

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

AGENDA

COUNCIL CHAMBERS

August 11, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember McCall

ROLL CALL

MINUTES – July 28, 2008

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 4, 5 and 6. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. Bid Awards:

(1) City Parking Garage Painting. (Opened July 29, 2008). Recommend ACOM Painting, Inc., \$394,500.00.

(2) W.O. 08-03, 2008 Street Maintenance Contract No. 1, Street Overlay Maintenance Project. (Opened July 29, 2008). Recommend Knife River, \$805,082.60.

(3) W.O. 08-04, 2008 Accessibility Ramps. (Opened July 29, 2008). Recommend J & J Concrete, \$259,256.00.

B. Agreement with Yellowstone County Council on Aging for senior programs at the Billings Community Center, July 1, 2008 – June 30, 2009, \$26,620.

C. Approval of Assignment of Sarpy Creek Land Company, LLC Non-Commercial Aviation Ground Lease to Yellowstone Bank for financing purposes, with no financial impact to the City.

D. Declaring Surplus Property and authorizing the Police Department to release 15 mobile data terminals to the Red Lodge Police Department.

E. Approval of easement with Montana Dakota Utilities to relocate natural gas lines at Billings Logan International Airport for Airport Road Project MT (009).

F. Approval of easement with NorthWest Energy to relocate electrical power lines at Billings Logan International Airport for Airport Road Project MT (009).

G. Approval of easement with Gold Creek Cellular of Montana Limited Partnership DBA Verizon Wireless to extend a fiber optic line to existing cell tower at Billings Logan International Airport.

H. Street Closure: March of Dimes Boogie for Babies; N. 28th Street between 1st Avenue N. and 2nd Avenue N. from 3:00 p.m. to 10:00 p.m. September 4, 2008.

I. Approval of 2007 High Intensity Drug Trafficking Area (HIDTA) Grant award increase of \$6,620, to purchase a body wire receiver and three 14-hour memory cards.

J. Approval of Domestic Violence Unit & Victim Witness Assistance Sub-grants from the Montana Department of Justice, Board of Crime Control, \$90,000 total award.

K. Resolution of Intent to construct W.O. 08-17, Glenhaven Stormwater Improvement, and set a public hearing date for September 8, 2008.

L. Second/Final Reading 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.

M. Preliminary Plat of Tuscany Subdivision, located on approximately 115 acres east of Ironwood Estates and north of Yellowstone Country Club Estates, conditional approval of the plat and adoption of the Findings of Fact.

N. Final Plat of Chalice Acres Subdivision.

O. Bills and Payroll
(1) July 14, 2008
(2) July 18, 2008

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. RESOLUTION RELATING TO POOLED SPECIAL IMPROVEMENT DISTRICTS BOND, AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE. A resolution authorizing the sale of up to \$1,075,000 in pooled bonds to finance SID 1378, SID 1379, SID 1380 and SID 1383. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

3. RESOLUTION RELATING TO POOLED SIDEWALK BONDS, AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE. A resolution authorizing the sale of \$230,000 in bonds to finance W.O. 04-12, Alkali Creek improvements and W.O. 06-18, Broadwater Avenue Subdivision Phase V improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

4. KING AVENUE EAST IMPROVEMENTS

(a) RESOLUTION CREATING SPECIAL IMPROVEMENT DISTRICT 1385, KING AVENUE EAST, for King Avenue East road construction and improvements between Orchard and South Billings Boulevard. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

(b) RESOLUTION RELATING TO KING AVENUE EAST SPECIAL IMPROVEMENT DISTRICT BONDS, AUTHORIZING THE ISSUANCE AND CALLING FOR A PUBLIC SALE. A resolution authorizing the public sale of \$5,360,000 in Special Improvement District bonds for the design and construction of improvements on King Avenue East between Orchard and South Billings Boulevard. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

(c) DEVELOPMENT AGREEMENT BETWEEN FOURSQUARE

PROPERTIES AND CABELAS

(d) **BID AWARD: W.O. 07-22, King Avenue East plus Alternate #1.** (Opened July 1, 2008.) Delayed from July 14 and July 28, 2008. Recommend Knife River, \$3,068,058.05, contingent on receipt of letter of credit securing the improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

5. (a) **RESOLUTION AMENDING RESOLUTIONS 07-18636 AND 08-18680 AND AMENDING THE DOWNTOWN BILLINGS PARTNERSHIP DEVELOPMENT AGREEMENT.** Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

(b) **UPGRADE AND MAINTENANCE AGREEMENT, W.O. 03-17, RAILROAD QUIET ZONE, WITH MONTANA RAIL LINK.** Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

6. **RESPONSE TO MONTANA MUNICIPAL INSURANCE AUTHORITY'S REQUEST FOR REIMBURSEMENT/CONTRIBUTION.** Staff recommends approval of Alternative Four. (Action: approval or disapproval of staff recommendation.)

7. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

Council Initiatives

ADJOURN

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

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 11th, 2008

TITLE: Contract Award for Painting City Parking Garages
DEPARTMENT: Administrative Services – Parking Division
PRESENTED BY: Chris Mallow, Parking Division Director

PROBLEM/ISSUE STATEMENT: The Parking Division budgeted funds in FY08 to have all City-owned Parking Garages re-painted. The re-painting will improve the appearance of the garages and protect the concrete structures as they are exposed to the elements. Staff will work with contractor to ensure minimal impact on the garage customers. The Parking Division initially set a deadline of May 27th, 2008, for the Parking Garage Painting bids but no bids were submitted. The bid information was clarified and re-advertised with a bid opening date of July 29th, 2008. The project was advertised in the *Billings Times* and the City of Billings website on July 17th and 24th, 2008. On July 29th, 2008, the following bids on this project were received:

<u>CONTRACTOR</u>	<u>BASE BID</u>
Krei Painting and Drywall	Rejected – No Bid Bond included
All Star Painting Inc.	\$879,300.00
ACOM Painting, Inc.	\$394,500.00

FINANCIAL IMPACT: The total cost of the project is Three Hundred Ninety-Four Thousand Five Hundred Dollars (\$394,500.00) and will be funded through Parking Division reserve funds. This project was budgeted in FY08 for a total of \$260,000.00. The Division will use additional parking reserves and cost saving from other budget line items to cover the additional cost of the contract price. This amount was not re-budgeted in FY09 because a Call for Sealed Bids was advertised but no bids were submitted. The Parking Division will request a budget amendment for this project during the first quarter budget amendment resolution. The Parking Division has sufficient budget authority to finance the contract until a budget amendment is approved.

RECOMMENDATION: Staff recommends that City Council approve the award of the Parking Garage Painting contract to the low responsive bidder ACOM Painting, Inc., for the amount of \$394,500.

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

Attachments:

- A. Garage Painting Contract
- B. Insurance Certificate
- C. Worker's Compensation Certificate
- D. Labor and Materials Bond
- E. Copy of City of Billings business license

PARKING DIVISION GARAGE PAINTING
AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 200____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "City," and Chad Amestoy, of ACOM Painting, Inc. hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform the services of Parking Garage Painting described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

2. Effective Date: This Agreement is effective upon the date of its execution and will terminate upon completion of the project. The City of Billings will notify the contractor in writing, upon satisfactory completion of the project, that the contract is terminated. Project is to be completed no later than October 31, 2009.

3. Scope of Work: The Contractor shall perform the services outlined in Exhibit A. In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. Contract Price: City shall pay Contractor for performance of the work in accordance with the Bid Documents, any Addendum and this Agreement, the sum of Three Hundred Ninety- Four Thousand Five Hundred Dollars and zero cents (394,500.00).

5. Payment Procedures

Contractor shall submit applications for payment on a monthly basis for any work accomplished during the preceding month, but subject to retainage as specified below.

City will make progress payments to Contractor on a monthly basis on Contractor's application for payment (invoiced to the City) for the work described in the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

The City shall retain five percent (5%) of the amount due the Contractor in accordance with the General Conditions and as outlined herein. Final Payment. Upon

final completion and acceptance of the work in accordance with the General Conditions, the City shall pay the remainder of the contract price.

5. Independent Contractor Status: The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all claims, losses, damages, judgments and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of Commercial General Liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

Before the City will execute this agreement and before any work at the site is started, the Contractor shall deliver to the City, certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain for the full term of this agreement.

7. Warranty: Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor for a period of one (1) year from the time services are completed or any warranty described in the Scope of Services, whichever is greater.

8. Compliance with Laws: Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or non-construction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid current prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of construction services (booklet attached).

9. Labor and Materials Bond: Contractor shall be required to furnish an approved Labor and Materials Bond in the amount of one hundred percent (100%) of the contract amount, to be held in force during the full term of this agreement.

10. Nondiscrimination: Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

11. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. Liaison: City's designated liaison with Contractor is Chad Amestoy, of ACOM Painting, Inc. and Contractor's designated liaison with City is Chris Mallow, Parking Supervisor.

13. Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. 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. Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

15. Successors and Assigns: Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

16. Ownership of Documents: All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from

the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

By _____
RON TUSSING, MAYOR

ACOM Painting Inc.
CONTRACTOR (Print Name Above)

By _____
Print Name Chad Amestoy
Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, City Attorney

Exhibit A

This contract is for the purpose of entering into a contract for Painting of City Parking Garages for the City of Billings. The locations of the Parking Garages to be painted are as follows:

- Park 1 Garage, located at 2912 3rd Ave North, Billings, MT, 59101
- Park 2 Garage, located at 2651 1st Ave North, Billings, MT, 59101
- Park 3 Garage, located at 210 North 27th Street, Billings, MT, 59101
- Park 4 Garage, located at 515 North 31st Street, Billings, MT, 59101

Surface Preparation – All painted areas to be power washed to put surfaces in a proper pre-painted condition. All signs, light fixtures, garage equipment, and floors to be protected from paint sprays and spills.

Areas to be painted:

- Park 1 Garage – All areas that are presently coated. All ceilings are to be painted by all remaining unpainted surfaces to remain unpainted. This includes all interior walls, exterior walls and similar areas on top decks. This includes interior and exterior of all stairwells and passage areas to be painted to match existing surfaces. All metal railing in stairwells and risers on stairs to be painted to match existing surfaces. All existing painted markings, letters, numbers are to be repainted.
 - Any E.F.I.S areas, elevator and passage doors, jambs, and window sills are not to be painted. Attendant booth is not to be painted.
- Park 2 Garage – All ceilings are to be painted. All metal railing in stairwells and risers on stairs to be repainted in the following stairwell locations:
 - Stairwell located closest to the intersection of N. 26th Street and 1st Ave N.
 - Stairwell located closest to the intersection of N. 27th Street and 1st Ave N.
 - Stairwell located closest to the N. 27th Street garage entrance.
- Park 3 Garage – All areas that are presently coated. All ceilings are to be painted by all remaining unpainted surfaces to remain unpainted. This includes all interior and exterior walls and similar areas on top decks. This includes interior and exterior of all stairwells and passage areas to be painted to match existing surfaces. All metal railing in stairwells and risers on stairs to be painted to match existing surfaces. All existing painted markings, letters, numbers are to be repainted. Attendant Booth to be repainted with interior walls patched and repaired prior to painting.
 - Any E.F.I.S areas, elevator and passage doors, jambs, and window sills are not to be painted.

Exhibit A (cont.)

- Park 4 Garage – All areas that are presently coated. All ceilings are to be painted by all remaining unpainted surfaces to remain unpainted. This includes all interior and exterior walls and similar areas on top decks. This includes interior and exterior of all stairwells and passage areas to be painted to match existing surfaces. All metal railing in stairwells and risers on stairs to be painted to match existing surfaces. All existing painted markings, letters, numbers are to be repainted. Painted areas of garage façade are to be repainted.
 - Any E.F.I.S areas, elevator and passage doors, jambs, and window sills are not to be painted. Attendant booth is not to be painted.

Suggested products:

- Substrate: Concrete, Stucco, EFIS, CMU
 - Columbia 01-224 Low Luster Exterior Latex or approved equivalent.
 - Sherwin Williams:
Finish: Pro Mar Interior/Exterior Semi-gloss Blockfiller/Finish.
1 coat @ 6.0-10.0 mils wet, 2.5-4.0 mils dft.
*** Note 1: The graphic areas in Park III would need to be primed prior to applying finish, or the graphic colors will bleed through.
Primer: Preprime Problock Latex Primer/Sealer- gray.
1 coat @ 1.4 dft
 - ***Note 2: The brown color on Park IV would need a different product to make the dark brown color.
Primer: Loxon Masonry Primer- gray
1 coat @ 3.2 dft
Finish: A-100 Latex Satin
2 coat @ 1.3 dft/ct
- Substrate: Ferrous Metal- previously painted.
Surface Prep: Scuff sand the remove all loose paint, de-gloss existing coating, feather out chipped areas. Remove all sanding dust, dirt, ect. Do not use hydrocarbon solvents as a cleaning agent. Water reducible cleaner only.
 - Columbia 04-400 Polyurethane Enamel or approved equivalent.
 - Sherwin Williams:
Finish: Multi-Purpose Acrylic- Gloss
2 coats @ 1.5-2.0 dft

Schedule for work to be done:

- Park 1, 2, 3, and 4 will be closed in sections during regular operating hours, allowing for the contractor to work. Complete closures of the garages will be negotiated if necessary.
- It is the contractor's responsibility to properly man the project to complete the work in this allotted time frame.
- It is the contractor's responsibility to provide sufficient barriers and blockades to keep vehicles and pedestrians out of the work area.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Work Order 08-03, 2008 Street Maintenance Contract No. 1

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for the 2008 Street Maintenance Contract No. 1 on July 29, 2008. This project will overlay King Avenue West between 24th Street West and the BBWA Canal, 24th Street West between Rosebud Drive and King Avenue West, 9th Avenue North between North 27th Street and North 22nd Street, 1st Avenue North between Main Street and North 18th Street, and South 25th Street and South 26th Street between 6th Avenue South and 7th Avenue South. The overlay of 1st Avenue North is estimated to be \$300,000.00, in which the city will be reimbursed by the Montana Department of Transportation per the MDT/City annual maintenance agreement.

ALTERNATIVES ANALYZED:

1. Award Work Order 08-03, Contract No. 1, to Knife River in the amount of \$805,082.60; or
2. Not award Work Order 08-03, Contract No. 1.

FINANCIAL IMPACT: Funding for the 2008 Street Maintenance Program, Contract No. 1, will be provided from Gas Tax and Street Maintenance Funds. We received two bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 1,000,000.00
Riverside Sand & Gravel	\$ 944,944.94
Knife River	\$ 805,082.60

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Overlay Maintenance Project with Knife River in the amount of \$805,082.60.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Work Order 08-04, 2008 Accessibility Ramps

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for the 2008 Accessibility Ramps on July 29, 2008. This project will construct Accessibility Ramps within the Gateway Triangle, on Babcock Boulevard, and Governors Boulevard. Per the agreement between the Department of Justice and the City Of Billings, the City is required to construct accessibility ramps on all streets that have been reconstructed or overlaid since 1992. This project has \$350,000 of gas tax funds for FY2009 and an additional \$350,000 rolled over from FY2008.

ALTERNATIVES ANALYZED:

3. Award Work Order 08-04, 2008 Accessibility Ramps, to J & J Concrete in the amount of \$259,256.00; or
4. Not award Work Order 08-04, 2008 Accessibility Ramps.

FINANCIAL IMPACT: Funding for Work Order 08-04, 2008 Accessibility Ramps, will be provided from Gas Tax. We received 4 bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 340,000.00
H.L. Ostermiller	\$ 345,855.00
Knife River	\$ 396,654.00
CMG Construction	\$ 342,065.00
J & J Concrete	\$ 259,256.00

CIP Project #ENG ADA

Approved Budget	\$700,000.00
Previous Encumbrances	\$000,000.00
Bid Award Amount	\$259,256.00
Budget Fund Balance (after this award)	\$440,744.00

RECOMMENDATION

Staff recommends that Council approve the construction contract for Work Order 08-04, 2008 Accessibility Ramps, with J & J Concrete in the amount of \$259,256.00.

Approved By: City Administrator City Attorney



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Rule: 18.6.311

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Rule Title: OWNERSHIP AND MAINTENANCE RESPONSIBILITIES FOR PUBLIC AT-GRADE RAIL HIGHWAY CROSSINGS

Department: [TRANSPORTATION, DEPARTMENT OF](#)
Chapter: [RIGHT-OF-WAY BUREAU](#)
Subchapter: [Railroad Crossing Signalization](#)



Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

[Printer Friendly Version](#)

18.6.311 OWNERSHIP AND MAINTENANCE RESPONSIBILITIES FOR PUBLIC AT-GRADE RAIL HIGHWAY CROSSINGS

(1) The road authority will own the railroad signal.

(2) Except in cases in which there is an encroachment onto the roadway by a railroad track, the road authority is responsible for installation and maintenance of the roadway, signs, except for crossbucks, and pavement markings in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), 1988 edition, and any amendments thereto which are in effect as of the date this rule is adopted, published by the U.S. department of transportation, federal highway administration, which is hereby incorporated by reference. A copy of the current MUTCD can be obtained from the Supervisor of the Utilities Section, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59620-1001. The road authority is responsible for the roadway between multiple tracks. In cases in which there is an encroachment onto the roadway by a railroad track, all construction and maintenance costs associated with the encroachment will be paid by the owner of the encroaching railroad track, including grade crossing signals if deemed necessary.



(3) The road authority will pay for the repair or replacement cost (damage maintenance cost) of the signal and activation equipment in the event of damage and the responsible party for the damage cannot be identified or will not pay.

(4) The railroad is responsible for maintaining the signals and crossbuck signs and the crossing surface from end of the railroad tie to the other end of the railroad tie.

History: [60-2-121](#) and [2-3-103](#), MCA; [IMP](#), [60-2-121](#) and [60-2-201](#), MCA; [NEW](#), 1997 MAR p. 896, Eff. 4/8/97.

Effective rule versions existed in ARM on or after March 31, 2007

MAR Notices	Effective From	Effective To	History Notes
4/8/1997	Current		History: 60-2-121 and 2-3-103 , MCA; IMP , 60-2-121 and 60-2-201 , MCA; NEW , 1997 MAR p. 896, Eff. 4/8/97.

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B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11th, 2008

TITLE: Yellowstone County Council on Aging Agreement Renewal
DEPARTMENT: Parks, Recreation & Public Lands Department
PRESENTED BY: Robin Grinsteiner, Billings Community Center Director

PROBLEM/ISSUE STATEMENT:

The City of Billings receives funding annually from the Yellowstone County Council on Aging (YCCOA) for the senior programs at the Billings Community Center. The attached document sets forth the terms of the agreement that is renewed each year. This year's funding amount will be \$25,000.00, plus \$1,620.00 in one-time state funds for the purchase of aluminum tables.

ALTERNATIVES ANALYZED:

1. Approve the Agreement (Recommended)
2. Disapprove the agreement

FINANCIAL IMPACT:

This funding source comprises around 13% of the Community Center's total budget.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the agreement with the Yellowstone County Council on Aging.

Approved By: City Administrator **City Attorney** X
(Previously reviewed)

ATTACHMENTS:

A: Memorandum of Agreement with the Yellowstone County Council on Aging, Inc.

ATTACHMENT A

AGREEMENT

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

SECTION 1 GENERAL TERMS

- 1.1 This agreement will be effective from July 1, 2008 through June 30, 2009. Prior to the completion date, the contract will be reviewed for renewal by YCCOA upon submission of a budget and funding request to YCCOA for the upcoming year by the City of Billings.
- 1.2 This agreement is for Yellowstone County funding which comes to the Yellowstone County Council on Aging and is distributed to senior service providers by the YCCOA with approval by the County Commissioners. As such, these funds are available to match Federal funds or other grants.
- 1.3 The allocation for this time period will be \$25,000. Payments will be made in four equal amounts. This amount includes \$1,800 that is considered rent for the kitchen and dining room space for the Senior Dinner Program meal site. The remainder of the funds will be used to support the Senior Center program expenses. It is understood that YCCOA will pay for $\frac{1}{2}$ of the repairs to the kitchen equipment that it uses provided there is notification of necessary repairs before they are made. YCCOA will also pay for the ice used by the Senior Dinner Program semi annually.
- 1.4 This agreement may be modified by a written amendment signed by an authorized representative of both parties, and attached to the original of this contract.
- 1.5 Either party, without cause, may terminate this agreement by written notice sixty (60) days in advance.
- 1.6 The Billings Senior/Community Center will also receive up to the following amount in one time state funds: \$1,620 for six aluminum tables.

SECTION 2 REPORTS AND RECORDS

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

SECTION 3 REPRESENTATIVE

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

SECTION 4 SENIOR NEWS

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

SECTION 5 TRAINING/PLANNING MEETINGS

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

SECTION 6 IDENTIFICATION ON PUBLICATIONS

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

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

Bea Ann Melichar Date 7/8/08
Bea Ann Melichar, Executive Director

City of Billings Representative Date _____

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Assignment of Sarpy Creek Land Company, LLC Non-Commercial Aviation Ground Lease to Yellowstone Bank for Financing Purposes

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Sarpy Creek Land Company, LLC currently leases a 19,142.10 square foot parcel located at Billings Logan International Airport on which the company has constructed an aircraft hangar. The Lease term is for twenty (20) years and expires on August 31, 2025. Sarpy Creek Land Company, LLC has a loan with Yellowstone Bank in which the aircraft hangar is 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 Sarpy Creek Land Company, LLC hangar, as Yellowstone 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 Sarpy Creek Land Company, LLC will still be required to pay the annual \$4,286.04 ground lease rental, as established in the existing Lease that was approved by the City Council on August 8, 2005.

RECOMMENDATION

Staff recommends that Council approve the Assignment of the Sarpy Creek Land Company, LLC Non-Commercial Aviation Ground Lease to Yellowstone Bank, for the purpose of securing the Bank's loan for the costs of the hangar construction.

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

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Declaring Surplus Property

DEPARTMENT: Billings Police Department

PRESENTED BY: Tim O'Connell, Deputy Chief of Police

PROBLEM/ISSUE STATEMENT: The Billings Police Department has had a request from Chief Richard Pringle of the Red Lodge Police Department for 15 of the old Xplorer Technologies, Model GeneSys II, Mobile Data Terminals (MDT's) that have been taken out of the patrol vehicles and replaced with Panasonic Toughbooks. We are requesting City Council declare 15 of the Xplorer Technologies MDT units as surplus property and authorize the Billings Police Department to release the 15 units to the Red Lodge Police Department.

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

RECOMMENDATION

Staff recommends that Council declare 15 Xplorer Technologies, Model GeneSysII, Mobile Data Terminals as surplus property and authorize the Billings Police Department to release the MDT's to the Red Lodge Police Department.

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

Attachment

A – Release of all Claims with Red Lodge Police Department (1 page)

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to the Red Lodge Police Department, fifteen (15) Xplorer Technologies, Model GeneSysII, Mobile Data Terminals (MDT's), receipt of which is hereby acknowledged. The Red Lodge Police Department 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 these MDT's.

The Red Lodge Police Department, on behalf of itself, its agents, employees, representatives and insurance companies understands: that these donated MDT's have been in service, are 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 MDT's will function properly; and, that the Red Lodge Police Department is solely responsible for contacting the manufacturer and determining whether these mobile data terminals are fit for use prior to using same.

The Red Lodge Police Department agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the use, misuse or failure of these mobile data terminals.

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

DATED this 24 day of July, 2008

Red Lodge Police Department

BY: Richard Pringle
Richard Pringle, Chief of Police

STATE OF MONTANA)

County of Carbon)

On this 24th day of July, 2008 before me a Notary Public for the State of Montana, personally appeared Richard Pringle, known to me to be the Richard Pringle, Chief of Police, Red Lodge Police Department, 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.

(NOTARIAL SEAL)

Janie Michekic
(Signature)
Janie Michekic
(Printed Name)
Notary Public for the State of Montana
Residing in Red Lodge, Montana
My Commission Expires: 9/5/2008

E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Montana Dakota Utilities Easement to Relocate Natural Gas Lines as Required for Airport Road Project MT (009)

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Montana Dakota Utilities (MDU) is requesting an easement to relocate existing natural gas lines that provide service to the Airport. These existing lines need to be relocated, as they are currently located within the construction area associated with the Airport Road Project MT (009) south of the Billings Logan International Airport. MDU is responsible for all construction costs; however, since the utility lines will be located on Airport property, a Right-of-Way Easement will need to be approved and executed by the Mayor.

FINANCIAL IMPACT: There will be no financial impact to the City of Billings for this Easement.

RECOMMENDATION

Staff recommends that the City Council approve and the Mayor execute this Easement with MDU to relocate natural gas lines at Billings Logan International Airport.

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

F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: NorthWest Energy Easement to Relocate Electric Power Lines as Required for Airport Road Project MT (009)

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: NorthWest Energy is requesting an easement to relocate electrical power lines that provide service to the Airport. These existing lines need to be relocated, as they are currently located within the construction area associated with the Airport Road Project MT (009) south of the Billings Logan International Airport. NorthWest Energy is responsible for all construction costs; however, since the utility lines will be located on Airport property, a Right-of-Way Easement will need to be approved and executed by the Mayor.

FINANCIAL IMPACT: There will be no financial impact to the City of Billings for this Easement.

RECOMMENDATION

Staff recommends that the City Council approve and the Mayor execute this Easement with NorthWest Energy to relocate electrical power lines at Billings Logan International Airport.

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

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Gold Creek Cellular of Montana Limited Partnership DBA
Verizon Wireless Easement to Extend a Fiber Optic
Communication Line to Existing Cell Tower

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Gold Creek Cellular of Montana Limited Partnership DBA Verizon Wireless is requesting an easement to extend a fiber optic cable from their existing fiber optic line located on the north edge of the Montana State Highway 3 right-of-way to the existing cell tower located northwest of the water tower. This fiber optic line will provide enhanced service for their customers. Gold Creek Cellular of Montana Limited Partnership DBA Verizon Wireless is responsible for all construction costs; however, since the optic lines will be located on Airport property, a Right-of-Way Easement will need to be approved and executed by the Mayor.

FINANCIAL IMPACT: There will be no financial impact to the City of Billings for this Easement.

RECOMMENDATION

Staff recommends that the City Council approve and the Mayor execute this Easement with Gold Creek Cellular of Montana Limited Partnership DBA Verizon Wireless to extend a fiber optic line at Billings Logan International Airport.

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

H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Boogie for Babies Street Closure Request

DEPARTMENT: Public Works Department-Engineering Division

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

PROBLEM/ISSUE STATEMENT: The March of Dimes requests a full street closure for its Boogie for Babies event on Thursday, September 4, 2008, from 3:00 pm to 10:00 pm. The event will take place on N. 28th Street between 1st Avenue N and 2nd Avenue N.

Recommended conditions of approval include March of Dimes:

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 closure described above for the Boogie for Babies event.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Certificate of insurance

JUL-24-2008(THU) 08:19 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 002/013
 Rx Date/Time JUL-09-2008(WED) 14:20 4062528198 P. 004
 07/09/2008 13:58 4062528198 MARCH OF DIMES MT398
 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 PAGE 04
 D. 2008/013



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

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 Public Works office, 510 N. Broadway, 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 Lori Simon

ORGANIZATION MAKING APPLICATION March of Dimes

PHONE 406-252-7480 ext. 201

ADDRESS 643 Grand Ave Billings 59101

EMAIL ADDRESS lsimon@marchordimes.com

APPROXIMATE TIME EVENT WILL:

Assemble 5:00 Start 6:00 Disband 10:00

DATE OF EVENT September 4, 2008

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

Boosie For Babies: Street dance with live music, food, beverages. Attracting approx. 3,000 people. A portion of the proceeds benefit the March of Dimes

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

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

Montana Brew Pub - Same as their Alive After Five location 1ST AVE N TO 2ND AVE N ON N 88th

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

March of Dimes volunteers will provide janitorial services

JUL-24-2008 (THU) 08:19 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 003/013
 Rx Date/Time JUL-09-2008 (WED) 11:56 4062528198 P. 005
 07/09/2008 11:33 4062528198 MARCH OF DIMES MT398
 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 PAGE 05
 P. 003/013

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 "safe 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 S. C. Simon DATE 6/4/08

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

JUL-24-2008 (THU) 08:20 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061

P. 004/013

Rx Date/Time JUL-09-2008 (WED) 11:56 4062528198

P. 007

07/09/2008 11:33 4062528198 MARCH OF DIMES MT398
JUL-24-2008 (THU) 13:41 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061

PAGE 87
P. 010/010



BID Event Kit of Parts Usage Packet

Below you will see a step by step process that must be implemented in order to close streets and hold an event. You may stage and implement your own event downtown and make use of the BID's "Kit of Parts." You must obtain your own street closure permission and provide your own liability insurance.

STEP 1: Make sure you have a PLAN AND that your block neighbors are "on board" with the idea... or, at least, do not object to your plan.

-Date(s) of Event: Sept 4, 2008

-Does this event require any Street Closure? Yes No

-Do you have Liability Insurance that will cover this event? Yes No

(You will be required to provide a "Binder" to the City of Billings showing coverage.)

-Will you be serving alcoholic beverages? Yes No

(A permit may be required from the Billings Police Department)

What Blocks will be closed: (Example: The 200 Block of N. Broadway)

List all:

Some as BrewPub Alive After 5.

Briefly Describe Your Event Activity/Participants:

Boogie For Babies: Street dance featuring live music, food/beverages to benefit the March of Dimes.

-Specify the exact date and TIME the blocks noted above will be CLOSED: 3:00 PM

-Specify the exact date and TIME the blocks noted above will be REOPENED: 10:00 PM

-Indicate your traffic re-route plan: BE SPECIFIC... SEE EXAMPLE

(Example if closing the 200 Block of N. Broadway... Northbound traffic on N. 28th would be diverted west at 1st Ave. North then resume northbound at N. 29th & southbound traffic on N. 28th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

-List ALL of the Businesses Impacted by the closure and have them "sign-off" on the event.

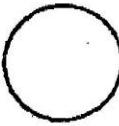
BUSINESS NAME: _____ ADDRESS: _____ SIGNATURE: _____

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____

JUL-24-2008 (THU) 08:20 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 P. 005/013
 Rx Date/Time JUL-29-2008 (WED) 11:56 4062528198 P. 009
 07/29/2008 11:33 4062528198 MARCH OF DIMES MT 398
 07/24/2008 10:44 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 PAGE 89
 Rx Date/Time APR-24-2008 (THU) 08:55 406 247 8541 P. 018/016
 APR 24 08 08:55a City of Billings - Prep 8 406-247-8641 P. 002
 P. 2



Department of Parks, Recreation & Public Lands
 390 North 23rd Street
 Billings, MT 59101
 (406) 657-8371



APPLICATION FOR PORTABLE COMMUNITY SOUNDSTAGE RENTAL

APPLICANT

Application Date 6/4/08

Organization March of Dimes

Event Chairman Lori Simon Day Phone 406-252-7480 Night Phone 697-2588
 Address 643 Grand Avenue, Suite B 59101

COMMUNITY SOUNDSTAGE SPECIFICATIONS

The Community Soundstage is a self-contained trailer which converts into a portable band shell or stage. It can be used for a variety of purposes for the performing arts such as plays, concerts, etc. The trailer itself is 31'6" long, 9' wide, and 13'1" high. The actual size of the stage is 14' deep by 23' wide. It is equipped with a P.A. system which has two microphones and a CD player, overhead fluorescent lighting, eight colored can type floodlights, and has multiple receptacles for electrical use with a total amperage draw based on the electrical power source.

RENTAL RATES

At the time of application, a 50% deposit of the total rental amount is required to secure a date for reservation.

	ONE DAY	TWO DAYS (Same Location)
BASIC STAGE RENTAL	\$300.00 <input checked="" type="checkbox"/>	\$400.00 <input type="checkbox"/>
PA SYSTEM & CD PLAYER	\$ 50.00 <input type="checkbox"/>	\$ 75.00 <input type="checkbox"/>
*COLORED CAN SPOTLIGHTS	\$100.00 <input type="checkbox"/>	\$150.00 <input type="checkbox"/>

(Rental rates for longer periods of time will be negotiable.)

* Available for night time shows only. Requires a separate 120 volt receptacle plug-in on a different circuit breaker than the one being used to power the stage receptacles.

EVENT

Type or name of event Bingo For Babies

Contact or person in charge DAY OF EVENT Lori Simon

Address _____

Day Phone _____ Night Phone _____

Date(s) of event Sept. 4, 2008 Day(s) of event Thursday

Event starting time 6:00 PM Event ending time 9:00 PM

Time Soundstage must be set up by? 4:30 PM

**Earliest time Soundstage can be dismantled? 9:30 PM

Time to meet person in charge the day of event for setup instructions? 4:00 PM

PA System/CD Player needed? no Colored can spotlights needed? no

**See terms of Rental Agreement

(Please complete back of application)

JUL-24-2008(THU) 08:20 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 006/013
 Rx Date/Time JUL-09-2008(WED) 11:56 4062528198 P. 010
 07/09/2008 11:33 4062528198 MARCH OF DIMES MT398
 APR-24-2008(THU) 08:55 (FAX)406 294 5061 PAGE 10
 Rx Date/Time APR-24-2008(THU) 08:55 406 247 8541 P. 006/002
 APR 24 08 08:38a City Of Billings - Prop 0 406-247-8541 P. 003
 p.3

LOCATION

Description or address of site Montana Brew Pub

(Use space below to draw a diagram of the specific Soundstage setup location.)

Is the setup site relatively level? yes Type of surface to be set up on? asphalt

Type of surface* to cross to reach setup site? asphalt

Is there at least 12 feet of overhead clearance (trees, wires, etc.) into the setup site? yes

What is the distance from the setup site to the nearest 120 A.C. electrical outlet?

* The PRPL Department is not responsible for surface damage caused by the weight of the Soundstage in accessing a site if the event chairman authorizes the entry. Staff may also refuse to access a site due to weather and/or site conditions.

RENTAL AGREEMENT

At the time of application, a 50% deposit of the total rental amount is required to secure a date for reservation. \$100 of the initial deposit shall be held as a security/damage deposit. If no damages are assessed, the entire amount will be credited to the rental fee. The balance of the rental fee must be paid within two weeks of the event ending date. Fees not received by that time will be assessed a \$25 collection fee and billed. If the event is canceled at least two weeks prior to the date reserved, the deposit will be fully refunded. Cancellations after that time will result in the deposit being forfeited. If the event is canceled the day of the event (due to weather), the balance of the rental fee will not be charged if we are notified in sufficient time to cancel our staff assignments before they report to duty. If the stage is not cleared and ready for take down by our staff within 15 minutes of the time indicated on this form, then a fee will be assessed at a rate of \$50 per 1/2 hour after the grace period until it can be dismantled.

I agree to the terms & conditions of this rental agreement and am authorized by my organization to sign such binding agreements.

Lori Simon

DATE 6/4/08

Organization Representative

Lori Simon

OFFICE USE ONLY

Reservation Deposit \$ Date Paid / / Cash Check #

Balance of Rental Fee \$ Date Paid / / Cash Check #

Total Rental Fee \$ Staff Assigned Phone

DRAW SITE DIAGRAM HERE:
 (attach additional sheet if necessary)

Same as Alive After Five

JUL-24-2008 (THU) 08:21 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061

P. 007/013

Rx Date/Time JUL-09-2008(WED) 11:56

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07/09/2008 11:33 4052528198

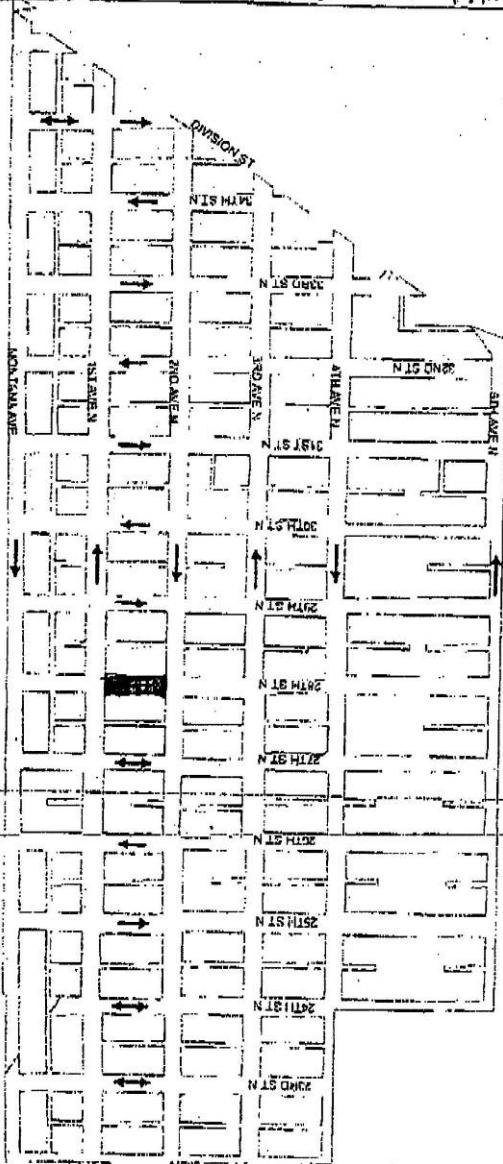
MARCH OF DIMES' MT398
PARTNERSHIP (FAX) 406 294 5001

P. 012

PAGE 12

P. 009/016

* Same as Montana Brew Pub
Closure for 11pm After Five



Downtown Billings Street Direction Map

JUL-24-2008 (THU) 08:21 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061
Rx Date/Time JUL-09-2008 (WED) 11:56 4062528198
07/09/2008 11:33 4062528198 MARCH OF DIMES MT 398
APR-24-2008 13:42 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061

P. 008/013

P. 013

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P. 013/016

THIS IS A CONTRACT - TERMS: Net 30 Days

The words Renter, You and Yours means the person who signs this contract (or is obligated under its terms).
We, Our and BID refer to the Business Improvement District.
Established open accounts are payable net 30 days. Past due accounts bear late payment penalties of 1.5% per month.
REMIT PAYMENT TO:
Downtown Business Improvement District - 2815 2nd Ave. North - Billings, MT 59101

RENTER: March of Dimes

Authorized Person: Lori Simon

Address: 643 Grand Avenue, Suite B

City: Billings State: MT Zipcode: 59101

Phone: 252-1480 ext 201

Item(s): SEE ATTACHED EVENT KIT OF PARTS RENTAL/USAGE PRICE LIST

ORDER OUT: (Start/Delivery Time) Date: _____ Time: _____ Renter Initials: _____ BID Initials: _____

ORDER IN: (End/Return Time) Date: _____ Time: _____ Renter Initials: _____ BID Initials: _____

Total Amount Rental Fee Due: \$ _____

I, the undersigned renter, specifically acknowledge that I have received and understand the instructions regarding use and operations of the rented equipment/items. Renter further acknowledges that he/she has read and fully understands the within rental contract and the attached TERMS AND CONDITIONS OF RENTAL and agrees to be bound by all of the terms, conditions and provisions hereof. Renter acknowledges that he/she has received a true and correct copy of this agreement at the time of execution hereof.

X LCDm

SIGNATURE

Printed Name _____

THIS IS YOUR CONTRACT, READ ALL PAGES BEFORE SIGNING!

Sherri - we need what you would use for
Montana Brew Pub Alive After Five event
Can you fill that in for me?

JUL-24-2008 (THU) 08:21 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 P. 009/013
 Rx Date/Time JUL-11-2008 (FRI) 11:58 406 259 3329 P. 002
 Jul 11 08 12:38p MBC HOOLIGANS 406 259 3329 p.2
 Jul 10 08 11:49a Tim Beeter Insurance 406 259 9271 p.3

Commercial Certificate of Insurance

Agency • FARMERS INSURANCE GROUP
 Name • TIM BEETER
 & • 2860 GRAND AVE
 Address • BILLINGS, MT 59102

St. 70 Dist. 05 Agent 09

Insured • CSKT CORP
 Name • MONTANA BREWING CO
 & • 113 N BROADWAY
 Address • BILLINGS, MT 59101



Issue Date (MM/DD/YY) 04/02/2008

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 shown below.

Companies Providing Coverage:

Company A Truck Insurance Exchange
 Letter
 Company B Farmers Insurance Exchange
 Letter
 Company C Mid-Century Insurance Company
 Letter
 Company D

Coverages

This is to certify that 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. Limits shown may have been reduced by paid claims.

Co. Ur.	Type of Insurance	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	Policy Limits
A <input checked="" type="checkbox"/>	General Liability Commercial General Liability - Occurrence Version Contractual - Incidental Only Owners & Contractors Proc.	065934922	10/19/2007	10/19/2008	General Aggregate \$ 2,000,000 Products-Comp/OPS Aggregate \$ 1,000,000 Personal & Advertising Injury \$ 1,000,000 Each Occurrence Fire Damage (Any one fire) \$ 1,000,000 Medical Expense (Any one person) \$ 75,000 \$ 5,000
	Automobile Liability All Owned Commercial Autos Scheduled Autos Hired Autos Non-Owned Autos Garage Liability				Combined Single Limit Bodily Injury (Per person) \$ Bodily Injury (Per accident) \$ Property Damage Garage Aggregate \$
A <input checked="" type="checkbox"/>	Umbrella Liability	065934930	10/19/2007	10/19/2008	Limit \$ 1,000,000
	Workers' Compensation and Employers' Liability				Statutory Each Accident Disease - Each Employee Disease - Policy Limit \$

Description of Operations/Vehicles/Restrictions/Special Items:

POLICY INCLUDES \$1,000,000 LIQUOR LIABILITY COVERAGE

Certificate Holder

Name • CITY OF BILLINGS
 & • P.O. BOX 1178
 Address • BILLINGS, MT 59103

Cancellation

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Authorized Representative

36-2492 4-04

Copy Distribution: Service Center Copy and Agent's Copy

44-01

JUL-24-2008 (THU) 08:22 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 P. 010/013
 Rx Date/Time JUL-10-2008 (THU) 12:55 406 259 3329 P. 002
 Jul 10 08 01:35p MBC. HOOLIGANS 406 259 3329 p.2
 406 259 3271 p.4

Commercial Certificate of Insurance					
Agency: FARMERS INSURANCE GROUP Name: TIM BEETER & 2860 GRAND AVE Address: BILLINGS, MT 59102			 FARMERS Issue Date (MM/DD/YY): 07/10/2008		
St. 70	Dist. 05	Agent 09	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 shown below.		
Insured: Name: CSKT CORP & MONTANA BREWING CO Address: 113 N BROADWAY BILLINGS, MT 59101			Companies Providing Coverage: Company A: Truck Insurance Exchange Letter Company B: Farmers Insurance Exchange Letter Company C: Mid-Century Insurance Company Letter Company D: _____		
Coverages This is to certify that 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. Limits shown may have been reduced by paid claims.					
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	Automobile Liability All Owned Commercial Autos Scheduled Autos Hired Autos Non-Owned Autos Garage Liability				Combined Single Limit: \$ Bodily Injury (Per person): \$ Bodily Injury (Per accident): \$ Property Damage: \$ Garage Aggregate: \$
A <input checked="" type="checkbox"/>	Umbrella Liability	065934930	10/19/2007	10/19/2008	Limit: \$ 1,000,000
	Workers' Compensation and Employers' Liability				Statutory: \$ Each Accident: \$ Disease - Each Employee: \$ Disease - Policy Limit: \$
Description of Operations/Vehicles/Restrictions/Special Items: POLICY INCLUDES \$1,000,000 LIQUOR LIABILITY COVERAGE					
Certificate Holder: Name: MARCH OF DIMES & 643 GRAND AVE Address: BILLINGS, MT 59102			Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.		
Authorized Representative: 56-2492 4-94 Copy Distribution: Service Center Copy and Agent's Copy 14-01					

JUL-24-2008 (THU) 08:22 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 P. 011/013
 Rx Date/Time JUL-09-2008 (WED) 14:20 4062528198 P.011
 07/09/2008 13:58 4062528198 MARCH OF DIMES MT398 PAGE 11

ACORD CERTIFICATE OF INSURANCE				DATE (MM/DD/YYYY) 07/09/2008																																																	
PRODUCER Aon Risk Services Northeast, Inc. fka Aon Risk Services, Inc. of New York 199 Water Street New York NY 10038-3551 USA PHONE: (866) 283-7122 FAX: (847) 953-5390		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.																																																			
INSURED March of Dimes Foundation 1275 Mamaroneck Avenue White Plains NY 10605 USA		INSURERS AFFORDING COVERAGE		NAIC #																																																	
		INSURER A: Federal Insurance Company	20281																																																		
		INSURER B: Zurich American Ins Co	16535																																																		
		INSURER C:																																																			
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		INSURER E:																																																			
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.																																																					
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Holder Identifier:

Certificate No: 57002544933



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Rich St. John,
Police Department
City Hall
220 N 27th Street
Comments or Conditions:

OK

Department Signature

Date

7-16-08

Terry Smith
Traffic Engineering Department
4th Floor Library
510 N. Broadway
Comments or Conditions:

OK

Department Signature

Date

7-16-08

Frank Oderman
Fire Department
2305 8th Avenue North
Comments or Conditions:

OK

Department Signature

Date

7-16-08

Brent Brooks
City Attorney
Comments or Conditions:

OK

7/23/08

Department Signature

Date

Chris Mallow
Public Parking Division
City Hall
210 N 27th Street
Comments or Conditions:

OK

7-16-08

Department Signature

Date

Ron Wenger
MET Transit
1705 Monad
Comments or Conditions:

OK

7-16-08

Department Signature

Date

I

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Approval and Acceptance of \$6,620 increase in 2007 HIDTA Award

DEPARTMENT: Billings Police Department

PRESENTED BY: Chief Rich St. John

PROBLEM/ISSUE STATEMENT: The City has been notified that the Office of National Drug Control Policy (ONDCP) has increased our 2007 High Intensity Drug Trafficking Area (HIDTA) award by \$6,620 in order for the Eastern Montana Drug Task Force to purchase a body wire receiver and three (3) 14 hour memory cards. Council is being asked to approve the \$6,620 increase in the 2007 HIDTA award, bring the total award to \$193,775.

FINANCIAL IMPACT: Since there is no City match required, the only financial impact would be an increase in budget authority for purchase of the above equipment.

RECOMMENDATION

Staff recommends Council's approval and acceptance for increasing the 2007 HIDTA award by \$6,620, bringing the total award to \$193,775.

Approved By: City Administrator _____ City Attorney _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

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

DEPARTMENT: City Attorney's Office

PRESENTED BY: Brent Brooks, City Attorney

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

FINANCIAL IMPACT:

The total amount of the sub-grant awards from the Board of Crime Control for FY 2008-2009 are:

- \$38,000.00 (partial funding for the Victim Witness Assistance Program Director position), and
- \$52,000.00 (partial funding for the Domestic Violence Dedicated Prosecutor position).

Victim Witness Program Grant

Original Request:

Amount Awarded:

Total Project Budget:	\$ 69,675.30	
City Contribution:	\$ 31,675.30	\$ 31,675.30
MBCC Match:	\$ 38,000.00	\$ 38,000.00

Domestic Violence Unit Grant

Original Request:

Amount Awarded:

Total Project Budget: \$ 85,581.68

City Contribution:	\$ 33,581.68	\$ 33,581.68
MBCC Match:	\$ 52,000.00	\$ 52,000.00

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

Each year the BOCC grant award amounts have been estimated into the fiscal year budget. The City's match for the Victim Witness Assistance Program grant totals \$31,675.30. For the Domestic Violence Unit grant the City's match is \$33,581.68

RECOMMENDATION

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

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

ATTACHMENTS

A. Grant Awards



STATE OF MONTANA
BOARD OF CRIME CONTROL
PO Box 201408 - 3075 N Montana Ave - Helena MT 59620-1408
Phone: (406) 444-3604 Fax: (406) 444-4722

ORIGINAL
PLEASE RETURN

GRANT AWARD

Subgrant: 08-W03-90290 City Atty Victim/Witness Program

Grantee: Billings City
PO Box 1178
Billings, MT 59103

FEIN: 816001237
Duration: 07/01/2008 through 06/30/2009
Proj. Dir: Karen Benner

Award Date:	06/24/2008	Personnel:	\$69,675.30
Federal Amount Awarded:	\$38,000.00	Contract Services:	\$0.00
State Amount Awarded:	\$0.00	Travel:	\$0.00
Guaranteed Local Matching:	\$31,675.30	Equipment:	\$0.00
Total:	\$69,675.30	Operating:	\$0.00
		Total:	\$69,675.30

Source of Federal Funds: 16.588 - Violence Against Women Formula Grant

Special Conditions

Please see attached Special Conditions

I am pleased to inform you that the Board of Crime Control has approved your application for financial assistance. This grant is subject to the special conditions listed above, general conditions attached hereto, and must be implemented and administered along guidelines already established by your agency. This grant shall become effective, as of the date of award, when the grantee signs and returns a copy of this grant award to the Board of Crime Control.

Funds allocated to this project, both awarded and matching, must be obligated prior to: 06/30/2009

Roland Mena
Executive Director
Board of Crime Control

6-24-08
Date

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above described grant on the terms and conditions set forth above or incorporated by reference therein.

Ron Tussing
Mayor

Date

SPECIAL CONDITIONS

Subgrant 08-W03-90290	City Atty Victim/Witness Program	Billings City
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1. If your agency receives \$500,000.00 or more in federal assistance from all sources during the fiscal year, you are required to have an audit conducted in accordance with federal circular A-133.

The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133. This audit must be performed in accordance with GAO's Government Auditing Standards. In conjunction with the beginning date of the award, the audit report period of the state or local governmental entity to be audited under the single audit requirement is 07/01/2008 to 06/30/2009. The audit report must be submitted no later than 03/31/2010 and for each audit cycle thereafter covering the entire award period as originally approved or amended. Subsequent audits must be submitted no later than nine (9) months after the close of the recipient organization's audited fiscal year.

An original copy of the audit report shall be sent to:

Montana Board of Crime Control
PO Box 201408
Helena, MT 59620-1408

2. The applicant hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirements, including EO 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements, 28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant assures and certifies that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to MBCC.
3. This grant award is conditional upon availability of Federal funding.
4. Award of this grant does not commit the Board of Crime Control to future funding.
5. Applicant must maintain time and attendance records to support personnel costs associated with grant project.
6. Subgrantee must keep records documenting the services provided. Records should show the type of service provided, who provided the service, who received the service, the time and location of service and amount charged.
7. The applicant assures that any information furnished by any person and identifiable to any specific private person shall not be used for any purpose other than the purpose for which it was obtained. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.
8. No more than 5% of the total project budget is to be used for public awareness or public education type expenditures.

SPECIAL CONDITIONS

Subgrant 08-W03-90290	City Atty Victim/Witness Program	Billings City
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9. Quarterly progress, financial, and statistical reports, in a format required by MBCC are required for calendar quarters ending: September 30, December 31, March 31, and June 30. These reports are to be received by the Montana Board of Crime Control within 20 days following the end of the calendar quarter. Subgrantees who fail to submit reports by the due date will be subject to the following:

FIRST LATE REPORT: Subgrantee will be notified to cease all expenditures of grant funds until the reports are submitted.

SECOND LATE REPORT: Cancel the grant. Project must appear before the Subgrant Review Committee and petition to get the grant reinstated.

10. Subgrantee may be required to appear before a subcommittee, at the Board's discretion, to explain their progress towards successful implementation of the grant. Should grant problems or deficiencies be detected, the subcommittee is authorized to initiate corrective actions.

11. Subgrantee will assist victims in seeking available crime victim compensation benefits. Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. Program must demonstrate that it will coordinate its activities with the State Victims Compensation Program.

12. Any funds not properly obligated during the grant period shall lapse and revert to the Montana Board of Crime Control.

13. Funding for this project is designated for improving the justice system's response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that priority for services from your program be given to women who are victims of gender-motivated crime, especially domestic violence, dating violence, sexual assault, and stalking.

14. Funding for this project is designated for improving services and the criminal justice response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that your Tribal Government certify compliance with the following two conditions by signing these special conditions.

That its laws, policies and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that an abused person bear the costs associated with filing criminal charges against a domestic violence offender or the costs associated with the issuance or service of a warrant, protection order, or witness subpoena.

That the Indian tribal government, unit of local government, or another governmental entity incur full out-of-pocket costs of forensic medical examinations for victims of sexual assault. "Full out-of-pocket costs means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination).

15. Education, prevention and awareness campaigns are not allowable under the STOP Violence Against Women Grant Program.

SPECIAL CONDITIONS

Subgrant 08-W03-90290	City Atty Victim/Witness Program	Billings City
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16. The grantee shall submit one copy of all proposed publications resulting from this agreement to the Montana Board of Crime Control. Any publications (written, visual, or sound), printed with these funds shall contain the following statement.

This project was supported by Grant No. _____ awarded by the Montana Board of Crime Control (MBCC) through the Office of Justice Programs, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.

All media, press releases and public presentations must acknowledge funding through Montana Board of Crime Control.

17. All information furnished to VAWA subgrantee agencies by victims of gender specific violence, including identifying information, is confidential, with the following exceptions:

- a) in situations where a trained professional assesses that a victim is in danger of harming herself or others (i.e., suicide or homicide),
- b) the victim informs the subgrantee that she is violating a court order or that there is a warrant out for her arrest, and
- c) in the event that the victim provides written consent for a release of information.

Programs are required by state statute MCA 26-1-812 Advocate Privilege, to maintain confidentiality of victims, privilege belongs to the victim and may not be waived even if the victim is unreachable. This privilege terminates upon death of a victim.

18. The subgrantee agrees to comply with the National Environmental Policy Act (NEPA) and other related federal environmental impact requirements in the use of these grant funds either directly or indirectly by sub-contractors.

19. Subgrantee must submit quarterly statistical reports via the PDQ database in electronic format. In addition, subgrantee must submit quarterly narrative reports via mail. Reports are due within 20 days following the end of the calendar quarter. Failure to do so will require the subgrantee to cease all expenditures and appear before the Subgrant Review Committee to petition for reinstatement.

20. The recipient agrees to provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes.

21. Recipient understands and agrees that it CANNOT use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval from MBCC.

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above special conditions.	
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Ron Tussing Mayor	Date
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Equal Employment Opportunity Plan – EEOP

Federal regulations require recipients of federal funds prepare, maintain on file, submit to MBCC for review, and/or implement an Equal Employment Opportunity Plan (EEOP). The purpose of an EEOP is to ensure full and equal participation of men and women regardless of race or national origin in the workforce. Below is a list of criteria to determine what you need to do to comply with federal regulations.

- An agency receiving \$500,000 or more in federal funds and has 50 or more employees must submit an EEOP to Montana Board of Crime Control (MBCC) within 45 days of the date of award.
- If an agency has fewer than 50 employees, regardless of the amount of the award, no EEOP is required; however, the agency must fill out a Certification Form (included in the award packet) and return it to MBCC within 45 days of the date of award.
- Pursuant to the Department of Justice regulations, each agency that receives \$25,000 or more, but under \$500,000 in federal funds and has 50 or more employees, is required to maintain an EEOP on file and return the Certification Form.
- A recipient of under \$25,000 is not required to maintain or submit an EEOP, but must return the Certification Form.
- Educational, non-profit or Indian Tribes are not required to maintain or submit an EEOP, but must return the Certification Form.

Determine which of the above criteria your agency falls under, then complete and sign the applicable section and return it to MBCC. If you need to submit an Equal Employment Opportunity Plan, please contact MBCC.

CERTIFICATION FORM

Recipient Name and Address: City of Billings P.O. Box 1178 Billings, MT 59101
City Attorney's
Grant Title: Victim / Witness Program Grant Number: 08-W03-90290 Award Amount: \$38,000.00

Contact Person Name and Title: Karen Benner Phone Number: (406) 247-8668
Program Director

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R. §§ 42.301-308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete Section A below. Recipients that claim the limited exemption from the submission requirement, must complete Section B below. A recipient should complete *either* Section A or Section B, *not both*. If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

Section A- Declaration Claiming Complete Exemption from the EEOP Requirement. *Please check all the boxes that apply.*

<input type="checkbox"/> Recipient has less than 50 employees,	<input type="checkbox"/> Recipient is an Indian tribe,
<input type="checkbox"/> Recipient is a non-profit organization,	<input type="checkbox"/> Recipient is an educational institution, or
<input type="checkbox"/> Recipient is a medical institution,	<input type="checkbox"/> Recipient is receiving an award less than \$25,000

I, _____ [responsible official], certify that _____ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R. §42.302. I further certify that _____ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title

Signature

Date

Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, Ron Tussing _____ [responsible official], certify that the City of Billings _____ [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: City Clerk _____ [organization], at 220 N 87th Billings, MT 59101 _____ [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Ron Tussing Mayor

Print or type Name and Title

Signature

Date

Complete top and either Section A or B



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) 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 making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

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

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE
(GRANTEEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

City of Billings 220 S. 27th St Billings, MT 59101
P.O. Box 1178 Billings, MT 59103

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

City Attorney's Victim Witness Program

4. Typed Name and Title of Authorized Representative

5. Signature

6. Date



STATE OF MONTANA
BOARD OF CRIME CONTROL
PO Box 201408 - 3075 N Montana Ave - Helena MT 59620-1408
Phone: (406) 444-3604 Fax: (406) 444-4722

ORIGINAL
PLEASE RETURN

GRANT AWARD

Subgrant: 08-W03-90294 Domestic Violence Unit

Grantee: Billings City PO Box 1178 Billings, MT 59103	FEIN: 816001237
	Duration: 07/01/2008 through 06/30/2009
	Proj. Dir: Teague Westrope

Award Date:	06/24/2008	Personnel:	\$77,304.68
Federal Amount Awarded:	\$52,000.00	Contract Services:	\$0.00
State Amount Awarded:	\$0.00	Travel:	\$750.00
Guaranteed Local Matching:	\$33,581.68	Equipment:	\$0.00
Total:	\$85,581.68	Operating:	\$7,527.00
		Total:	\$85,581.68

Source of Federal Funds: 16.588 - Violence Against Women Formula Grant

Special Conditions

Please see attached Special Conditions

I am pleased to inform you that the Board of Crime Control has approved your application for financial assistance. This grant is subject to the special conditions listed above, general conditions attached hereto, and must be implemented and administered along guidelines already established by your agency. This grant shall become effective, as of the date of award, when the grantee signs and returns a copy of this grant award to the Board of Crime Control.

Funds allocated to this project, both awarded and matching, must be obligated prior to: **06/30/2009**

Roland Mena
Executive Director
Board of Crime Control

6-24-08
Date

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above described grant on the terms and conditions set forth above or incorporated by reference therein.

Ron Tussing
Mayor

Date

SPECIAL CONDITIONS

Subgrant 08-W03-90294 Domestic Violence Unit

Billings City

1. If your agency receives \$500,000.00 or more in federal assistance from all sources during the fiscal year, you are required to have an audit conducted in accordance with federal circular A-133.

The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133. This audit must be performed in accordance with GAO's Government Auditing Standards. In conjunction with the beginning date of the award, the audit report period of the state or local governmental entity to be audited under the single audit requirement is 07/01/2008 to 06/30/2009. The audit report must be submitted no later than 03/31/2010 and for each audit cycle thereafter covering the entire award period as originally approved or amended. Subsequent audits must be submitted no later than nine (9) months after the close of the recipient organization's audited fiscal year.

An original copy of the audit report shall be sent to:

Montana Board of Crime Control
PO Box 201408
Helena, MT 59620-1408

2. The applicant hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirements, including EO 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements, 28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant assures and certifies that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to MBCC.
3. This grant award is conditional upon availability of Federal funding.
4. Award of this grant does not commit the Board of Crime Control to future funding.
5. Applicant must maintain time and attendance records to support personnel costs associated with grant project.
6. Subgrantee must keep records documenting the services provided. Records should show the type of service provided, who provided the service, who received the service, the time and location of service and amount charged.
7. State rates for mileage, per diem, and lodging are maximum amounts that can be charged to subgrants funded by MBCC.

Mileage rate: Effective 01/01/2008 .505 cents per mile

Meals Allowance:	In-State	Out-of State
Morning Meal (12:01AM-10:00AM)	\$5.00	\$7.00
Midday Meal: (10:01AM-3:00PM)	\$6.00	\$11.00
Evening Meal: (3:01PM-12:00AM)	\$12.00	\$18.00

SPECIAL CONDITIONS

Subgrant 08-W03-90294	Domestic Violence Unit	Billings City
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\$23.00	\$36.00
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In order to claim reimbursement for a meal, you must be in a travel status for more than 3 continuous hours within one of the time ranges. To receive the morning meal you must leave before 7:00AM and to receive the evening meal you must return after 6:01PM.

The lodging rate for Montana and federal lodging rate for out-of state lodging is available through the Internet at the following location:

<http://doa.mt.gov/DOAtravel/travelmain.asp>

Grant funds may not be used to pay for out-of state travel without prior approval from MBCC.

Reimbursement for lodging without a receipt will be \$12.00

Allowable expenses include emergency working supplies taxi fares, and business telephone calls. Paid receipts must support individual expense items of \$25.00 or more.

8. The applicant assures that any information furnished by any person and identifiable to any specific private person shall not be used for any purpose other than the purpose for which it was obtained. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.
9. No more than 5% of the total project budget is to be used for public awareness or public education type expenditures.
10. Quarterly progress, financial, and statistical reports, in a format required by MBCC are required for calendar quarters ending: September 30, December 31, March 31, and June 30. These reports are to be received by the Montana Board of Crime Control within 20 days following the end of the calendar quarter. Subgrantees who fail to submit reports by the due date will be subject to the following:

FIRST LATE REPORT: Subgrantee will be notified to cease all expenditures of grant funds until the reports are submitted.

SECOND LATE REPORT: Cancel the grant. Project must appear before the Subgrant Review Committee and petition to get the grant reinstated.

11. Subgrantee may be required to appear before a subcommittee, at the Board's discretion, to explain their progress towards successful implementation of the grant. Should grant problems or deficiencies be detected, the subcommittee is authorized to initiate corrective actions.
12. Subgrantee will assist victims in seeking available crime victim compensation benefits. Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. Program must demonstrate that it will coordinate its activities with the State Victims Compensation Program.
13. Any funds not properly obligated during the grant period shall lapse and revert to the Montana Board

SPECIAL CONDITIONS

Subgrant 08-W03-90294	Domestic Violence Unit	Billings City
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of Crime Control.

14. Funding for this project is designated for improving the justice system's response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that priority for services from your program be given to women who are victims of gender-motivated crime, especially domestic violence, dating violence, sexual assault, and stalking.
15. Funding for this project is designated for improving services and the criminal justice response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that your Tribal Government certify compliance with the following two conditions by signing these special conditions.

That its laws, policies and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that an abused person bear the costs associated with filing criminal charges against a domestic violence offender or the costs associated with the issuance or service of a warrant, protection order, or witness subpoena.

That the Indian tribal government, unit of local government, or another governmental entity incur full out-of-pocket costs of forensic medical examinations for victims of sexual assault. "Full out-of-pocket costs means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (e.g., the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination).

16. Education, prevention and awareness campaigns are not allowable under the STOP Violence Against Women Grant Program.
17. The grantee shall submit one copy of all proposed publications resulting from this agreement to the Montana Board of Crime Control. Any publications (written, visual, or sound), printed with these funds shall contain the following statement.

This project was supported by Grant No. _____ awarded by the Montana Board of Crime Control (MBCC) through the Office of Justice Programs, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.

All media, press releases and public presentations must acknowledge funding through Montana Board of Crime Control.

18. All information furnished to VAWA subgrantee agencies by victims of gender specific violence, including identifying information, is confidential, with the following exceptions:
 - a) in situations where a trained professional assesses that a victim is in danger of harming herself or others (i.e., suicide or homicide),
 - b) the victim informs the subgrantee that she is violating a court order or that there is a warrant out for her arrest, and

SPECIAL CONDITIONS

Subgrant 08-W03-90294	Domestic Violence Unit	Billings City
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- c) in the event that the victim provides written consent for a release of information.

Programs are required by state statute MCA 26-1-812 Advocate Privilege, to maintain confidentiality of victims, privilege belongs to the victim and may not be waived even if the victim is unreachable. This privilege terminates upon death of a victim.

19. The subgrantee agrees to comply with the National Environmental Policy Act (NEPA) and other related federal environmental impact requirements in the use of these grant funds either directly or indirectly by sub-contractors.
20. Subgrantee must submit quarterly statistical reports via the PDQ database in electronic format. In addition, subgrantee must submit quarterly narrative reports via mail. Reports are due within 20 days following the end of the calendar quarter. Failure to do so will require the subgrantee to cease all expenditures and appear before the Subgrant Review Committee to petition for reinstatement.
21. The recipient agrees to provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes.
22. Recipient understands and agrees that it CANNOT use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval from MBCC.

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above special conditions.

Ron Tussing
Mayor

Date

Equal Employment Opportunity Plan – EEOP

Federal regulations require recipients of federal funds prepare, maintain on file, submit to MBCC for review, and/or implement an Equal Employment Opportunity Plan (EEOP). The purpose of an EEOP is to ensure full and equal participation of men and women regardless of race or national origin in the workforce. Below is a list of criteria to determine what you need to do to comply with federal regulations.

- An agency receiving \$500,000 or more in federal funds and has 50 or more employees must submit an EEOP to Montana Board of Crime Control (MBCC) within 45 days of the date of award.
- If an agency has fewer than 50 employees, regardless of the amount of the award, no EEOP is required; however, the agency must fill out a Certification Form (included in the award packet) and return it to MBCC within 45 days of the date of award.
- Pursuant to the Department of Justice regulations, each agency that receives \$25,000 or more, but under \$500,000 in federal funds and has 50 or more employees, is required to maintain an EEOP on file and return the Certification Form.
- A recipient of under \$25,000 is not required to maintain or submit an EEOP, but must return the Certification Form.
- Educational, non-profit or Indian Tribes are not required to maintain or submit an EEOP, but must return the Certification Form.

Determine which of the above criteria your agency falls under, then complete and sign the applicable section and return it to MBCC. If you need to submit an Equal Employment Opportunity Plan, please contact MBCC.

CERTIFICATION FORM

Recipient Name and Address: City of Billings PO Box 1178 Billings, MT 59103

Grant Title: Domestic Violence Unit Grant Number: 08-W03-90294 Award Amount: \$52,000.00

Contact Person Name and Title: Teague Westrope Phone Number: (406) 247-8602
Deputy City Attorney

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R §§ 42.301-308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete **Section A** below. Recipients that claim the limited exemption from the submission requirement, must complete **Section B** below. A recipient should complete *either* Section A or Section B, *not both*. If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

Section A- Declaration Claiming Complete Exemption from the EEOP Requirement. *Please check all the boxes that apply.*

<input type="checkbox"/> Recipient has less than 50 employees,	<input type="checkbox"/> Recipient is an Indian tribe,
<input type="checkbox"/> Recipient is a non-profit organization,	<input type="checkbox"/> Recipient is an educational institution, or
<input type="checkbox"/> Recipient is a medical institution,	<input type="checkbox"/> Recipient is receiving an award less than \$25,000

I, _____ [responsible official], certify that _____ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R. §42.302. I further certify that _____ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title

Signature

Date

Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, Ron Tussing [responsible official], certify that the City of Billings [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: City Clerk [organization], at 220 N 27th Billings, MT 59101 [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Ron Tussing Mayor

Print or type Name and Title

Signature

Date

Complete top and either Section A or B

OMB Approval No. 1121-0140

Expiration Date: 01/31/06



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) 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 making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

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

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

City of Billings 230 S. 27th Billings, MT 59101
P.O. Box 1578 Billings, MT 59103

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

Domestic Violence Unit

4. Typed Name and Title of Authorized Representative

5. Signature

6. Date

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Resolution of Intent to Construct W.O. 08-17, Glenhaven Stormwater Improvement

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: The purpose of this project is to address a storm drainage problem on Glenhaven Drive located in Lake Hills Subdivision in the Heights. The project will include street widening, curb & gutter, driveway work, sidewalks (per landowners request), and constructing a small ditch along the storm drain easement. This project will affect five property owners. In order to construct these improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow the five adjacent property owners to be assessed for curb and gutter, driveway/approach work, and sidewalk (optional by property owner).

FINANCIAL IMPACT: The proposed project is funded with storm drain funds and property assessments for a total project cost of \$95,473, as follows:

Estimated Assessed Costs	\$ 46,000.00
Storm Drain	\$ 49,473.00

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2008 budget.

RECOMMENDATION

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 08-17, Glenhaven Stormwater Improvement, and set a Public Hearing date for September 08, 2008.

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

ATTACHMENT

A. Resolution of Intent

RESOLUTION NO. 08-_____

A RESOLUTION RELATING TO W.O. 08-17, GLENHAVEN STORMWATER IMPROVEMENT; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND.

WHEREAS, the city is granted the power pursuant to M.C.A. 7-14-4109 to order certain improvements without creation of a special improvement district and certain sections of curb and gutter, sidewalks, drive approaches, alley approaches and/or appurtenant features have deteriorated, settled and cracked, or none exist, or some of the foregoing do not exist; and

WHEREAS, the safety and convenience of the public require installation, construction, reconstruction, repair or replacement of curbs and gutters, sidewalks, drive approaches, alley approaches, and/or appurtenant features or combinations thereof; and

WHEREAS, said improvements should be ordered as provided by law.

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits "A" and "B" attached hereto.
2. AFFECTED PROPERTIES. All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit "B" attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$46,000.00 as described below

Construction Costs	\$34,409.00
Engineering & Administration	\$5,750.00
Bond Revolving Fund (5%)	\$2,300.00
Bond Discount Costs (2%)	\$920.00
Issuance Costs (3%)	\$1,380.00
Bank Fees	\$1,000.00
Roundoff	<u>\$ (241.00)</u>
TOTAL ASSESSED COSTS	\$46,000.00

Estimated unit costs for construction only, not including engineering, issuance, administrative and bond costs as follows:

<u>Removal and Replacement of:</u>	<u>Unit Price:</u>
Concrete Flatwork Removal	\$ 2.50/sq. ft.
<u>New Construction:</u>	
Curb Walk, 4"	\$ 5.50/sq. ft.
Concrete Driveway, 4"	\$ 6.00/sq. ft.
Curb and Gutter	\$12.00/lin. ft.
Concrete Curb Approach, 6"	\$ 6.50/sq. ft.

The actual cost to be assessed against any benefited property will be determined by the actual amount of work done adjacent to the property.

4. **ASSESSMENT OF COSTS.** All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit "B", assessments will be levied against 5 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The average total assessment, including engineering, administrative, and bond costs is estimated to be \$9,200.00, with a high of \$13,156.71, low of \$7,140.84, and a median of \$8,846.00.

5. **PERIOD OF ASSESSMENT.** The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. **PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS.** In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.
7. **METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS.**
The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount estimated at \$46,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect to the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$589,502.00. The average market value is \$117,900.40, with a high of \$130,687.00, a low of \$104,092.00, and median value of \$115,304.00. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 5 Tax codes in this project, there are 5 separate property owners.
- (c) Comparison of Special Assessments, Property Taxes and Market Value. Currently, there is no SID levied against the 5 property owners.

As noted in Section 4, the estimated average assessment levied by this project will be \$9,200.00. With an average market value of \$117,900.40, and an average yearly principal payment of \$767.00 (monthly principal of \$64.00), the amount of assessment versus the value of the property would appear acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "B".

- (d) Delinquencies. For tax year 2007, Zero (0) parcels were delinquent. This rate is above the average city collection rate of 95%.

Therefore, given the delinquency history of this Project area, no unusual need for loans from the Revolving Fund would be expected.

- (e) The Public Benefit of the Improvements. The five property owners impacted by the project are located at the sag of Glenhaven Dr. Stormwater flows east down Glenhaven Dr. and floods several homes at the bottom as well as leaving standing water on the road at the sag where there currently is a big pot hole. The benefit to the public would be containing the stormwater within the curb and gutter and channeling it out to the golf course through the storm drain easement. The street will be wider and safer at the corner and no standing water will be on the road. It will greatly reduce chances of flooding landowner's homes.

The Current City Subdivision and Site Development Ordinances, and under City Council policies, the cost of installation of new curb, gutter, sidewalk, and drive approaches is to be borne by the adjoining property owners. Property Owner's will not be required to install sidewalk on this project.

8. REIMBURSEMENT EXPENDITURES.

- (a) Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the

“Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

- (b) Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.
- (c) Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$67,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.
- (d) Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.
- (e) Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

9. **PUBLIC HEARING.** On Monday, September 08, 2008, at 6:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, MT, the City Council will conduct a public hearing concerning this project and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.
10. **NOTICE OF PASSAGE OF RESOLUTION OF INTENTION.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on August 21 and August 28, 2008, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

PASSED by the City Council and APPROVED this 11th day of August, 2008.

CITY OF BILLINGS:

BY: _____ Ron Tussing MAYOR

ATTEST:

Cari Martin

CITY CLERK

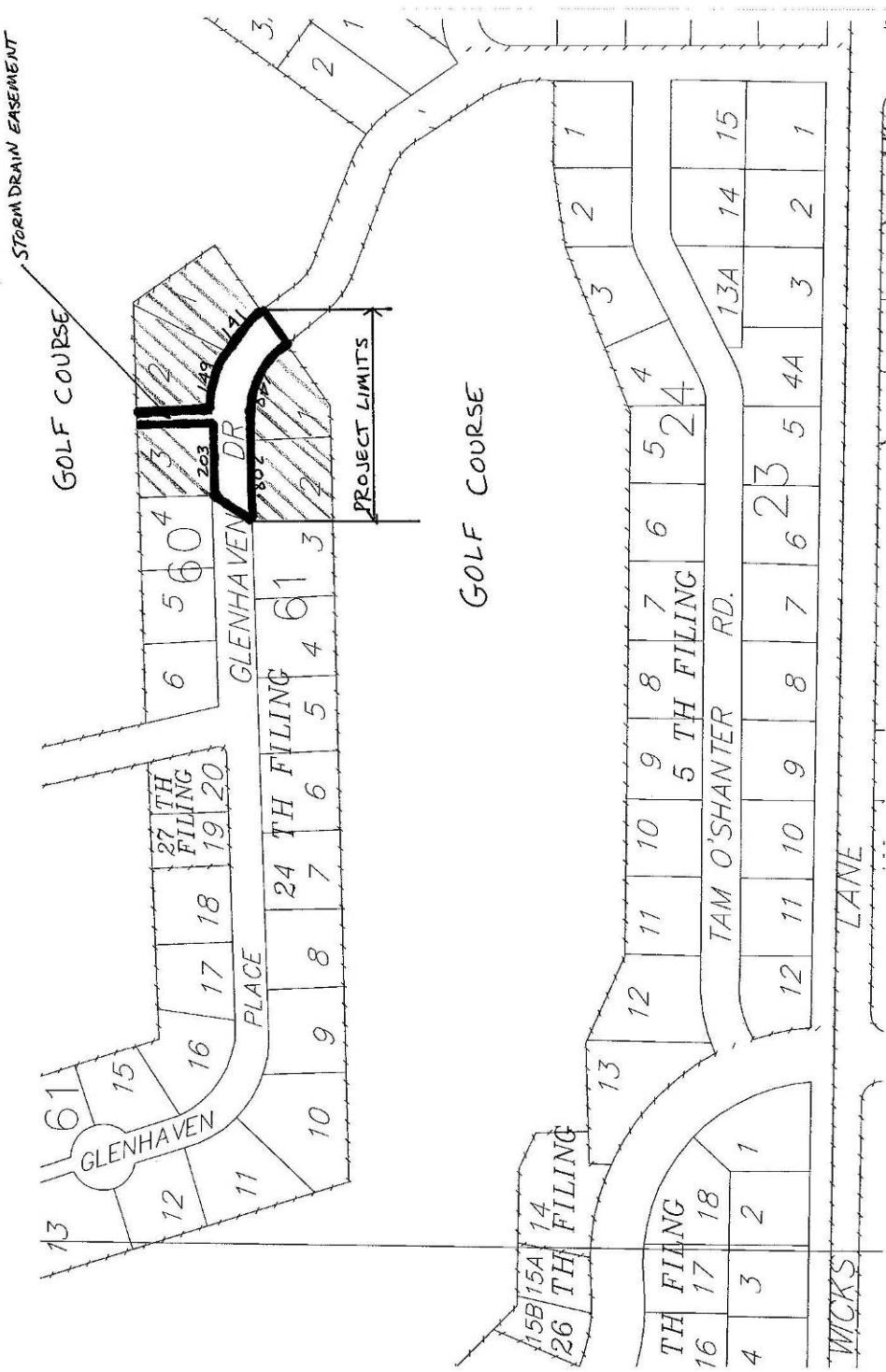
Work Order 08-17

Glenhaven Stormwater Improvement Exhibit "A": Location of Work

Project Description

1. Reconstructing 150 ft of Glenhaven Drive to put sag in front of storm drain easement.
2. Constructing a small ditch along storm drain easement to carry stormwater out to the golf course.
3. Constructing curb and gutter, approaches, sidewalk (optional), and street widening along the listed five property owners.

See attached drawing for project limits and property owners.



W.O. 08-17

Glenhaven Stormwater Improvement

Exhibit B

TAX ID	SID #	SID PAYOFF	DELINQUENT	W.O. 08-17 ASSESMENT	MARKET VALUE
A22814	-	\$0.00	n/a	\$7,140.84	\$113,523.00
A22815	-	\$0.00	n/a	\$8,846.00	\$104,092.00
A22816	-	\$0.00	n/a	\$9,058.56	\$130,687.00
A22820	-	\$0.00	n/a	\$13,156.71	\$125,896.00
A22821	-	\$0.00	n/a	\$7,797.90	\$115,304.00

AVERAGE				\$9,200.00	\$117,900.40
MEDIAN				\$8,846.00	\$115,304.00
HIGH				\$13,156.71	\$130,687.00
LOW				\$7,140.84	\$104,092.00

L

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Zone Change #845, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from 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. The City Council held a public hearing and approved the first reading of the zone change on July 28, 2008.

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 recommends by a 5-0 vote that the City Council approve Zone Change #845 and adopt the determinations of the 12 criteria.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

Zone Change #845

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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 11, 2008

TITLE: Preliminary Plat of Tuscany Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On June 2, 2008, the developer, GSK Partners, LLC, applied for preliminary major plat approval for Tuscany Subdivision, which contains 49 single-family residential lots on approximately 115 acres of land. The property is zoned Residential-9600 (R-96). The subject property is located east of Ironwood Estates and north of Yellowstone Country Club Estates. The representing agent is Morrison-Maierle, Inc. The City Council preliminary approved the Tuscany Subdivision preliminary plat with conditions at its meeting on September 24, 2007. Since that time, the applicant has submitted this second preliminary plat application in conjunction with a legal settlement agreement between GSK Partners, LLC and the City of Billings. Two variances from the Subdivision Regulations have been requested. One is to permit curb-style sidewalks in lieu of boulevard-style sidewalks. The second is to allow no full, secondary access to the subdivision as required for all major subdivisions in the City. The Planning Board held a public hearing on July 22, 2008, and is recommending eight conditions of approval. The Board also is stressing to the Council the importance of the future connection of Pomino Way in the Tuscany Subdivision to the City's road network. The Board supports efforts to ensure this connection is provided when future development south of Tuscany Subdivision occurs. The City Council will review the preliminary plat and variance requests, and approve, conditionally approve, or deny the proposed subdivision at its August 11, 2008, meeting.

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

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

RECOMMENDATION

The Planning Board on a 6-0 vote recommends approval of the two requested variances from Section 23.406 (B) (13), and Section 23-406 (A) (5), BMCC, conditional approval of the preliminary plat of Tuscany Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

- A. Preliminary Plat
- B. Site Photographs
- C. Findings of Fact
- D. Variance Review Criteria
- E. Mayor's Approval Letter
- F. Written Comments from Public

INTRODUCTION

On June 2, 2008, the developer, GSK Partners, LLC, applied for preliminary major plat approval for Tuscany Subdivision, which contains 49 single-family residential lots on approximately 115 acres of land. The property is zoned Residential-9600 (R-96). The subject property is located east of Ironwood Estates and north of Yellowstone Country Club Estates. The representing agent is Morrison-Maierle, Inc. The City Council preliminary approved the Tuscany Subdivision preliminary plat with conditions at its meeting on September 24, 2007. Since that time, the applicant has submitted this second preliminary plat application in conjunction with a legal settlement agreement between GSK Partners, LLC and the City of Billings. Two variances from the Subdivision Regulations have been requested. One is to permit curb-style sidewalks in lieu of boulevard-style sidewalks. The second is to allow no full, secondary access to the subdivision as required for all major subdivisions in the City.

PROCEDURAL HISTORY

- The Planning Board reviewed and made a recommendation on the Tuscany Subdivision on August 28, 2007 to the City Council.
- The City Council preliminary approved the Tuscany Subdivision preliminary plat with conditions at its meeting on September 24, 2007.
- The City Council and the applicant approved a legal settlement agreement in May 2008 that provided for the applicant to submit a second preliminary plat.
- On May 15, 2008, a pre-application meeting was conducted for the second preliminary plat application of Tuscany Subdivision.
- On June 2, 2008, the preliminary major plat application was submitted to the Planning Division.
- On June 19, 2008, the departmental review meeting for the preliminary plat was conducted.
- On July 8, 2008, the Planning Board conducted a plat review on the proposed major subdivision.
- On July 22, 2008, the Planning Board conducted a public hearing on the proposed major subdivision.
- On August 11, 2008, the preliminary plat will be reviewed and acted on by the City Council.

BACKGROUND

The proposed major subdivision creates 49 lots for single-family, residential development. The subject property is located east of Ironwood Estates and north of Yellowstone Country Club Estates.

General location: East of Ironwood Estates and north of Yellowstone Country Club Estates

Legal Description: Tract B, Certificate of Survey 3030, Tract 1,
2nd Amended

Subdivider/Owner: GSK Partner, LLC

Engineer and Surveyor:	Morrison-Maierle, Inc.
Existing Zoning:	Residential 9600
Existing land use:	Vacant Land
Proposed land use:	Large lot, single-family residences
Gross area:	115.75 acres
Net area:	55.88 acres
Proposed number of lots:	49
Lot size:	Max: 2.07 acres Min.: 0.64 acres
Parkland requirements:	3.23 acres of parkland required; 49.19 acres provided: 9.51 acres provided for public access via a public easement on private open space land, and 39.69 acres provided as private parkland for use by the subdivision residents.

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on departmental comments and public input using the subdivision review criteria. 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 final plat. (*Required by Section 23-410 of the City Subdivision Regulations and recommended by the Engineering Division*)

2. To minimize effects on local services, the applicant 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 post office. *(Required by Section 406.A.17. of the City Subdivision Regulations and recommended by the United States Postal Service)*
3. To minimize effects on public health and safety, allow for adequate emergency access to the site, and to mitigate the requirements of Section 23-406.A.5, BMCC which requires secondary access for major subdivisions, the following shall be required prior to final plat approval:

The following language shall be added to Section IV of the SIA:

“Emergency Access Road” The emergency access road described here shall be constructed prior to approval of any building permits for the Tuscany Subdivision. The emergency access road shall be designed to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. Gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read “EMERGENCY ACCESS ONLY” using black letters not less than 2 inches wide and 6 inches high on a white retroreflective background.
Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer’s Office.
The storm drainage design shall account for a 10 year storm event with no encroachment of the travel way.”

“Emergency Access Road Construction” The concrete path across the 20 foot park easement shall be built to the maximum width possible within the 20 foot wide easement and be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. The City Parks Department shall review and approve the emergency access road within the park corridor in cooperation with the Fire Department. The remainder of the emergency access road shall be to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities.

“The Emergency access road shall be assigned a name by the City Fire Marshal’s Office. The road shall be shown on the plat along with the name assigned to the road. This is for the sole purpose of ensuring the roads are entered into and reflected on the County GIS mapping system. The emergency access road will not have a conventional street sign identifying it by the assigned name. The name assigned to this emergency access road shall be Emergency Rd 1 Tuscany.

“Two (2) sets of final plans showing corrections/revisions after review and approval must be submitted to the City Fire Marshal. The City Fire Marshal will forward 1 set of plans to County GIS so that the emergency access road and road name are inputted into the GIS mapping system.”

As specified in Section IV of the SIA, all structures shall have fire sprinkler systems. Plans for the sprinkler requirements shall be reviewed by the Fire Department at the time of building permit.

Language in Section IV (A) shall be amended to read:

“All building permit application submittals for construction on any lot within the subdivision prior to completion of a second access for vehicular traffic to the subdivision and acceptance by the City of Billings shall require that all dwellings have internal fire sprinkler systems installed in accordance with NFPA 13-D.”

Language in Section IV (B) shall be amended to read:

“Upon completion of a second access for vehicular traffic to the subdivision and acceptance by the City of Billings, internal fire sprinkler systems shall not be required to be installed within structures on any lot.”

(Required by Section 23-413.C. of the City Subdivision Regulations and recommended by the Engineering and Planning Divisions and the Fire Department)

4. To comply with the definition of subdivision set forth by Article 23-200, BMCC, the exempt plat for the boundary line relocation of the approximately 56 acre property containing the site for the proposed water reservoir and proposed city park land shall be recorded prior to recording of the final plat *(Required by Article 23-200, BMCC)*
5. To ensure public access within the subdivision for use of specific Open Space areas #8 and #9, to provide access from east to west across the subdivision property for public park access, and to clarify the access and maintenance of public infrastructure and future trail facilities, an easement document specifying the parameters of the public access easement shall be provided and reviewed and approved by City Legal, Planning and Parks Departments prior to final plat approval. *(Recommended by the Planning Division, the Public Works Department and the Parks Department)*

6. To minimize the effects on local services, prior to final plat approval the subdivider shall amend the language in Section VII (B) (2) (b) and (c) of the SIA to state the following:

“The open spaces identified within the subdivision as O.S. #s 1-13 will be maintained and managed by a private homeowner’s association for the subdivision. Future trail improvements in O. S. #8 and #9 will be maintained through a Park Maintenance District (PMD) that will be created for the Tuscany Subdivision at the time the trail improvements are installed by the City. The homeowners association for the subdivision will manage all other maintenance or management of the open space areas #1-13 in the subdivision, including O. S. #8 and #9 as identified on the preliminary plat.

(Required by Article 23-1000, BMCC, recommended by Parks

Department and Planning Division)

7. To minimize effects on local services and notify future property owners of the status of Pomino Way within the Tuscany Subdivision, language shall be added to Section II of the SIA that states: “Pomino Way is a public street built within public right-of-way to the southern property line of the Tuscany Subdivision for future connectivity to other neighborhoods in the area. Property owners along Pomino Way should be aware that this street may be a through street in the future to neighborhoods to the south and may facilitate vehicle and pedestrian access in and out of the Tuscany Subdivision.” *Recommended by the Planning Board to notify future property owners of the potential for Pomino Way to be a through street in the subdivision*
8. 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.
9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

Pomino Way Future Connection: The Planning Board finds that the future connection of Pomino Way in the Tuscany Subdivision to the City’s road network is an essential vehicle and pedestrian connection in this area of Billings, and the Board supports efforts to ensure this connection is provided when future development south of Tuscany Subdivision occurs. The Planning Board offers this information as a

comment, not a condition, to the City Council to express the Board's view of the importance of this future road connection.

VARIANCES REQUESTED

Sidewalks: A variance to permit sidewalks on one side of the internal subdivision streets, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets. The subdivider is requesting a hardship for the sidewalks based on the varied terrain of the subject property. The applicant is proposing 5-foot wide boulevard walks along one side of the internal subdivision streets, except in areas where there are no lots adjacent to the sidewalk. In these areas, the subdivider is proposing 5-foot wide curb walks. Staff finds that this variance is acceptable as there is varied terrain throughout the subdivision that makes sidewalk construction challenging. The subdivider also is proposing a public access easement across the Open Space #8 and #9 areas designated on the preliminary plat along the southern portion of the property. This access easement will provide a public park access across the property to the adjacent parkland to the east and will provide a connection to Ironwood Estates to the west via an existing 20-foot-wide park corridor at the southeast corner of Ironwood Estates off of Autumnwood Drive.

Full, Secondary Access: A variance to permit no full secondary access, where Section 23-406 (A) (5), BMCC, specifically addresses the requirement for secondary access to major subdivisions. The applicant is requesting a variance due to the rimrocks that border the property on the north and east, and the limitations of passing through private property on the west and south. The applicant has pursued a second access to the west through Ironwood Estates Subdivision and has met with physical and legal barriers. The applicant also has pursued secondary access to the south to a road in the Yellowstone Country Club and has not been able to secure access in that area. Staff has found that this variance is acceptable since an emergency access is being provided to this subdivision, the subdivision is constructing Pomino Way to the south property line of the subdivision to facilitate full future secondary access when the property to the south develops, and the subdivision is proposing fire sprinklers in all residences within the subdivision.

Further justification of these variances is included under Tab 9 of the application submittal binder and the variance criteria and staff review are further discussed in Attachment B of this staff report.

STAKEHOLDERS

At its July 22, 2008 meeting, the Planning Board held a public hearing to gather public input on the proposal. The Planning Board first heard a presentation from Planning Division Manager Wyeth Friday on the application and the staff recommendation. After the presentation, Board Vice President Bill Iverson called for questions and discussion from the members of the Board. Mr. Iverson asked for clarification on the access for the future park land dedication to the east of the proposed subdivision. Mr. Friday said that the existing park corridor along Autumnwood Drive in Ironwood Estates Subdivision, Open Space areas #8 and #9 in the Tuscany Subdivision, the public road right-of-way

within the Tuscany Subdivision, and the State land to the east could all provide access to the park property.

Planning Board Member Fred Rogers asked whether the requirement for sprinkler systems in the homes in the subdivision would be lifted if a full, secondary access was provided. Mr. Friday said that the language in the SIA specifies that if a full, secondary access is provided then the requirement for residential sprinklers will no longer apply.

Planning Board Member Clinton McFarland asked if the applicant has worked with ConocoPhillips on the maintenance of the high pressure pipeline that traverses the property and if consideration has been made for emergency access along the pipeline corridor going northeast out of the property. Mr. Friday said the applicant had worked with ConocoPhillips on an easement for the pipeline and requirements for building construction near the pipeline. He said there had not been discussion of the use of the pipeline easement for a secondary or emergency access.

Planning Board Member Fred Rogers stated that he was concerned about the comments from Montana Fish, Wildlife and Parks that development within $\frac{1}{4}$ mile of state lands limits hunting on those lands. He said that this essentially condemns property without compensation and that he finds this bothersome.

Planning Board Member Donna Forbes noted the concern expressed in the written comment from Pam Christianson (**See Attachment F**) regarding who would be responsible for paying for the improvements to 62nd Street West for emergency access. Mr. Friday said that under current plans to build 62nd Street West for emergency access either by the City or the developer of Ironwood Estates Subdivision, property owners in the area would not be assessed. He said that he did not know how improvements would be funded if 62nd Street West was developed as a full access in the future. Ms. Forbes commented that Pomino Way could be an important secondary access if it is improved in the future. Mr. Friday said that the connection to Pomino Way through the Yellowstone County Club Estates property will be a discussion that will move forward when the property comes forward for development.

Mr. Iverson opened the public hearing for comment. Certified letters were sent to adjacent property owners regarding the public hearing and a legal notice also advertised the public hearing. Six members of the public, including the applicant and his agent, spoke during the public hearing.

Gregory Wing, who lives in Ironwood Estates Subdivision, distributed an aerial photo map of the subject property to the Planning Board Members. He commended the efforts of City staff in reviewing the application. He said that the proposed development is up to standard and is a nice development. Mr. Wing stated that the section of Canyonwoods Drive that will be used as the primary access for the subdivision is narrow, with 28 feet of paved surface. He said that there is a lot of residential parking that takes place along this road and that this creates a one lane road. He asked if the two accesses, one full access and one emergency access, will provide enough for an emergency situation. Mr. Wing

stated that the real solution is to cut Pomino Way through as a second, full access. He stated that he is concerned that this subdivision as proposed is compromising on safety.

Brad Kimble, who lives in Ironwood Estates Subdivision, asked if the emergency access is going to be gated or allow some access. Mr. Friday stated that it will be gated at both ends and will be accessed only by bicyclists and pedestrians, except in emergency situations or to maintain the sewer line.

Shane Gundlach, the applicant, pointed out three points of access to the open space property to the east of the subdivision. He said the trail access through Ironwood Estates, and two accesses via the road right of way in the Tuscany Subdivision would all provide public access to the park area. Mr. Gundlach also said that ConocoPhillips will not allow a public access road to be built along its pipeline in the area and so this was not an option that was considered for this subdivision.

Steven VanDelinder, who lives in Ironwood Estates Subdivision, said that he is in favor of this development. He said that the access point on Pomino Way is critical and recommended a resolution be passed that stipulated if the property to the south is developed it must be opened. He asked that the City look into its eminent domain authority to make the Pomino Way connection through the Yellowstone Country Club Estates property.

Pam Purcell, who lives in Ironwood Estates Subdivision, said that the subject property will be developed at some point, and that she is in favor of this development as a creative solution.

Mr. Iverson closed the public hearing and asked Morrison-Maierle Engineer Kevin Jacobsen, the applicant's agent, if Canyonwoods Drive is wide enough to allow for traffic. Mr. Jacobsen said that it was and that it has 32 feet of drivable surface including two-foot-wide concrete aprons on each side. Planning Board Member Doug Clark asked for a response to the email comments submitted by Pam Christianson (**See Attachment F**). Mr. Jacobsen said that the comments reference 62nd Street West as an emergency access to the subdivision, and the 62nd Street West access is technically "off the table" in relation to access for the Tuscany Subdivision. Mr. Friday concurred and said that this is not directly related to this subdivision. As to the requirement for secondary access and regulations that were mentioned in the email comments, Mr. Friday said that overall the variance for the secondary access was reviewed and weighed by staff against the mitigation measures that might mitigate no full, secondary access. He said the provision of an emergency access and residential sprinklers were significant mitigation measures to support the variance from full, secondary access.

Ms. Forbes asked Mr. Friday about the Fire Department's review and discussion of the application and if there are any other items of concern that the Board should be aware of. Mr. Friday said that initially the variance requests included a variance for full secondary and emergency access. He said that following discussions between the applicant and staff, the emergency access option was identified and the Fire Department was able to

consider some mitigation options for the full, secondary access variance request. Ms. Forbes asked about whether Pomino Way could be used as a full access in the future. Mr. Friday said that the Fire Department and the applicant had reviewed the property where the road would connect and found that while there is some topography that makes a through road challenging, the primary obstacle is the private property ownership. Ms. Forbes and Board Member Alex Tommerup said that the Pomino Way discussion needs to move forward as this is an important access. Mr. Tommerup asked what triggers the access. Mr. Friday said that an additional condition to require the adjacent property owners to provide access is probably not possible. However, he said that if the property comes in for review, connectively will be discussed and will be a review issue.

Planning Board Member Dennis Cook asked if the Yellowstone Country Club Estates property owners have been approach for an access connecting to Pomino Way. Mr. Gundlach said that he has met with the property owners on three occasions and all of the proposals for access have not been accepted. Mr. Gundlach said he is still negotiating and further along in discussions than they have been before. Mr. Clark asked if it would be possible to make a notation in the SIA or conditions stressing the importance of the access on Pomino Way. Mr. Friday concurred and said that the language could be added. The Board agreed to add language to the SIA informing future property owners that Pomino Way is expected to be a through street in the future (**See Condition 7**). The Board also agreed to stress to the City Council in this report the importance of this future connection. Mr. Clark also suggested that this road connection might be added to the Transportation Plan Functional Classification Map as a future important connection.

The Board closed its discussion and voted 6-0 to recommend approval of the two requested variances and conditional approval of the Tuscany Subdivision Preliminary Plat.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the Transportation Plan, the Heritage Trail Plan, the West Billings Plan, and the Northwest Shiloh Area Plan is discussed within the Findings of Fact in Attachment C.

RECOMMENDATION

The Planning Board on a 6-0 vote recommends approval of the two requested variances from Section 23.406 (B) (13), and Section 23-406 (A) (5), BMCC, conditional approval of the preliminary plat of Tuscany Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

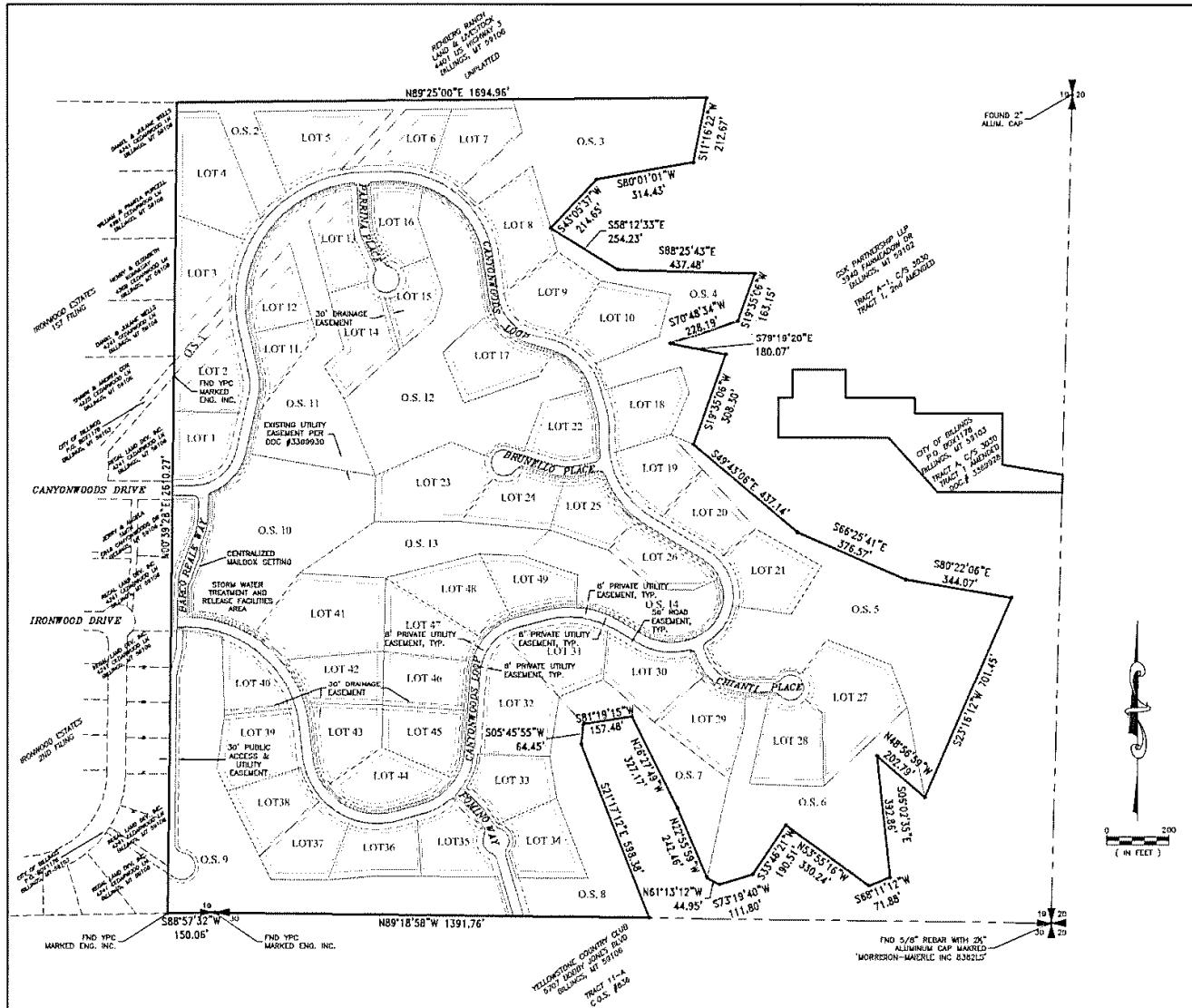
ATTACHMENTS

- A. Preliminary Plat
- B. Site Photographs
- C. Findings of Fact
- D. Variance Review Criteria

- E. Mayor's Approval Letter
- F. Written Comments from Public

ATTACHMENT A

Preliminary Plat of Tuscany Subdivision



ATTACHMENT B
Site Photographs



Figure 1: View east from the terminus of Ironwood Drive toward the subject property.



Figure 2: View east from Canyonwoods Drive toward the subject property.



Figure 3: View from Autumnwood Drive in Ironwood Subdivision east toward the existing park corridor and proposed emergency access route to the subject property.



Figure 4: View north from Tommy Armous Circle in Yellowstone Country Club Estates of the subject property. Homes along the eastern edge of Ironwood Estates Subdivision are visible in the left portion of the photograph.

ATTACHMENT C

Findings of Fact

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

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

1. Effect on agriculture and agricultural water user facilities

The land to be subdivided is vacant and has not been used for agricultural crop production. No irrigation ditches, laterals, or irrigation easements exist on the property or are adjacent to the property. There should be no effect on agriculture or agricultural water user facilities.

2. Effect on local services

a. **Utilities** – Water and sewer to the subject property will be through public main lines within the internal subdivision streets from the existing lines within Canyonwoods Drive and Autumnwood Drive. The location and sizing of these lines will be determined by the Public Utilities Department, as specified within the SIA. A 30-foot-wide public access and utility easement will be provided from the intersection of Barco Reale Way and Canyonwoods Loop in the subdivision south along the west property line of the subdivision to the existing 20-foot-wide park corridor located in Ironwood Estates Subdivision that connects to Autumnwood Drive to provide for a sewer main to loop through the subdivision. The public access and utility easement will be constructed to allow City service vehicles to access the sewer line for its entire length. This access easement also will be constructed to serve as an emergency access to the Tuscany Subdivision as specified in Section 23-413 (C) of the City Subdivision Regulations (See Section 2(e) of this report).

MDU will provide gas services, and Northwestern Energy will provide electric services to the subdivision. Easements have been shown on the face of the preliminary plat that are acceptable to these utility providers.

b. **Stormwater** – There are no existing detention or retention facilities in place to provide stormwater drainage for the proposed subdivision. Stormwater drainage control will be provided by a series of natural and constructed swales, culverts and a detention/retention facility in the west central portion of the subdivision on Open Space #10. Since a complete stormwater master plan for this area does not exist, the subdivision may be required to participate in the costs of a future area wide stormwater master plan, as specified within the SIA. Concrete culverts will be

installed where necessary under the internal subdivision streets to allow passage of stormwater runoff. All drainage improvements and discharge flows shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Division.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal of solid waste in the subdivision. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision will be through Ironwood Estates Subdivision via Canyonwoods Drive that intersects the subdivision property on the west side near the middle of the property. Canyonwoods Drive is a residential street built with a 28-foot asphalt driving surface and 2' concrete ribbons on each edge for a total surface of 32 feet. There is no curb and gutter installed. The Traffic Accessibility Study (TAS) provided with the preliminary plat application indicates an estimated 539 average weekday trips will be generated from the Tuscany Subdivision and use Canyonwoods Drive to enter and exit the subdivision. Traffic must travel about one block west on Canyonwoods, turn left on Cedarwood Lane for about one block and then turn right on Ironwood Drive to access Molt Road. The internal subdivision streets: Canyonwoods Loop, Barco Reale Way, Parrina Place, Brunello Place, Chianti Place and Pomino Way will be constructed to 34-feet back of curb to back of curb pavement widths within 56-foot wide easements. Barco Reale Way will have a wider right-of-way and pavement width in one area to accommodate a central mail delivery facility and pull out for vehicles.

These streets within the subdivision will be public. Boulevard sidewalks will be installed on one side of the internal streets where streets front lots and curbwalls will be installed on one side of the street where there is open space and no lots. The subdivider is requesting a variance from Section 23-406.B.13, BMCC, which requires boulevard sidewalks on both sides of internal streets within a subdivision based on the challenging terrain within the subdivision. Staff is in support of this variance as discussed on pages 1 and 2 of this report and in Attachment A.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1501 54th Street West (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR). The Fire Department did express concerns regarding the lack of full secondary access for this subdivision. To mitigate the public health and safety concerns created by not having a full secondary access to the subdivision for vehicular and pedestrian traffic, the subdivision will have an emergency access road built from the intersection of Barco Reale Way and Canyonwoods Loop south to the intersection of a 20-foot-wide park corridor in Ironwood Estates Subdivision and through the 20-foot-wide park corridor to the intersection of Autumnwood Drive in the Ironwood Estates Subdivision. In addition, the residential structures built on all lots within the Tuscany Subdivision will have fire sprinkler systems installed and approved by the City of Billings or a third party approved by the City of Billings. The Fire Department finds these emergency access

and sprinkler requirements acceptable to mitigate impacts to the public health and safety as long as the additions to the SIA as described here and within the proposed conditions of approval are made (**See Condition #3**).

The following language shall be added to Section IV of the SIA:

“Emergency Access Road” The emergency access road shall be designed to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. Gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read “EMERGENCY ACCESS ONLY” using black letters not less than 2 inches wide and 6 inches high on a white retroreflective background.

Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer’s Office.
The storm drainage design shall account for a 10 year storm event with no encroachment of the travel way.”

“Emergency Access Road Construction” The concrete path across the 20 foot park easement shall be built to the maximum width possible within the 20 foot wide easement and be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. The remainder of the emergency access road shall be to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities.

“The Emergency access road shall be assigned a name by the City Fire Marshal’s Office. The road shall be shown on the plat along with the name assigned to the road. This is for the sole purpose of ensuring the roads are entered into and reflected on the County GIS mapping system. The emergency access road will not have a conventional street sign identifying it by the assigned name. The name assigned to this emergency access road shall be Emergency Rd 1 Tuscany.

“Two (2) sets of final plans showing corrections/revisions after review and approval must be submitted to the City Fire Marshal. The City Fire Marshal will forward 1 set of plans to County GIS so that the emergency access road and road name are inputted into the GIS mapping system.”

As specified in Section IV of the SIA, all structures shall have fire sprinkler systems. Plans for the sprinkler requirements shall be reviewed by the Fire Department at the time of building permit.

Language in Section IV (A) shall be amended to read:

“All building permit application submittals for construction on any lot within the subdivision prior to completion of a second access for vehicular traffic to the subdivision and acceptance by the City of Billings shall require that all dwellings have internal fire sprinkler systems installed in accordance with NFPA 13-D.”

Language in Section IV (B) shall be amended to read:

“Upon completion of a second access for vehicular traffic to the subdivision and acceptance by the City of Billings, internal fire sprinkler systems shall not be required to be installed within structures on any lot.”

The Police Department has expressed concerns regarding the lack of radio communication reception in this area of the City and that there may be disruption in reception of radio calls in this area. This has been a concern since the first filing of Ironwood was platted and remains a concern with further subdivision. The only remedy is to install another transmitter tower within this area. The future site of the new City water reservoir east of this proposed subdivision may be a location for a future relay tower for radio public safety communication. A radio relay tower is not a requirement of this subdivision, but may be required in the future. Construction could utilize a Special Improvement District (SID) in which property owners in this area of Billings would contribute to the construction of the tower. A Waiver of Right to Protest has been included with this subdivision for future creation of SIDs.

- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District regarding this specific subdivision. However, the subdivision was submitted for review by the local schools that will be affected by this subdivision. Since all schools in the service area of the subdivision have reached capacity, District 2 staff has specified that students from the proposed subdivision will attend Boulder Elementary, Lewis and Clark Middle School, and Senior High School.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 3.23 acres of dedicated parkland. The subdivider is proposing a land dedication of 59.87 acres in the form of private open space areas throughout the subdivision and a blanket public access easement located on Open Spaces #8 and #9 located in the southwestern area of the property. This public access easement will facilitate public access from the park corridor in Ironwood Estates Subdivision from Autumnwood Drive across the southern portion of the Tuscany Subdivision to the rim rock area east of the subdivision and to a potential City park area that includes the City water reservoir site (**See Condition #5**). This is a significant east-west pedestrian connection in this area of Billings and meets a connectivity goal of the Heritage Trail Plan. As specified within the SIA, the open spaces will be maintained by a private Homeowner’s Association. Future trail improvements in Open Spaces #8 and #9 will be maintained through a Park Maintenance District (PMD) that will be created at the time the trail improvements are installed. Language in Section VII (B) (2) (b) and (c) will be amended to clarify that only maintenance of the trail improvements will be addressed through a PMD (**See Condition #6**). The Tuscany Homeowners Association

will manage all other maintenance of the open space areas in the subdivision, including Open Spaces #8 and #9.

h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access (**See Condition #2**). The proposed location of the mail boxes is on Barco Reale Way located south of the entrance to the subdivision. This location shall be reviewed and approved by the post office. The applicant is proposing additional right-of-way and additional pavement width on a portion of Barco Reale Way to accommodate the centralized delivery area and has specified this in Section III (a) and (b) of the SIA.

3. Effect on the natural environment

A geotechnical report was submitted with this application and indicates that there are variable soil conditions throughout the subdivision with a potential for hydro-collapsible soils. As specified by the Building Official's review of the submitted geotechnical report, a final design geotechnical investigation will be required when final building designs are available. Language has been added to Section II (E) and Section VIII of the SIA to describe the soil conditions and potential additional geotechnical investigation that may be required prior to construction in the subdivision.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. MFWP does not provide direct assistance unless there is damage to commercial agricultural products in non-residential areas, or a threat to public health and safety such as in the case of nuisance mountain lions. MFWP has provided the following additional information regarding the location of the subdivision and its impact on public hunting:

The proposed subdivision adjoins a parcel of State School Trust land that may be used by the hunting public. Since Montana Department of Natural Resources and Conservation rules prohibit the discharge of firearms within $\frac{1}{4}$ mile of an occupied dwelling, a subdivision in this location would significantly reduce hunting opportunity on the adjacent state land. This would reduce MFWP's ability to manage deer/antelope numbers in this area. The MFWP is recommending that no homes be built within $\frac{1}{4}$ mile of the state land boundary. Initial analysis of this separation request indicates that potentially three lots would be affected by this separation recommendation and not be able to be built on along the eastern edge of the proposed subdivision. Staff is not recommending this separation request as a condition of approval and recommends the applicant discuss this issue further with MFWP to see if any mitigation is possible or needed for the three affected lots on the subdivision.

5. Effect on the public health, safety and welfare

This subdivision is located in an area that has significant topographic relief that makes construction of structures, roads, and sidewalks challenging. The property backs up to steep rim rocks on the north and east that have the potential for rock fall and rock slide hazards. The subdivision is proposed to utilize one full access for vehicular traffic and one emergency access for only emergency situations. Fire sprinklers are proposed for residential construction in the subdivision to partially mitigate the impacts to public health and safety from the subdivision.

The following issues have been addressed within the Conditions that Run with the Land portion of the SIA to warn future lot owners of hazards, conditions and building limitations that exist on the property:

- Lot owners should be aware that there is a fully operational petroleum products pipeline located within this subdivision. At times it may be necessary for the pipeline company to inspect, test, and maintain this pipeline. These activities could include excavation, repair, and replacement of the pipeline.
- Lot owners should be aware that the United States Postal Service mail delivery will be made only to a centralized delivery location. The location of the centralized mailbox setting is shown on the face of the plat.
- Lot owners should be aware that this subdivision is being built in close proximity to wildlife habitat and it is likely that wildlife indigenous to the prairie and rimrock environments may be found on the property. This wildlife may impact the developed property and interface with domestic animals, residents, and visitors.
- Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction. According to a geotechnical report prepared by Rimrock Engineering, Inc. based on findings from on-site borings, there exists the potential for hydro-collapsible soils within the subdivision. Assessment and mitigation of these conditions shall be the responsibility of the lot owner. The City may require the owner of each lot to provide a geotechnical investigation and report with the building permit submittal prior to construction.
- Lot owners should be aware that there exists a potential for rock falls or slides within the subdivision due to the proximity of the rimrocks.
- Lot owners should be advised that water distribution system pressure may fall below the generally accepted minimum pressure at home fixtures on some lots within the subdivision. Assessment and mitigation, if required, of these conditions, including potential installation of booster pumping units on individual homes, shall be the responsibility of the lot owner.

- Lot owners should be advised that sanitary sewer service may require the installation of grinder pump units with individual homes. The installation and maintenance of the same shall be the responsibility of the lot owner.
- Lot owners should be advised that Open Space Numbers 8 and 9 (O.S. 8 and 9) are encumbered by a blanket public access easement that may be utilized by members of the public. City of Billings employees or their authorized agents may access the easement for construction, installation, inspection, maintenance, repair, replacement and removal of all necessary public facilities and appurtenances.

The Planning Board at its meeting on July 22 agreed to add the following language to Section II of the SIA to clarify the future potential connection of Pomino Way as a thru street so that future property owners on Pomino Way are aware of this possibility (See Condition #7).

- Pomino Way is a public street built within public right-of-way to the southern property line of the Tuscany Subdivision for future connectivity to other neighborhoods in the area. Property owners along Pomino Way should be aware that this street may be a through street in the future to neighborhoods to the south and may facilitate vehicle and pedestrian access in and out of the Tuscany Subdivision.” *Recommended by the Planning Board to notify future property owners of the potential for Pomino Way to be a through street in the subdivision*

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

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

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

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- **Goal: Accessible public lands (Open Space and Recreation Element Goal, Page 9).**

The proposed subdivision would provide a public access easement across the southern portion of the property to connect an existing park corridor to the west in the Ironwood Estates Subdivision to proposed park land and state land to the east along the rims and on top of the rims.

- **Goal: Protect and increase the availability of public access to natural areas and trails near the rims (Open Space and Recreation Element Goal, Page 9).**

The proposed subdivision would provide a public access easement across the southern portion of the property to connect an existing park corridor to the west in the Ironwood Estates Subdivision to proposed park land and state land to the east along the rims and on top of the rims.

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

The subject property is annexed and is adjacent to subdivisions in the City limits located to the south and west.

The subdivision is inconsistent with the following goal of the Growth Policy:

- **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

The proposed subdivision is currently about four miles from community services and requires vehicular transportation for all service needs for residents as well as a significant travel time for all public services to the subdivision, including public safety, solid waste and utility services.

- **Goal: Unobstructed views of the rimrocks surrounding the City of Billings (Aesthetics Element, Page 7).**

The proposed subdivision will place homes right up against the rimrocks in the western part of Billings and detract from the uninterrupted views of the rimrocks in this area of the City.

- **Goal: Increased circulation connections for improved traffic flow (Transportation Element Goal, Page 10).**

The subdivision is proposed with one full vehicular access. While a second access may be possible in the future, the subdivision as proposed does not provide connectivity between neighborhoods for improved traffic flow.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision only partially adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan. The Guiding Principles in Section 2 of the Billings Urban Area 2005 Transportation Plan reference the Growth Policy issues and goals referenced above and encourage connections between neighborhoods and more efficient pedestrian and vehicle traffic flows throughout the City. While a future connection to the south via Pomino Way would address secondary access and traffic connectivity and efficient traffic flow, the full second access variance request submitted with this subdivision application conflicts with the 2005 Transportation Plan Update.

3. Heritage Trail Plan

The Heritage Trail Plan identifies a trail corridor within this subdivision that will eventually connect a trail from the park corridor in Ironwood Estates Subdivision on the west to the rimrocks to the east. The subdivider is proposing a blanket public access easement on Open Space #8 and #9 located along the southern portion of the site that will provide an east-west link from the base of the Rimrocks to the Cove Creek drainage located southeast of Ironwood Subdivision. The multi-use trail will be located within the Open Space #8 and #9 and will be constructed by the City of Billings. Maintenance of the trail improvements will be managed by the City of Billings and may include a PMD. Condition #5 requires that an easement document be provided for the public easement within Open Spaces #8 and #9 (**See Conditions #5 and #6**).

4. West Billings Plan

The proposed subdivision satisfies the following policy of the West Billings Plan:

- Development in the West End planning area shall provide for a variety of residential types and densities.

The proposed subdivision is in conflict with the following goals of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers and medical facilities.

5. Northwest Shiloh Area Plan

The proposed subdivision complies with the following goals of the Northwest Shiloh Area Plan:

- Provide more housing and business choices within each neighborhood.
- Provide a multi-purpose trail network integrated into the community infrastructure that emphasizes safety, continuity, environmental preservation, resource conservation and cost effectiveness.

The proposed subdivision is in conflict with the following goals of the Northwest Shiloh Area Plan:

- Reduce commuting and the number and length of daily vehicle trips.
- Plan for the cost-efficient extension and delivery of public services.

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 will satisfy the requirements of the Montana Subdivision and Platting Act and the review and approval procedures set forth in the local and state subdivision regulations. The proposed conditions of approval help to mitigate the negative impacts of the subdivision and also help bring the subdivision into compliance with state and local regulations.

There is an exempt plat in process for the subject property for a minor boundary line adjustment. This boundary line adjustment would expand existing Tract A of Certificate of Survey 3030, Tract 1, Amended (the city's water reservoir site) to include the entire eastern portion of the subject property. This would expand the city's water reservoir site to include the eastern portion for the reservoir site and future parkland. Until the exempt plat is recorded, the legal description on the submitted plat does not exist. In order to comply with the definition of subdivision set forth by Article 23-200, BMCC, this remainder portion of the property would be required to be depicted as a lot within the subdivision without the minor boundary line adjustment. Therefore, Condition #4, requires that the exempt plat either be recorded prior to recording of the final plat or the subdivision shall include this remainder portion of the property as a lot. Including this portion as a lot is a substantial change and would require that the subdivision be resubmitted as a new major plat application. The applicant has indicated that the exempt plat will be recorded prior to recording of the Tuscany Subdivision final plat.

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

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

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

The subject property shall conform to the requirements set forth by Article 27-300 of the Unified Zoning Regulations for the R-96 zoning district.

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

The City Engineering Department 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)

Legal and physical access to the proposed subdivision will be via Canyonwoods Drive that intersects the western edge of the property from Ironwood Estates Subdivision. Canyonwoods Drive is a public residential street and all of the proposed internal residential streets in the subdivision are to be public streets built to City standards.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Tuscany Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and conflicts with several goals of the 2003 Growth Policy. The subdivision partially conflicts with the Transportation Plan due to lack of connectivity provided by only one full access. The subdivision does comply with the Heritage Trail Plan by providing a park corridor connection through the subdivision to facilitate access between existing residential development and park areas west of the subdivision and the rimrocks, future park land and public land to the east of the subdivision.
- The proposed subdivision, with the required conditions, complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, August 11, 2008.

Ron Tussing, Mayor

ATTACHMENT D
Variance Review Criteria

Section 23-1101 of the City Subdivision Regulations states that the City Council may grant reasonable variances from the design and improvement standards of these regulations. In order to do so, the applicant must provide a written statement demonstrating that the request satisfies the following criteria. The applicant has provided written information in Tab 9 of the preliminary plat application packet to address the criteria listed below.

Variance Review Criteria

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.
2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.
3. The variance will not result in an increase in tax payer burden.
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations.
5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

ATTACHMENT D (Continued): Staff Variance Analysis

Sidewalks: A variance to permit sidewalks on one side of the internal subdivision streets, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets. The subdivider is requesting a hardship for the sidewalks based on the varied terrain of the subject property, as well as the fact that the subdivision will be a private gated community. The applicant is proposing 5-foot wide boulevard walks along one side of the internal subdivision streets, except in areas where there are no lots adjacent to the sidewalk. In these areas, the subdivider is proposing 5-foot wide curbwalks. Staff finds that this variance is acceptable as there is varied terrain throughout the subdivision that makes sidewalk construction challenging. The subdivider also is proposing a public access easement across the Open Space #8 and #9 areas designated on the preliminary plat along the southern portion of the property. This access easement will provide a public park access across the property to the adjacent parkland to the east and will provide a connection to Ironwood Estates to the west via an existing 20-foot-wide park corridor at the southeast corner of Ironwood Estates off of Autumn Wood Drive.

Secondary Access: A variance to permit no full secondary access, where Section 23-406 (A) (5), BMCC, specifically addresses the requirement for secondary access to major subdivisions. The applicant is requesting a variance due to the rimrocks that border the property on the north and east, and the limitations of passing through private property on the west and south.

The applicant's findings for the variance request for secondary access states that approval of the variance will not place the subdivision in nonconformance with any adopted zoning regulations or the Growth Policy. The applicant has based part of this analysis on the future potential for a connection out of the subdivision to the south through Yellowstone Country Club Estates. The TAS provided by the applicant estimates a total of 539 average weekday vehicle trips to and from the subdivision. All of this traffic is proposed to access the subdivision at one point via Canyonwoods Drive, a residential street.

Planning staff has reviewed the access variance request based on the City Subdivision Regulations, Growth Policy, and Transportation Plan. Staff also has specifically reviewed the variance criteria within the Subdivision Regulations, including evaluation of whether granting the variance would be detrimental to the public health, safety or general welfare, or injurious to other adjoining properties. Staff also has considered the applicant's proposed future access to the south via Pomino Way and across the Yellowstone Country Club Estates property, with road improvements stubbed to the property line of Tuscany Subdivision. Planning staff has found that two of the Transportation Issues and the associated goals in the Growth Policy specifically discuss the need for connectivity between different parts of the City and between neighborhoods for more efficient traffic flow, improved access and improved public safety. Issue #5 and Issue #10 as well as the associated goals on page 10 of the Growth Policy discuss these goals directly. The Guiding Principles in Section 2 of the Billings Urban Area 2005 Transportation Plan also reference the Growth Policy issues and goals referenced above and encourage connections between neighborhoods and more efficient pedestrian and vehicle traffic flows throughout the City.

The secondary access variance requests conflicts with the Growth Policy and the Transportation Plan.

Planning staff has received comments from the Fire Department and Engineering Division on this variance request. The applicant is proposing an emergency access built to emergency access standards. Staff also is aware of the topographic limitations to the east and north of the property with steep rimrocks and deep draws. Staff is supportive of the variance for full secondary access based on the construction of an emergency access to serve the subdivision, the installation of sprinkler systems in all residential structures built in the subdivision until such time that a full secondary access is built, and the construction of Pomino Way to the south property line of the subdivision to facilitate a future connection potential for this subdivision and to provide better connectivity to this area of Billings.

ATTACHMENT E
Mayor's Approval Letter

August 11, 2008

GSK Partners, LLC
2515 Park Ridge Lane
Billings, MT 59106

Dear Applicant:

On August 11, 2008, the Billings City Council conditionally approved the preliminary plat of Tuscany Subdivision and approved the two variances. The conditions of approval and variances are as follows:

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 final plat. (*Required by Section 23-410 of the City Subdivision Regulations and recommended by the Engineering Division*)
2. To minimize effects on local services, the applicant 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 post office. (*Required by Section 406.A.17. of the City Subdivision Regulations and recommended by the United States Postal Service*)
3. To minimize effects on public health and safety, allow for adequate emergency access to the site, and to mitigate the requirements of Section 23-406.A.5, BMCC which requires secondary access for major subdivisions, the following shall be required prior to final plat approval:

The following language shall be added to Section IV of the SIA:

“Emergency Access Road” The emergency access road described here shall be constructed prior to approval of any building permits for the Tuscany Subdivision. The emergency access road shall be designed to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. Gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read “EMERGENCY ACCESS ONLY” using black letters not less than 2 inches wide and 6 inches high on a white retroreflective background.

Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer's Office. The storm drainage design shall account for a 10 year storm event with no encroachment of the travel way."

"Emergency Access Road Construction The concrete path across the 20 foot park easement shall be built to the maximum width possible within the 20 foot wide easement and be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. The City Parks Department shall review and approve the emergency access road within the park corridor in cooperation with the Fire Department. The remainder of the emergency access road shall be to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities.

"The Emergency access road shall be assigned a name by the City Fire Marshal's Office. The road shall be shown on the plat along with the name assigned to the road. This is for the sole purpose of ensuring the roads are entered into and reflected on the County GIS mapping system. The emergency access road will not have a conventional street sign identifying it by the assigned name. The name assigned to this emergency access road shall be Emergency Rd 1 Tuscany.

"Two (2) sets of final plans showing corrections/revisions after review and approval must be submitted to the City Fire Marshal. The City Fire Marshal will forward 1 set of plans to County GIS so that the emergency access road and road name are inputted into the GIS mapping system."

As specified in Section IV of the SIA, all structures shall have fire sprinkler systems. Plans for the sprinkler requirements shall be reviewed by the Fire Department at the time of building permit.

Language in Section IV (A) shall be amended to read:

"All building permit application submittals for construction on any lot within the subdivision prior to completion of a second access for vehicular traffic to the subdivision and acceptance by the City of Billings shall require that all dwellings have internal fire sprinkler systems installed in accordance with NFPA 13-D."

Language in Section IV (B) shall be amended to read:

"Upon completion of a second access for vehicular traffic to the subdivision and acceptance by the City of Billings, internal fire sprinkler systems shall not be required to be installed within structures on any lot."

(Required by Section 23-413.C. of the City Subdivision Regulations and recommended by the Engineering and Planning Divisions and the Fire Department)

4. To comply with the definition of subdivision set forth by Article 23-200, BMCC, the exempt plat for the boundary line relocation of the approximately 56 acre property containing the site for the proposed water reservoir and proposed city park land shall be recorded prior to recording of the final plat *(Required by Article 23-200, BMCC)*
5. To ensure public access within the subdivision for use of specific Open Space areas #8 and #9, to provide access from east to west across the subdivision property for public park access, and to clarify the access and maintenance of public infrastructure and future trail facilities, an easement document specifying the parameters of the public access easement shall be provided and reviewed and approved by City Legal, Planning and Parks Departments prior to final plat approval. *(Recommended by the Planning Division, the Public Works Department and the Parks Department)*
6. To minimize the effects on local services, prior to final plat approval the subdivider shall amend the language in Section VII (B) (2) (b) and (c) of the SIA to state the following:

“The open spaces identified within the subdivision as O.S. #s 1-13 will be maintained and managed by a private homeowner’s association for the subdivision. Future trail improvements in O. S. #8 and #9 will be maintained through a Park Maintenance District (PMD) that will be created for the Tuscany Subdivision at the time the trail improvements are installed by the City. The homeowners association for the subdivision will manage all other maintenance or management of the open space areas #1-13 in the subdivision, including O. S. #8 and #9 as identified on the preliminary plat.

(Required by Article 23-1000, BMCC, recommended by Parks

Department and Planning Division)

7. 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.

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

VARIANCES APPROVED

Sidewalks: A variance to permit sidewalks on one side of the internal subdivision streets, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets. The subdivider plans 5-foot wide boulevard walks along one side of the internal subdivision streets, except in areas where there are no lots adjacent to the sidewalk. In these areas, the subdivider is planning 5-foot wide curb walks.

Full, Secondary Access: A variance to permit no full secondary access, where Section 23-406 (A) (5), BMCC, specifically addresses the requirement for secondary access to major subdivisions. To mitigate the impacts of no full, secondary access, the subdivider is providing an emergency access to this subdivision, the subdivider is constructing Pomino Way to the south property line of the subdivision to facilitate full future secondary access when the property to the south develops, and the subdivider is planning fire sprinklers in all residences in the subdivision.

Should you have questions please contact Wyeth Friday with the Planning Division at 247-8660 or by email at fridayw@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Kevin Jacobsen, Morrison-Maierle, Inc.

ATTACHMENT F
Public Written Comments

Page 1 of 2

From: Deines, Tammy
Sent: Monday, July 21, 2008 8:19 AM
To: Friday, Wyeth
Subject: FW: Tuscany Subdivision Citizen Comments

From: Pam Christianson [mailto:mtmnm@live.com]
Sent: Sunday, July 20, 2008 2:14 PM
To: Deines, Tammy
Subject: Re: Tuscany Subdivision

To Whom It May Concern:

Thank you for the opportunity to share my thoughts/concerns re: the Tuscany Subdivision without being present. Previously made plans to be out-of-town prevent me from being at the meeting. Please accept this statement in regards to the proposed Tuscany subdivision and I ask that they be presented at this week's city/county planning meeting.

I have two major concerns re: the proposed Tuscany Subdivision.

1. This concern centers around the precedence that the city/county will be setting should it allow the development to continue without a second access directly effecting/accessing the proposed neighborhood.

-It concerns me that city/county would allow an entity to "slip" through the laws governing the requirement to have two direct entrances/exits from a neighborhood. I am personally appalled that the city fire department is not more concerned with this. Also, how does this protect the future homeowners of this proposed subdivision?

-If the city/county allows one developer to avoid such requirements what kind of precedence does that then set for future developers?

-Does it then set a precedence re: the two access requirements?

-Does it then set a precedence for anything else that is required by law but not convenient for the developer to complete?

-Who is protecting those of us who buy these houses? Who is protecting us by making sure that developers follow those requirements set forth for our protection?

-Is the city/county backing out of this only because of the threat of a lawsuit? Is that the only thing that a developer will need to do to get his way in the future?

-Is the city entertaining this because they truly did change the original plat and they are trying to cover themselves?

-The city has continuously allowed developers to alter their plans as initially proposed for neighborhoods. This is not protecting those of us who are buying the homes within the neighborhoods. I believe that the city needs to stand strong to its rules/laws, with everybody involved.

2. This concern centers around the proposed 62nd Street as the "second access" for Tuscany subdivision.

-Does this mean that 62nd Street will then eventually be opened and utilized as a through street?

-Will the bump gate be there forever?

-If the street is improved, who is responsible for paying for it?

-If the street is to be opened as a through street, who is responsible for paying for it?

-If the city/county says they are paying for the improvements, does that then insulate those of us living in the neighborhood from any future SID's in regards to this street? Do we have guarantees that we will never be levied SID's in any way with regards to this street?

file:///4fl-w2k01/planning/Subdivisions/City Subdivisions/2008/Tuscany Subdivision/FW Tuscany Subdiv... 7/23/2008

If the city is not able to gaurantee that we will never have SID's levied against us with regards to the improvements of 62nd Street then I am totally against it being utilized. I am not willing to take on additionoal financial responsibility simeplyu because those two parties and the city/county cannot agree on h ow to rememdy their problems and/or the city/county is afraid of suit and/or trying to cover for something that they have done wrong.

I respectfully request that the city/county think clearly, logically and legally before signing on the dotted line. Please think about ALL of us involved with whom you represent. I will look forward to reading the minutes of this meeting to see how you have responded to each of my questions.

Sincerely,

Pam Christianson
3916 Bushwood Dr.
Billings, MT 59106

With Windows Live for mobile, your contacts travel with you. Connect on the go.

From: Deines, Tammy
Sent: Monday, July 21, 2008 8:21 AM
To: Friday, Wyeth
Subject: FW: Tuscany Subdivision

From: Todd Vralsted [mailto:todd_v@bresnan.net]
Sent: Friday, July 18, 2008 6:52 PM
To: Deines, Tammy
Subject: Tuscany Subdivision

I am in favor of having Tuscany subdivision approved. The best option in my opinion is to have two access points one going thru Ironwood and the second going thru Yellowstone via 62nd street.

Thanks,

Todd H. Vralsted
4187 Cedarwood Lane
Billings, MT. 59106
(Ironwood Subdivision)

N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: Final Plat of Chalice Acres Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Chalice Acres Subdivision is being presented to the City Council for approval. The subject property is zoned Residential 6000 (R-60) and is located on the west side of Bench Boulevard across from the intersection of Bench Boulevard and Kingston Avenue. On June 9, 2008, the City Council conditionally approved the 4-lot subsequent minor plat on 3.06 acres of land for residential development. There are 3 existing homes on the subject property. The owners are Gene & Joy Culver 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 Chalice Acres Subdivision.

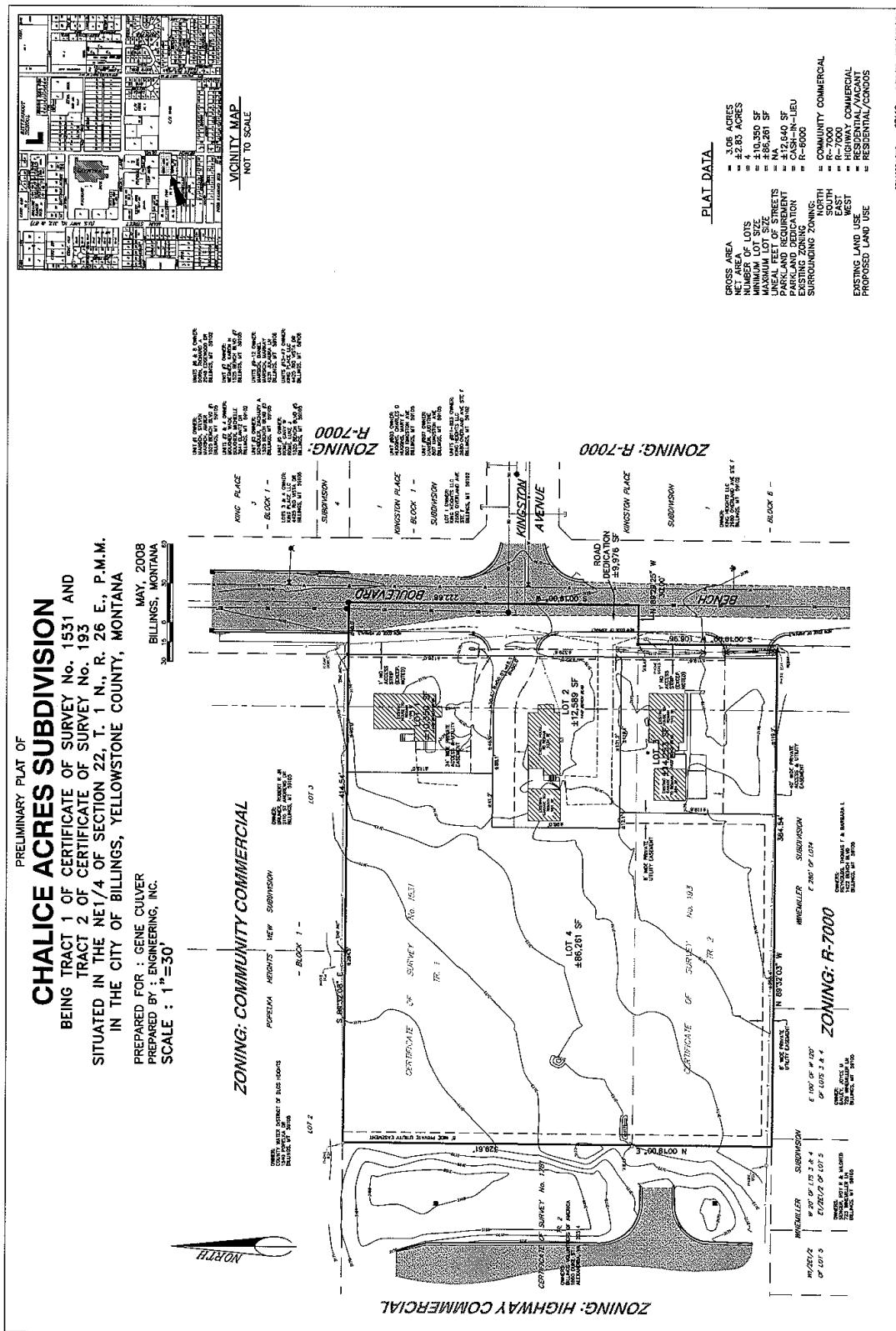
Approved By: **City Administrator** **City Attorney**

ATTACHMENT

A: Final Plat

ATTACHMENT A

Final Plat



O₁

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 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 \$1,321,575.55 have been audited and are presented for your approval for payment. A complete listing of the claims dated

July 14, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

O₂

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 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 \$976,720.15 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 18, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 2008

TITLE: Resolution Relating to \$1,075,000 Pooled Special Improvement Districts Bond, Authorizing the Issuance and Calling for the Public Sale Thereof

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved Special Improvement District (SID) projects and has awarded construction contracts for SID 1378, SID 1379, SID 1380, and SID 1383. The following resolution authorizes the sale of up to \$1,075,000 in bonds for financing of the project listed below.

FINANCIAL IMPACT:

SID 1378-Clevenger Avenue
 \$235,000
 Street and storm improvements

SID 1379-King Ave West 31st to Shiloh
 \$442,000
 Street and utility improvements

SID 1380-Terra West Subdivision (Park strip along Monad)
 \$80,000
 Landscaping and irrigation improvements

SID 1383-Cherry Hills Road
 \$318,000
 Water, sanitary sewer, storm drain and street improvements

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

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

ATTACHMENTS

A – Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “RESOLUTION RELATING TO POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2008A (SPECIAL IMPROVEMENT DISTRICT NOS. 1378, 1379, 1380, AND 1383), IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,075,000; AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 11, 2008, and that such meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

_____; voted against the same: _____; abstained from voting thereon: _____

_____; or were absent: _____.

WITNESS my hand officially this _____ day of August, 2008.

City Clerk

RESOLUTION NO. _____

**RESOLUTION RELATING TO
POOLED SPECIAL IMPROVEMENT DISTRICT BONDS,
SERIES 2008A (SPECIAL IMPROVEMENT DISTRICT NOS.
1378, 1379, 1380, AND 1383), IN THE ORIGINAL AGGREGATE
PRINCIPAL AMOUNT OF \$1,075,000; AUTHORIZING THE
ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF**

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

Section 1. Recitals.

(a) This Council has duly and validly created and established in the City various special improvement districts, designated as (i) Special Improvement District No. 1378 (“District No. 1378”), (ii) District No. 1379 (“District No. 1379”), (iii) District No. 1380 (“District No. 1380”), and (iv) District No. 1383 (“District No. 1383”) (individually a “District” and, collectively, the “Districts”). The Districts were established by the City for the purpose of financing costs of certain public improvements of special benefit to the properties within the Districts (the “Improvements”) and paying costs incidental thereto, including (i) costs associated with the sale and the security of the City’s Pooled Special Improvement District Bonds, Series 2008A (Special Improvement District Nos. 1378, 1379, 1380 and 1383) (the “Bonds”), (ii) the creation and administration of the Districts, and (iii) funding of a deposit to the City’s Special Improvement District Revolving Fund (the “Revolving Fund”). The funds for the payment of the Bonds are to be specially assessed against the property owners in each District. The Districts were established by the City pursuant to the powers granted under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Districts is \$1,075,000. The costs of the Improvements are to be paid from the proceeds of the Bonds, which are to be payable primarily from special assessments to be levied against property in the Districts, which property will be specially benefitted by the Improvements in an amount not less than \$1,075,000.

(b) It is necessary that the Bonds be issued and sold in an aggregate principal amount of \$1,075,000 to finance the costs of the Improvements within each of the Districts, including incidental costs, described in Subsection (a) of this Section 1. The costs of the Improvements are currently estimated, as follows:

District Number 1378

Construction	\$170,892
Administrative (design and construction)	34,178
Revolving Fund Deposit	11,750
Costs of Issuance	7,605
Finance Fees	5,875
Bond Discount	<u>4,700</u>
Total	<u>\$235,000</u>

District Number 1379

Construction and Administrative (design and construction)	\$374,739
Revolving Fund Deposit	22,100
Engineering Fee	15,470
Costs of Issuance	9,801
Finance Fees	11,050
Bond Discount	<u>8,840</u>
Total	<u>\$442,000</u>

District Number 1380

Construction and Administrative (design and construction)	\$69,324
Revolving Fund Deposit	3,491
Engineering Fee	2,444
Costs of Issuance	1,600
Finance Fees	1,745
Bond Discount	<u>1,396</u>
Total	<u>\$80,000</u>

District Number 1383

Construction and Administrative (design and construction)	\$266,440
Revolving Fund Deposit	15,900
Engineering Fee	11,130
Costs of Issuance	10,220
Finance Fees	7,950
Bond Discount	<u>6,360</u>
Total	<u>\$318,000</u>

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

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

Section 2. Determination of Public Interest in Allowing Bond Discount and Permitting Pooling of Bonds. Pursuant to the authority described in Section 1, this Council hereby determines that the issuance and sale of the Bonds in a pooled single offering for the following Districts in the respective principal amounts set forth below is in the best interest of each of the Districts and the City will facilitate the sale of the Bonds because the size of the issue will attract more interest in the marketplace and thus

help to lower interest rate on the Bonds and because as single issue will reduce the costs of issuance of the Bonds

<u>District Number</u>	<u>Principal Amount</u>
1378	\$235,000
1379	442,000
1380	80,000
1383	318,000

This Council further determines to fix the minimum price for the Bonds at \$1,056,725 (98.3% of par), plus interest accrued, if any, thereon to the date of delivery. Such minimum bid will enable bidders to bid more efficiently for the Bonds by permitting them to submit their bids based on actual market conditions without adjusting the interest rates thereon to provide compensation for their purchase of the Bonds. This procedure will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests

Section 3. Findings and Determination to Pledge the Revolving Fund. This Council previously found it to be in the public interest and in the best interest of the City and Districts to secure payment of principal of and interest on the Bonds, by the Revolving Fund and authorized the City to enter into the undertaking and agreements authorized in the Act in respect of the Bonds, based upon the following factors:

(a) Estimated Market Value of Parcels. The special assessments to be levied against each lot, tract or parcel for the Improvements in each District, as a general matter, is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) Diversity of Property Ownership. Substantially all the lots, tracts or parcels in each District are under separate ownership.

(c) Comparison of Special Assessments, Property Taxes and Market Value. Based upon an analysis of the aggregate amount of the proposed assessments, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes against each lot, parcel, or tract in the Districts, in comparison to the estimated market value of such lot, parcel, or tract after the Improvements; the City has concluded that, overall, the estimated market value of the lots, parcels, or tracts, exceeds the sum of special assessments, delinquent property taxes, and current assessments.

(d) Delinquencies. The tax delinquency rates for properties in the Districts are generally no greater than the delinquency rate of the City at large, and therefore, no unusual need for loans from the Revolving Fund are expected.

(e) The Public Benefit of the Improvements. The Improvements in each District are of a public nature and generally benefit to the community at large as well as provide a special benefit to the property owners to be assessed, and therefore, the use of the Revolving Fund to secure the Bonds is in the public interest.

The specific findings relating to the factors mentioned in (a)-(e) above that are required by Section 7-12-4225 of the Act in order to pledge the Revolving Fund to the Bonds were ratified and confirmed in the resolutions creating Special Improvement Districts, Nos. 1378, 1379, and 1383, adopted by this Council pursuant to Resolution No. 07-18555 adopted on May 19, 2007, Resolution No. 07-18579 adopted on July 23, 2007, and Resolution No. 08-18669 adopted on January 28, 2008, respectively, and

are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge the Revolving Fund to payment of the principal of and interest on the Bonds. The findings required by Section 7-12-4225 of the Act have not been previously made by this Council with respect to District No. 1380. The Council will consider, at the August 25, 2008 Council meeting, the above factors with respect to pledging the Revolving Fund to secure payment of the Bonds allocated to District No. 1380. The consideration of the pledging the Revolving Fund to the Bonds allocated to District No 1380 will be made by this Council after publication of a notice and a public hearing with respect to pledging the Revolving Fund to the Bonds allocated to District No. 1380.

Section 4. Terms of the Bonds. This Council hereby authorizes the issuance and sale of the Bonds in the original aggregate principal amount of \$1,075,000 for the purpose of financing the Improvements. The Bonds shall be dated, as originally issued, as of September 29, 2008 or such other date as designated by the City Administrator, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 2009, at a rate or rates designated by the successful bidder at public sale and approved by this Council. If issued as serial bonds, the Bonds shall mature on July 1 in each of the following years and amounts (unless combined into one or more term bonds):

Year	Principal Amount	Year	Principal Amount
2009	\$65,000	2017	\$70,000
2010	55,000	2018	70,000
2011	55,000	2019	80,000
2012	60,000	2020	85,000
2013	65,000	2021	85,000
2014	65,000	2022	85,000
2015	65,000	2023	100,000
2016	70,000		

Bidders will have the option of combining the Bonds maturing from 2009 to and including 2018 and from 2019 to and including 2023 into one or more terms bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption on each July 1, concluding no later than 2023, at a redemption price equal to the principal amount of such Bonds or portions thereof to be redeemed with interest accrued thereon and payable on January 1 and July 1 to the redemption date, in installments and in the same amounts and same dates as the bonds would have matured if they were not included in a term bond.

The Bonds shall be issued as serial or term bonds and shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

The Bonds shall be issuable only as fully registered bonds and shall be executed by the manual or facsimile signatures of the Mayor, City Administrator and the City Clerk. The payment of principal and interest due on the Bonds shall be secured by the Revolving Fund.

Section 5. Public Sale. The Bonds shall be sold at a public competitive sale which is hereby called and shall be held on September 8, 2008. Sealed bids for purchase of the Bonds shall be submitted to the Financial Services Manager of the City or shall be received by the City by electronic transmission through ParityTM. Bids for the Bonds may be made in either case until 12:00 noon, M.T., on September 8, 2008, at which time bids will be opened and tabulated by the Financial Services Manager and the City's Financial Advisor, Springsted Incorporated. At a regular meeting of this Council on September 8, 2008, at or after 6:30 p.m., M.T., the City will consider the bids and, if a responsive and acceptable bid is

received, award the sale of the Bonds. Such revisions and amendments as are necessary to the Notice of Sale are hereby authorized to be made by the City Administrator in consultation with bond counsel to the City. The City Clerk is hereby authorized and directed to cause notice of the sale to be published, as required by Sections 7-12-4204 of the Act and Montana Code Annotated, Sections 7-7-4252 and 17-5-106, in *The Billings Times*, the official newspaper of the City, once each week for two (2) successive weeks preceding the week of the Bond sale. The notice of sale shall be published and mailed in substantially the form set forth as EXHIBIT A to this resolution and this Council hereby adopts the terms and conditions set forth in such Notice of Sale as the terms and conditions of the sale of the Bonds.

Section 6. Official Statement. The City Administrator and other officers of the City, are hereby authorized and directed to prepare on behalf of the City a preliminary official statement and a final official statement (collectively, the "Official Statement"), to be distributed to potential purchasers of the Bonds. The Official Statement will contain the terms and conditions of sale set forth in the Notice of Sale attached to this resolution as Exhibit A and such other information as shall be advisable and necessary to describe accurately (i) the City, (ii) the Districts, (iii) the Improvements, and (iv) the security for, and terms and conditions of, the Bonds. The City Administrator is authorized on behalf of the City to deem the preliminary official statement near "final" as of its date, in accordance with Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934 (the "Rule").

Section 7. Continuing Disclosure. In order to permit bidders for the Bonds to comply with paragraph (b)(5) of the Rule 15c2-12, the City will enter into a Continuing Disclosure Undertaking for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds to provide annual reports of specified information and notice of the occurrence of certain events, if material. A description of the Continuing Disclosure Undertaking will be set forth in the Official Statement for the Bonds. Failure of the City to enter into a Continuing Disclosure Undertaking similar to that described in the Official Statement would relieve the successful bidder of its obligations to purchase the Bonds.

Passed by the City Council of the City of Billings, Montana, this 11th day of August, 2008.

Mayor

Attest: _____
City Clerk

EXHIBIT A

NOTICE OF BOND SALE

\$1,075,000

CITY OF BILLINGS, MONTANA
POOLED SPECIAL IMPROVEMENT DISTRICT BONDS,
SERIES 2008A
(SPECIAL IMPROVEMENT DISTRICT NOS. 1378, 1379, 1380, AND 1383)

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

District No.	Principal Amount
1378	\$235,000
1379	442,000
1380	80,000
1383	318,000

Sealed bids for the purchase of the Bonds will be received at the office of the City Clerk of the City of Billings, City Hall, 1st Floor of Park II, at 210 North 27th Street, Billings, Montana, until 12:00 p.m., M.T., on Monday, September 8, 2008. The bids will be opened and tabulated and the City Council of the City will meet at their regular meeting at 6:30 p.m. on the same day in the Council Chambers, 2nd Floor of the Police Facility, 220 North 27th Street, Billings, Montana, to consider the bids received and to award the sale of the Bonds.

Book Entry

The Bonds will be issued by means of a book entry system with no physical distribution of Bonds made to the public. The Bonds will be issued in fully registered form and one Bond, representing the aggregate principal amount of the Bonds maturing in each year, will be registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as securities depository of the Bonds. Individual purchases of the Bonds may be made in the principal amount of \$5,000 or any multiple thereof of a single maturity, through book entries made on the books and records of DTC and its participants. Principal and interest are payable by the registrar to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to participants of DTC will be the responsibility of DTC; transfer of principal and interest payments to beneficial owners by participants will be the responsibility of such participants and other nominees of beneficial owners. The purchaser, as a condition of delivery of the Bonds, will be required to deposit the Bonds with DTC.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of Special Improvement District Nos. 1378, 1379, 1380, and 1383 (collectively, the "Districts"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"). The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special assessment which is a lien against the assessable real property within the respective Districts benefited by the Improvements to be undertaken therein or therefor. The special assessments are payable in equal, semiannual installments of principal over a fifteen (15) year period, with unpaid principal installments of the special assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum.

The Bonds are further secured by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"). The City will agree to make a loan from the Revolving Fund to the debt service fund (and the accounts therein) established for the Districts to make good any deficiency then existing in the principal and interest subaccounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City's general fund to the extent and for the period authorized by law.

Date and Type

The Bonds will be dated, as originally issued, as of September 29, 2008, or such other date as determined by the City Administrator, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Form

The Bonds shall mature, subject to redemption, on July 1 in the following years and amounts (unless combined into one or more term bonds):

Year	Principal Amount	Year	Principal Amount
2009	\$65,000	2017	\$70,000
2010	55,000	2018	70,000
2011	55,000	2019	80,000
2012	60,000	2020	85,000
2013	65,000	2021	85,000
2014	65,000	2022	85,000
2015	65,000	2023	100,000
2016	70,000		

Bidders will have the option of combining the Bonds maturing from and after 2009 to and including 2018 and from and after 2019 to and including 2023 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption on each July 1, concluding no later than 2023, at a redemption price equal to the principal amount of such Bonds or portions thereof to be redeemed with interest accrued thereon and payable on January 1 and July 1 to the redemption date, in installments and in the same amounts and same dates as the bonds would have matured if they were not included in a term bond.

The Bonds shall be issued as serial or term bonds and shall be in minimum denominations of \$5,000 each or any integral multiple thereof of single maturities.

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the debt service fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the District or from the transfer of surplus money from the construction account to the debt service fund, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the debt service fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed, plus interest accrued to the date of redemption.

If the successful bidder for the Bonds selects to combine two or more maturities into term bonds, then the Bonds combined into a term bond shall be subject to mandatory sinking fund redemption at a redemption price equal to the principal amount of the Bonds to be redeemed, plus interest accrued to the date of redemption.

Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described under "Mandatory Redemption" on any interest payment date; provided, however, the Bonds shall not be called for redemption before July 1, 2018, from the proceeds of refunding special improvement district bonds or warrants. The redemption price shall be the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

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

Interest Payment Dates, Interest Rates

Interest on the Bonds will be payable each January 1 and July 1, commencing January 1, 2009, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. All Bonds of the same stated maturity must bear interest from the date of original issue until paid at a single, uniform rate. The rate must be expressed in an integral multiple of 1/8 or 5/100 of 1%. No supplemental or "B" coupons or additional interest certificates are permitted. Interest will be calculated for the Bonds on the basis of a 360-day year consisting of twelve 30-day months.

Bond Registrar, Transfer Agent and Paying Agent

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

Delivery

Within thirty (30) days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five (5) business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the authorized denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser

and, if serial bonds, will be issued in denominations corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of Bond Counsel hereinafter described, an arbitrage certification and a certificate stating that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated depository on the day of closing.

Within 48 hours after the ratification of the award of the Bonds, the winning bidder will be required to notify the City and its Financial Advisor in writing of (1) the initial offering price of the Bonds to the public (excluding bond brokers and other intermediaries) at which a substantial portion (10%) of each maturity of the Bonds have been or are expected to be sold, (2) the initial offering yield to maturity for each maturity of the Bonds and (3) the selling compensation and the identity of the underwriter(s) necessary to complete the Official Statement.

In addition, prior to delivery of the Bonds, the winning bidder will be required to complete, execute, and deliver to the City a certificate in form and substance required by Bond Counsel with respect to the public offering price and yield of the Bonds and the total compensation received and profit realized by the winning bidder in connection with the purchase and sale of the Bonds. By submitting its bid, each bidder agrees to complete, execute and deliver such certificate prior to the delivery of the Bonds if its bid is accepted. It will be the responsibility of the winning bidder to institute such syndicate reporting requirements, to make such investigation, and otherwise to ascertain the facts necessary to enable it to make such certification with reasonable certainty. Any questions concerning such certification should be directed to Bond Counsel.

Not Qualified Tax-Exempt Obligations

The Bonds will not be designated by the City as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code.”).

Legal Opinion

An opinion as to the validity of the Bonds and the exclusion of the interest thereon from gross income for federal income tax purposes and Montana individual income tax purposes will be furnished by Kennedy & Graven, Chartered, P.C., of Minneapolis and Saint Paul, Minnesota, as Bond Counsel, at the expense of the Purchaser. The legal opinion will be provided at closing. The legal opinion will state that the Bonds are valid and binding special, limited obligations of the City enforceable in accordance with their terms, except to the extent to which enforceability thereof may be limited by the exercise of judicial discretion or by state or federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights.

Type of Bid and Good Faith Deposit

Sealed or electronic bids for not less than \$1,056,725 (98.3% of par) and accrued interest, if any, on the principal sum of \$1,075,000 must be mailed or delivered to the undersigned and must be received at the office of the City Clerk prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional.

Bids for the Bonds may be transmitted electronically through ParityTM, in accordance with these terms and conditions. Unless submitting a printed bid, a prospective bidder must electronically submit a bid for the Bonds via PARITYTM. Bids may be submitted electronically via PARITYTM in accordance with this Notice of Bond Sale, until 12:00 p.m. M.T. but no bid will be received after the time for

receiving bids specified above. To the extent any instructions or directions set forth in PARITY™ conflict with this Notice of Bond Sale, the terms of this Notice of Bond Sale shall control. For further information about PARITY™, potential bidders may contact the Financial Advisor at Springsted Incorporated 380 Jackson Street, Suite 300, St. Paul, Minnesota 55101-2887, Telephone (651) 223-3000 or i-Deal LLC at 1359 Broadway, 2nd Floor, New York, New York 10018, Telephone (212) 849-5021.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith deposit (the “Deposit”) in the form of money, cashier’s check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of \$10,750 payable to the order of the City is required for a bid to be considered. If money, cashier’s check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the City Clerk. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond in the State of Montana and such bond must be submitted to the City Administrator prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier’s check (or wire transfer such amount as instructed by the City) not later than 1:00 p.m., M.T., on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the Debt/Investment Coordinator, Teri Walker, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8363.

The City reserves the right to postpone the date and time established for the receipt of bids. If any date and time fixed for the receipt of bids and the sale of the Bonds is postponed, an alternative sale date and time will be announced at least one business day prior to such alternative sale date. On any such alternative sale date and time, any bidder may submit bids electronically as described above for the purchase of the Bonds in conformity in all respects with the provision of this Notice of Bond Sale, except for the date and time of sale.

Award

The bid authorizing the lowest true interest cost (TIC) for the Bonds, will be deemed the most favorable. The TIC is the effective cost of the Bonds based on Bond proceeds received at closing calculated from the dated date of the Bonds. In the event that two or more bids state the lowest true interest cost, the sale of the Bonds will be awarded by lot. No oral bids will be considered. The City Council will consider sealed bids. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

CUSIP Numbers

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

Official Statement

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

The Notice of Bond Sale and the Preliminary Official Statement may be viewed and downloaded at www.springsted.com or a physical copy may be obtained by contacting the City.

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

Within seven (7) business days after the sale of the Bonds the City will furnish to the successful bidder, without charge, seventy-five (75) copies of the final Official Statement relating to the Bonds. The successful bidder must notify the City Administrator in writing within five (5) business days after the award of sale of the Bonds if it requires additional copies of the Official Statement. The cost of additional copies of the Official Statement shall be paid by the successful bidder.

Continuing Disclosure

In order to permit bidders for the Bonds to comply with paragraph (b)(5) of the Rule 15c2-12, the City will enter into a Continuing Disclosure Undertaking for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds to provide annual reports of specified information and notice of the occurrence of certain events, if material. A copy of the proposed Continuing Disclosure Undertaking will be set forth in the Official Statement for the Bonds. Failure of the City to enter into a Continuing Disclosure Undertaking similar to that described in the Official Statement would relieve the successful bidder of its obligations to purchase the Bonds.

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

Dated: August 11, 2008

BY ORDER OF THE CITY COUNCIL
OF THE CITY OF BILLINGS, MONTANA

/s/ Cari Martin
City Clerk

Publish: August 14, 2008
August 21, 2008

BL240-3 (BWJ)
336998v.4



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 2008

TITLE: Resolution Relating to \$230,000 Pooled Sidewalk Bonds, Authorizing the Issuance and Calling for the Public Sale Thereof

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved these sidewalk projects and has awarded construction contracts for WO 04-12, and WO 06-18. The following resolution authorizes the sale of \$230,000 in bonds for financing of the projects listed below.

FINANCIAL IMPACT:

WO 04-12	\$13,300
Alkali Creek improvements	
WO 06-18	\$216,700
Broadwater Avenue Subdivision Phase V improvements	

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

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

ATTACHMENTS

A - Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “RESOLUTION RELATING TO \$230,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS, SERIES 2008; AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on August 11, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand and seal officially this ____ day of August, 2008.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$230,000 POOLED SPECIAL
SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS,
SERIES 2008; AUTHORIZING THE ISSUANCE AND CALLING FOR
THE PUBLIC SALE THEREOF

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

Section 1. Recitals.

(a) This Council has duly and validly created and established in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”), special improvement projects, designated as the W.O. 04-12, Alkali Creek Road Sidewalk Project (the “Alkali Creek Road Sidewalk Improvements”), and the W.O. 06-18 Broadwater Subdivision – Phase V Improvements (the “Broadwater Subdivision - Phase V Improvements”) (together, the “Projects”), for the purpose of financing costs of certain public improvements of special benefit to the properties within the Projects (the “Improvements”) and paying costs incidental thereto, including costs associated with the sale and the security of special sidewalk, curb, gutter and alley approach bonds of the City drawn on the Projects (the “Bonds”), the creation and administration of the Projects and the funding of a deposit to the City’s Special Improvement Project Revolving Fund (the “Revolving Fund”). The total estimated costs of the Improvements, including such incidental costs, is \$230,000. The costs of the Improvements will be paid from the proceeds of the Bonds, which are to be payable primarily from special assessments to be levied against property in each of the Project areas, which property will be specially benefited by the Improvements in an amount not less than \$230,000.

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

	Alkali Creek Road Sidewalk Improvements	Broadwater Subdivision - Phase V Improvements
Construction	\$10,137.00	\$170,785.79
Engineering & Administration	1,750.00	27,625.00
Revolving Fund Deposit	700.00	11,050.00
Bond Discount	280.00	4,420.00
Costs of Issuance	433.00	2,819.21
Total	\$13,300.00	\$216,700.00

(c) It is necessary that Bonds be issued and sold in an aggregate principal amount of \$230,000 to finance the costs of the Improvements within each of the Project areas, including incidental costs, described in Subsection (a).

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

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

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

<u>Project</u>	<u>Principal Amount</u>
Alkali Creek Road Sidewalk Improvements	\$13,300.00
Broadwater Subdivision - Phase V Improvements	\$216,700.00

is in the best interest of each of the Projects and the City and will facilitate the sale of the Bonds because the size of the issue will attract more interest in the marketplace and thus help to lower interest rates on the Bonds and because a single issue will reduce the costs of issuance. This Council further determines to fix the minimum price for the Bonds at \$225,400 (98.0% of par), plus interest accrued thereon to the date of delivery. Such minimum bid will enable bidders to bid more efficiently for the Bonds by permitting them to submit their bids based on actual market conditions without adjusting the interest rates thereon to provide compensation for their purchase of the Bonds. This procedure will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests of each of the Projects and the City.

Section 3. Findings and Determination To Pledge the Revolving Fund. In the Resolutions of Intention To Order in the Programs for the Alkali Creek Road Sidewalk Improvements and the Broadwater Subdivision - Phase V Improvements, adopted on March 14, 2005 and March 26, 2007, respectively, this Council found it to be in the public interest, and in the best interest of the City and the Projects, to secure payment of principal of and interest on the Bonds by the Revolving Fund and authorized the City to enter into the undertakings and agreements authorized in the Act in respect of the Bonds, based on the factors required to be considered under Section 7-12-4225(4) of the Act. Those findings and determinations were ratified and confirmed in the resolutions ordering the programs adopted by this Council on April 11, 2005 and April 23, 2007, respectively, and are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge the Revolving Fund to payment of the principal of and interest on the Bonds.

Section 4. Terms of the Bonds. This Council hereby authorizes the issuance and sale of Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2008 of the City in the aggregate principal amount of \$230,000 (the "Bonds") for the purpose of financing the Improvements. The Bonds shall be dated, as originally issued, as of September 1, 2008, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 2009, at a rate or rates designated by the successful bidder at public sale and approved by this Council. If issued as serial bonds, the Bonds shall mature on July 1 in each of the following years and amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2009	\$10,000	2015	\$20,000
2010	20,000	2016	20,000
2011	20,000	2017	20,000
2012	20,000	2018	20,000
2013	20,000	2019	20,000
2014	20,000	2020	20,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine at the time of the sale, and the principal of and interest on the Bonds shall be payable semiannually in equal payments on each January 1 and July 1, commencing January 1, 2009, and concluding July 1, 2020, unless the Bonds are earlier redeemed. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

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

Section 5. Public Sale. The Bonds shall be sold at a public competitive sale, the sealed bids for which shall be submitted to the Financial Services Manager or bids for the purchase of the Bonds shall be received by the City by electronic transmission through Parity™, in either case until 12:00 noon, M.T. on August 25, 2008, at which time bids will be opened and tabulated by the Financial Services Manager. At a regular meeting of this Council on August 25, 2008, at 6:30 p.m., M.T, the City will consider the bids and, if a responsive and acceptable bid is received, award the sale of the Bonds. Award of sale will be made to the bidder with the lowest true interest cost ("TIC") by the Council. The City will receive sealed bids or bids transmitted electronically through Parity™ for the Bonds and the Bonds will be sold in accordance with the Official Terms and Conditions attached hereto as Exhibit A (which is hereby incorporated and made a part hereof). The City Clerk is authorized and directed to cause notice of the sale to be published, as required by Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106, in *The Billings Times* once each week for two successive weeks preceding the week which contains the date of sale. The notice of sale shall be published and mailed in substantially the form set forth as Exhibit A to this resolution and this Council hereby adopts the terms and conditions set forth in such notice of sale as the terms and conditions of the sale of the Bonds.

Section 6. Informational Materials. The Financial Services Manager and other officers of the City are hereby authorized and directed to prepare and distribute on behalf of the City an Offering Circular or summary of the transaction, to the extent deemed necessary or appropriate.

Passed by the City Council of the City of Billings, Montana, this 11th day of August, 2008.

Mayor

Attest: _____
City Clerk

EXHIBIT A

TERMS AND CONDITIONS OF BOND SALE

\$230,000 Pooled Special Sidewalk, Curb, Gutter and
Alley Approach Bonds, Series 2008
(Alkali Creek Road Sidewalk Improvements and
Broadwater Subdivision - Phase V Improvements)

CITY OF BILLINGS, MONTANA

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

<u>Project</u>	<u>Principal Amount</u>
Alkali Creek Road Sidewalk Improvements	\$13,300.00
Broadwater Subdivision - Phase V Improvements	\$216,700.00

Sealed bids for the purchase of the Bonds will be received in the City Clerk's office, 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids for the purchase of the Bonds will be received by the City by electronic transmission through Parity™, in either case until 12:00 noon, M.T., on Monday, August 25, 2008, at which time the bids will be opened or accessed and tabulated. The City Council of the City will meet at their regular meeting at 6:30 p.m., M.T., on the same day in the Council Chambers, 2nd Floor of the Police Facility, 220 North 27th Street, Billings, Montana, to consider the bids and to award the sale of the Bonds.

Bids may be submitted by facsimile to the City Clerk at (406) 657-8390 until 12:00 noon, M.T., on August 25, 2008.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of the W.O. 04-12, Alkali Creek Road Sidewalk Project and the W.O. 06-18 Broadwater Subdivision – Phase V Improvements (together, the "Projects"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended. The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special assessment which is a lien against the assessable real property within the respective Projects benefited by the Improvements to be undertaken therein or therefor. The special assessments are payable in equal, semiannual installments over a 12-year term, with unpaid installments of the special assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The Bonds are further secured by the Special Improvement Project Revolving Fund of

the City (the “Revolving Fund”). The City will agree to make a loan from the Revolving Fund to the Sinking Fund established for the Projects to make good any deficiency then existing in the principal and interest subaccounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City’s general fund to the extent authorized by law.

Date and Type

The Bonds will be dated, as originally issued, as of September 1, 2008, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Redemption

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

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2009	\$10,000	2015	\$20,000
2010	20,000	2016	20,000
2011	20,000	2017	20,000
2012	20,000	2018	20,000
2013	20,000	2019	20,000
2014	20,000	2020	20,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine, and the principal of the Bonds shall be payable semiannually on each January 1 and July 1, commencing January 1, 2009, and continuing through July 1, 2020, subject to prior redemption. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

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

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the Sinking Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the Projects or from the transfer of surplus money from the Construction Subaccount to the Principal Subaccount, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the Sinking Fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described under "Mandatory Redemption" on any interest payment date; provided, however, the Bonds shall not be called for redemption before July 1, 2013, from the proceeds of refunding special improvement district bonds or warrants. The redemption price shall equal the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

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

Interest Payment Dates, Rates

Interest will be payable each January 1 and July 1, commencing January 1, 2009, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. All Bonds of the same stated maturity must bear interest from date of original issue until paid at a single, uniform rate. Each rate must be expressed in an integral multiple of 1/8 or 5/100 of 1% and shall be bid in level or ascending rates. No supplemental or "B" coupons or additional interest certificates are permitted. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Bond Registrar, Transfer Agent and Paying Agent

The City may select a, or may act as, bond registrar, transfer agent and paying agent (the "Registrar") in connection with the Bonds. The bond register will be kept, transfers of ownership will be effected and principal of and interest on the Bonds will be paid by the Registrar. The City will pay the charges of the Registrar for such services. The City reserves the right to remove the Registrar and to appoint a suitable bank or trust company as successor.

Delivery

Within 15 days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the authorized denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser and, if serial bonds, will be issued in denominations corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of bond counsel hereinafter described, an arbitrage certification and a certificate verifying that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated

depository on the day of closing. As a condition of delivery, the purchaser must certify to the City in writing the initial reoffering prices of the Bonds.

Legal Opinion

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

Type of Bid and Good Faith Deposit

Bids transmitted electronically through Parity™ or sealed bids for not less than \$225,400 (98.0% of par) and accrued interest on the principal sum of \$230,000 must be mailed or delivered to the undersigned and must be received at the office of the City Clerk prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional. Bids may be transmitted electronically through Parity™ in accordance with these terms and conditions.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith deposit (the "Deposit") in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of \$4,600 payable to the order of the City is required for a bid to be considered. If money, cashier's check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the Financial Services Manager. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond in the State of Montana and such bond must be submitted to the Financial Services Manager prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier's check (or wire transfer such amount as instructed by the City) not later than 1:00 P.M., M.T., on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the City's

Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209.

Award

The bid authorizing the lowest net interest cost (total interest on all Bonds from September 1, 2008, to their maturities, less any premium or plus any discount) will be deemed the most favorable. In the event that two or more bids state the lowest net interest cost, the sale of the Bonds will be awarded by lot. No oral bid will be considered. The Council will consider sealed bids or bids transmitted electronically through the Parity™ system. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

Electronic Transmission

To the extent any instructions or directions set forth in Parity™ conflict with this Terms and Conditions of Sale, the terms of this Terms and Conditions of Sale shall control. For further information about Parity™, potential bidders may contact Parity™ at (212) 849-5021. In the event of a malfunction in the electronic bidding process, bidders may submit their bids by sealed bid including facsimile transmission to the City Clerk, Cari Martin, at facsimile number (406) 657-8390 (phone (406) 657-8210).

Informational Materials.

The Financial Services Manager and other officers of the City will prepare and distribute on behalf of the City an Offering Circular or summary of the transaction, to the extent deemed necessary or appropriate.

CUSIP Numbers

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

Dated: August 11, 2008.

BY ORDER OF THE CITY COUNCIL

City Clerk
City of Billings, Montana

EXHIBIT B

NOTICE OF BOND SALE

\$230,000 Pooled Special Sidewalk, Curb, Gutter and
Alley Approach Bonds, Series 2008

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of the City of Billings, Montana (the "City"), will receive sealed bids for the purchase of \$230,000 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2008 (the "Bonds") in the City Clerk's office, 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids transmitted electronically through Parity™ until 12:00 noon, M.T., on August 25, 2008, at which time the bids will be opened or accessed and tabulated. The City Council of the City will meet at their regular meeting at 6:30 p.m., M.T., on the same day in the Council Chambers, 2nd Floor of the Police Facility, 220 North 27th Street, Billings, Montana, to consider the bids and to award the sale of the Bonds. The Council will award sale of the Bonds to the responsive bidder whose bid reflects the lowest true interest cost (TIC).

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of the W.O. 04-12, Alkali Creek Road Sidewalk Project and the W.O. 06-18 Broadwater Subdivision – Phase V Improvements (together, the "Projects"); and paying costs associated with the sale and issuance of the Bonds. The Bonds shall mature, subject to redemption, on July 1 in the following years and amounts (unless combined into one or more term bonds):

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2009	\$10,000	2015	\$20,000
2010	20,000	2016	20,000
2011	20,000	2017	20,000
2012	20,000	2018	20,000
2013	20,000	2019	20,000
2014	20,000	2020	20,000

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

Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

The Bonds shall be dated, as originally issued, as of September 1, 2008, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 2009, and will be issued as negotiable investment securities in registered form as to both principal and interest. The Bonds with stated maturities on or after July 1, 2014 will be subject to redemption on July 1, 2013, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. The Bonds are also subject to mandatory redemption on an interest payment date if the amounts in the Sinking Fund, either from prepayment of assessments or transfers from the Construction Account to the Principal

Account, are sufficient to pay outstanding Bonds, or portions thereof, with interest thereon to that interest payment date.

The Bonds will be sold for not less than \$225,400 (98.0% of par) with accrued interest on the principal amount of the Bonds to the date of their delivery. The Board reserves the right to reject any and all bids, to waive any informality in any bid, and to adjourn the sale.

A good faith deposit in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the Federal Deposit Insurance Corporation or a financial surety bond in the sum of 2% of the aggregate principal amount of the Bonds (\$4,600) payable to the order of the City is required for each bid to be considered, as further specified in the Official Terms and Conditions of Sale.

Copies of a statement of the Official Terms and Conditions of Sale and additional information may be obtained from Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209. Prospective bidders should consult the Official Terms and Conditions of Sale and any other information material distributed by the City for a detailed description of the Bonds, the security therefore, and the form of legal opinion proposed to be rendered by Dorsey & Whitney LLP, of Missoula, Montana, and Minneapolis, Minnesota, as bond counsel. To the extent any instructions or directions set forth in Parity™ conflict with this Notice of Bond Sale, the terms of this Notice of Bond Sale shall control. For further information about Parity™, potential bidders may contact the Parity™ at (212) 849-5021. In the event of a malfunction in the electronic bidding process, bidders may submit their bids by sealed bid including facsimile transmission to the City's Financial Services Manager, Pat Weber, at facsimile number (406) 247-8608 (phone (406) 657-8209).

Dated: August 11, 2008.

BY ORDER OF THE CITY COUNCIL

Cari Martin, City Clerk
City of Billings, Montana

Publish: August 14, 2008
 August 21, 2008

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 11, 2008

TITLE: SID 1385, King Avenue East, Resolution Creating District

DEPARTMENT: Public Works / Engineering

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

PROBLEM/ISSUE STATEMENT: Foursquare Properties and Cabelas have requested that the construction of King Avenue East proceed before the Miller Crossing development is completed. They have petitioned the City of Billings to create a Special Improvement District (SID) to fund the cost of the road improvements. 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. Foursquare and Cabelas are the only property owners in the district, so they are assuming total responsibility for the annual assessments. However, staff recommends that the City Council also approve a new development agreement (Item #4B) that will commit the City to pay fifty-seven percent (57%) of the cost of the road improvements with associated costs and the remainder paid by Foursquare or split between the two property owners. The City would use Arterial Construction Fees to pay the initial City costs, but replace those dollars with tax increment as the project develops and increment is produced. When there is more increment than is needed to satisfy the City's obligation, the developer(s) will be reimbursed for a portion of or all of their assessments. Under state law at MCA Sections 7-12-4102(3)(2007) and 7-12-4114(1)(d)(2007), if all of the property owners included in the SID consent to create the SID, creation can occur without a resolution of intent or public hearing. If the Council approves this resolution, it will also be waiving application of the raw land SID policy contained in Resolution No. 05-18234. Section 10 of this resolution outlines the reasons why a waiver is justified in this instance.

ALTERNATIVES ANALYZED: The City Council may:

1. Approve the Resolution Creating SID 1385; or
2. Do not approve the Resolution Creating SID 1385. The September, 2007, development agreement between the City and the developer says the developer is responsible for improvements, but commits the City to create and use tax increment funds for the construction or to create an SID, thereby allowing Foursquare to repay costs over time.

Tax increment bonds cannot be issued at this time, so refusing to create the SID and issue bonds would violate the development agreement.

FINANCIAL IMPACT: The estimated construction cost is \$3,068,058.05. Engineering, bond issuance costs, revolving fund contribution and recovering costs incurred by the City during the tax increment formation and bonding process added approximately \$2, 087,000 for a total assessable cost of \$5,360,000. Foursquare and Cabelas will be completely responsible for the bond payments; however, if the proposed new development agreement is approved, they will be reimbursed for part of or all of the assessments through City street and/or tax increment funds.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1385.

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

ATTACHMENTS

- A. Petition and Consent to Create
- B. Resolution Creating SID 1385, King Avenue East

INTRODUCTION

Foursquare Properties and Cabelas have requested that the construction of King Avenue East proceed before the Miller Crossing development is completed. 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. The Council is being asked to create SID 1385 to pay the improvement costs.

PROCEDURAL HISTORY

- May 12, 2008 – Creation of S. Billings TIFD.
- July 1, 2008 – Bid for construction of improvements.
- August 11, 2008 – Award bid for construction
- August 11, 2008 – Approval of amended development agreement

BACKGROUND

The boundary of this proposed special improvement district is as indicated on the attached map. 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. If the City Council approves an accompanying development agreement, the City will pay fifty-seven percent (57%) of the construction and associated costs. This assessment share is proportional to the City's obligations under the arterial street construction policy adopted by the City Council in 2004. It provides that the adjacent properties are responsible for constructing $\frac{1}{2}$ a residential or commercial street, but the City-at-large is responsible for the remainder of the street if or when it is constructed. The other forty-three percent (43%) will be split between Foursquare Properties and Cabelas. Because both property owners in the district petitioned the City for the SID per MCA 7-12-4102, the district can be created according to MCA 7-12-4112 without a resolution of intent to create and a public hearing. Section 10 of the resolution describes the reasoning for the City's raw land SID policy as stated in Resolution No. 05-18234; which is to secure the payment of SID assessments and reduce the risk to the City of delinquent payments and having to use the Revolving Fund to make debt payments. The section further describes the reasons why the Council may waive the raw land SID policy in this instance. These reasons include, but are not limited to: that the street benefits the entire city; the property development is the first large private investment in a new tax increment district; the development will provide shopping and job opportunities to a low-moderate income neighborhood and; an independent study by King and Associates shows that the assessed property value at build out will exceed the assessments by many times.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1385.

ATTACHMENTS

- A. Resolution Creating SID 1385, King Avenue East
- B. Miller Crossing Agreement

PETITION AND CONSENT OF ALL OWNERS OF PROPERTY
FOR THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT
IN THE CITY OF BILLINGS, MONTANA

The undersigned hereby represent and warrant that they constitute all of the owners of the real property described on Exhibit A hereto (the "Property"), and that the Property is located within the City of Billings, Montana (the "City"). Each of the undersigned hereby voluntarily and irrevocably petitions for, and consents to, the creation of a special improvement district by the City including the Property and the levying of special assessments in an aggregate principal amount not to exceed \$5,360,000 against the Property for the purpose of financing the direct and incidental costs of certain local improvements, all as further and more particularly provided in the proposed form of resolution creating such special improvement district, which is attached as Exhibit B hereto. Each of us has reviewed the proposed resolution for a description of the nature, location and estimated cost of the improvements, the identity of the proposed engineer for the district, the method(s) by which the special assessments are proposed to be levied, the term over which the special assessments will be payable and other particulars. Each of us further acknowledges and agrees that the amount of special assessments proposed to be levied against each lot, tract or parcels that we own does not exceed the special benefit conferred upon such lot, tract or parcel by the improvements to be undertaken in the proposed district.

The undersigned acknowledge that, following receipt of this petition, the City Council of the City will have jurisdiction in its discretion to create the special improvement district and order the local improvements by adoption of a resolution substantially in the form of that attached as Exhibit B, without a public hearing and without notice to the undersigned to issue bonds payable from the special assessments levied against the Property and to levy assessments against the Property.

The undersigned acknowledge and agree that the provisions of this Petition and Consent shall be deemed to run with the land and to bind subsequent assignees of their interest in the Property, and that this Petition and Consent may be recorded to advise prospective successors or assigns of the provisions hereof.

DATED as of this 11th day of August, 2008.

**SIGNATURE PAGE TO
PETITION AND CONSENT OF ALL OWNERS OF PROPERTY
FOR THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT
IN THE CITY OF BILLINGS, MONTANA
DATED AS OF AUGUST 11, 2008**

Printed Name

Signature

South Billings Center, LLC, a
Delaware limited liability company

By: South Billings Associates, LLC, a
Delaware limited liability company,
its Manager

Name: Jeffrey M. Vitek
Title: Executive Committee Member

Description of Property Owned:

Lot 2A-2A South Billings Center LLC.

“Lot 2A-2A of Amended Plat of Lots 2A-2 & 2A-3, Block 1, of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County”

STATE OF MONTANA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2008, before me, a Notary Public for the State of _____, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

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

(Notarial Seal) Notary Public for the State of _____
Residing at _____
My Commission expires _____

SIGNATURE PAGE TO
PETITION AND CONSENT OF ALL OWNERS OF PROPERTY
FOR THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT
IN THE CITY OF BILLINGS, MONTANA
DATED AS OF AUGUST 11, 2008

Printed Name

Signature

Cabela's Wholesale, Inc.

By: _____

Its: _____

Description of Property Owned:

Lot 2A-3A Cabela's

"Lot 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County"

STATE OF MONTANA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2008, before me, a Notary Public for the State of _____, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

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

(Notarial Seal)

Notary Public for the State of _____
Residing at _____
My Commission expires _____

**SIGNATURE PAGE TO
PETITION AND CONSENT OF ALL OWNERS OF PROPERTY
FOR THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT
IN THE CITY OF BILLINGS, MONTANA
DATED AS OF AUGUST 11, 2008**

Printed Name

Signature

Miller Trois, LLC

By: _____

Its: _____

Description of Property Owned:

Lot 2A-4 Miller Trois

“Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County”

STATE OF MONTANA)
)
COUNTY OF _____) SS.

On this _____ day of _____, 2008, before me, a Notary Public for the State of _____, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

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

(Notarial Seal)

Notary Public for the State of _____
Residing at _____
My Commission expires _____

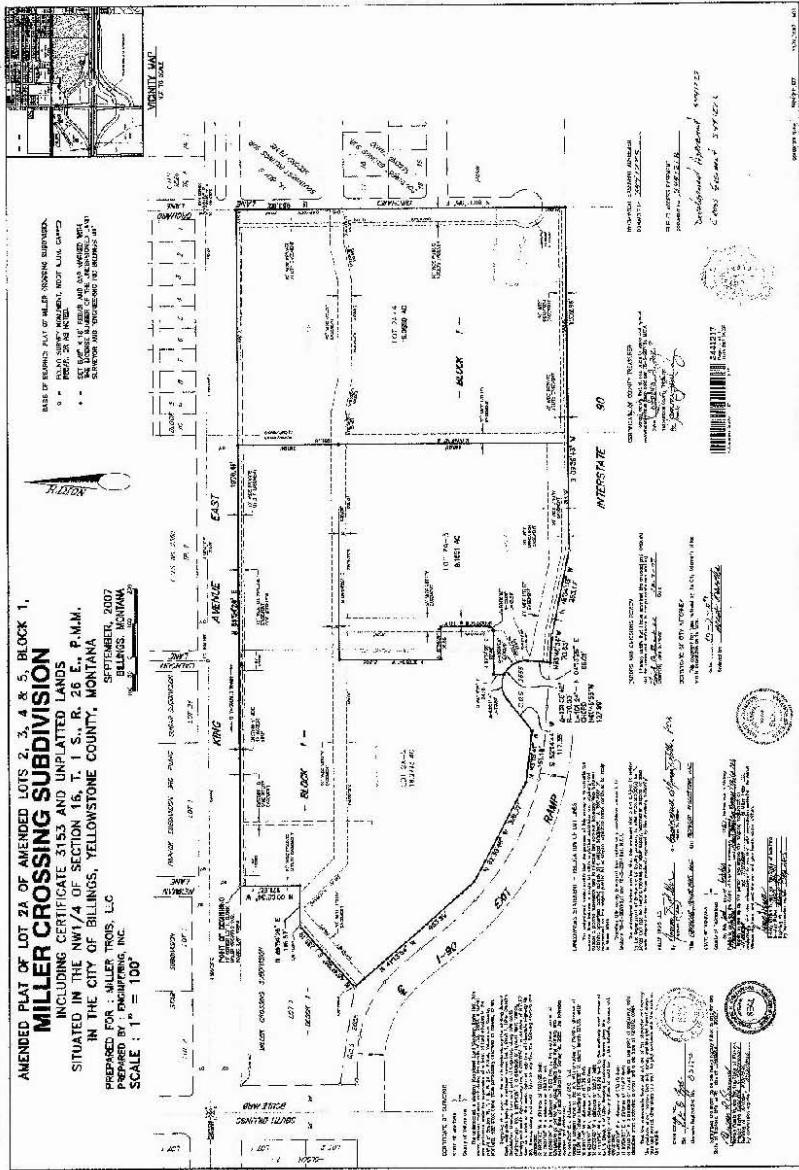
EXHIBIT A

LEGAL DESCRIPTION OF THE DISTRICT

Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County;

Lots 2A-2A & 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County

MAP DEPICTING DISTRICT



A-2

EXHIBIT B

PROPOSED FORM OF RESOLUTION CREATING THE SPECIAL IMPROVEMENT
DISTRICT

B-1

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1385; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 11, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand and seal officially this _____ day of _____, 2008

(SEAL)

City Clerk

RESOLUTION NO. 08-18742

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT
NO. 1385; CREATING THE DISTRICT FOR THE PURPOSE OF
UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND
FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO
THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT
DISTRICT BONDS SECURED BY THE CITY'S SPECIAL
IMPROVEMENT DISTRICT REVOLVING FUND AND
ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND
REGULATIONS UNDER THE INTERNAL REVENUE CODE

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

Section 1. Receipt of Petition. This Council has received a petition, dated August 11, 2008 (the "Petition") to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Part 41, as amended (the "Act"), a special improvement district (the "District") for the purpose of financing certain local improvements to benefit certain property located in the City and included within the proposed District. The Petition has been signed by all owners of the property in the proposed District and the owners expressly consented in the Petition to the creation of the proposed District on the terms and conditions hereinafter specified.

Section 2. Creation of the District; Issuance of Bonds. Based on the Petition and Sections 7-12-4102(3), 7-12-4110(2) and 7-12-4114(1)(d) of the Act, this Council has jurisdiction, and finding it in the best interest of the City hereby determines, to create the District and order the Improvements (as defined in Section 6) on the terms and conditions hereinafter prescribed, for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds of the City drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds is \$5,360,000. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefitted by the Improvements in an amount not less than \$5,360,000.

Section 3. Number of District. The District shall be known and designated as Special Improvement District No. 1385 of the City of Billings, Montana.

Section 4. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit C hereto (which is hereby incorporated herein and made a part hereof).

Section 5. Benefitted Property. The District and territory included within the limits and boundaries described in Section 4 and as shown on Exhibits A, B and C are hereby declared to be the special improvement district and the territory which will benefit and be benefitted by the Improvements and will be assessed for the costs of the Improvements as described in Section 8. The Improvements, in the opinion of this Council, are of more than local and ordinary benefit. The property included within said limits and boundaries is hereby declared to be the property benefitted by the Improvements.

Section 6. General Character of the Improvements. The general character of the Improvements is street improvements on King Avenue East, South Billings Boulevard, Newman Lane, Calhoun Lane and Orchard Lane, as well as water, storm drain and sanitary sewer facilities, and city/county drain crossings, as required by the City (the “Improvements”).

Section 7. Engineer and Estimated Cost. The City of Billings Public Works Department (the “Engineer”) shall be the engineer for the District. The Engineer has estimated the cost of the Improvements, including all incidental costs, as shown on Exhibit D hereto.

Section 8. Assessment Method.

8.1. Property To Be Assessed. All properties within the District are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefitting from the Improvements, based on the actual area method of assessment described in Section 7-12-4161 of the Act, as particularly applied and set forth in this Section 8.

8.2. Actual Area. All properties in the District will be assessed for their proportionate share of the costs of the Improvements. The total estimated cost of the Improvements is \$5,360,000 and shall be assessed against each lot, tract or parcel of land in the District for that part of the costs of the Improvements that the actual area of such lot, tract or parcel bears to the total actual area of all lots, tracts or parcels of land in the District, exclusive of streets, avenues and alleys. The total actual area of the District to be assessed is 1,852,659.072 square feet. The costs of the Improvements per square foot of actual area shall not exceed \$2.8931 per square foot. The assessment for each lot, tract or parcel of land for the Improvements is shown on Exhibit C hereto.

8.3. Assessment Methodologies Equitable and Consistent with Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific Improvements against the properties benefitted thereby as prescribed in this Section 8 are equitable and in proportion to and not exceeding the special benefits derived from the respective Improvements by the lots, tracts and parcels to be assessed therefor within the District.

Section 9. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 20 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property owners shall have the right to prepay assessments as provided by law.

Section 10. Method of Financing; Pledge of Revolving Fund; Making an Exception to the City's Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$5,360,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) Estimated Market Value of Parcels. The assessed value of the lots, parcels or tracts in the District as of the date of adoption of this resolution, as shown in the records of the Department of Revenue, is set forth in Exhibit C hereto (which is hereby incorporated herein and made a part hereof). The estimated market value of all of the property in the District based on an appraisal prepared by Cushman & Wakefield, Inc. of Portland, Oregon is shown on Exhibit C. The special assessments to be levied under Section 8 against each lot, parcel or tract in the District is less than the increase in estimated market value of the lot, parcel or tract as a result of the construction of the Improvements.

(b) Diversity of Property Ownership. Of the three parcels of land in the District, one parcel or 22% of the square footage of the District is owned by Cabela's Wholesale, Inc. (the "Cabela's Property"), one parcel or 43% of the square footage of the District is owned by South Billings Center, LLC. (the "Developer") (the "Developer's Property") and one parcel or 35% of the square footage of the District is owned by Miller Trois, LLC who has entered into an Option Agreement with the Developer for the same property. The Developer has entered into a Purchase Agreement with Sam's Real Estate Business Trust for such property (the "Sam's Club Property"). Currently, the ownership of the property in the District is spread 22%, 43%, and 35%, respectively, and it is not anticipated that the concentration of ownership will exceed those percentages. The Developer will either sell or lease the separate pads constituting the Developer Property and, if leased, the special assessments will be payable by the Lessees under the terms of the lease agreements, therefor assuring ever greater diversity.

(c) Comparison of Special Assessments and Property Taxes and Market Value. The City has compared the estimated market value of each lot, tract, and parcel in the District after the Improvements are made to the amount of the proposed special assessments against each lot, tract, and parcel in the District. The estimated market value of each lot, tract, and parcel in the District after the Improvements are made is believed to be in excess of the proposed special assessments against each lot, tract, and parcel in the District.

(d) Delinquencies. Based on a sampling of the records of the County Assessor relating to properties in the District, delinquencies in payment of property taxes for those properties to be included in the District do not exceed the level that is customary for properties in the City and County. None of the property in the District is included in any other special or rural special improvement districts.

(e) The Public Benefit of the Improvements. While the Improvements are of special benefit to the property in the District, they are of general benefit to the entire City and in particular to the newly created South Billings Boulevard Urban Renewal District (the “Urban Renewal District”) and will greatly assist in the stimulation and redevelopment of the Urban Renewal District.

(f) Newly Platted Subdivision, Approval of Exception to Resolution No. 05-18234. To protect the City against undue risks and demands on its Revolving Fund, the City has adopted Resolution No. 05-18234 limiting the circumstances under which the City will issue special improvement district bonds secured by the Revolving Fund for districts containing significant amounts of raw or undeveloped land. While the District does consist of a newly platted subdivision and is predominantly undeveloped, the City has obtained a report from King and Associates which projects that the District will be fully developed within five years. Further, the City has received a letter from Cabela’s Retail, Inc., predecessor in interest to Cabela’s Wholesale, Inc, dated May 13, 2008, indicating that the Cabela’s Property will be fully developed and open for business by June 1, 2009. The Developer has represented that it is actively marketing the Developer’s Property. It is anticipated that the Sam’s Club Property will be fully developed by September 30, 2009. To ensure the marketability of the Bonds at the most advantageous interest rate, it is necessary that the Bonds be secured by the Revolving Fund. This Council believes, given the proposed development timetable, the strength of the developments, and the public benefits derived from the Improvements, it is in the public interest to make an exception to Resolution No. 05-18234 and to create the District and issue Bonds secured by the Revolving Fund as provided herein.

Section 11. Creation of District Conditional Upon Execution of Amended and Restated Development Agreement. The creation of the District, the issuance of the Bonds, and the construction of the Improvements all as defined herein is conditional upon the approval, execution, and delivery of an Amended and Restated Development Agreement between the City, South Billings Center, LLC, and Cabela’s Wholesale, Inc., dated as of August 11, 2008 in substantially the form attached hereto as Exhibit E.

Section 12. Reimbursement Expenditures.

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

12.2. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iii) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

12.3. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$5,360,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

12.4. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

12.5. Reimbursement Allocations. The City’s Financial Services Manager shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 11th day of August, 2008.

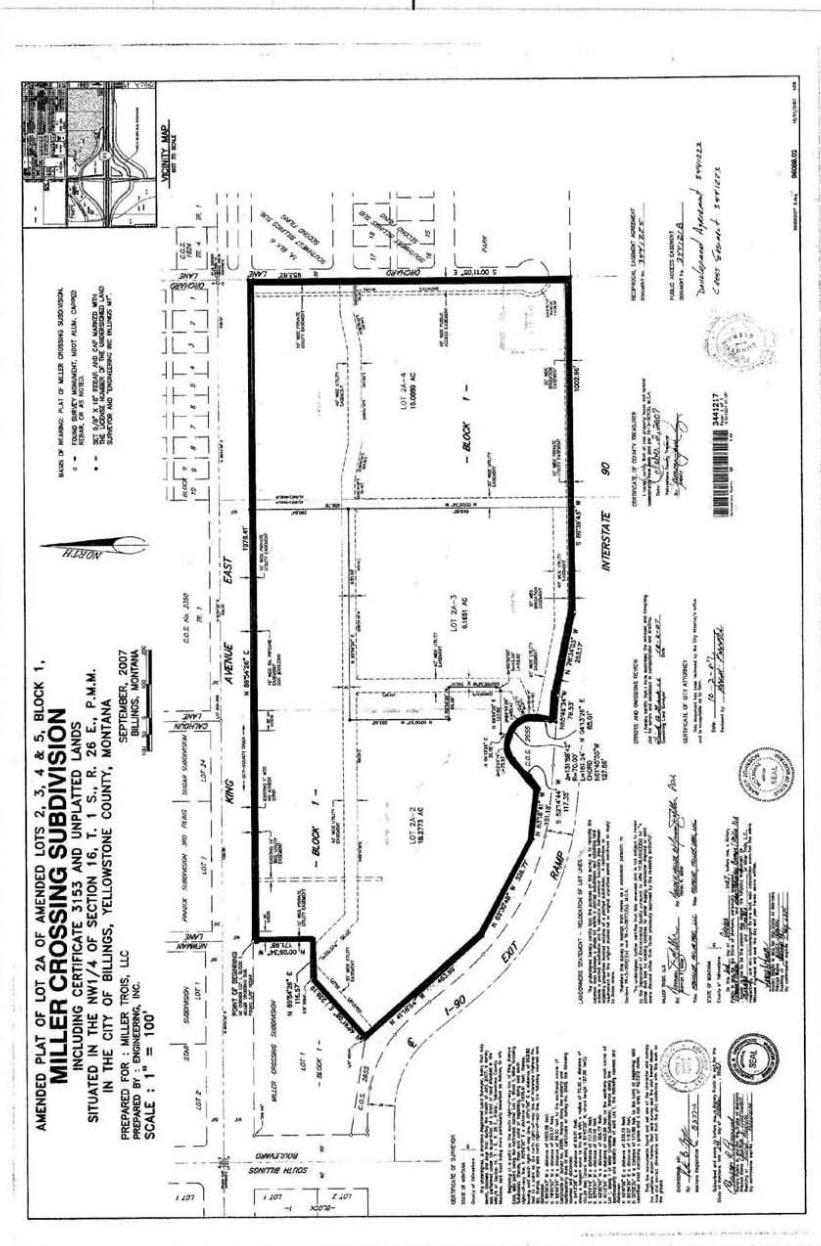
Mayor

Attest:

City Clerk

EXHIBIT A

SID 1385 DISTRICT BOUNDARY MAP



A-1

EXHIBIT B
LEGAL DESCRIPTION OF THE PROPERTY

Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County;

Lots 2A-2A & 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County

EXHIBIT C
LISTING OF PROPERTIES IN THE DISTRICT

Property Owner	Cabela's Wholesale, Inc.	Miller Trois, LLC	South Billings Center, LLC.	Total
Legal Description	Lot 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County	Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County	Lot 2A-2A of Amended Plat of Lots 2A-2 & 2A-3, Block 1, of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County	
Mailing Address	One Cabela Drive Sidney, NE 69160	4507 Palisade Drive Billings, MT 59106	5850 Avenida Encinas, Suite A Carlsbad, CA 92008	
Square Footage	404,415.396	657,272.484	790,971.192	1,852,659.072
Proposed Principal Assessment	\$1,170,014	\$1,901,555	\$2,288,359	\$5,359,928
Assessed Market Value (DOR)	\$324,745	\$520,237	\$621,514	\$1,466,496
Estimated Market Value by Cushman & Wakefield, Inc.	\$3,033,115	\$4,929,544	\$5,932,284	\$13,894,943

EXHIBIT D

ESTIMATED COST OF IMPROVEMENTS BY
THE CITY OF BILLINGS PUBLIC WORKS DEPARTMENT

Engineering	\$535,353.00
Right-of-way Acquisition	310,085.00
Construction	3,068,058.00
Engineering Services Fees	84,000.00
Traffic Signal Construction	130,987.00
Water Main Construction	171,517.00
Total	\$4,300,000.00
Deposit to Project Construction Fund	\$4,300,000.00
City Engineering and Administration	450,000.00
Deposit to Debt Service Reserve Fund (DSRF) - 5%	268,000.00
Deposit to Capitalized Interest Fund (CIF)	192,148.13
Total Underwriter's Discount (1.700%)	91,120.00
Costs of Issuance	56,250.00
Rounding Amount	2,481.87
Total Uses	\$5,360,000.00

EXHIBIT E
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

E-1

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
MILLER CROSSING SUBDIVISION
OFF-SITE IMPROVEMENTS**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the “Agreement”) shall be dated as of August 11, 2008, and is made by and between **SOUTH BILLINGS CENTER, LLC**, a Delaware limited liability company whose address is 5850 Avenida Encinas, Suite A, Carlsbad, California 92008 (the “Developer”), **CABELA’S WHOLESALE, INC.**, a Nebraska corporation whose address is One Cabela Drive, Sidney, Nebraska 69160, as successor by merger to Cabela’s Retail, Inc., a Nebraska corporation (“Cabela’s”), and the **CITY OF BILLINGS, MONTANA**, a municipal corporation whose address is 210 North 27th Street Billings, Montana 59101 (the “City”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the City has pursuant to Ordinance No. 08-5462 (the “Ordinance”) created the South Billings Boulevard Urban Renewal District which contains a tax increment provision (the “Urban Renewal District”); and

WHEREAS, the Developer and Cabela’s plan to develop property in the Urban Renewal District as the Billings Town Square Shopping Center and has provided to King and Associates a proposed schedule of development of the Shopping Center (the “Project”); and

WHEREAS, in order to set forth the rights, duties, obligations and responsibilities in connection with the construction of certain public improvements as required by the City of Billings and as more particularly set forth in Exhibit A attached hereto and made a part hereof (the “Public Improvements”) and the Project, the Developer and the City entered into that certain Development Agreement dated as of October 4, 2007, which was duly recorded on October 4, 2007 in the Office of the County Recorder of Yellowstone County, Montana as Instrument No. 3441222 of Official Records (the “Original Development Agreement”); and

WHEREAS, it has been the intention and desire of the Parties that the tax increment revenue generated from the Project (the “Project Tax Increment”) will be used to pay for the costs of the Public Improvements; and

WHEREAS, given the complexities of tax increment bonds and the uncertainty of timing in the development of the Project and the receipt of the proposed tax increment revenues, it is not possible to sell tax increment bonds at this time to pay the costs of the Public Improvements; and

WHEREAS, it is necessary and desirable for the Project that the City proceed with the construction of the Public Improvements through the creation of a special improvement district; and

WHEREAS, the Developer, Cabela’s and Miller Trois, LLC, as owners of record of that property described on Exhibit B attached hereto and made a part hereof (the “South Billings Center Property,” the “Cabela’s Property” and the “Miller Trois Property,” collectively, the “Property”), have filed a petition with the City dated as of August 11, 2008 (the “Petition”) to create a special improvement district to pay the costs of the Public Improvements; and

WHEREAS, the City, upon receipt of the signed Petition, will pursuant to Resolution No. 08-18742 (the “Resolution”) create Special Improvement District No. 1385 (the “Special Improvement District” or the “District”), to finance the Public Improvements and will issue special improvement district bonds in the principal amount of \$5,360,000 (the “Special Improvement District Bonds” or the “Bonds”), to be paid from special assessments levied against the property in the District, to pay the costs of the Public Improvements, fund a deposit to the City’s Revolving Fund, capitalize interest and pay costs associated with the sale and issuance of the Bonds; and

WHEREAS, the City has determined pursuant to the Ordinance that the Project and Public Improvements are Urban Renewal Projects and eligible for tax increment financing; and

WHEREAS, based on the foregoing, the Developer and the City now desire to amend, restate and supersede the Original Development Agreement, add Cabela’s as an additional party, and set forth the Parties’ intentions with respect to the availability and use of the Project Tax Increment and other available funds of the City with respect to the Public Improvements being financed by the Special Improvement District Bonds and the reimbursement of the special assessment levied therefor.

NOW THEREFORE, for good and valuable consideration, the Parties hereto hereby agree, covenant and represent as follows:

Section 1. Development of the Project.

1.01. King and Associates have prepared a report to the City dated as of July 11, 2008, (the "King Report") which projects the amount of tax increment revenue that will be generated from the development of the Project. The Developer is actively marketing the Project and the King Report was based on information provided by the Developer with respect to its plan for the development of the Property. Development of the Project is anticipated to be phased based on final agreements between the Developer and its retail tenants but the Developer believes that the development will occur consistent with the findings of the King Report and be substantially completed within five years. Subject to events of Force Majeure, as hereinafter defined, the Developer will complete the on-site improvements set forth in Exhibit C attached hereto and made a part hereof, at an estimated cost of not less than \$1,000,000 (the "On-Site Improvements") no later than May 2, 2009 and undertake to develop the Project as expeditiously as possible. The Developer will provide all permanent utilities to the Cabela's Property no later than February 1, 2009.

1.02. Cabela's has agreed to construct an 80,000 square foot retail store (the "Cabela's Store") in the Billings Town Square Shopping Center. Subject to events of "Force Majeure" (defined below), the City's substantial completion of the Public Improvements by June 1, 2009, and the completion and delivery of the permanent utilities to the Cabela's Property by February 1, 2009, Cabela's agrees to complete the construction of the Cabela's Store and open no later than June 1, 2009.

1.03. The Developer shall obtain the approval of the City for all construction on or adjacent to the Project. The Developer shall construct all On-Site Improvements in accordance with City ordinances and other applicable local, state and federal regulations. The proposed development plan shall be in conformance with the current zoning of the Property. All improvements and construction on and adjacent to the Project, including, but not limited to site development, building construction, landscaping, and lighting shall be performed in accordance with all local, state, and federal regulations, and as approved by the City. The Developer and Cabela's acknowledges that the Property is subject to applicable utility fees in place at the time a building permit is secured for building and/or the extension of service to the Property or any portion thereof is applied for. Fees shall be due and payable by the Developer, Cabela's, or the owner of the Property, if not the Developer, at the time of request for service extension.

Section 2. Construction of the Public Improvements. The City will commence construction of the Public Improvements upon creation of the District and the execution of this Agreement and undertake to complete the construction of the Public Improvements as expeditiously as possible. The construction contract anticipated to be awarded to Knife River Construction on August 11, 2008 has a completion day for the Public Improvements of June 1, 2009.

Section 3. Assessments and Taxes. The Developer and Cabela's acknowledge and understand that all Property in the District will be assessed for its pro rata share of the

costs of the Public Improvements as set forth in the Resolution. The Developer and Cabela's agree to pay when due all special assessments and property taxes levied against their respective portions of the Property in the District, unless they have otherwise provided for the payment of those obligations by a lessee or other successor of that Property through a duly recorded agreement. The Developer also agrees to pay when due all special assessments for any portion of the Property in the District for which it may otherwise be liable or obligated to pay.

Section 4. Reimbursements. Consistent with the Parties' desires that Project Tax Increment be used to pay the costs of the Public Improvements, the City agrees to allocate one hundred percent (100%) of the Project Tax Increment to reimburse the owners of the Property in the District responsible for or paying the special assessments (the "Property Owners") as provided in this Section 4, for the payment of special assessments in connection with the Special Improvement District Bonds and as further illustrated on Schedules I and II attached hereto. Reimbursements will be made by the City on a semi-annual basis by check mailed to the Property Owners at the respective addresses set forth in Section 12 hereof within ten (10) business days from receipt by the City of a paid invoice or other reasonable evidence of the Property Owner's payment of the special assessment for the prior period.

1. 57.5% of the special assessments (the "Reimbursement Amount") will be first made from Project Tax Increment payable pro rata to the Property Owners in the District on the basis of the amount of their respective special assessments.
2. To the extent the Project Tax Increment is insufficient, the City will use revenues from the City's Arterial Construction Fee established pursuant to Ordinance No. 04-5300 (the "Arterial Fee Revenues") to fund the Reimbursement Amount, for a period ending July 1, 2012. After August 1, 2012, Project Tax Increment will be the only source of reimbursement of the Reimbursement Amount.
3. Once the Project Tax Increment is sufficient to cover the Reimbursement Amount, any Project Tax Increment in excess of the Reimbursement Amount (the "Excess Project Tax Increment") will be used to reimburse the Property Owners for their 42.5% share of their unreimbursed special assessments (the "Property Owners' Share"), allocable to the Developer, Cabela's and the owner of the Miller Trois Property on the basis as illustrated in Schedule I titled "Reimbursement by the City Example".
4. Once the Project Tax Increment is sufficient to cover the Reimbursement Amount and Property Owners' Share, the Excess Project Tax Increment will be used to reimburse on a semiannual basis the Property Owners for their accumulated aggregate unreimbursed special assessments and to reimburse the City for the Reimbursements made from the Arterial Fee

Revenues until fully paid based on the percentages illustrated in Schedule II.

Section 5. No Effect On Obligation to Pay Special Assessments. Nothing in this Agreement shall be deemed or construed to affect the enforceability of the special assessments levied against the Property in the District or the obligation of any party to this Agreement to pay such special assessments.

Section 6. Refunding of the Special Improvement District Bonds. It is the City's intention to refund the Special Improvement District Bonds from the proceeds of tax increment revenue bonds payable from the Project Tax Increment when and to the extent that the Project Tax Increment is adequate to successfully market a principal amount of bonds sufficient to redeem the Special Improvement District Bonds, fund a debt service reserve, to pay costs associated with the sale and issuance of the Bonds, without any additional credit support of the Developer, at which time the SID assessment would be permanently and unconditionally removed from the Property within the District.

Section 7. Representations of Parties. Each Party to this Agreement represents that it has full power and authority to enter into this Agreement and has taken all action necessary and requisite to make this Agreement valid, binding and enforceable in accordance with its terms.

Section 8. Former Rights Superseded. This Agreement, together with all agreements supplementing or ancillary hereto, contains the entire agreement of the Parties and supersedes the Original Development Agreement. All rights contained in the Original Development Agreement not restated in this Agreement are relinquished by the parties thereto, and the parties thereto are relieved of all obligations contained in the Original Development Agreement not amended by or restated in this Agreement.

Section 9. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana.

Section 10. Construction. If any provision of this Agreement is found invalid to any extent, the remainder of this Agreement shall not be affected thereby, and any provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 11. Successors and Assigns. The stipulations and agreements of this Agreement shall be binding on the successors and assigns of the Parties.

Section 12. Notices. Any notice, demand or request under this Agreement shall be delivered in person or sent via US Certified Mail, postage prepaid, to the Parties at the following addresses:

Cabela's Wholesale, Inc.
One Cabela Drive
Sidney, NE 69160
Attn: Mark Nienhueser

City of Billings
210 North 27th Street
Billings, MT 59103
Attn: Financial Services Manager

South Billings Center, LLC.
c/o Foursquare Properties, Inc.
5850 Avenida Encinas, Suite A
Carlsbad, CA 92008
Attn: Jeffrey M. Vitek

Section 13. Attorneys' Fees. If it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, or to give any notice required herein, then the prevailing party shall be entitled to reasonable attorney fees and costs.

Section 14. Amendments. Amendment or modification of this Agreement or any provisions herein shall be made in writing by the Party requesting the change and upon acceptance and execution by all Parties shall become a part of this Agreement.

Section 15. Force Majeure. For purposes of this Agreement "Force Majeure" shall mean any act of God, fire, earth movement, hurricane, flood, explosion, action of the elements, war, invasion, insurrection, acts of terrorism, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions (unless provoked in bad faith violation of any labor laws by the party claiming its obligation or undertaking was prevented or delayed), condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, similar to the foregoing, not within the control of such party, provided, however, Force Majeure shall not include lack of funds or inability to obtain financing.

Section 16. Parties to this Agreement. The only parties to this Agreement are the Developer, Cabela's and the City, and except as stated in this section nothing herein should be held to give rise to claims of third parties. This Agreement establishes a right of reimbursement for special assessments paid by owners of the Miller Trois Property and the City will honor that obligation as if the owner of such property were signatory to this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
County of Yellowstone)

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the CITY OF BILLINGS, MONTANA, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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

Notary Public for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

**SOUTH BILLINGS CENTER, LLC., a
Delaware limited liability company**

By: South Billings Associates, LLC, a
Delaware limited liability company,
its Manager

By: _____
Name: _____
Title: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 200_____, before me, a Notary Public
for the State of _____, personally appeared _____,
known to me to be the _____ of South Billings Center,
LLC., the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same.

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

Notary Public for the State of _____
Printed name: _____
Residing at: _____
My commission expires: _____

CABELA'S WHOLESALE, INC.

By: _____

Its: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 200_____, before me, a Notary Public for the State of _____, personally appeared _____, known to me to be the _____ of Cabela's Wholesale, Inc., the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

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

Notary Public for the State of _____
Printed name: _____
Residing at: _____
My commission expires: _____

EXHIBIT A

PUBLIC IMPROVEMENTS



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

28-Jun-07
Miller Crossing
96082 02

**Preliminary Engineer's Estimate of Probable Cost
For
Miller Crossing Site Development**

Phase I Off-Site Improvements For King Ave. East

Estimate Based on Schematic Drawings

ALL ITEMS ARE COMPLETE IN PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<i>Utility Improvements</i>					
101	1	LS	Mobilization and Insurance (7%)	@ \$25,688.12 / LS =	\$25,688.12
102	2	EA	Connect to Existing 12-inch Water Main Stub	@ \$1,400.00 / EA =	\$2,800.00
103	1,250	LF	12-inch Water Main	@ \$40.00 / LF =	\$50,000.00
104	4	EA	12-inch Gate Valve	@ \$1,350.00 / EA =	\$5,400.00
105	1	EA	12-inch Cross	@ \$595.00 / EA =	\$595.00
106	1	EA	12x12x8-inch Tee	@ \$575.00 / EA =	\$575.00
107	2	EA	12x8-inch Reducer	@ \$550.00 / EA =	\$1,100.00
108	3	EA	12x12x12-inch Tee	@ \$550.00 / EA =	\$1,650.00
109	250	LF	8-inch Water Main	@ \$30.00 / LF =	\$7,500.00
110	3	EA	8-inch Gate Valve	@ \$850.00 / EA =	\$2,550.00
111	3	EA	8-inch Plug and Thrust Block	@ \$375.00 / EA =	\$1,125.00
112	3	EA	Fire Hydrant Assembly	@ \$3,800.00 / EA =	\$11,400.00
113	5	EA	48-inch Storm Drain Manhole	@ \$2,200.00 / EA =	\$11,000.00
114	660	LF	12-inch Storm Drain Pipe	@ \$28.00 / LF =	\$18,680.00
115	6	EA	12-inch Cap	@ \$400.00 / EA =	\$2,400.00
116	8	EA	Inlet	@ \$1,250.00 / EA =	\$10,000.00
117	60	LF	12x8-foot RCP Box Culvert (Includes Wing Walls)	@ \$750.00 / LF =	\$45,000.00
118	1	LS	City / County Drain Modifications	@ \$160,000.00 / LS =	\$160,000.00
119	1	LS	Traffic Control	@ \$21,000.00 / LS =	\$21,000.00
Subtotal - Utility Improvements					= \$366,973.12

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ITEM NO.	EST QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE															
<i>Street Improvements</i>																				
201	1	LS	Mobilization and Inspection (7%)	@ \$56,180.00 / LS =	\$56,180.00															
202	4,850	LS	Storm Water Management & Erosion Control	@ \$16,051.43 / LS =	\$16,051.43															
203	4,850	SY	Remove Existing Asphalt	@ \$5.60 / SY =	\$24,750.00															
204	6,275	CY	Unclassified Excavation	@ \$8.00 / CY =	\$50,200.00															
205	4,280	CY	1 1/2-inch Base Gravel	@ \$21.00 / CY =	\$89,880.00															
206	1,430	LF	Curb and Gutter	@ \$11.00 / LF =	\$15,730.00															
207	1,050	SF	Accessibility Ramp	@ \$6.50 / SF =	\$6,825.00															
208	20	EA	Truncated Dome Panel	@ \$180.00 / EA =	\$3,600.00															
209	8,425	SY	Asphalt Surface Course (6-inch Section)	@ \$15.00 / SY =	\$125,000.00															
210	3	EA	Monument and Box	@ \$360.00 / EA =	\$1,080.00															
211	13,420	SF	10-foot Wide Construction Wall	@ \$5.50 / SF =	\$73,810.00															
212	1	LS	Intersection King Ave East & Billings Blvd Improvements (Includes Widening, Signing, Striping and Signal Reliming)	@ \$60,000.00 / LS =	\$60,000.00															
213	1	LS	Traffic Signal at King Ave East and Calhoun Ln	@ \$250,000.00 / LS =	\$250,000.00															
214	1	LS	Traffic Control	@ \$28,000.00 / LS =	\$28,000.00															
Subtotal - Street Improvements					= \$802,671.43															
Total Construction Costs					= \$1,169,544.55															
Construction Contingency (7%)					= \$81,889.12															
Total Cost of Construction Improvements					= \$1,251,412.67															
<i>Administrative Costs If Done By Private Contract</i>																				
<table border="0"> <tr> <td>Preliminary Engineering and Design (4%)</td><td>= \$50,056.51</td></tr> <tr> <td>Final Engineering and Design (2%)</td><td>= \$25,028.25</td></tr> <tr> <td>Field Staking (2.5%)</td><td>= \$31,265.32</td></tr> <tr> <td>Construction Inspection and Quality Control (4%)</td><td>= \$50,056.51</td></tr> <tr> <td>Construction Engineering and Management (2%)</td><td>= \$25,028.25</td></tr> <tr> <td>Materials Testing (1.5%)</td><td>= \$18,771.19</td></tr> <tr> <td colspan="2" style="text-align: right;">Subtotal - Engineering and Construction Management</td><td>= \$200,226.03</td></tr> </table>						Preliminary Engineering and Design (4%)	= \$50,056.51	Final Engineering and Design (2%)	= \$25,028.25	Field Staking (2.5%)	= \$31,265.32	Construction Inspection and Quality Control (4%)	= \$50,056.51	Construction Engineering and Management (2%)	= \$25,028.25	Materials Testing (1.5%)	= \$18,771.19	Subtotal - Engineering and Construction Management		= \$200,226.03
Preliminary Engineering and Design (4%)	= \$50,056.51																			
Final Engineering and Design (2%)	= \$25,028.25																			
Field Staking (2.5%)	= \$31,265.32																			
Construction Inspection and Quality Control (4%)	= \$50,056.51																			
Construction Engineering and Management (2%)	= \$25,028.25																			
Materials Testing (1.5%)	= \$18,771.19																			
Subtotal - Engineering and Construction Management		= \$200,226.03																		
<i>City Fees</i>																				
<table border="0"> <tr> <td>Public Utilities Sewer Local Main Construction Fee \$0.0598/s f of 72% of the Gross Area</td><td>= \$78,125.28</td></tr> <tr> <td>Public Utilities 4% Franchise Fee (Sewer)</td><td>= \$3,125.01</td></tr> <tr> <td>Public Utilities Water Local Main Construction Fee \$0.1221/s f of 72% of the Gross Area</td><td>= \$159,516.68</td></tr> <tr> <td>Public Utilities 4% Franchise Fee (Water)</td><td>= \$6,380.67</td></tr> <tr> <td>City 2.5% Private Contract Fee</td><td>= \$31,285.32</td></tr> <tr> <td colspan="2" style="text-align: right;">Total City Fees</td><td>= \$278,432.95</td></tr> </table>						Public Utilities Sewer Local Main Construction Fee \$0.0598/s f of 72% of the Gross Area	= \$78,125.28	Public Utilities 4% Franchise Fee (Sewer)	= \$3,125.01	Public Utilities Water Local Main Construction Fee \$0.1221/s f of 72% of the Gross Area	= \$159,516.68	Public Utilities 4% Franchise Fee (Water)	= \$6,380.67	City 2.5% Private Contract Fee	= \$31,285.32	Total City Fees		= \$278,432.95		
Public Utilities Sewer Local Main Construction Fee \$0.0598/s f of 72% of the Gross Area	= \$78,125.28																			
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Public Utilities Water Local Main Construction Fee \$0.1221/s f of 72% of the Gross Area	= \$159,516.68																			
Public Utilities 4% Franchise Fee (Water)	= \$6,380.67																			
City 2.5% Private Contract Fee	= \$31,285.32																			
Total City Fees		= \$278,432.95																		
Total Administrative Costs					= \$478,658.88															
<i>Total Estimated Project Costs*</i>																				
<table border="0"> <tr> <td>Total Net Square Footage Improved</td><td>= 1,814,504</td></tr> <tr> <td>Total Gross Square Footage Improved</td><td>= 1,814,504</td></tr> <tr> <td>Total Square Foot Cost (Net Lot Area)</td><td>= \$0.95</td></tr> </table>						Total Net Square Footage Improved	= 1,814,504	Total Gross Square Footage Improved	= 1,814,504	Total Square Foot Cost (Net Lot Area)	= \$0.95									
Total Net Square Footage Improved	= 1,814,504																			
Total Gross Square Footage Improved	= 1,814,504																			
Total Square Foot Cost (Net Lot Area)	= \$0.95																			

* Estimate Does Not Include Private Utilities



ENGINEERING, INC.

Consulting Engineers and Land Surveyors

28-Jun-07
Miller Crossing
96082 02

**Preliminary Engineer's Estimate of Probable Cost
For
Miller Crossing Site Development**

**Phase II Off-Site
For**

King Ave. East, South Billings Blvd. & Orchard Ln. Improvements

Estimate Based on Schematic Drawings

ALL ITEMS ARE COMPLETE IN PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
101	1	LS	Mobilization and Insurance (7%)	@ \$129,605.15 / LS =	\$129,605.15
102	1	LS	Storm Water Management & Erosion Control	@ \$37,030.33 / LS =	\$37,030.33
103	7	EA	Connect to Ex. 12-inch Storm Drain Stub	@ \$750.00 / EA =	\$5,250.00
104	3	EA	48-inch Storm Drain Manhole	@ \$2,200.00 / EA =	\$6,600.00
105	285	LF	12-inch Storm Drain Pipe	@ \$28.00 / LF =	\$7,960.00
106	12	EA	Inlet	@ \$1,250.00 / EA =	\$15,000.00
107	1	LS	City / County Drain Modifications	@ \$150,000.00 / LS =	\$150,000.00
108	1	LS	Orchard Ln. Bridge Improvements	@ \$18,500.00 / LS =	\$18,500.00
109	4,335	SY	Remove Existing Asphalt	@ \$5.50 / SY =	\$23,842.50
110	500	LF	Saw Cut Existing Edge of Asphalt	@ \$4.00 / LF =	\$2,000.00
111	10,070	CY	Unclassified Excavation	@ \$8.00 / CY =	\$80,560.00
112	6,870	CY	1 1/2-inch Base Gravel	@ \$21.00 / CY =	\$144,270.00
113	6,010	LF	Curb and Gutter	@ \$11.00 / LF =	\$65,110.00
114	3,810	SF	Drive Approach	@ \$8.50 / SF =	\$24,765.00
115	1,860	SF	Accessibility Ramp	@ \$5.50 / SF =	\$10,725.00
116	28	EA	Truncated Dome Panel	@ \$180.00 / EA =	\$5,040.00
117	17,285	SF	7-foot Wide Blvd Walk	@ \$4.50 / SF =	\$77,725.00
118	3,000	SF	5-foot Wide Blvd Walk	@ \$4.50 / SF =	\$13,500.00
119	12,215	SY	Asphalt Surface Course (6-inch Section)	@ \$10.00 / SY =	\$122,150.00
120	2,640	LF	Median Curb	@ \$390.00 / LF =	\$981.00
121	1	EA	Manhole and Box	@ \$390.00 / EA =	\$390.00
122	5,300	SF	10-foot Wide Multi-Use Trail (Includes Widening, Signing, Striping and Signal Rehab)	@ \$5.50 / SF =	\$28,150.00
123	1	LS	Intersection King Ave East & S. Billings Blvd Improvements	@ \$250,000.00 / LS =	\$250,000.00
124	1	LS	S Billings Blvd Improvements (South of King Ave East)	@ \$235,000.00 / LS =	\$235,000.00
125	1	LS	Calhoun Ln. and Underpass Ave. Intersection Improvements	@ \$20,000.00 / LS =	\$20,000.00
126	1	LS	Traffic Signal at King Ave East and Orchard Ln	@ \$200,000.00 / LS =	\$200,000.00
127	1	LS	Traffic Control	@ \$85,000.00 / LS =	\$85,000.00

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Total Construction Costs	=	\$1,851,516.48
Construction Contingency (7%)	=	\$129,806.15
Total Cost of Construction Improvements	=	<u>\$1,981,122.64</u>

Administrative Costs If Done By Private Contract

Preliminary Engineering and Design (4%)	=	\$79,244.91
Final Engineering and Design (2%)	=	\$39,622.45
Field Staking (2.5%)	=	\$49,528.07
Construction Inspection and Quality Control (4%)	=	\$79,244.91
Construction Engineering and Management (2%)	=	\$39,622.45
Materials Testing (1.5%)	=	\$29,716.84
Subtotal - Engineering and Construction Management	=	\$316,979.82

City Fees

City 2.5% Private Contract Fee	=	\$49,528.07
Total City Fees	=	\$49,528.07

Total Administrative Costs	=	\$366,507.89
-----------------------------------	---	---------------------

Total Estimated Project Costs*	=	\$2,347,630.33
---------------------------------------	---	-----------------------

Total Net Square Footage Improved	=	1,814,504
Total Gross Square Footage Improved	=	1,814,504
Total Square Foot Cost (Net Lot Area)	=	\$1.29

* Estimate Does Not Include Private Utilities

Total Estimated Project Costs For Phase I & II	=	\$4,183,412.86
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EXHIBIT B
LEGAL DESCRIPTION OF THE PROPERTY

South Billings Center Property:

Lot 2A-2A South Billings Center LLC.

“Lot 2A-2A of Amended Plat of Lots 2A-2 & 2A-3, Block 1, of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County”

Cabela’s Wholesale Property:

Lot 2A-3A Cabela’s

“Lot 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County”

Miller Trois Property:

Lot 2A-4 Miller Trois

“Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County”

EXHIBIT C

ON-SITE IMPROVEMENTS

Developer's On-Site Improvements

Description	Total
Civil Engineering	\$ 80,000
Soils Engineering	\$ 15,000
Soils Inspection & Testing	\$ 10,000
Site Preparation	\$ 25,000
Mass Grading	\$ 125,000
Sewer	\$ 90,000
Storm Drain	\$ 75,000
Water	\$ 50,000
Dry Utilities	\$ 20,000
Precise Grading	\$ 20,000
Site Concrete	\$ 70,000
Site Lighting	\$ 45,000
Base & Pave	\$ 115,000
Landscape & Irrigation	\$ 80,000
Promotional Signage	\$ 180,000
Total:	1,000,000

SCHEDULE I

REIMBURSEMENT OF SPECIAL ASSESSMENTS

SCHEDULE I

Illustration Purposes Only

**Based on Bond Principal Amount of \$5,380,000 with interest
Assumes enough TIF Revenue for 01/01/2011 payment
Assessment amounts payable by each respective party**

7/1/2010 \$ 128,098 C

**Source: Miller Crossing Plat
Total Sq. Ft. 1,852,659.072
Rate per Sq. Ft. 0.0891**

**Cabela's Wholesale Inc.
Miller Property Owner
South Billings Center LLC.**

**27,945
45,418
54,736**

**128,098
128,098**

**Source: Miller Crossing Plat
Total Sq. Ft. 1,852,659.0720
Rate per Sq. Ft. 0.0891**

**Cabela's Wholesale Inc.
Miller Property Owner
South Billings Center LLC.**

**27,945
45,418
54,736**

128,098

Reimbursement by the City - Assumption that Foursquare will reimburse the Millers

	D		\$ Reim.
	42.5% of	Total C	by TIF or City
Paid \$	27,945	27,221	724
	45,418	12,348	33,068
	54,736	14,872	39,884
	128,098	54,442	73,657
	42.5%	42.5%	57.5%

D is the amount the two parties will be responsible for until enough TIF revenue is available

D is the amount the two parties will be responsible for until enough TIF revenue is available

SCHEDULE II

REIMBURSEMENT OF SPECIAL ASSESSMENTS (continued)

SCHEDULE II

Illustration Purposes Only

Assumes enough TIF Revenue to Cover SID Debt Payment

City Reimb. South Billings and Cabel's	147,314	57.50%
Cabela's Wholesale Inc. Paid Amount	54,442	21.25%
Miller Property Owner	24,698	9.64%
South Billings Center LLC. Paid Amount	<u>29,744</u>	<u>11.61%</u>
	256,198	100.00%

Assume there is \$100,000 above required debt payment

	\$ Paid	
	Back	
City of Billings	67,140	
Cabela's Wholesale Inc.	21,250	
Miller Property Owner	9,640	
South Billings Center LLC.	11,610	

The reimbursement to each respective party would continue until amount paid has been recovered



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 2008

TITLE: Resolution Relating to \$5,360,000 King Avenue East Special Improvement District Bonds, Authorizing the Issuance and Calling for a Public Sale

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is being asked to approve this resolution that will authorize the sale of \$5,360,000 of Special Improvement District (SID) bonds. The bonds are for the design and construction of King Avenue East between Orchard and South Billings Boulevard and to improve three street intersections. The bonds will be offered in a public sale.

The initial bond sizing was \$5,155,000. The amount increased to fund a mid-year bond interest payment. This mid-year interest payment is necessary for marketing and selling the bonds but it is out of cycle with SID assessments and tax statements that occur in November. Therefore, the interest only payment that will be due on July 1, 2009 must be capitalized in the bond issue.

FINANCIAL IMPACT: These are SID bonds for which the primary securities are the revolving fund and the property. The bonds are expected to sell with an interest rate of approximately 5% and will have a 20 year term. If these conditions hold, the annual debt service will average approximately \$455,000.

RECOMMENDATION

Staff recommends City Council approve the attached resolution authorizing the King Avenue East SID bond issuance and public sale.

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

ATTACHMENTS

A - Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$5,360,000 SPECIAL IMPROVEMENT DISTRICT NO. 1385 BONDS; AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF AND AUTHORIZING AND MAKING CERTAIN FINDINGS WITH RESPECT TO THE PLEDGE OF THE REVOLVING FUND TO THE SECURITY THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 11, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand and seal officially this _____ day of August, 2008.

(SEAL)

City Clerk

RESOLUTION NO. 08-18743

RESOLUTION RELATING TO \$5,360,000 SPECIAL IMPROVEMENT DISTRICT NO. 1385 BONDS; AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF AND AUTHORIZING AND MAKING CERTAIN FINDINGS WITH RESPECT TO THE PLEDGE OF THE REVOLVING FUND TO THE SECURITY THEREOF

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

Section 1. Recitals.

(a) This Council has duly and validly created and established in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), a special improvement district, designated as Special Improvement District No. 1385 (the "District"), for the purpose of financing costs of certain public improvements of special benefit to the properties within the District (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds of the City drawn on the District (the "Bonds"), the creation and administration of the District, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, are \$5,360,000. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements in an amount not less than \$5,360,000.

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

(c) Subject to Subsection 1(b), it is necessary that the Bonds be issued and sold in an aggregate principal amount of \$5,360,000 to finance the costs of the Improvements, including incidental costs, described in Subsection 1(a). The costs of the Improvements are currently estimated, as follows:

Deposit to Project Construction Fund	\$4,300,000.00
City Engineering and Administration	450,000.00
Deposit to Debt Service Reserve Fund (DSRF) - 5%	268,000.00
Deposit to Capitalized Interest Fund (CIF)	192,148.13
Total Underwriter's Discount (1.700%)	91,120.00
Costs of Issuance	56,250.00
Rounding Amount	2,481.87
Total Uses	\$5,360,000.00

Section 2. Determination of Public Interest in Allowing Bond Discount. Pursuant to the authority described in Section 1, this Council hereby determines to fix the minimum price for the Bonds at \$5,360,000 (100% of par), plus interest accrued thereon to the date of delivery. Such minimum bid will enable bidders to bid more efficiently for the Bonds by permitting them to submit their bids based on actual market conditions without adjusting the interest rates thereon to provide compensation for their purchase of the Bonds. This procedure will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests of the District and the City.

Section 3. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$5,360,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) Value of Parcels. Exhibit A hereto shows the assessed value of the lots, parcels or tracts in the District as of the date of adoption of this resolution, which values are taken from the records of the Department of Revenue. The City determines that the value of the properties will be enhanced by the Improvements.

(b) Diversity of Property Ownership: Level of Development. Of the three parcels of land in the District, one parcel or 22% of the square footage of the District is owned by Cabela's Wholesale, Inc. (the "Cabela's Property"), one parcel or 43% of the square footage of the District is owned by South Billings Center, LLC. (the "Developer") (the "Developer's Property") and one parcel or 35% of the square footage of the District is owned by Miller Trois, LLC who has entered into an Option Agreement with the Developer for the same property. The Developer has entered into a Purchase Agreement with Sam's Real Estate Business Trust for such property (the "Sam's Club Property"). Currently, the ownership of the property in the District is spread 22%, 43%, and 35%, respectively, and it is not anticipated that the concentration of ownership will exceed those percentages. The Developer will either sell or lease the separate pads constituting the Developer Property and, if leased, the special assessments will be payable by the Lessees under the terms of the lease agreements, therefor assuring ever greater diversity.

(c) Comparison of Special Assessments and Property Taxes and Market Value. As shown in Exhibit A, the proposed amount of the assessment is less than the assessed value of the property. The estimated market value of each lot, tract, and parcel in the District after the Improvements are made is believed to be in excess of the proposed special assessments against each lot, tract, and parcel in the District.

(d) Delinquencies. Based on a sampling of the records of the County Assessor relating to properties in the District, delinquencies in payment property taxes for those properties

to be included in the District do not exceed the level that is customary for properties in the City and County. None of the property in the District is included in any other special or rural special improvement districts.

(e) The Public Benefit of the Improvements. The street improvements on King Avenue East, South Billings Boulevard, Newman Lane, Calhoun Lane and Orchard Lane, as well as water, storm drain and sanitary sewer facilities, and city/county drain crossings are of general benefit to the entire community and the City.

Section 4. Terms of the Bonds. This Council hereby authorizes the issuance and sale of the Bonds, to be denominated "Special Improvement District No. 1385 Bonds," of the City in the aggregate principal amount of \$5,360,000 (the "Bonds") for the purpose of financing the costs of the Improvements. The Bonds shall be dated, as originally issued, as of October 1, 2008, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing July 1, 2009, at a rate or rates designated by the successful bidder at public sale and approved by this Council. If issued as serial bonds, the Bonds shall mature on July 1 in each of the following years and amounts (unless combined into one or more term bonds):

Year	Principal Amount	Year	Principal Amount
2011	\$205,000	2020	\$290,000
2012	210,000	2021	305,000
2013	220,000	2022	320,000
2014	225,000	2023	335,000
2015	235,000	2024	355,000
2016	245,000	2025	375,000
2017	255,000	2026	390,000
2018	265,000	2027	415,000
2019	280,000	2028	435,000

Bidders will have the option of combining the Bonds maturing on and after 2011 through and including 2015 and on and after 2016 through and including 2028 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amount set forth in the foregoing schedule on each July 1, concluding no later than 2028, at a redemption price equal to the principal amount of such Bonds or portions thereof to be redeemed with interest accrued thereon and payable on January 1 and July 1 to the redemption date, in installments and in the same amounts and on the same dates as the Bonds would have matured if they were not included in a term bond.

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

Section 5. Public Sale. The Bonds shall be sold at a public competitive sale, the sealed bids for which shall be submitted to the Financial Services Manager or bids for the purchase of the Bonds shall be received by the City by electronic transmission through Parity™, in either case until 11:30 a.m., MT, on September 22, 2008 at which time bids will be opened or

accessed and tabulated by the Financial Services Manager. The tabulation of bids will be presented to the City Council at a special meeting of this Council on September 22, 2008, at 12:00 noon, MT. This Council will consider the bids and, if a responsive and acceptable bid is received, award the sale of the Bonds. The City will receive sealed bids or bids transmitted electronically through Parity™ for the Bonds and the Bonds will be sold in accordance with the Official Terms and Conditions attached hereto as Exhibit B (which is hereby incorporated and made a part hereof). The Financial Services Manager is hereby authorized and directed to cause notice of the sale to be published, as required by Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106, in *The Billings Times*, once each week for two successive weeks preceding the week which contains the date of sale. The notice of sale shall be published and mailed in substantially the form set forth as Exhibit C to this resolution (which is hereby incorporated herein and made a part hereof) and this Council hereby adopts the terms and conditions set forth in such notice of sale as the terms and conditions of the sale of the Bonds.

Section 6. Official Statement. The Financial Services Manager and other officers of the City, in cooperation with Springsted Incorporated, of St. Paul, Minnesota, financial consultants to the City, are hereby authorized and directed to prepare on behalf of the City an official statement to be distributed to potential purchasers of the Bonds. Such official statement shall contain the terms and conditions of sale set forth in the notice of sale adopted in Section 5 and such other information as shall be advisable and necessary to describe accurately the City and the security for, and terms and conditions of, the Bonds. The Financial Services Manager is authorized on behalf of the City to deem the official statement near "final" as of its date, in accordance with Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934.

Section 7. Continuing Disclosure. In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Board under the Securities Exchange Act of 1934 (the "Rule"), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution prescribing the terms of the Bonds to provide certain specified information, if customarily prepared and publicly available, and notice of the occurrence of certain events, if material. The City is the only "obligated person" in respect of the Bonds within the meaning of the Rule and, giving effect to the issuance of the Bonds, there will not be more than \$10 million in principal amount of municipal securities outstanding on the date of issuance of the Bonds as to which the City is an obligated person (excluding municipal securities exempt from the Rule under paragraph (d)(1) thereof). A description of the undertaking is set forth in the Official Statement. Failure of the District to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds. The City has complied in all material respects with any undertaking previously entered into by it under the Rule.

Passed by the City Council of the City of Billings, Montana, this 11th day of August, 2008.

Mayor

ATTEST:

City Clerk

EXHIBIT A
Assessment List of District Properties

Property Owner	Cabela's Wholesale, Inc.	Miller Trois, LLC	South Billings Center, LLC.	Total
Legal Description	Lot 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County	Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County	Lot 2A-2A of Amended Plat of Lots 2A-2 & 2A-3, Block 1, of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County	
Mailing Address	One Cabela Drive Sidney, NE 69160	4507 Palisade Drive Billings, MT 59106	5850 Avenida Encinas, Suite A Carlsbad, CA 92008	
Square Footage	404,415.396	657,272.484	790,971.192	1,852,659.072
Proposed Principal Assessment	\$1,170,014	\$1,901,555	\$2,288,359	\$5,359,928
Assessed Market Value (DOR)	\$324,745	\$520,237	\$621,514	\$1,466,496
Estimated Market Value by Cushman & Wakefield, Inc.	\$3,033,115	\$4,929,544	\$5,932,284	\$13,894,943

A-1

EXHIBIT B

TERMS AND CONDITIONS

**\$5,360,000
SPECIAL IMPROVEMENT DISTRICT NO. 1385 BONDS**

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City of Billings, Montana (the "City"), will sell to the best bidder for cash, as evidenced by sealed bids or bids transmitted electronically through Parity™, the above-described Bonds drawn against the district fund of Special Improvement District No. 1385 in the principal amount of \$5,360,000.

Sealed bids for the purchase of the Bonds will be received at the office of the Financial Services Manager in Billings, Montana, at 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids for the purchase of the Bonds will be received by electronic transmission through Parity™, in either case until 11:30 a.m., MT, on Monday, September 22, 2008, at which time the bids will be opened or accessed and tabulated. The City Council of the City will meet at 12:00 noon on the same day in the Council Chambers to consider the bids and the award of sale of the Bonds and, if a responsive and acceptable bid is received, award the Series 2008 Bonds to the responsive bidder whose bid reflects the lowest true interest cost (TIC) to the City.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of Special Improvement District No. 1385 (the "District"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"). The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special assessment which is a lien against the assessable real property within the District benefited by the Improvements to be undertaken therein or therefor. The special assessments are payable in semiannual installments over a term not exceeding 20 years, each in semiannual installments of principal, plus interest, with unpaid installments of the special assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum.

The Bonds are further secured by the Special Improvement District Revolving Fund of the City (the "Revolving Fund") into which \$268,000 will be deposited from the proceeds of the Bonds. The City will agree to make a loan from the Revolving Fund to the District Fund to make good any deficiency then existing in the principal and interest accounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City's general fund to the extent and for the period authorized by the Act.

Date and Type

The Bonds will be dated, as originally issued, as of October 1, 2008, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Form

If issued as serial bonds, the Bonds shall mature, subject to redemption, on July 1 in the following years and amounts (unless combined into one or more term bonds):

Year	Principal Amount	Year	Principal Amount
2011	\$205,000	2020	\$290,000
2012	210,000	2021	305,000
2013	220,000	2022	320,000
2014	225,000	2023	335,000
2015	235,000	2024	355,000
2016	245,000	2025	375,000
2017	255,000	2026	390,000
2018	265,000	2027	415,000
2019	280,000	2028	435,000

Bidders will have the option of combining the Bonds maturing on and after 2011 through and including 2015 and on and after 2016 through and including 2028 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amount set forth in the foregoing schedule on each July 1, concluding no later than 2028, at a redemption price equal to the principal amount of such Bonds or portions thereof to be redeemed with interest accrued thereon and payable on January 1 and July 1 to the redemption date, in installments and in the same amounts and on the same dates as the Bonds would have matured if they were not included in a term bond.

Book Entry

Unless requested otherwise by the underwriter, the Bonds will be issued by means of a book entry system with no physical distribution of Bonds made to the public. The following provisions of this paragraph shall apply unless the underwriter expressly requests that the Bonds not be issued in book-entry form. The Bonds will be issued in fully registered form and one Bond, representing the aggregate principal amount of the Bonds maturing in each year, will be registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as securities depository of the Bonds. Individual purchases of the Bonds may be made in the principal amount of \$5,000 or any multiple thereof of a single maturity, through book entries made on the books and records of DTC and its participants. Principal and interest are payable by the registrar to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to participants of DTC will be the responsibility of DTC; transfer of principal and interest payments to beneficial owners by participants will be the responsibility of such participants and other nominees of

beneficial owners. The purchaser, as a condition of delivery of the Bonds, will be required to deposit the Bonds with DTC.

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the District Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the District or from the transfer of surplus money from the Construction Account to the Principal Account, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the District Fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described under "Mandatory Redemption". The Bonds with stated maturities on or after July 1, 2016 will be subject to redemption on July 1, 2015, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

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

Interest Payment Dates, Rates

Interest will be payable each January 1 and July 1, commencing July 1, 2009, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. All Bonds of the same stated maturity must bear interest from date of original issue until paid at a single, uniform rate. Each rate must be expressed in an integral multiple of 1/8 or 1/20 of 1%. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Individual interest rates may be no higher than 6.50%, with the difference between the highest and lowest rate being no greater than 4.50%. No supplemental or "B" coupons or additional interest certificates will be allowed.

Bond Registrar, Transfer Agent and Paving Agent

The City shall select a bond registrar, transfer agent and paying agent (the "Registrar") in connection with the Bonds. The bond register will be kept, transfers of ownership will be effected and principal of and interest on the Bonds will be paid by the Registrar. The City will pay the charges of the Registrar for such services. The City reserves the right to remove the Registrar and to appoint a successor.

Delivery

Within 40 days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser and, if serial bonds, will be issued in denominations corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of Bond Counsel hereinafter described, an arbitrage certification and a certificate stating that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated depository on the day of closing. The successful bidder shall submit to the Financial Services Manager not earlier than 48 hours after the award of sale and not later than the day of closing a certificate, in form satisfactory to Bond Counsel, as to the initial reoffering price of each stated maturity of the Bonds and stating that at least ten percent of the principal amount of such Bonds of each stated maturity has been sold at such respective prices.

Legal Opinion

An opinion as to the validity of the Bonds and the exclusion of the interest thereon from gross income for federal income tax purposes and Montana individual income tax purposes will be furnished by Dorsey & Whitney LLP, of Missoula, Montana, and Minneapolis, Minnesota, as Bond Counsel. The legal opinion will be printed on the Bonds. The legal opinion will state that the Bonds are valid and binding special, limited obligations of the City enforceable in accordance with their terms, except to the extent to which enforceability thereof may be limited by the exercise of judicial discretion or by state or federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights.

Type of Bid and Good Faith Deposit

Sealed or electronic bids for not less than \$5,360,000 (100% of par) and accrued interest on the principal sum of \$5,360,000 must be mailed or delivered to the undersigned and must be received at the office of the Financial Services Manager prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional. Bids may be transmitted electronically through Parity™ in accordance with these terms and conditions.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith deposit (the "Deposit") in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of \$107,200 payable to the order of the City is required for a bid to be considered. If money, cashier's check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the Financial Services Manager. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond in the State of Montana and such bond must be submitted to the Financial Services Manager, or

the City's financial advisor prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier's check (or wire transfer such amount as instructed by the City or its financial advisor) not later than 1:00 p.m., Mountain Daylight Time, on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the City's Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209 or from Financial Advisor, Springsted Incorporated at (651) 223-3000 (Bond Services Division).

Award

The City will consider sealed bids or bids transmitted electronically through the ParityTM system. The bid having the lowest true interest cost (TIC) (the net present value of the total interest on all Bonds from October 1, 2008, to their maturities, less any premium or plus any discount), will be deemed the most favorable. In the event that two or more bids state the lowest true interest cost, the sale of the Bonds will be awarded by lot. No oral bid will be considered. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

Electronic Transmission

For further information about ParityTM, potential bidders may contact the Financial Advisor, Springsted Incorporated at (651) 223-3000 (Bond Services Division), or ParityTM at (212) 849-5021. In the event of a malfunction in the electronic bidding process, bidders may submit their bids by sealed bid including facsimile transmission to the Financial Services Manager, Pat Weber, at facsimile number (406) 657-8390 (phone (406) 657-8210) or to Springsted Incorporated at facsimile number (651) 223-3046 (phone (651) 223-3000).

CUSIP Numbers

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

Official Statement

The City will prepare an Official Statement relating to the Bonds which the City will deem, for purposes of SEC Rule 15c2-12, to be final as of its date. The City will deliver, at closing, a certificate executed by the Mayor and the Financial Services Manager to the effect that, to the best of their knowledge, as of the date of closing, the information contained in the Official Statement, including any supplement thereto, does not contain any untrue statement of a

material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading; provided that no comment will be made with respect to any information provided by the successful bidder for inclusion in any supplement to the Official Statement.

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

Within seven business days after the sale the City will furnish to the successful bidder without charge up to 50 copies of the final Official Statement relating to the Bonds. The successful bidder must notify the Financial Services Manager in writing within seven business days after the award of sale of the Bonds if it requires additional copies of the Official Statement. The cost of additional copies shall be paid by the successful bidder.

Continuing Disclosure

In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Board under the Securities Exchange Act of 1934 (the "Rule"), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution prescribing the terms of the Bonds to provide certain specified information, if customarily prepared and publicly available, and notice of the occurrence of certain events, if material. The City is the only "obligated person" in respect of the Bonds within the meaning of the Rule and, giving effect to the issuance of the Bonds, there will not be more than \$10 million in principal amount of municipal securities outstanding on the date of issuance of the Bonds as to which the City is an obligated person (excluding municipal securities exempt from the Rule under paragraph (d)(1) thereof). A description of the undertaking is set forth in the Official Statement. Failure of the District to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds. The City has complied in all material respects with any undertaking previously entered into by it under the Rule.

Dated: August 11, 2008.

BY ORDER OF THE CITY COUNCIL

Cari Martin, City Clerk

EXHIBIT C

NOTICE OF BOND SALE

**\$5,360,000
SPECIAL IMPROVEMENT DISTRICT NO. 1385 BONDS**

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of the City of Billings, Montana (the "City"), will receive sealed bids for the purchase of \$5,360,000 Special Improvement District No. 1385 Bonds (the "Bonds") in the City Finance offices at 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids for the purchase of the Bonds will be received by the City by electronic transmission through Parity™, in either case until 11:30 a.m., M.T., on Monday, September 22, 2008, at which time the bids will be opened or accessed and tabulated. The bids will be presented to the City Council at a special meeting at 12:00 noon on the same day at the Council Chambers, at which time the Council will consider the bids received, and if a responsive and acceptable bid is received, the Council will award sale of the Bonds to the responsive bidder whose bid reflects the lowest true interest cost (TIC).

The Bonds are being issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements"), or reimbursing the City the cost thereof, within Special Improvement District No. 1385 (the "District"); and paying costs associated with the sale and issuance of the bonds. The Bonds shall mature, subject to redemption, on July 1 in the following years and amounts (unless combined into one or more term bonds):

Year	Principal Amount	Year	Principal Amount
2011	\$205,000	2020	\$290,000
2012	210,000	2021	305,000
2013	220,000	2022	320,000
2014	225,000	2023	335,000
2015	235,000	2024	355,000
2016	245,000	2025	375,000
2017	255,000	2026	390,000
2018	265,000	2027	415,000
2019	280,000	2028	435,000

The Bonds shall be secured by the City's Special Improvement District Revolving Fund. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities. Bidders will have the option of combining the Bonds maturing on and after 2011 through and including 2015 and on and after 2016 through and including 2028 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption on each July 1, concluding no later than 2028, at a redemption price equal to the principal amount of such Bonds or portions thereof to be redeemed with interest accrued thereon and payable on January 1 and July 1 to the redemption date, in installments and in the same amounts and on the same dates as the bonds would have matured if they were not included in a term bond.

The Bonds shall be dated, as originally issued, as of October 1, 2008, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing July 1, 2009, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. No interest rate may exceed 6.50% per annum, and the difference between the highest and lowest rate of interest may not exceed 4.50% per

annum. No supplemental coupons are permitted and rates shall be expressed in integral multiples of 1/8 or 1/20 of one percent per annum. The Bonds with stated maturities on or after July 1, 2016 will be subject to redemption on July 1, 2017, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. The Bonds are also subject to mandatory redemption on an interest payment date if the amounts in the District Fund, either from prepayment of assessments or transfers from the Construction Account to the Principal Account, are sufficient to pay outstanding Bonds, or portions thereof, with interest thereon to that interest payment date.

The Bonds will be sold for not less than \$5,360,000 (100% of par) with accrued interest on the principal amount of the Bonds to the date of their delivery. The Council reserves the right to reject any and all bids, to waive any informality in any bid, and to adjourn the sale.

A good faith deposit in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the Federal Deposit Insurance Corporation or a financial surety bond in the sum of 2% of the aggregate principal amount of the Bonds (\$107,200) payable to the order of the City is required for each bid to be considered, as further specified in the Official Terms and Conditions of Sale.

Copies of the Official Terms and Conditions of Sale and additional information may be obtained from Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209, financial advisor to the District. Prospective bidders should consult the Official Terms and Conditions of Sale and the Preliminary Official Statement for a detailed description of the Bonds, the security therefor, and the form of legal opinion proposed to be rendered by Dorsey & Whitney LLP, of Missoula, Montana, and Minneapolis, Minnesota, as bond counsel. To the extent any instructions or directions set forth in Parity™ conflict with this Notice of Bond Sale, the terms of this Notice of Bond Sale shall control. For further information about Parity™, potential bidders may contact the Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209, or Parity™ at (212) 849-5021. In the event of a malfunction in the electronic bidding process, bidders may submit their bids by sealed bid including facsimile transmission to the Financial Services Manager, Pat Weber, at facsimile number (406) 247-8608 (phone (406) 657-8209) or to Springsted Incorporated at facsimile number (651) 223-3046 (phone (651) 223-3000).

Dated: August 11, 2008.

BY ORDER OF THE CITY COUNCIL

/s/ Cari Martin
Cari Martin, City Clerk
City of Billings, Montana

Publish: _____ and _____, 2008

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 2008

TITLE: Miller Crossing Subdivision Off-Site Improvements Amended and Restated Development Agreement

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council will consider approving a revised development agreement concerning construction and financing of off-site improvements for the Miller Crossing Subdivision. The property is located between King Avenue East and I-90 and between S. Billings Blvd. and Orchard Lane. Council approved the original development agreement in September, 2007. This revised agreement provides additional details about how the developer/property owners will finance the improvements and how the City will share in those costs. The developer/owners have petitioned for creating SID 1385 and are legally responsible for and will pay the entire assessment. However, the developer/owners are required to build off-site improvements to offset the effects of their development and the City is responsible for the cost of improvements that exceed those demanded by the development. After the property owners pay the assessments, the City will reimburse them for its share of costs. The City's 57.5% share of the total costs will initially be paid from the arterial fee fund and as private investment occurs, will be replaced by tax increment. The developer/property owners will equally share the remaining 42.5% of costs and will be reimbursed for that amount as tax increment becomes available. Schedules and performance requirements are also outlined in the agreement. The agreement states the City's intention to refund or call the SID bonds when tax increment is sufficient to finance the entire annual debt cost of the improvements.

FINANCIAL IMPACT: The City's 57.5% reimbursement will be approximately \$147,000 in 2010 and \$261,000 in 2011. Those payments will probably come from the arterial fund. It is projected that by the end of 2011, tax increment will replace the city's arterial fund contribution. When the tax increment exceeds the total amount of debt service, the excess will be used to repay the initial contributions from the arterial fund.

RECOMMENDATION

Staff recommends that Council approve the Miller Crossing Subdivision Off-Site Improvements Amended and Restated Development Agreement.

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

ATTACHMENT

A: Miller Crossing Subdivision Off-Site Improvements Amended and Restated
Development Agreement

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
MILLER CROSSING SUBDIVISION
OFF-SITE IMPROVEMENTS**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the “Agreement”) shall be dated as of August 11, 2008, and is made by and between **SOUTH BILLINGS CENTER, LLC.**, a Delaware limited liability company whose address is 5850 Avenida Encinas, Suite A, Carlsbad, California 92008 (the “Developer”), **CABELA’S WHOLESALE, INC.**, a Nebraska corporation whose address is One Cabela Drive, Sidney, Nebraska 69160, as successor by merger to Cabela’s Retail, Inc., a Nebraska corporation (“Cabela’s”), and the **CITY OF BILLINGS, MONTANA**, a municipal corporation whose address is 210 North 27th Street Billings, Montana 59101 (the “City”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the City has pursuant to Ordinance No. 08-5462 (the “Ordinance”) created the South Billings Boulevard Urban Renewal District which contains a tax increment provision (the “Urban Renewal District”); and

WHEREAS, the Developer and Cabela’s plan to develop property in the Urban Renewal District as the Billings Town Square Shopping Center and has provided to King and Associates a proposed schedule of development of the Shopping Center (the “Project”); and

WHEREAS, in order to set forth the rights, duties, obligations and responsibilities in connection with the construction of certain public improvements as required by the City of Billings and as more particularly set forth in Exhibit A attached hereto and made a part hereof (the “Public Improvements”) and the Project, the Developer and the City entered into that certain Development Agreement dated as of October 4, 2007, which was duly recorded on October 4, 2007 in the Office of the County Recorder of Yellowstone County, Montana as Instrument No. 3441222 of Official Records (the “Original Development Agreement”); and

WHEREAS, it has been the intention and desire of the Parties that the tax increment revenue generated from the Project (the “Project Tax Increment”) will be used to pay for the costs of the Public Improvements; and

WHEREAS, given the complexities of tax increment bonds and the uncertainty of timing in the development of the Project and the receipt of the proposed tax increment revenues, it is not possible to sell tax increment bonds at this time to pay the costs of the Public Improvements; and

WHEREAS, it is necessary and desirable for the Project that the City proceed with the construction of the Public Improvements through the creation of a special improvement district; and

WHEREAS, the Developer, Cabela’s and Miller Trois, LLC, as owners of record of that property described on Exhibit B attached hereto and made a part hereof (the “South Billings Center Property,” the “Cabela’s Property” and the “Miller Trois Property,” collectively, the “Property”), have filed a petition with the City dated as of August 11, 2008 (the “Petition”) to create a special improvement district to pay the costs of the Public Improvements; and

WHEREAS, the City, upon receipt of the signed Petition, will pursuant to Resolution No. 08-18742 (the “Resolution”) create Special Improvement District No. 1385 (the “Special Improvement District” or the “District”), to finance the Public Improvements and will issue special improvement district bonds in the principal amount of \$5,360,000 (the “Special Improvement District Bonds” or the “Bonds”), to be paid from special assessments levied against the property in the District, to pay the costs of the Public Improvements, fund a deposit to the City’s Revolving Fund, capitalize interest and pay costs associated with the sale and issuance of the Bonds; and

WHEREAS, the City has determined pursuant to the Ordinance that the Project and Public Improvements are Urban Renewal Projects and eligible for tax increment financing; and

WHEREAS, based on the foregoing, the Developer and the City now desire to amend, restate and supersede the Original Development Agreement, add Cabela’s as an additional party, and set forth the Parties’ intentions with respect to the availability and use of the Project Tax Increment and other available funds of the City with respect to the Public Improvements being financed by the Special Improvement District Bonds and the reimbursement of the special assessment levied therefor.

NOW THEREFORE, for good and valuable consideration, the Parties hereto hereby agree, covenant and represent as follows:

Section 1. Development of the Project.

1.01. King and Associates have prepared a report to the City dated as of July 11, 2008, (the "King Report") which projects the amount of tax increment revenue that will be generated from the development of the Project. The Developer is actively marketing the Project and the King Report was based on information provided by the Developer with respect to its plan for the development of the Property. Development of the Project is anticipated to be phased based on final agreements between the Developer and its retail tenants but the Developer believes that the development will occur consistent with the findings of the King Report and be substantially completed within five years. Subject to events of Force Majeure, as hereinafter defined, the Developer will complete the on-site improvements set forth in Exhibit C attached hereto and made a part hereof, at an estimated cost of not less than \$1,000,000 (the "On-Site Improvements") no later than May 2, 2009 and undertake to develop the Project as expeditiously as possible. The Developer will provide all permanent utilities to the Cabela's Property no later than February 1, 2009.

1.02. Cabela's has agreed to construct an 80,000 square foot retail store (the "Cabela's Store") in the Billings Town Square Shopping Center. Subject to events of "Force Majeure" (defined below), the City's substantial completion of the Public Improvements by June 1, 2009, and the completion and delivery of the permanent utilities to the Cabela's Property by February 1, 2009, Cabela's agrees to complete the construction of the Cabela's Store and open no later than June 1, 2009.

1.03. The Developer shall obtain the approval of the City for all construction on or adjacent to the Project. The Developer shall construct all On-Site Improvements in accordance with City ordinances and other applicable local, state and federal regulations. The proposed development plan shall be in conformance with the current zoning of the Property. All improvements and construction on and adjacent to the Project, including, but not limited to site development, building construction, landscaping, and lighting shall be performed in accordance with all local, state, and federal regulations, and as approved by the City. The Developer and Cabela's acknowledges that the Property is subject to applicable utility fees in place at the time a building permit is secured for building and/or the extension of service to the Property or any portion thereof is applied for. Fees shall be due and payable by the Developer, Cabela's, or the owner of the Property, if not the Developer, at the time of request for service extension.

Section 2. Construction of the Public Improvements. The City will commence construction of the Public Improvements upon creation of the District and the execution of this Agreement and undertake to complete the construction of the Public Improvements as expeditiously as possible. The construction contract anticipated to be awarded to Knife River Construction on August 11, 2008 has a completion day for the Public Improvements of June 1, 2009.

Section 3. Assessments and Taxes. The Developer and Cabela's acknowledge and understand that all Property in the District will be assessed for its pro rata share of the

costs of the Public Improvements as set forth in the Resolution. The Developer and Cabela's agree to pay when due all special assessments and property taxes levied against their respective portions of the Property in the District, unless they have otherwise provided for the payment of those obligations by a lessee or other successor of that Property through a duly recorded agreement. The Developer also agrees to pay when due all special assessments for any portion of the Property in the District for which it may otherwise be liable or obligated to pay.

Section 4. Reimbursements. Consistent with the Parties' desires that Project Tax Increment be used to pay the costs of the Public Improvements, the City agrees to allocate one hundred percent (100%) of the Project Tax Increment to reimburse the owners of the Property in the District responsible for or paying the special assessments (the "Property Owners") as provided in this Section 4, for the payment of special assessments in connection with the Special Improvement District Bonds and as further illustrated on Schedules I and II attached hereto. Reimbursements will be made by the City on a semi-annual basis by check mailed to the Property Owners at the respective addresses set forth in Section 12 hereof within ten (10) business days from receipt by the City of a paid invoice or other reasonable evidence of the Property Owner's payment of the special assessment for the prior period.

1. 57.5% of the special assessments (the "Reimbursement Amount") will be first made from Project Tax Increment payable pro rata to the Property Owners in the District on the basis of the amount of their respective special assessments.
2. To the extent the Project Tax Increment is insufficient, the City will use revenues from the City's Arterial Construction Fee established pursuant to Ordinance No. 04-5300 (the "Arterial Fee Revenues") to fund the Reimbursement Amount, for a period ending July 1, 2012. After August 1, 2012, Project Tax Increment will be the only source of reimbursement of the Reimbursement Amount.
3. Once the Project Tax Increment is sufficient to cover the Reimbursement Amount, any Project Tax Increment in excess of the Reimbursement Amount (the "Excess Project Tax Increment") will be used to reimburse the Property Owners for their 42.5% share of their unreimbursed special assessments (the "Property Owners' Share"), allocable to the Developer, Cabela's and the owner of the Miller Trois Property on the basis as illustrated in Schedule I titled "Reimbursement by the City Example".
4. Once the Project Tax Increment is sufficient to cover the Reimbursement Amount and Property Owners' Share, the Excess Project Tax Increment will be used to reimburse on a semiannual basis the Property Owners for their accumulated aggregate unreimbursed special assessments and to reimburse the City for the Reimbursements made from the Arterial Fee

Revenues until fully paid based on the percentages illustrated in Schedule II.

Section 5. No Effect On Obligation to Pay Special Assessments. Nothing in this Agreement shall be deemed or construed to affect the enforceability of the special assessments levied against the Property in the District or the obligation of any party to this Agreement to pay such special assessments.

Section 6. Refunding of the Special Improvement District Bonds. It is the City's intention to refund the Special Improvement District Bonds from the proceeds of tax increment revenue bonds payable from the Project Tax Increment when and to the extent that the Project Tax Increment is adequate to successfully market a principal amount of bonds sufficient to redeem the Special Improvement District Bonds, fund a debt service reserve, to pay costs associated with the sale and issuance of the Bonds, without any additional credit support of the Developer, at which time the SID assessment would be permanently and unconditionally removed from the Property within the District.

Section 7. Representations of Parties. Each Party to this Agreement represents that it has full power and authority to enter into this Agreement and has taken all action necessary and requisite to make this Agreement valid, binding and enforceable in accordance with its terms.

Section 8. Former Rights Superseded. This Agreement, together with all agreements supplementing or ancillary hereto, contains the entire agreement of the Parties and supersedes the Original Development Agreement. All rights contained in the Original Development Agreement not restated in this Agreement are relinquished by the parties thereto, and the parties thereto are relieved of all obligations contained in the Original Development Agreement not amended by or restated in this Agreement.

Section 9. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana.

Section 10. Construction. If any provision of this Agreement is found invalid to any extent, the remainder of this Agreement shall not be affected thereby, and any provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 11. Successors and Assigns. The stipulations and agreements of this Agreement shall be binding on the successors and assigns of the Parties.

Section 12. Notices. Any notice, demand or request under this Agreement shall be delivered in person or sent via US Certified Mail, postage prepaid, to the Parties at the following addresses:

Cabela's Wholesale, Inc.
One Cabela Drive
Sidney, NE 69160
Attn: Mark Nienhueser

City of Billings
210 North 27th Street
Billings, MT 59103
Attn: Financial Services Manager

South Billings Center, LLC.
c/o Foursquare Properties, Inc.
5850 Avenida Encinas, Suite A
Carlsbad, CA 92008
Attn: Jeffrey M. Vitek

Section 13. Attorneys' Fees. If it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, or to give any notice required herein, then the prevailing party shall be entitled to reasonable attorney fees and costs.

Section 14. Amendments. Amendment or modification of this Agreement or any provisions herein shall be made in writing by the Party requesting the change and upon acceptance and execution by all Parties shall become a part of this Agreement.

Section 15. Force Majeure. For purposes of this Agreement "Force Majeure" shall mean any act of God, fire, earth movement, hurricane, flood, explosion, action of the elements, war, invasion, insurrection, acts of terrorism, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions (unless provoked in bad faith violation of any labor laws by the party claiming its obligation or undertaking was prevented or delayed), condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, similar to the foregoing, not within the control of such party, provided, however, Force Majeure shall not include lack of funds or inability to obtain financing.

Section 16. Parties to this Agreement. The only parties to this Agreement are the Developer, Cabela's and the City, and except as stated in this section nothing herein should be held to give rise to claims of third parties. This Agreement establishes a right of reimbursement for special assessments paid by owners of the Miller Trois Property and the City will honor that obligation as if the owner of such property were signatory to this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
County of Yellowstone)

On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the CITY OF BILLINGS, MONTANA, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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

Notary Public for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

**SOUTH BILLINGS CENTER, LLC., a
Delaware limited liability company**

By: South Billings Associates, LLC, a
Delaware limited liability company,
its Manager

By: _____

Name: _____

Title: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 200_____, before me, a Notary Public
for the State of _____, personally appeared _____,
known to me to be the _____ of South Billings Center,
LLC., the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same.

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

Notary Public for the State of _____
Printed name: _____
Residing at: _____
My commission expires: _____

CABELA'S WHOLESALE, INC.

By: _____

Its: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 200_____, before me, a Notary Public for the State of _____, personally appeared _____, known to me to be the _____ of Cabela's Wholesale, Inc., the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

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

Notary Public for the State of _____
Printed name: _____
Residing at: _____
My commission expires: _____

EXHIBIT A

PUBLIC IMPROVEMENTS



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

28-Jun-07
Miller Crossing
96082 02

**Preliminary Engineer's Estimate of Probable Cost
For
Miller Crossing Site Development**

Phase I Off-Site Improvements For King Ave. East

Estimate Based on Schematic Drawings

ALL ITEMS ARE COMPLETE IN PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<i>Utility Improvements</i>					
101	1	LS	Mobilization and Insurance (7%)	@ \$25,688.12 / LS =	\$25,688.12
102	2	EA	Connect to Existing 12-inch Water Main Stub	@ \$1,400.00 / EA =	\$2,800.00
103	1,250	LF	12-inch Water Main	@ \$40.00 / LF =	\$50,000.00
104	4	EA	12-inch Gate Valve	@ \$1,350.00 / EA =	\$5,400.00
105	1	EA	12-inch Cross	@ \$595.00 / EA =	\$595.00
106	1	EA	12x12x8-inch Tee	@ \$575.00 / EA =	\$575.00
107	2	EA	12x8-inch Reducer	@ \$550.00 / EA =	\$1,100.00
108	3	EA	12x12x12-inch Tee	@ \$550.00 / EA =	\$1,650.00
109	250	LF	8-inch Water Main	@ \$30.00 / LF =	\$7,500.00
110	3	EA	8-inch Gate Valve	@ \$850.00 / EA =	\$2,550.00
111	3	EA	8-inch Plug and Thrust Block	@ \$375.00 / EA =	\$1,125.00
112	3	EA	Fire Hydrant Assembly	@ \$3,800.00 / EA =	\$11,400.00
113	5	EA	48-inch Storm Drain Manhole	@ \$2,200.00 / EA =	\$11,000.00
114	660	LF	12-inch Storm Drain Pipe	@ \$28.00 / LF =	\$18,680.00
115	6	EA	12-inch Cap	@ \$400.00 / EA =	\$2,400.00
116	8	EA	Inlet	@ \$1,250.00 / EA =	\$10,000.00
117	60	LF	12x8-foot RCP Box Culvert (Includes Wing Walls)	@ \$750.00 / LF =	\$45,000.00
118	1	LS	City / County Drain Modifications	@ \$160,000.00 / LS =	\$160,000.00
119	1	LS	Traffic Control	@ \$21,000.00 / LS =	\$21,000.00
Subtotal - Utility Improvements					= \$366,973.12

1300 North TransTech Way • Billings, MT 59102 • Phone (406) 656-5255 • Fax (406) 656-0967 • www.enginc.com

ITEM NO.	EST QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE															
<i>Street Improvements</i>																				
201	1	LS	Mobilization and Inspection (7%)	@ \$56,180.00 / LS =	\$56,180.00															
202	4,850	LS	Storm Water Control & Erosion Control	@ \$16,051.43 / LS =	\$16,051.43															
203	4,850	SY	Remove Existing Asphalt	@ \$5.60 / SY =	\$24,750.00															
204	6,275	CY	Unclassified Excavation	@ \$8.00 / CY =	\$50,200.00															
205	4,280	CY	1 1/2-inch Base Gravel	@ \$21.00 / CY =	\$89,880.00															
206	1,430	LF	Curb and Gutter	@ \$11.00 / LF =	\$15,730.00															
207	1,050	SF	Accessibility Ramp	@ \$6.50 / SF =	\$6,825.00															
208	20	EA	Truncated Dome Panel	@ \$180.00 / EA =	\$3,600.00															
209	8,425	SY	Asphalt Surface Course (6-inch Section)	@ \$15.00 / SY =	\$125,000.00															
210	3	EA	Monument and Box	@ \$360.00 / EA =	\$1,080.00															
211	13,420	SF	10-foot Wide Construction Wall	@ \$5.50 / SF =	\$73,810.00															
212	1	LS	Intersection King Ave East & Billings Blvd Improvements (Includes Widening, Signing, Striping and Signal Relining)	@ \$60,000.00 / LS =	\$60,000.00															
213	1	LS	Traffic Signal at King Ave East and Calhoun Ln	@ \$250,000.00 / LS =	\$250,000.00															
214	1	LS	Traffic Control	@ \$28,000.00 / LS =	\$28,000.00															
Subtotal - Street Improvements					= \$802,671.43															
Total Construction Costs					= \$1,169,544.55															
Construction Contingency (7%)					= \$81,889.12															
Total Cost of Construction Improvements					= \$1,251,412.67															
<i>Administrative Costs If Done By Private Contract</i>																				
<table border="0"> <tr> <td>Preliminary Engineering and Design (4%)</td><td>= \$50,056.51</td></tr> <tr> <td>Final Engineering and Design (2%)</td><td>= \$25,028.25</td></tr> <tr> <td>Field Staking (2.5%)</td><td>= \$31,265.32</td></tr> <tr> <td>Construction Inspection and Quality Control (4%)</td><td>= \$50,056.51</td></tr> <tr> <td>Construction Engineering and Management (2%)</td><td>= \$25,028.25</td></tr> <tr> <td>Materials Testing (1.5%)</td><td>= \$18,771.19</td></tr> <tr> <td colspan="2" style="text-align: right;">Subtotal - Engineering and Construction Management</td><td>= \$200,226.03</td></tr> </table>						Preliminary Engineering and Design (4%)	= \$50,056.51	Final Engineering and Design (2%)	= \$25,028.25	Field Staking (2.5%)	= \$31,265.32	Construction Inspection and Quality Control (4%)	= \$50,056.51	Construction Engineering and Management (2%)	= \$25,028.25	Materials Testing (1.5%)	= \$18,771.19	Subtotal - Engineering and Construction Management		= \$200,226.03
Preliminary Engineering and Design (4%)	= \$50,056.51																			
Final Engineering and Design (2%)	= \$25,028.25																			
Field Staking (2.5%)	= \$31,265.32																			
Construction Inspection and Quality Control (4%)	= \$50,056.51																			
Construction Engineering and Management (2%)	= \$25,028.25																			
Materials Testing (1.5%)	= \$18,771.19																			
Subtotal - Engineering and Construction Management		= \$200,226.03																		
<i>City Fees</i>																				
<table border="0"> <tr> <td>Public Utilities Sewer Local Main Construction Fee \$0.0598/s f of 72% of the Gross Area</td><td>= \$78,125.28</td></tr> <tr> <td>Public Utilities 4% Franchise Fee (Sewer)</td><td>= \$3,125.01</td></tr> <tr> <td>Public Utilities Water Local Main Construction Fee \$0.1221/s f of 72% of the Gross Area</td><td>= \$159,516.68</td></tr> <tr> <td>Public Utilities 4% Franchise Fee (Water)</td><td>= \$6,380.67</td></tr> <tr> <td>City 2.5% Private Contract Fee</td><td>= \$31,285.32</td></tr> <tr> <td colspan="2" style="text-align: right;">Total City Fees</td><td>= \$278,432.95</td></tr> </table>						Public Utilities Sewer Local Main Construction Fee \$0.0598/s f of 72% of the Gross Area	= \$78,125.28	Public Utilities 4% Franchise Fee (Sewer)	= \$3,125.01	Public Utilities Water Local Main Construction Fee \$0.1221/s f of 72% of the Gross Area	= \$159,516.68	Public Utilities 4% Franchise Fee (Water)	= \$6,380.67	City 2.5% Private Contract Fee	= \$31,285.32	Total City Fees		= \$278,432.95		
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Total City Fees		= \$278,432.95																		
Total Administrative Costs					= \$478,658.88															
<i>Total Estimated Project Costs*</i>																				
<table border="0"> <tr> <td>Total Net Square Footage Improved</td><td>= 1,814,504</td></tr> <tr> <td>Total Gross Square Footage Improved</td><td>= 1,814,504</td></tr> <tr> <td>Total Square Foot Cost (Net Lot Area)</td><td>= \$0.95</td></tr> </table>						Total Net Square Footage Improved	= 1,814,504	Total Gross Square Footage Improved	= 1,814,504	Total Square Foot Cost (Net Lot Area)	= \$0.95									
Total Net Square Footage Improved	= 1,814,504																			
Total Gross Square Footage Improved	= 1,814,504																			
Total Square Foot Cost (Net Lot Area)	= \$0.95																			

* Estimate Does Not Include Private Utilities



ENGINEERING, INC.

Consulting Engineers and Land Surveyors

28-Jun-07
Miller Crossing
96082 02

**Preliminary Engineer's Estimate of Probable Cost
For
Miller Crossing Site Development**

**Phase II Off-Site
For**

King Ave. East, South Billings Blvd. & Orchard Ln. Improvements

Estimate Based on Schematic Drawings

ALL ITEMS ARE COMPLETE IN PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
101	1	LS	Mobilization and Insurance (7%)	@ \$129,605.15 / LS =	\$129,605.15
102	1	LS	Storm Water Management & Erosion Control	@ \$37,030.33 / LS =	\$37,030.33
103	7	EA	Connect to Ex. 12-inch Storm Drain Stub	@ \$750.00 / EA =	\$5,250.00
104	3	EA	48-inch Storm Drain Manhole	@ \$2,200.00 / EA =	\$6,600.00
105	285	LF	12-inch Storm Drain Pipe	@ \$28.00 / LF =	\$7,900.00
106	12	EA	Inlet	@ \$1,250.00 / EA =	\$15,000.00
107	1	LS	City / County Drain Modifications	@ \$150,000.00 / LS =	\$150,000.00
108	1	LS	Orchard Ln. Bridge Improvements	@ \$18,500.00 / LS =	\$18,500.00
109	4,335	SY	Remove Existing Asphalt	@ \$5.50 / SY =	\$23,842.50
110	500	LF	Saw Cut Existing Edge of Asphalt	@ \$4.00 / LF =	\$2,000.00
111	10,070	CY	Unclassified Excavation	@ \$8.00 / CY =	\$80,560.00
112	6,870	CY	1 1/2-inch Base Gravel	@ \$21.00 / CY =	\$144,270.00
113	6,010	LF	Curb and Gutter	@ \$11.00 / LF =	\$65,110.00
114	3,810	SF	Drive Approach	@ \$8.50 / SF =	\$24,765.00
115	1,860	SF	Accessibility Ramp	@ \$5.50 / SF =	\$10,725.00
116	28	EA	Truncated Dome Panel	@ \$180.00 / EA =	\$5,040.00
117	17,285	SF	7-foot Wide Blvd Walk	@ \$4.50 / SF =	\$77,725.00
118	3,000	SF	5-foot Wide Blvd Walk	@ \$4.50 / SF =	\$13,500.00
119	12,215	SY	Asphalt Surface Course (6-inch Section)	@ \$10.00 / SY =	\$122,150.00
120	2,640	LF	Median Curb	@ \$1.00 / LF =	\$2,640.00
121	1	EA	Manhole and Box	@ \$390.00 / EA =	\$390.00
122	5,300	SF	10-foot Wide Multi-Use Trail (Includes Widening, Signing, Striping and Signal Rehab)	@ \$5.50 / SF =	\$28,150.00
123	1	LS	Intersection King Ave East & S. Billings Blvd Improvements	@ \$250,000.00 / LS =	\$250,000.00
124	1	LS	S Billings Blvd Improvements (South of King Ave East)	@ \$235,000.00 / LS =	\$235,000.00
125	1	LS	Calhoun Ln. and Underpass Ave. Intersection Improvements	@ \$20,000.00 / LS =	\$20,000.00
126	1	LS	Traffic Signal at King Ave East and Orchard Ln	@ \$200,000.00 / LS =	\$200,000.00
127	1	LS	Traffic Control	@ \$85,000.00 / LS =	\$85,000.00

1300 North TransTech Way • Billings, MT 59102 • Phone (406) 656-5255 • Fax (406) 656-0967 • www.enginc.com

Total Construction Costs	=	\$1,851,516.48
Construction Contingency (7%)	=	\$129,806.15
Total Cost of Construction Improvements	=	\$1,981,122.64

Administrative Costs If Done By Private Contract

Preliminary Engineering and Design (4%)	=	\$79,244.91
Final Engineering and Design (2%)	=	\$39,622.45
Field Staking (2.5%)	=	\$49,528.07
Construction Inspection and Quality Control (4%)	=	\$79,244.91
Construction Engineering and Management (2%)	=	\$39,622.45
Materials Testing (1.5%)	=	\$29,716.84
Subtotal - Engineering and Construction Management	=	\$316,979.82

City Fees

City 2.5% Private Contract Fee	=	\$49,528.07
Total City Fees	=	\$49,528.07

Total Administrative Costs	=	\$366,507.89
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Total Estimated Project Costs*	=	\$2,347,630.33
---------------------------------------	---	-----------------------

Total Net Square Footage Improved	=	1,814,504
Total Gross Square Footage Improved	=	1,814,504
Total Square Foot Cost (Net Lot Area)	=	\$1.29

* Estimate Does Not Include Private Utilities

Total Estimated Project Costs For Phase I & II	=	\$4,183,412.86
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EXHIBIT B
LEGAL DESCRIPTION OF THE PROPERTY

South Billings Center Property:

Lot 2A-2A South Billings Center LLC.

“Lot 2A-2A of Amended Plat of Lots 2A-2 & 2A-3, Block 1, of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County”

Cabela’s Wholesale Property:

Lot 2A-3A Cabela’s

“Lot 2A-3A of Amended Plat of Lots 2A-2 & 2A-3, Block 1 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded January 8, 2008, under Document No. 3450780, Records of Yellowstone County”

Miller Trois Property:

Lot 2A-4 Miller Trois

“Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4 and 5, Block 1, Miller Crossing Subdivision, Recorded October 4, 2007, under Document No. 3441217, Records of Yellowstone County”

EXHIBIT C

ON-SITE IMPROVEMENTS

Developer's On-Site Improvements

Description	Total
Civil Engineering	\$ 80,000
Soils Engineering	\$ 15,000
Soils Inspection & Testing	\$ 10,000
Site Preparation	\$ 25,000
Mass Grading	\$ 125,000
Sewer	\$ 90,000
Storm Drain	\$ 75,000
Water	\$ 50,000
Dry Utilities	\$ 20,000
Precise Grading	\$ 20,000
Site Concrete	\$ 70,000
Site Lighting	\$ 45,000
Base & Pave	\$ 115,000
Landscape & Irrigation	\$ 80,000
Promotional Signage	\$ 180,000
Total:	1,000,000

SCHEDULE I

REIMBURSEMENT OF SPECIAL ASSESSMENTS

SCHEDULE I

Illustration Purposes Only

**Based on Bond Principal Amount of \$5,380,000 with interest
Assumes enough TIF Revenue for 01/01/2011 payment
Assessment amounts payable by each respective party**

7/1/2010 \$ 128,098 C

**Source: Miller Crossing Plat
Total Sq. Ft. 1,852,659.072
Rate per Sq. Ft. 0.0891**

**Cabela's Wholesale Inc.
Miller Property Owner
South Billings Center LLC.**

**21.25% split between Miller and South Billings
Miller Property Owner 657,272.484
South Billings Center LLC. 790,971.192
1,448,243.676**

21.250%

Reimbursement by the City - Assumption that Foursquare will reimburse the Millers

**Per Year Assessment Amount
Cabela's Wholesale Inc.
Miller Property Owner
South Billings Center LLC.**

**27,945
45,418
54,736
128,098**

**7/1/2010 \$ 128,098
Rate per Sq. Ft. 0.0891**

**Source: Miller Crossing Plat
Total Sq. Ft. 1,852,659.0720
Rate per Sq. Ft. 0.0891**

**Cabela's Wholesale Inc.
Miller Property Owner
South Billings Center LLC.**

**404,415.396
657,272.484
790,971.192
1,448,243.676**

**21.25% of
Total C
by TIF or City**

**27,945
45,418
54,736
128,098**

**27,221
12,348
14,872
54,442**

**724
33,068
39,884
73,657**

**42.5%
57.5%**

D is the amount the two parties will be responsible for until enough TIF revenue is available

SCHEDULE II

REIMBURSEMENT OF SPECIAL ASSESSMENTS (continued)

SCHEDULE II

Illustration Purposes Only

Assumes enough TIF Revenue to Cover SID Debt Payment

City Reimb. South Billings and Cabel's	147,314	57.50%
Cabela's Wholesale Inc. Paid Amount	54,442	21.25%
Miller Property Owner	24,698	9.64%
South Billings Center LLC. Paid Amount	<u>29,744</u>	<u>11.61%</u>
	256,198	100.00%

Assume there is \$100,000 above required debt payment

	\$ Paid	
	Back	
City of Billings	67,140	
Cabela's Wholesale Inc.	21,250	
Miller Property Owner	9,640	
South Billings Center LLC.	11,610	

The reimbursement to each respective party would continue until amount paid has been recovered

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 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. Award of this project was delayed at the July 28, 2008, City Council Meeting till August 11, 2008.

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**

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 2008

TITLE: A Resolution Amending Resolutions 07-18636 and Resolution 08-18680 and Amending the Downtown Billings Partnership Development Agreement Dated November 26, 2007 and subsequently Amended on February 25, 2008

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council is being asked to adopt a Resolution and development agreement amendment to allocate the remaining funds in the 1976 downtown Tax Increment District (TID). On November 26, 2007 the City Council approved a resolution that outlined the conditions under which the 1976 downtown TID would sunset and approved a development agreement with the Downtown Billings Partnership that specifies how the final allocation of TID funds are to be expended. On February 25, 2008, the City Council approved amendments to that resolution and development agreement. Project conditions have changed since February and a Large Project Gap Funding project has been identified. The attached Resolution and amendment to the amended development agreement will accomplish the goal of aligning more accurately estimated costs with the known projects. The funds are currently encumbered to the projects detailed in the development agreement and its amendments.

ALTERNATIVES ANALYZED: The Council may:

- Approve the proposed Resolution and development agreement amendment. The changes refine cost and schedule estimates for the previously approved projects.
- Amend and approve the proposed Resolution and development agreement amendment to change or re-order the proposed projects.
- Disapprove the proposed Resolution and development agreement. This action will leave the previously enacted and amended Resolution and development agreement in place. The Quiet Zone project will be under-funded and will probably be canceled.

FINANCIAL IMPACT: The Finance Division reports that \$4,222,711 has already been encumbered to the approved TIFD Fund projects on June 30, 2008, after all debt payments were made. The previously approved and amended development agreement describes five projects that have descending priority; GSA courthouse land assemblage/County parking lot (County parking lot has been completed), railroad quiet zone, downtown street lighting, Artspace Market

Study, Large Project Gap Funding program and Downtown Cooperative Security program. The first project remains unchanged aside from the completion of the County parking component. The funding allocation is up to \$800,000, of which \$353,800 remains encumbered and available. The quiet zone has been refined and now requires an allocation of \$1.5 million. These funds will be transferred to the City's Public Works Department, which will then pay to Montana Rail Link, who will perform the actual work. The existing agreement allocates \$900,000 for downtown street lights. That entire project, including City owned intersection lights, is projected to cost more than \$4 Million and would require passage of a new special improvement light maintenance district (SILMD). The Downtown Property Owners have not demonstrated a united interest in funding the estimated \$3.1 Million additional dollars required for this project but support expending funds to complete some of the required planning and engineering that could enable this project to move forward as part of the proposed expansion of the N. 27th TID. Therefore this amendment would reduce the initial amount allocated to the street light project to a maximum of \$100,000. The Artspace market study funding remains unchanged and that project is moving forward as planned. The Large Project Gap Funding program's funding would be increased \$200,000 to a maximum of \$1.9 million and the Cooperative Security program's funding would be reduced to \$184,722. This would require the downtown Property Owners to raise approximately \$67,278 in funding to begin implementation of the Cooperative Security Program. If the Large Project Gap Funding program does not have a Development Agreement tied to a specific project and approved by City Council by December 31, 2008, the \$1.9 million and any funds remaining after completion of the other projects, would move to the downtown streetlight project and improving the City owned intersection lights would be the first priority.

RECOMMENDATION

Staff recommends that Council approve the Resolution that amends Resolutions No. 07-18636 and Resolution No. 08-18636 and that it approve the proposed amendment to the City/DBP development agreement.

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

ATTACHMENTS

- A: Resolution
- B: Development Agreement Amendment

INTRODUCTION

The Council is being asked to adopt a Resolution and development agreement amendment to allocate the remaining funds in the 1976 downtown Tax Increment District (TID). On November 26, 2007 the City Council approved a resolution that outlined the conditions under which the 1976 downtown TID would sunset and approved a development agreement with the Downtown Billings Partnership that specifies how the final allocation of TID funds are to be expended. On February 25, 2008, the City Council approved amendments to that resolution and development agreement. Project conditions have changed since February, now that the City has received the second half tax payments for the 2007 tax year and since project costs have been finalized and a potential Large Project Gap Funding project has been identified.

BACKGROUND

In November, 2007 the City Council adopted Resolution No. 07-18636 and approved a development agreement with the Downtown Billings Partnership. The Resolution established the downtown TID sunset, including specifying the final projects and that the City plans to use the account balance and 2007 tax collections to implement those projects past the official sunset date. This action is allowed by state law, 7-15-4292 MCA. On February 25, 2008, the City Council adopted Resolution No. 08-18680 and approved amendments to the Development Agreement. On June 30, 2008 the City encumbered \$4,222,711 for these projects and the projects approved by that amended development agreement

The DBP Board of Directors met on July 25, 2008 to confirm the known projects and make adjustments to them. Based on knowing the exact amount of funding available after the second half 2007 tax payments and based upon updated cost totals for the approved projects, the DBP recommends that the Council approve a new resolution that describes an amended development agreement that commits the funds to these projects. The projects and recommended fund allocations are as follows, in descending priority:

• GSA courthouse land assemblage	up to \$800,000
• Railroad quiet zone	up to \$1,500,000
• Downtown light district	up to \$100,000
• ArtSpace Artist Market Study	up to \$35,000
• Large Project Gap Funding	up to \$1,900,000
• Cooperative Security Project	up to \$184,722

All of the projects were approved in February. The railroad quiet zone project is ready for installation and the exact cost has been determined. The DBP Board requests that the approved funding for this project be increased from \$1 million to \$1.5 million and that the project begin installation as soon as possible, in order to avoid additional cost increases. The downtown light district is being planned as a potential project in the future and the allocation of up to \$100,000 would enable the City to begin engineering and design work. The project was previously budgeted for \$900,000 but the remaining cost (\$3.1 million) is too high for the property owners who would be assessed for the remainder. If the Large Gap Funding is not allocated to a specific project by the end of the year, the \$1.9 million allocated to that project would be transferred to the street lighting project and the City could begin installing its intersection lights. The district could replace all or part of the Northwest Power Lighting District 97 with a City owned district.

If the lighting project receives \$2 Million from the TID, the remaining estimated \$2 million cost would need to be paid by property owners. The debt service on that amount and power costs would be more than the present assessments, but after the debt is retired, only power costs will be paid. The ArtSpace market study is underway. The large project gap funding project was unspecified and budgeted for \$1.7 million. DBP recommends that the funding increase to a maximum of \$1.9 million. Purchasing and remodeling the Babcock Theater/Moss property is now under consideration. It was previously identified in 2006-2007 as a legacy project that the DBP should pursue to increase the taxable value of the TID. It requires substantial private investment to qualify for the public assistance. DBP continues to recommend that a time limit of December 31, 2008 remain in the agreement. If the project is not finalized by that date, the funds will be released and any balance will revert to the light maintenance district project. The cooperative security project is a proposal from the Downtown Alliance to establish a greater police presence in the downtown and thereby to enhance safety and security. The program would pay the salary, benefits, operating costs and equipment for a full time City police officer that would be dedicated to the downtown neighborhood. The allocation of up to \$184,722, along with \$67,278 in private or alternate funding, would fund the program for three (3) years, during which time the Downtown Alliance will fund-raise and continue the program after the grant funding expires.

RECOMMENDATION

Staff recommends that Council approve the Resolution that amends Resolutions No. 07-18636 and Resolution No. 08-18636 and that it approve the proposed amendment to the City/DBP development agreement.

ATTACHMENTS

- A: Resolution
- B: Development Agreement Amendment

ATTACHMENT A

RESOLUTION NO. 08-_____

A RESOLUTION AMENDING BILLINGS RESOLUTIONS NO. 07-18636 AND 08-18680 RELATING TO THE DOWNTOWN TAX INCREMENT DISTRICT, TERMINATING THE DISTRICT AND ALLOCATING FUNDS.

WHEREAS, the Billings City Council approved Resolution No. 07-18636 on November 26, 2007; and

WHEREAS, the Billings City Council approved Resolution No. 08-18680 on February 25, 2008; and

WHEREAS, Resolution No. 08-18680 amended Resolution No. 07-18636; and

WHEREAS, Resolution No. 07-18636 outlined conditions under which the 1976 Downtown Tax Increment District would sunset in March, 2008 and stated the City's intention to retain tax increment funds on hand at the end of Fiscal Year 2008 for projects that are identified in the Resolution; and

WHEREAS, some of the projects described in the Resolution have changed slightly and additional funding has been identified that could be used to further enhance downtown redevelopment.

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

1. Resolution No. 07-18636, as amended by Resolution No. 08-18680, Schedule 1 is hereby amended as follows

PROJECT	COST EST.	COMPLETION SCHEDULE
GSA land assemblage and County parking	up to \$800,000	June, 2009
Railroad Quiet Zone	\$1,000,000 up to \$1,500,000	December, 2009
Downtown light district	\$900,000 up to \$100,000	December, 2008
Artspace market study	up to \$35,000	December, 2008
Large project gap Funding project	\$1,700,000 up to \$1,900,000	December 2008/2009*
Cooperative security program	\$252,000 up to \$184,722	December, 2009**

*If the large project gap financing element is not under contract by December 31, 2008, the funds dedicated to this project and any remaining funds will be allocated ~~first to the cooperative security program and then~~ to the downtown light district.

**If the Development agreement is reached by December 31, 2008, the Developers MUST begin construction BEFORE December 31, 2009 or the funding will be allocated to the ~~cooperative security program and then to~~ the downtown light district.

2. This resolutions shall become effective on the date of adoption hereof,

PASSED by the City Council of the City of Billings Montana, this 11th day of August, 2008.

CITY OF BILLINGS

BY: _____

ATTEST:

BY: _____

ATTACHMENT B

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement (“Second Amendment”) is entered into this _____ day of August, 2008, by and between the CITY OF BILLINGS, a municipality of the State of Montana (“City”) and DOWNTOWN BILLINGS PARTNERSHIP, INC. an I.R.C. §501(c)(4) Montana non-profit corporation, (“DBP” or “Developer”).

WHEREAS, on November 13, 2007, City and Developer entered into that certain Development Agreement (“Development Agreement” or “Agreement”) to establish the terms, conditions and priorities for completion of identified urban renewal projects and for use of tax increments to pay the costs of or incurred in connection with these projects.

WHEREAS, the City by Resolution No. 07-18636 approved and allocated tax increment funds for the urban renewal projects identified therein and in the Development Agreement.

WHEREAS, on February 25, 2008, City and Developer entered into an Amendment to Development Agreement (“Amendment”) to reflect a separate development agreement for Project 1, completion of Project 2, an MDT contract for Project 3 and to include new approved urban renewal projects identified in the Amendment as Projects 4, 5, 6, 7 and 8, and to permit retention and use of funds remaining in the special fund or reserve fund in accordance with the requirement of §7-15-4292(2)(b)(i) MCA.

WHEREAS, the City by Resolution No. 08-18680 amended Resolution No. 07-18636 and approved and allocated tax increment funds for the urban renewal projects identified therein and in the Amendment.

WHEREAS, any and all remaining unencumbered funds from City Fund 202 have been encumbered to the approved budget and projects by the City.

WHEREAS, Section 2.9 of the Amendment provides that City and Developer reserve the right on City’s approval to allocate and use any remaining TIF Funds for the Urban Renewal Projects identified in the Agreement and the Amendment.

WHEREAS, the specific design, construction and funding requirements for the urban renewal projects identified in Development Agreement and Amendment have been further refined as described in this Second Amendment.

WHEREAS, City and Developer wish to further amend the Development Agreement to reflect the refined design, construction and funding requirements for the urban renewal projects.

WHEREAS, the urban renewal projects described in the Development Agreement, Amendment and this Second Amendment will improve the public experience and directly benefit the public and conform with the Urban Renewal Plan and the Downtown Billings Framework Plan.

AGREEMENT

NOW, THEREFORE, City and Developer hereby agree as follows:

1. Amendments to Development Agreement:

(A) Section 2.4 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.4 Railroad Quiet Zone Project. The second priority Urban Renewal Project shall be to develop and implement the Railroad Quiet Zone within the District. Since 2005, DBP has worked closely with the City, including the City of Billings Public Works Department, to plan, design and implement a Railroad Quiet Zone under the provisions of federal and state law and to identify the equipment and construction requirements to complete a Railroad Quiet Zone within the District. City and the Montana Department of Transportation (“MDT”) have entered into a contract for the completion of Project 3. MDT has requested additional design and construction requirements for the Quiet Zone improvements that will increase the cost of the improvements. In order to pay the cost of these additional improvements, City shall pay to Developer and Developer shall allocate up to \$1,500,000 of TIF Funds to implement Project 3. Developer shall allocate these TIF Funds to the City of Billings Public Works Department for this Project and Developer shall work with the Public Works Department to monitor adherence to the Plan. All remaining TIF Funds shall be allocated, paid and used for the approved urban renewal projects as described in Sections 2.5 through 2.9 of this Agreement.

(B) Section 2.5 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.5 Downtown Street Improvement Light Maintenance District Project. The third priority Urban Renewal Project shall be to allocate up to \$100,000 of remaining TIF Funds to the Street Improvement Light Maintenance District 304 (SILMD 304). SILMD 304 has been the subject of various studies and meetings between City staff and downtown property owners to replace the street lights and traffic signals to provide safer intersection lighting and mid-block pedestrian lighting. Further study has determined that the funding for completion of SILMD 304 will not be available in the time frame initially contemplated and that funds should be presently allocated for further engineering and design work for SILMD. City shall allocate up to \$100,000 of TIF Funds to offset the costs for SILMD 304.

(C) Section 2.7 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.7 TIF Large Project Grant Program. The fifth priority Urban Renewal Project shall be to allocate any balance of TIF Funds to the TIF Large Project Grant Program. Developer shall manage this program and award funding to qualified development project(s) subject to City’s approval of a project specific development agreement. Developer has identified the Babcock Theater as a potential qualified development project and is evaluating this project, which may involve participation in the acquisition of land and improvements in order for the City or its assignee to acquire or retain ownership of the Babcock Theater. Given the nature of the Babcock Theater project, Developer may, upon City’s approval, suspend or modify selected requirement of the TIF Large Project Grant Program including funding ratio and land acquisition requirements. If Developer is unable to identify and approve a qualified project before December 31, 2008, the TIF Large Project Grant Program shall expire and any and all remaining TIF Funds shall be allocated and managed by Developer for purposes of Sections 2.8 and 2.9 below.

(D) Section 2.8 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.8 Downtown Cooperative Security Pilot Program. The sixth priority Urban Renewal

Project shall be to implement a Downtown Cooperative Security Pilot Program that shall fund a Downtown Resource Officer assigned by the Billings Police Department. The allocation shall not exceed \$184,722. Any remaining TIF funds, after fully funding the project, shall be then allocated as provided in Section 2.9 below.

(E) Section 2.9 of the Development Agreement shall be deleted in its entirety and replaced with the following:

2.9 Remaining Funds to SILMD 304. The seventh priority Urban Renewal Project shall be to allocate any remaining TIF Funds to SILMD 304. City shall pay to Developer and Developer shall allocate any and all remaining TIF Funds for the implementation of the project. Provided, however, that City and Developer reserve the right on City's approval to allocate and use any remaining TIF Funds for the Urban Renewal Projects identified in the Development Agreement, Amendment and this Second Amendment.

(D) Sections 3.3(c), (d), (g) and (h) of the Development Agreement and Amendment shall be deleted in their entirety and replaced with the following:

3.3 Release of Funds for Urban Renewal Projects. In addition to the payment for administrative services set forth in Section 3.2 above, City will release the TIF Funds to Developer as follows:

- (c) City and Developer have entered into a contract with MDT and is anticipating an agreement with Montana Rail Link (MRL). All TIF Funds necessary for completion of the project, up to \$1,500,000, have been committed to the project. City and Developer shall promptly deliver such funds to the City of Billings Public Works Department to provide goods and services for project completion.
- (d) City and Developer shall pay the sum of up to \$100,000 to SILMD 304, for the purpose of planning and designing replacement street lighting in downtown. City and Developer shall promptly deliver such funds to the City of Billings Public Works Department to provide goods and services for completion of the project.
- (g) City shall pay Developer any remaining TIF Funds after fully funding all higher priority projects, up to the sum of \$184,722 for the purpose of implementing the downtown cooperative security pilot program.
- (h) City shall promptly pay any and all remaining TIF funds, if any, after fully funding all previously described projects or expiration of the time limits established in Section 5.1 of this agreement, to the City Public Works Department for additional design and construction work for SILMD 304, the downtown street lighting project. Such funds shall first be used to replace intersection lighting and then to reduce property owner assessments that result from the project.

(E) Section 5.1, Schedule of Performance, of the Agreement shall be deleted in its entirety and replaced with the following:

5.1 Schedule of Performance. Developer shall proceed expeditiously to complete the Urban Renewal Projects in accordance with the performance schedule set forth below

GSA land assemblage and County parking	June, 2009
Railroad Quiet Zone	December, 2009
Downtown light district	December, 2008
Artspace market study	December, 2008
Large project gap Funding project	December 2008/2009*
Cooperative security program	December, 2009**

*If the large project gap financing element is not under contract by December 31, 2008, the funds dedicated to this project and any remaining funds will be allocated to SILMD 304, the downtown street light district.

**If the Development agreement is reached by December 31, 2008, the Developers MUST begin construction BEFORE December 31, 2009 or the funding will be allocated to SILMD 304, the downtown street light district.

2. Effective Date:

This Amendment shall be effective as of August 11, 2008.

3. Effectiveness of Development Agreement:

Except as expressly provided herein, the Development Agreement and Amendment remain valid and effective, and nothing in this Second Amendment shall be deemed to waive or modify any of the provisions of the Development Agreement, or any amendment or addendum thereto. In the event of any conflict between the Development Agreement, this Second Amendment, or any other amendment or addendum hereto, the document later in time shall prevail.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Development Agreement on the day and year first written above.

City of Billings ("City")

By: _____
Its:

STATE OF MONTANA)
:ss
County of Yellowstone)

This instrument was acknowledged before me on _____ by
_____ as _____ of City of Billings.

(SEAL)
Montana

expires:_____

Printed Name: _____

Notary Public for the State of Montana

Residing at _____,

My Commission

“Developer”

Downtown Billings Partnership, Inc.

By:
Its: President

STATE OF MONTANA)
:ss
County of Yellowstone)

This instrument was acknowledged before me on _____ by
_____ as President of Downtown Billings Partnership, Inc..

(SEAL)
Montana

Printed Name: _____

Notary Public for the State of Montana

Residing at _____,

My Commission expires: _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 11, 2008

TITLE: Work Order 03-17 – Upgrade and Maintenance Agreement for the Railroad Quiet Zone

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: City staff recently (March 25, 2008) conducted a Diagnostic Review of at-grade railroad crossing located within the proposed quiet zone location with members from Montana Rail Link (MRL), Railroad Controls Limited, the Federal Railroad Administration, and the Montana Department of Transportation. An agreement between Montana Rail Link and the City is required to start the construction/implementation of the Quiet Zone. This agreement defines which parties will be responsible for the various costs of construction and maintenance. Because MRL is the owner of the railroad tracks, they will be issuing the contract to construct the Quiet Zone. Therefore, the City will not be involved with the selection of the contractor, and the project will not be publicly bid. In order for the project to continue, the City Council must authorize the mayor to sign the agreement. This will allow the funds from the Downtown Partnership to be released to MRL. MRL can then start with their contractor selection process and order the necessary equipment.

ALTERNATIVES ANALYZED:

- Authorize the Mayor to sign the agreement
- Do not authorize the Mayor to sign the agreement

FINANCIAL IMPACT: The installation of the Railroad Quiet Zone will be paid for through the Downtown Business Partnership's Tax Increment Fund. The cost estimate for the project is \$1,465,710. Any additional maintenance costs in future years will be paid from the 27th Street TIF District. If the TIF District ceases to exist the city will pay the maintenance costs. It is estimated that the maintenance for the extra Quiet Zone equipment installed with this project will cost \$1,800 per year per crossing for a total of \$5,400 per year.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Upgrade, Installation, and Maintenance Agreement.

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

ATTACHMENTS

A. Upgrade, Installation, and Maintenance Agreement (4 Pages)

INTRODUCTION

City staff recently (March 25, 2008) conducted a Diagnostic Review of at-grade railroad crossing located within the proposed quiet zone location with members from Montana Rail Link (MRL), Railroad Controls Limited, the Federal Railroad Administration, and the Montana Department of Transportation. An agreement between Montana Rail Link and the City is required to start the construction/implementation of the Quiet Zone. This agreement defines which parties will be responsible for the various costs of construction and maintenance. Because MRL is the owner of the railroad tracks, they will be issuing the contract to construct the Quiet Zone. Therefore, the City will not be involved with the selection of the contractor, and the project will not be publicly bid. In order for the project to continue, the City Council must authorize the mayor to sign the agreement. This will allow the funds from the Downtown Partnership to be released to MRL. MRL can then start with their contractor selection process and order the necessary equipment.

PROCEDURAL HISTORY

- Sept. 22, 2003 – Original Railroad Feasibility Study Contract signed with S.E.H.
- Feb. 2004 – DBP request that City of Billings pursue implementation of a quiet zone
- Feb. 11, 2008 – Memorandum of Agreement signed with MDT
- Mar. 25, 2008 – Diagnostic Review conducted
- Apr. 2008 – Notice of Intent to Create a Railroad Quiet Zone was distributed

BACKGROUND

The Downtown Billings Partnership and various downtown property owners and businesses would like a railroad Quiet Zone implemented at the Downtown railroad crossings on South 27th, 28th, and 29th Streets. Railroad Quiet Zones require approval of the Federal Railroad Administration (FRA) before they can be implemented. If implemented, a Quiet Zone allows the prohibition of blowing the horn or whistle on a locomotive as a warning that a locomotive is approaching the crossing.

ALTERNATIVES ANALYSIS

If the Council does not authorize the Mayor to sign the Upgrade, Installation, and Maintenance Agreement, MRL cannot select a contractor or order the necessary equipment. Ultimately, the Quiet Zone will not be able to progress.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Upgrade, Installation, and Maintenance Agreement.

ATTACHMENTS

A. Upgrade, Installation, and Maintenance Agreement (4 Pages)

**UPGRADE, INSTALLATION AND MAINTENANCE OF RAILROAD
CROSSING WARNING SIGNALS**

27th, 28th, and 29th Streets
Billings, Montana

Montana Rail Link
Jones Jct. to Spurling Main Line

THIS AGREEMENT is made as of this _____ day of _____, 2008, between Montana Rail Link, Inc. a Montana Corporation, with principal offices at 101 International Way in Missoula, MT, hereinafter referred to as "RAILROAD", and the City of Billings, a Municipal Corporation of the State of Montana, hereinafter referred to as "CITY" for upgrade of existing railroad crossing warning signals, installation of additional warning devices and maintenance of the warning signals located at the public railroad grade crossings on 27th Street, 28th Street and 29th Street all in Billings, Montana, which are identified in the Federal Railroad Administration's data base as DOT #087 491 T, DOT #087 492 A and DOT # hereinafter referred to "CROSSINGS";

WITNESSETH:

WHEREAS, the RAILROAD has previously executed agreements with the Montana Department of Transportation and the City of Billings dated May 12, 1975 (which was supplemented by an agreement dated July 23, 1990), May 14, 1981 (which was supplemented by an agreement dated August 9, 1990) and May 14, 1981 (which was supplemented by additional agreements dated October 11, 1988 and June 25, 1990) all of which authorized installation and maintenance of the crossing warning signals currently in service at the CROSSINGS; and

WHEREAS, the CITY has supplied the RAILROAD with a "Notice to Establish a Railroad Quiet Zone" dated May 20, 2008 and is proposing to establish a Quiet Zone under 49 CFR (Code of Federal Regulations) 222.39 (a) (1) by implementing, at the CROSSINGS, SSM as identified and defined in Appendix A of 49 CFR Part 222 Subpart 2- Four Quadrant Gate System, hereinafter referred to as "SSM"; and

WHEREAS, the CITY has prepared or commissioned to be prepared an Engineering Diagnostic Review which will allow establishment of a Quiet Zone under 49 CFR Part 222 Subpart 2 – Four Quadrant Gate System; and

WHEREAS, a Engineering Diagnostic Review was preformed at the CROSSINGS on March 25, 2008 by a diagnostic review team assembled by the CITY; and

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from establishment of a Quiet Zone at the CROSSINGS; and

WHEREAS, the CITY will pay actual cost for the acquisition, upgrade, installation, and a portion of the future maintenance costs of the required crossing signal equipment, with CITY funds, and

WHEREAS, the RAILROAD consents to acquire, upgrade, install, and maintain the required crossing signal equipment as shown in the scope of work and upon the terms and conditions herein stated;

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

I **Scope of Work**

RAILROAD work to be performed by the RAILROAD, or its contractors and to be funded by the CITY

1. Acquisition and installation of material for upgrade of existing crossing signal equipment to accommodate installation of SSM at the CROSSINGS
2. Acquisition and installation of SSM at the CROSSINGS

CITY work to be performed by the CITY and to be funded by the CITY

1. Implement all recommendations of the diagnostic review team excluding the RAILROAD work shown above in Items 1 and 2. These recommendations specifically relate to street geometry, sidewalk geometry, street layout (including location of adjacent side streets) and fencing for control of pedestrians.

II

All crossing signal equipment will be installed at the CROSSINGS in accordance with the Manual on Uniform Traffic Control Devices, 49 CFR 222, and the recommendations developed in Engineering Diagnostic Review by the review team.

III

The RAILROAD may use its own forces or may utilize contractors to install the crossing signal equipment, as detailed in Section I

IV

The CITY will pay a \$1,031.00 lump sum payment for preliminary engineering costs to be included in the first bill submitted by the RAILROAD. Preliminary engineering includes all costs incurred for developing this agreement.

V

The RAILROAD is providing a detailed estimate of RAILROAD costs including, contractor charges, labor, and material costs required for this project. The estimate will be titled Exhibit "B", attached hereto and by this reference made part hereof.

The CITY will pay actual cost for any RAILROAD labor, materials and third party charges.

VI

The RAILROAD has reviewed and inspected the materials in the field prior to signing this agreement. The salvage value of materials, if any, will be credited to the project cost by the RAILROAD and is shown on Exhibit "B". The RAILROAD will dispose of all scrap from the RAILROAD's work covered in this agreement at its own expense.

VII

The RAILROAD may submit progress bills to the CITY during the process of the work included in this agreement for the actual cost of services and expenses incurred by the RAILROAD. Actual and lump sum reimbursement will be in accordance with the provisions of 23 CFR.

It is further agreed that the RAILROAD will make every effort to finalize and complete billing of incurred costs no later than six (6) months after installation. All cost records of the RAILROAD and its contractors and subcontractors pertaining to this project will be subject to inspection and audit at any time by representatives of the CITY. All such records will be retained for a period of not less than three (3) years from the date of final payment.

VIII

The Administrative Rules of the State of Montana, ARM 18.6.311, stipulates; "The road authority will own the railroad signal". In accordance with these rules the crossing warning signal equipment at 28th and 29th Streets will be owned by the CITY and the crossing warning signal equipment at 27th Street will be owned by the State of Montana.

If the CROSSINGS are abandoned, or if for any reason the warning signals are no longer required, the RAILROAD and the CITY will work with the Montana Department of Transportation to determine if the signals are to be installed at another location or used for replacement parts.

IX

If a RAILROAD, CITY or other highway improvement project necessitates a rearrangement, relocation, or alteration of the warning signals at the Crossings, the party whose improvement causes such a change will pay the cost thereof.

X

The RAILROAD will notify the CITY law enforcement within two (2) working days from the time any damage to the signal equipment, resulting from negligent or malicious acts of the public, is discovered.

If any of the crossing signal equipment installed at this location is partially or wholly destroyed as the result of negligent or malicious acts of the public and its replacement value or cost of repairing cannot be recovered from the person(s) responsible for such destruction, the road authority will pay for the labor and material(s), which will include the applicable RAILROAD additives in use at the time of the damage, needed to repair such damage.

XI

If any of the crossing signal equipment installed pursuant to this agreement cannot, through age, be maintained, or by virtue of their obsolescence require replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable polices and warrants of the State of Montana.

XII

Upon completion of the installation of the crossing signal equipment, the RAILROAD, will operate and maintain the crossing signal equipment in compliance with 49 CFR Subtitle B, Volume 4, Chapter 2, Part 234. Recognizing that the installation of SSM at the CROSSINGS was at the request of the CITY, it is agreed that the CITY shall fund that portion of the maintenance of the crossing signal equipment related to SSM and the establishment of the Railroad Quite Zone. It was determined that forty

percent (40%) of the installation cost of this crossing signal was attributable to installation of SSM at the CROSSINGS.

The CITY agrees to fund forty percent (40%) of the actual cost of maintaining the crossing signal equipment installed under this agreement. The RAILROAD will keep an accurate and detailed record of the railroad's labor hours, equipment expenses, contractor and third party charges, and material usage associated with maintaining this crossing signal equipment and at least once each calendar year will submit a bill for forty percent (40%) of the actual cost of this maintenance. Actual cost reimbursement will be in accordance with 23 CFR and the then current policies of the Montana Department of Transportation.

For damage caused by an Act of God and/or of Nature, the RAILROAD will fund all repairs of the crossing signal equipment that is not reasonably related to SSM. The CITY will pay for the labor and material(s), which will include the applicable RAILROAD additives in use at the time of the damage to repair damage to equipment related to SSM. Actual cost reimbursement will be in accordance with 23 CFR and the then current policies of the Montana Department of Transportation.

All cost records of the RAILROAD and its contractors and subcontractors pertaining to maintenance of this crossing signal equipment will be subject to inspection and audit at any time by representatives of the CITY. All such records will be retained for a period of not less than three (3) years from the date maintenance is performed.

XIII

This agreement will inure to the benefit of and be binding on the parties hereto, their successors and assigns

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

MONTANA RAIL LINK, INC.

By: _____

Title: _____

CITY OF BILLINGS

By: _____

Title: _____

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 11, 2008****TITLE:** Response to MMIA Request for Reimbursement/Contribution**DEPARTMENT:** City Administrator and City Attorney**PRESENTED BY:** Tina Volek, City Administrator, Bruce McCandless, Assistant City Administrator, Brent Brooks, City Attorney

PROBLEM/ISSUE STATEMENT: The City's liability insurance provider is the Montana Municipal Insurance Authority (MMIA). Through correspondence from its new CEO Alan Hulse, the MMIA has recently requested the City to reimburse the MMIA for two-thirds of the \$1.6 million judgment and attorneys fees incurred in the case of Feuerstein v. City of Billings, et al, DV 06-0332. Two-thirds of \$1.6 million is approximately \$1,056,000. The MMIA requested a decision by the Mayor and City Council by the end of July, 2008. City Administrator requested a brief extension so this matter could be thoroughly discussed and considered by the Mayor and City Council prior to a final decision on this request.

This issue was comprehensively discussed during the July 21, 2008 worksession where alternatives were presented by staff and the current case law was provided to the Mayor and City Council in summary form obtained from an insurance industry website. This information accurately summarizes the current status of the case law on this rarely litigated issue. A copy of that article is included here as Attachment A.

ALTERNATIVES ANALYZED: The following alternatives have been previously presented to and discussed by the Mayor and City Council:

1. **Alternative One:** Offer no reimbursement and direct staff to send a letter to the MMIA indicating the City has declined the request for contribution.
2. **Alternative Two:** Offer some specific amount of contribution to the MMIA that is **less** than the requested two-thirds amount of (approximately) \$1,056,000.
3. **Alternative Three:** Agree to contribute the requested two-thirds amount of \$1,056,000.
4. **Alternative Four:** Offer to mediate the issue before an experienced insurance law attorney with no obligation or expectation of any financial contribution from the City to the MMIA. This statement from the Council is suggested because traditional mediation does imply that

some amount of money reimbursement or contribution in this instance would be considered by the Council. The City and the MMIA would equally share the costs of mediation.

FINANCIAL IMPACT: The source of funding would be the property and liability insurance fund. Currently there is approximately \$1.1 million in that fund. To cover routine property damage or liability claims within our insurance deductibles, staff recommends that approximately \$400,000 remain in this fund should the Mayor and City Council consider contributing some amount of money to the MMIA. Any contribution exceeding \$750,000 to the MMIA would need to be obtained from some form of installment payments to the MMIA.

RECOMMENDATION

Staff recommends Alternative Four—that Council offer to mediate the request from the MMIA with the understanding that there may be no contribution from the City as a result of the mediation.

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

ATTACHMENT

Attachment A—Insurance industry article from IRMI.com



Expert Commentary

The Burden To Allocate: Mine, Yours, or Ours?

February 2008

An insurer must indemnify its insured for damages covered by the insured's insurance policy. Typically, the insured has the burden of proving coverage. See e.g., *Colonial Life & Accident Ins. Co. v. Collins*, 194 So. 2d 532 (Ala. 1967); *Consolidated Edison Co. of N.Y. v. Allstate Ins. Co.*, 774 N.E.2d 687 (N.Y. 2002). Therefore, "the burden of segregating the damage attributable solely to the covered event is a coverage issue for which the insured carries the burden of proof." *Kelly v. Travelers Lloyds of Tex. Ins. Co.*, 2007 WL 527911, 3 (Tex. App. 2007).

by R. Steven Rawls and Rebecca C. Appelbaum
 Butler Pappas Weihmuller Katz Craig, LLP

A complaint against the insured that asserts both covered and noncovered claims, resulting in a judgment or settlement that fails to allocate between the two, creates issues with respect to the burden of proof. Not surprisingly, different jurisdictions resolve these issues differently. In some jurisdictions, the insured's failure to apportion a judgment or settlement between covered and noncovered damages results in no coverage for the insured. In others, the insurer's failure to defend and/or failure to inform the insured that it should allocate the judgment results in the insurer becoming responsible for the entire undifferentiated judgment.

Insured's Burden

In *Corn Plus Coop. v. Continental Cas. Co.*, 2007 WL 107676 (D. Minn. 2007), the plaintiff, Corn Plus, sought to enforce a Miller-Shugart¹ settlement agreement against the defendant-insured's commercial general liability (CGL) insurers. The court granted summary judgment for the insurers, stating that "Minnesota courts do not permit a party to seek reimbursement from an insurer under a Miller-Shugart agreement when the insured fails to allocate between covered and noncovered claims or damages." *Corn Plus* at 4. The court explained that, because the unallocated settlement amount included noncovered damages, the amount was "not reasonable as a matter of law for the covered damages." *Id.* at 5.

In *Corn Plus*, the parties to the settlement agreement had included an addendum allowing the court to determine a reasonable amount in the event the court found the agreed amount unreasonable. However, the court did not apply the addendum based on public policy and because "there [was] no efficient or practical way to determine a reasonable settlement amount for the covered damages due to the parties' failure to allocate." *Id.* at 6.

In *International Commc'n Materials, Inc. v. Employer's Ins. of Wausau*, 1996 WL 1044552 (W.D. Pa. 1996), the insured, ICMI, was sued for trademark and trade dress infringement, false advertising, and patent infringement. The false advertising claims triggered the "advertising injury" provisions of the policies while the patent infringement claims were not covered. Wausau initially provided ICMI with a defense under a reservation of rights but withdrew the defense. Travelers, which also insured ICMI, was notified of the litigation 9 months after suit was filed. Seven months later, Travelers issued a letter explaining its coverage position in which it recognized a "potential" duty to defend but did not begin to defend. ICMI treated that "potential" as a denial and settled the underlying litigation for \$2,222,222.22.

ICMI then filed a declaratory judgment action against its insurers, asserting that they breached their policies by failing to defend and seeking indemnification for the judgment. Travelers argued, among other things, that ICMI was not entitled to reimbursement because it could not apportion the settlement amount between covered and

noncovered damages. The court agreed, reasoning that "as in any breach of contract action, the insured had the burden of proving damages with reasonable certainty." Because the insured "could not allocate the settlement payment among the four counts in the complaint, only one of which was covered," the insured "failed to establish damages and was not entitled to indemnification." *ICMI* at 10 (citations omitted).

In so holding, the court rejected *ICMI*'s argument that the burden of apportionment shifted to the insurers as a result of the insurers' failure to notify *ICMI* of their obligation to apportion because the insurers did not defend. The court held that summary judgment was inappropriate because "a genuine issue of material fact exists as to whether *ICMI* can apportion the settlement payment between covered and noncovered damages." *ICMI* at 10.

However, in another recent Western District of Pennsylvania decision, *Voest Alpine Ind., Inc. v. Zurich Am. Ins. Co.*, 2007 WL 1175750 (W.D. Pa. 2007), the court held that "[w]here an insured settles liability that is based on covered and noncovered claims without a contemporaneous apportionment between the two, then the proper procedure is for the court to make an equitable apportionment of the settlement." *Voest* at 3. Although the *Voest* court recognized that the insured has the burden of apportioning the settlement payment between covered and noncovered claims, the insured's failure to do so was not fatal to recovering under the policy because the "ultimate allocation is a matter that rests with a sound exercise of the court's equitable discretion." *Id.* The equitable allocation is to be made by the court "on such evidence as was available, despite the potential for testimony colored by hindsight and self-interest." *Id.*

Insurer's Burden

ICMI distinguishes two lines of caselaw finding that the burden of apportionment between covered and noncovered damages falls on the insurer. In these lines of cases, the insurer either breaches its duty to defend or undertakes the defense of its insured and fails to notify the insured of the need to allocate. In both circumstances, the insurer is responsible for satisfying the entire undifferentiated award.

No Defense Provided

In *Liquor Liab. Joint Underwriting Ass'n of Mass. v. Hermitage Ins. Co.*, 644 N.E.2d 964 (Mass. 1995), the JUA sought recovery from Hermitage for the defense costs and settlement amount from defending their mutual insured. The complaint against the insured alleged negligent serving of alcoholic beverages (within the coverage of the JUA policy) and negligent security (within the coverage of the Hermitage policy). Hermitage denied coverage, and the JUA defended the entire suit. The JUA requested an allocated verdict, but the judge denied the request, and an unallocated verdict was returned. The JUA settled after the verdict was returned, and there was no question that the settlement was "noncollusive and reasonable." *Liquor Liability* at 969.

The JUA had advised Hermitage of its obligations, but Hermitage nonetheless failed to defend when it could have done so under a reservation of rights. Because Hermitage breached its defense obligation, it had the burden of proving the claim was not within the policy's coverage and, therefore, bore the burden of allocating the underlying judgment between the covered and noncovered claim. *Liquor Liability* at 968-9. Any attempt by Hermitage to satisfy this burden "would be speculative and arbitrary, essentially amounting to an attempt to determine the particular amount that happened to be in the juror's minds as they returned the verdict," and therefore, Hermitage was responsible to the JUA for the entire unallocated settlement amount. *Id.* at 969. Cf. *Peterson Tractor Co. v. Travelers Indem. Co. of Ill.*, 156 Fed. Appx. 21 (9th Cir. 2005) (once the insurer breaches the duty to defend, the insured is relieved of its burden to allocate although the insurer can still present any defenses not inconsistent with the judgment), and *Welch Foods, Inc. v. Liberty Mut. Fire Ins. Co.* (Mass. Super. 2005) (applying the burden to allocate defense costs as well and if unable, the insurer breaching its duty to defend is responsible for both covered and noncovered defense costs).

Defense Provided but No Notification to Insured of Need for Allocation

Courts have characterized shifting the burden to allocate to the insurer who fails to defend as "eminently fair" because the nondefending insurer "could (and should) have participated in the defense of the action ... under a reservation of rights ... and explained to the trial judge" the need to allocate. *Palermo v. Fireman's Fund Ins. Co.*, 676 N.E.2d 1158, 1164 (Mass. Ct. App. 1997). However, some jurisdictions make the insurer responsible for the entire undifferentiated award even when the insurer defends under a reservation of rights.

In *Duke v. Hoch*, 468 F.2d 973 (5th Cir. 1972), Duke obtained a judgment against the insured and sued its insurer, demanding that the insurer pay the covered portion of a judgment entered in Duke's favor that included covered and uncovered claims. Under Florida law, Duke had the burden of proving which damages included in the judgment pertained to covered losses. Duke was unable to meet this burden because of the unallocated general verdict form. Despite this, the Fifth Circuit excused Duke from his burden of proof because of the conduct of the insurer.

The appeals court noted that because the insured had the burden of proof, the insurer had an interest in the verdict not being allocated. This conflicted with the interest of the insured, who would have been better served by an allocated verdict form in which the segregation of damages would have enabled the insured to prove which damages were covered. The attorney retained by the insurance company to defend Duke had not requested an allocated verdict at trial. *Id.* at 979.

The Fifth Circuit stressed that the insurer undertaking the defense of a suit against its insured has the right to control the litigation and must meet a high standard of conduct. The right to control the litigation in all of its aspects carries with it the corresponding duty to exercise diligence, intelligence, good faith, and honest and conscientious fidelity to the common interest of the parties. When the insurer undertakes the defense of the claim or suit, it acts as the agent of its insured by virtue of the contract of insurance between the parties. When a conflict of interest arises between the insurer, as agent, and insured, as principal, the insurer's conduct will be subject to closer scrutiny than that of an ordinary agent, because of the insurer's adverse interest. *Id.* at 978.

Thus, the court found that before trial, the insurer was required to make known to the insured the availability of a special verdict and the divergence of interest between the insured and insurer springing from whether damages were or were not allocated. *Id.* at 979; see also *Doe v. Illinois State Medical Inter-Insurance Exch.*, 599 N.E.2d 983, 989 (Ill. App. 1992) (reflecting the insurer's obligation to allocate because it is the insurer who is aware of the issue). The court quoted the following provision from Section 4(b) of the Statement of Principles of the ABA and the Conference Committee on Adjusters:

The companies and their representatives, including attorneys, will inform the policyholder of the progress of any suit against the policyholder and its probable results. If any diversity of interest shall appear between the policyholder and the company, the policyholder shall be fully advised of the situation.

The court found that the insurer should not have been allowed to rely on the evidentiary advantage it gained by failing to follow the above principle, and the court accordingly relieved Duke of its burden of proof on the issue of the amount of covered damages. *Id.* at 979-80.

At least one court has applied this reasoning to an umbrella insurer with respect to an unallocated judgment in excess of the underlying limits. In *Valley Bancorp. v. Auto Owners Ins. Co.*, 569 N.W.2d 345 (Wis. App. 1997), the primary insurer notified the excess insurer, Auto Owners, of the lawsuit 5 months prior to trial. Auto Owners asserted that there was no coverage, with one possible exception. Auto Owners was not notified of a subsequent pretrial strategy meeting and refused to participate in the posttrial settlement negotiations. Because Auto Owners had the opportunity to participate and did nothing to determine coverage or seek a declaratory judgment, the burden to allocate fell on Auto Owners, and because it could not do so, it became responsible "for the entire amount of the settlement in excess of [the primary] limits." *Valley* at 351.

Duke and *Doe* describe the notification requirements an insurer bears when defending a mixed complaint under a reservation of rights. In *MedMarc Cas. Ins. Co. v. Forest Healthcare, Inc.*, 199 S.W.3d 58 (Ark. 2004), the insurer defended under a reservation of rights and directed counsel to seek an allocated verdict. The court refused defense counsel's request to allocate among policy periods because it "would confuse the jury." *MedMarc* at 60.

MedMarc filed suit seeking a declaration that its policy provided no coverage as two insurers were on the risk and the jury failed to allocate. MedMarc argued that allocation was the insured's burden, and the failure to allocate relieved the insurer from paying any amount under the policy. The insured argues that it was the insurer's burden and, further, that the circuit court's allocation was supported by trial testimony.

The *MedMarc* court concluded, like *Duke*, that one of the duties inherent in the right to control the litigation is "the

duty not to prejudice the insured's rights by failing to request special interrogatories or a special verdict in order to clarify coverage of damages." *MedMarc* at 62 (citing *Gay & Taylor, Inc. v. St. Paul Fire & Marine Ins. Co.*, 550 F. Supp. 710 (W.D. Okla. 1981)). Requesting allocation, but not receiving it, did not relieve *MedMarc* of its obligation to pay a portion of the judgment. The court remanded the case to provide "the reasoning and basis for the particular allocation in the form of findings of fact and conclusions of law." *Id.* at 63.

MedMarc seems anomalous because the insurer defended under a reservation of rights and notified its insured of the ability to seek an allocated verdict apportioning the damages attributable to the covered and noncovered claims. In fact, the *MedMarc* dissent found that because "*MedMarc* adequately notified [its insured] of [the] need for an apportioned verdict, ... *MedMarc* fulfilled its obligations" so that the burden of apportioning the verdict did not shift from insured to insurer. *MedMarc* at 64 (Thornton, J., dissenting).

Implicit in the *MedMarc* decision is the majority's reliance on *MedMarc*'s decision to drop its appeal of "the issue of the failure to give the apportionment instruction." *MedMarc* at 63. Had the trial court's denial of the apportionment instruction been upheld on appeal, it is not clear whether the majority would still have found that *MedMarc* failed to fulfill its duty with respect to guiding its insured to seek an allocated verdict. Cf. *Aetna Ins. Co. v. Borrell-Bigby Elec. Co., Inc.*, 541 So. 2d 139 (Fla. Dist. Ct. App. 1989) (the insurer is obligated to appeal from an adverse judgment where there is a good faith basis for doing so).

Conclusion

Some jurisdictions find the insured bears the burden of seeking an allocated verdict because the insured bears the burden of proving coverage. Most jurisdictions will find insurers liable for the entirety of an undifferentiated damage that includes covered and noncovered damages when the insurer wrongfully refuses to defend. Many jurisdictions shift the burden of apportionment to the insurer when the insurer defends under a reservation of rights but fails to notify and/or request the insured allocate the verdict.

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¹An agreement where the insured stipulates to a money judgment in favor of the plaintiff and the plaintiff agrees to release the insured from personal liability and recover solely from the insurer. *Miller v. Shugart*, 316 N.W.2d 729 (Minn. 1982). See also *Coblenz v. Am. Sur. Co. of New York*, 416 F.2d 1059 (5th Cir. 1969).

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