding a recommendation of approval to the City Council on a 3-2 vote. The Zoning Commission's recommendations are made and discussed in the 12 criteria for zone changes below.

ALTERNATIVES ANALYSIS

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

1. *Is the new zoning designed in accordance with the Growth Policy?*

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

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*
The proposed zoning would allow the re-use of the existing office building for professional offices and is consistent with the surrounding single-family uses.
- *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 proposed zoning is consistent with the surrounding character of the neighborhood.
- The proposed zone does not create an illegal spot zone.
 1. The requested use is not significantly different than the prevailing use in the area.
 2. The area requested for the use is not small in area.
 3. The requested zoning benefits both the property owner and the surrounding property owners.

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

The additional traffic from a professional office of less than 2,000 square feet would not be significant considering the existing vehicle trips per day on Colton Boulevard and 17th Street West.

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

The subject property is currently serviced by City Fire and Police. Any development will require a provision of commercial access to city streets and buildings will need to meet minimum building and fire protection standards.

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

The proposed zoning would permit the re-use of an existing professional office building. The applicant has stated that property improvements would be made if the zone change is approved. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, like all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 zone allows 30% lot coverage and the RP zone allows 50% lot coverage. The proposed site plan does not increase the foot print of the existing 1,775 square foot building.

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

The new zoning does avoid undue concentration of population. The R-96 zoning only allows single family homes on a minimum lot size of 9,600 square feet. The proposed zoning also only allows single family homes on a minimum lot size of 6,000 square feet.

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

Transportation: The proposed zoning may impact the surrounding streets, although this is dependent on the actual commercial use intended for the property.

Water and Sewer: The City will provide water and sewer to the property through existing lines.

Schools and Parks: School District #2 will provide education to students within the development.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

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

The proposed zoning will permit the re-use of an existing professional office. The structure was built in 1969 through a special exception granted by the City Council. The use became a nonconforming use in 1972 when the City Council adopted the current zoning regulations and zoning map. The re-use of this building for office space gives consideration to the existing character of the district.

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

The subject property is suitable for the requested zoning district. The property is located at a traffic-controlled intersection of an arterial street and a collector street. There are several other small office buildings north and south along 17th Street West.

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

In 2005, the tax category for this property was changed from “commercial urban” to “residential urban”. This reduced the annual property taxes from \$2,600 per year to approximately \$1,900 per year. Surrounding residential property to the north, west and east have similar taxable value as residential property. The building at 1702 Colton Boulevard was not built as a residential dwelling and the taxable and market value of the structure would significantly increase if the underlying zoning were changed to allow professional and commercial uses. The zone change will conserve and enhance the value of this existing building.

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

The proposed zoning is the most appropriate zoning for this location.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

Planning Division staff received two phone calls regarding the proposed zone change application. One person requested a zone change protest form and instructions. A protest petition has not been filed as of July 7, 2008.

The Zoning Commission conducted a public hearing on July 1, 2008, and is forwarding a recommendation of approval to the City Council on a 3-2 vote. Three members of the Zoning Commission believe the proposed zone change was the most likely use of the property given the existing building and its location at the intersection of 17th Street West and Colton Boulevard. Two members of the Zoning Commission were concerned with the incompatibility of the surrounding zoning and the proposed zoning might be an illegal spot zoning.

Heather McDowell of the Crowley Law Firm testified on behalf of the applicant Ronald Scariano, principal of Sunday Creek Land Company. Ms. McDowell testified that she disagreed with the Planning staff recommendation of denial. She stated that the building was constructed for use as an office by the Assembly of God Church in 1969. The building has been rented for residential purposes but is not a conventional home. Photographs of the property from the east side of 17th Street West show the openness of the property to the high traffic intersection. She stated this would not be a suitable residential building site. Ms. McDowell testified the Planning staff reasoning within the 12 criteria appears to be arbitrary and not related to the actual conditions of the property. Traffic would not impact the area since weekday use by an office would likely produce less traffic than the current 4 to 5 residents of the building on a daily basis.

There would be no noise after 5 pm or on weekends from an office use. Ms. McDowell testified that RP zoning is the most appropriate for this building. Any upgrade to the property would not alter the footprint of the existing building but would upgrade the roof or other amenities. Ms. McDowell stated this use of the property is identical to the property at Parkhill and 17th Street West just south of this location. She stated the Planning staff report that referenced overcrowding of area schools but this fact is completely un-related to the proposed zone change. Ms. McDowell stated that this proposed zoning does not meet the criteria for an illegal spot zone. The precedent case involved the re-zoning of 54 acres of property for a large commercial development that was surrounding by low density residential uses. In that case, the re-zoning was in direct contradiction to the adopted growth policy and could not be supported by the criteria for zone changes. Ms. McDowell stated this zone change is supported by the 12 criteria for zone changes. The 2003 Growth Policy encourages to the re-use of existing buildings and mixed uses in areas where city services are already available.

Commission member Tom Grimm asked Ms. McDowell to further explain how RP zoning is not significantly different than the surrounding residential zoning. Ms. McDowell stated that RP zoning is just one degree of difference than the R-96 zoning that exists in the area. The RP zoning is meant to be compatible with residential zoning.

Mr. Len Ventling of 3114 17th Street West and a member of the Assembly of God Church testified in favor of the zone change. Mr. Ventling stated that professional offices would be the best use of the property and that it was unsuitable for residential uses. Mr. Ventling stated he had an office at 5th St West and Broadwater Avenue for many years and he went through a similar zone change process. He stated that surrounding residential owners were concerned it would affect their property values, but after the zone change the surrounding owners were surprised to see an enhancement of their property and value. Mr. Ventling stated he believes the current owner has good ideas for re-development of the property and the Zoning Commission should approve the request.

Ms. Meredith Cox of 1908 Colton Boulevard testified against the proposed zone change. Ms. Cox stated that at times it is difficult to exit her driveway because of traffic and additional traffic from an office would make this worse. Ms. Cox stated it might be appropriate as a single office space but multiple tenants would not be a benefit to the area. Ms. Cox stated the intersection is hazardous in the winter even with the traffic light because it ices up frequently.

Mr. Wallace Stadfeld of 1740 Mariposa Lane testified against the proposed zone change. He stated that the only reason a traffic light was installed at Colton Boulevard and 17th Street West was a fatal motorcycle accident occurred. The traffic normally would just require a stop sign on Colton Boulevard just like every other intersection from Grand to Poly Drive. The light at Parkhill and 17th Street West is mainly for the fire station. He testified that Edward Jones, Mr. Scariano's investment business, already has an office at 1645 Parkhill and he will not move in to this location even if the zone change is approved. Mr. Stadfeld testified the front door of the existing building actually faces Soloman Avenue, a public street that all the adjoining neighbors to the west use for the primary access to their residential properties. If the zone change is

approved, Soloman Avenue may start carrying commercial traffic past their homes. He stated the Council approved the church offices in 1969 but did not change the zoning and there should be no reason for the city to change the zoning now. Mr. Stadtfeld stated his biggest concern is other lots that front on 17th Street West also requesting commercial zoning if this zone change is approved.

Mr. John Lunney of 1726 Colton Boulevard testified against the zone change. He stated he has been through 4 or 5 applications with this property and none have been approved. He stated he was concerned that once the R-96 zoning is changed it will never change back. He testified that despite the limitation of the RP zone, any use a lawyer could figure to put on the property would be allowed. Mr. Lunney testified the zone change does not guarantee that Mr. Scariano will improve the property. He stated that in 2004, the last time a zone change was denied by the City Council; Mr. Scariano threatened the neighbors to rent the property to any group of college students he could find. Mr. Lunney stated that Mr. Scariano fulfilled his promise and the tenants do cause quite a disturbance in the neighborhood and will not maintain the yard. Mr. Lunney stated the church wants the zone change because everyone blames them for the condition of the property even though the church sold the property some years ago. Mr. Lunney stated there was no demand for added office space in this area. Mr. Lunney stated that once the zone change is passed, a dozen other owners would be asking for the same zoning up and down 17th Street West. Scott Emerick of 1736 Colton Boulevard testified against the zone change. Mr. Emerick stated he was concerned that this zone change approval could lead to similar zoning being approved on 17th Street West or Colton Boulevard. He stated the property could be developed as a nice residential home if screening was constructed on 17th Street West. He testified that Mr. Scariano does not need a zone change to improve the property. Mr. Emerick stated the owner has used strong arm tactics to get the neighborhood to agree to a zone change. He stated this included the rental of the home to college students. Mr. Emerick stated he bought his home on Colton Boulevard with the intent to increase his property value not diminish it through another property owners wishes. Mr. Emerick stated that use of Soloman Avenue for access to the proposed office would diminish the safety of this street for his children. Mr. Emerick testified that the concept plan that shows a vacation of Soloman would never be approved by the city since there are existing utilities in the street.

Bruce Kline of 1734 Mariposa Lane testified against the zone change. Mr. Kline stated he was opposed to the change because it would accelerate commercial creep in this mainly residential area north of the BBWA canal. He stated the zone change would decrease the value of the surrounding homes. He stated he thought a nice residential home could be built on these two lots.

Heather McDowell of the Crowley Law Firm provided rebuttal testimony to the Zoning Commission. She stated that traffic concerns were without merit since traffic would be much less with a Monday through Friday office use than the 7 days-a-week traffic from college students. Ms. McDowell stated the concept drawings were prepared when Mr. Scariano was intending to make his office on the property. This is not necessarily the intended use now. She stated Mr. Scariano will likely sell or lease the property. She stated Mr. Scariano has health issues and is not making long term plans for this property. She stated that most of the inquiries from potential

buyers or office tenants had been from accountants and lawyers. She stated that the roof will likely be improved as well as the landscaping when a new owner or office tenant is on site. She stated the office use would not encroach on existing residential uses and would be a better alternative than building a new office on the west end of Billings.

Commission member Tom Grimm asked whether the applicant intends to use Solomon Avenue for access to the office space. Ms. McDowell stated that access would be taken from Colton Boulevard since access off Solomon would not make sense or be convenient for clients or tenants.

Chairman Leonard Dailey Jr., closed the public hearing. Commission member Ed Workman made a motion to recommend approval of the zone change, and this motion was seconded by member Barbara Hawkins. Mr. Workman stated that this corner location at 17th Street West and Colton Boulevard was a good location for RP zoning. He stated this property already is an island of office space in a residential zone and it makes logical sense to zone it for that use. Mr. Workman noted that traffic increases the propriety of the proposed RP zoning. He stated that use for an office space would certainly require improvements to the building, parking and landscaping. He stated he understood the concerns of the neighbors but the office use would be more appropriate than a rental home.

Comment [F1]: I don't understand what propriety means in this sentence.

Commission member Michael Larson stated he has sat as a Council member through 4 applications on this property and voted in favor of each proposal. The re-use of the building for office space is a sensible use in this location. The City Council made a mistake in 1969 by allowing the church offices without changing the zoning. He stated this zone change will rectify that mistake.

Chairman Leonard Dailey, Jr. stated he would not vote in favor of approval for the zone change. He stated he was concerned with the spot zoning criteria, particularly if the city could be held fiscally liable. Mr. Daily stated he will take the conservative approach to the issue and not risk approval of a potential spot zoning. Commission member Tom Grim stated he agreed with Chairman Dailey and would also vote against the zone change.

The commission voted 3-2 on the motion to recommend approval of the zone change.

RECOMMENDATION

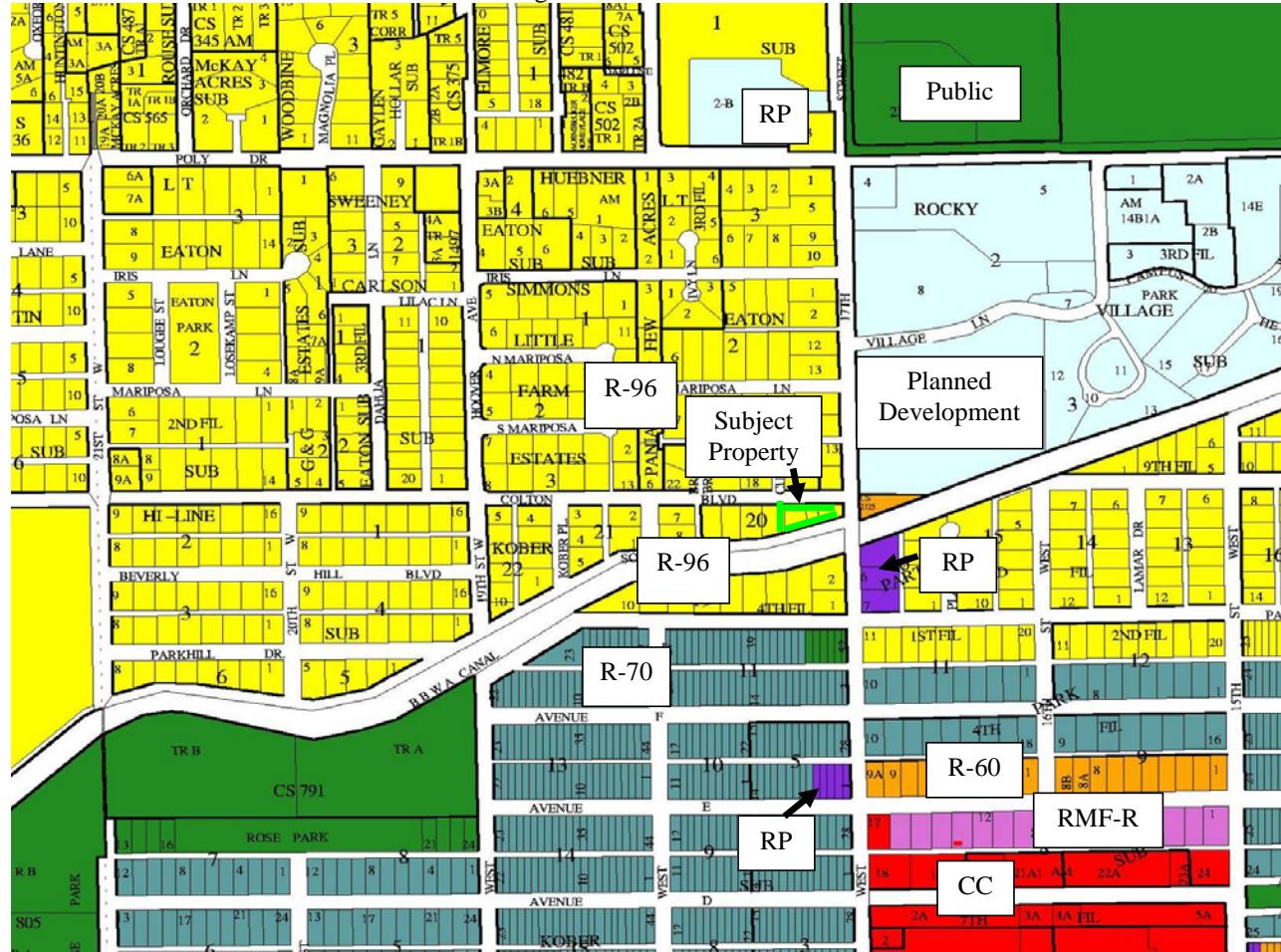
The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #846 and adoption of the 12 Zoning Commission Determinations on a 3-2 vote.

ATTACHMENTS:

- A: Surrounding Zoning
- B: Photographs of Subject Property
- C: Pre-application Meeting Summary and Concept Site Plans
- D: Ordinance

Attachment A

Zone Change #846 – 1702 Colton Boulevard



Attachment B
Zone Change #846 Site Photographs



Subject Property view south and east from Colton Boulevard



View east across existing parking area to 17th Street West

Attachment C

Zone Change #846 Pre-application Meeting Summary & Site Plans

Minutes for Neighborhood Meeting

1702 Colton Blvd.

April 4, 2008

5:30 p.m.

Opening of meeting: Introductions. Ronald Scariano, owner of 1702 Colton Blvd. Please sign sheet of attendance.

History of Property.

History of 1702 Colton-

The Building has never been a church. It was the district office for the Assembly of God Church. In 1971 or 1972 Church asked the city if they could not pay the taxes on the property as it was part of a church, the city said "no" and taxes were paid on an "office". There have been 3 different owners.

We now rent the building. In 2004 and 2005 building was rented out to a halfway house to convicted felons. We now rent to "college age" students, which has been a revolving door.

Show Visuals.

Picture of the property now.

Artist Rendering of Property as Residential Professional.(2 Renderings)

Map of existing commercial properties in area.

What is going in the building?

Not a Wendy's, Not a kwik Way. But a professional, i.e. Lawyer, Dentist.
Residential Professional.

What zoning are you proposing?

Residential Professional, one step above residential. Like the professional condominiums building across the street. The building is 1600 sq.ft. The plan would be to rehab the building, put on a different roof and landscape. Landscape onto Solomon Road and make a very nice "park-like" area.

Why do we not leave the building "as is"?

You will not get a family in that building, it is not set up as a home, it is set up as an office building.

Why don't we take some money and change it into a house?

The building is located on a very busy corner and that is not desirable for a home and the money that you have to put into the building to make a home is not worth the value that you would have to put into it.

We are now going to go around the room and hear any comments or questions each one of you may have.

Heather Rahr- Concerned about how the building will affect the value of her home.

Nadine Pointer- Is for the proposed zone change, it needs to be changed and made into a building to improve the property.

Bonnie Frank- Concern about how the building will affect the value of her home.

Rae McClaire- Concerned that the structure of the building will be changed. There is no guarantee that you will change the building as you propose.

Ronald- If we can all agree to this zone change tonight, I will start immediately on the landscaping of the building. But nothing to do with the structure until the zoning passes.

Randy Howell- In favor of the building changing zoning, in the past it has been run as a similar office, It could be better utilized in that fashion again.

Fern Stean- Owns two properties in the area. Wants to know if we are going to use the same building that is there.

Ronald- Yes, we will take off the roof but use the same footprint of the building. And how do we know that you won't sell in a few years and it's turned into a high rise. Ronald-The building will be reconstructed to fit the proposed plan, plus the lot that the building sits on doesn't allow for expanding.

How many parking spots can you have?

Ronald- Not sure we would have to check with the city.

Cecelia Emerick- Once you make the change in the zoning, that's it, no going back. The only reason why the church got that building there is because it was under a church designation. I don't appreciate what has happened to the property. Why don't you take care of the property. I don't want a business and I don't want what it is now. You are not a very good neighbor!

Ronald- The building is what it is, it's not a home it's an office.

Scott Emerick- Agree with wife. In the same boat there is no guarantee, we will be stuck with it.

John- you are going to do this remodel, I think once it changes zoning you are just going to put it on the market and sell it and not do anything to the property.

Bob Fox-The future of the building is what seems to be the concern here. It devalues the properties as it sits right now. In my observation that building will never be a house, I have been in the building and it has little rooms, no closets, upstairs can only be used for

storage. A person cannot afford to change the property into a SFR. I would like to see something nice to me. It's more preferable if there could be something nice, maintained and desirable.

Of course nothing is guaranteed.

Member of the church- agree that concept of the building would be great, but nothing is guaranteed.

Leon Whitley-Had an office building on 5th and Broadwater that was a duplex and went for a zoning change for his office. Went neighbor to neighbor and not one objected the zone change. Best option is residential professional, it has the best professions. i.e. lawyers, accountants, stockbrokers, dentist. Most don't have many clients coming in and out, so not much traffic. Never a problem with parking, best increase of the surrounding property. I believe it would increase your property. They can park on Solomon-Ronald- our plan is to landscape Solomon and up to the ditch. I have never meet Ron Scariano until tonight at the front door. I believe he is a good man trying to do a good thing.

Maryanne- Everything seems a little vague on residential professional,

Katie Link-

Sad that it's neglected, appalled at the site of it. Never knew that Ron Scariano owned the property, always thought that the church owned it.

Bruce Kline- Opposed to it, opening doors to more zone changes, why don't you build a home?

Ronald- It doesn't make sense money wise to build a new home.

Wally Steed- Opposed, Concerned that properties will continue to be rezoned down 17th and Colton. Knows of Ron thinks he is a great guy, but still is opposed.

Maxine Hanson- Looking at the drawing of the building it would be great, Show good faith to us and clean it up as it sits,

Nancy- My heart is breaking for alice, the building is appalling to look at.

Do you know how long you will keep the property?

Ronald- If the zoning changes I will remodel the building and put it on the market. If it doesn't change I will keep it and rent it out.

Can we get a statement from a real estate professional that our homes will keep their value?

Chuck Platt- Owns diamond realtors, last person to do a zone change in the late 90's We used 1702 Colton as a comparable to this zone change. We went to all the neighbors to see what there concern was and we worked around that.

Couple of things: I think you can do a deed restriction that says "only that these certain professions can go into the building"
Accept this zoning with these stipulations guaranteed from Ron.
If you all work together you can come to a solution.

Dick Larson- emphasizes with Alice. Can hear the noise at night. Knows it's hard to find good renters. Is for the zoning because the zoning has little traffic, no traffic at night. It would be appealing to the eye. Believes there has to be faith on both sides.
There are some uncertainties; you aren't going to change some people's minds.
I tend to agree that this won't change zoning down 17th or Colton. I do think that the current tenants need to take better care of the property.

End of comments, closing of meeting.

Ronald- Thank you everyone for coming tonight, if anyone would like to talk to me, I would be glad to meet with anyone! Thanks again!





Attachment D
ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
 Lots 1 and 2, Block 20 of Kober Subdivision 4th Filing containing
 approximately 16,843 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 1 and 2, Block 20 of Kober Subdivision 4th Filing, containing approximately 16,843 square feet of land and is

presently zoned Residential 9,600 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 9,600** to **Residential Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Professional** 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 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading August 11, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

Cari Martin, City Clerk
ZC #846 – 1702 Colton Boulevard