

Note: Supporting documents follow agenda.

# CITY OF BILLINGS

## CITY OF BILLINGS VISION STATEMENT:

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

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## AGENDA

COUNCIL CHAMBERS

August 25, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing  
PLEDGE OF ALLEGIANCE – Mayor Tussing  
INVOCATION – Councilmember Pitman  
ROLL CALL  
MINUTES – August 11, 2008  
COURTESIES  
PROCLAMATIONS  
ADMINISTRATOR REPORTS – Tina Volek

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

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

## **CONSENT AGENDA:**

### **1. A. Bid Awards**

**(1) Wastewater Plant Diffuser Replacement.** (Opened 8/12/08)  
Recommend ITT - Sanitaire, \$45,160.

**(2) Window Cleaning Services for Airport Terminal Building (3-year agreement).** (Opened 8/12/08) Recommend Skyline Services, \$60,480.

**(3) Two Current Model Year Fire Apparatus.** (Opened 8/19/08)  
Recommend Sutphen Corporation, \$816,576.

**(4) W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer Improvements.** (Opened 8/12/08) Recommend COP Construction, LLC, \$2,051,510.

**(5) W.O. 08-06, King Avenue Lift Station.** (Opened 8/12/08) Recommend Williams Brother Construction, \$418,456.50.

**B. Contract** with Yellowstone Valley Animal Shelter, Inc. for City of Billings Animal Shelter Operations. (Delayed from 5/27/08 & 6/23/08) Recommend delay until 9/22/08.

**C. Memorandum of Understanding** with Billings Heights Water District for resale water rates.

**D. (1) Amendment** of Federal Aviation Administration Airport Improvement Program (AIP) Grant 34.

**(2) Airport Improvement Program (AIP) 34 Perimeter Security Fence Project, Amendment No. 5,** Additional Engineering Services, Morrison-Maierle, Inc., \$38,165.

**(3) Change Order No. 1,** Airport Improvement Program (AIP) 34 Perimeter Security Fence Project, Frontier Fence, \$158,159.81.

**E. Amendment No. 1, W.O. 07-16, Shiloh Road Corridor Utility Improvements,** Professional Engineering Services, Engineering, Inc., not to exceed \$173,517.13.

**F. Amendment No. 1, South Billings Boulevard and Midland Road Signal,** Project Development and Construction Agreement, Montana Department of Transportation (MDT), amending the agreement for advertisement, award, and administration of the construction contract by MDT. City's financial responsibility – all additional costs exceeding the federal safety funding of \$491,519.

**G. Amendment No. 1, Non-Commercial Aviation Ground Lease** with First Interstate Bancsystem, Inc., with no financial impact to the City.

**H. Appoint** City Councilmember subcommittee (Ronquillo, Ruegamer, McCall, and Astle) to establish process and schedule for 2008 City Administrator Performance Review.

**I. Street Closure:** Montana Tow Truck Association Parade: 9/13/08, 5:30 p.m. – 7:00 p.m.; Commencing at the Billings Hotel & Convention Center, 1223 Mullaney Lane, proceeding north onto King Avenue West, east on Grand Avenue, south on Division Street, southwest on Montana Avenue to State Avenue to the Laurel Road, returning to the Billings Hotel & Convention Center.

**J. Quarterly Report for Pledged Collateral** for Wells Fargo Bank, First Interstate Bank, and US Bank.

**K. Semi-Annual Investment Report.**

**L. Resolution** temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Shrine Auditorium parking lot during the Billings Big Sky Polka Fest, August 28-31, 2008.

**M. Preliminary Plat** of Marisela Subdivision generally located on the north side of Matador Drive and Annandale Road in Billings Heights; Dover Ranch, owner; conditional approval of the plat and adoption of the Findings of Fact.

**N. Preliminary Subsequent Minor Plat** of Gabel Subdivision, 4<sup>th</sup> Filing, generally located on the south side of Gabel Road directly south of the Gabel Road and Transtech Way intersection; Bottrell Family Investments, LP, owner; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

**O. Preliminary Subsequent Minor Plat** of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, generally located on the southeast corner of the intersection of Shiloh Road and King Avenue West; Shiloh Crossing, LLC, owner; Engineering, Inc., Agent; conditional approval of the plat and adoption of the Findings of Fact.

**P. Bills and Payroll**

- (1) July 25, 2008
- (2) August 1, 2008

**REGULAR AGENDA:**

- 2. **PUBLIC HEARING AND RESOLUTION** vacating a portion of North 19<sup>th</sup> Street from 6<sup>th</sup> Avenue North to the rail tracks for a value of \$19,603.75. Aaron Sparboe, owner and petitioner. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
- 3. **PUBLIC HEARING AND RESOLUTION** relating to SID 1380, making certain findings with respect to the pledge of the revolving fund. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
- 4. **\$230,000 POOLED SIDEWALK BONDS, SERIES 2008.** (Opened 8/25/08) Recommendation to be made at meeting. (**Action:** approval or disapproval of staff recommendation.)

5. **LANDFILL GAS SALES AGREEMENT** with Montana Dakota Utilities, (Delayed from 6/23/08 & 7/28/08). Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. **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**

*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 contact Cari Martin, City Clerk, at 657-8210.*

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



## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

**TITLE:** Wastewater Plant Diffuser Bid Award  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The aeration system at the wastewater treatment plant utilizes membrane diffusers that must be periodically replaced. Staff advertised for and received bids on August 12 for the replacement diffusers.

**FINANCIAL IMPACT:** Bids were publicly advertised and received and opened on August 12, 2008 as follows:

ITT – Sanitaire \$45,160.00

A bid package was sent to another company, but they did not submit a bid. There is sufficient money in the wastewater plant O&M fund to cover the bid award.

**RECOMMENDATION**

Staff recommends that Council award the bid for replacement of the aeration system diffusers to ITT – Sanitaire in the amount of \$45,160.00.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Approval of Award of the Window Cleaning Services Three-Year Agreement for the Airport Terminal Building

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** The Billings Logan International Airport currently uses a contractor to provide the weekly, monthly, and quarterly window cleaning services for the main Terminal Building. Due to the height and location of many of these windows, we have found that a professional window cleaning contractor can provide this service more efficiently. The current window cleaning service agreement expires on October 31, 2008. This service agreement was advertised in the *Billings Times* on July 24 and 31, 2008 and on the City's Web Site. In spite of these efforts, on August 12, 2008, we received a single bid for this project from Skyline Services in the amount of \$60,480. Our estimate for this three-year agreement was \$60,000. Staff has reviewed this bid and finds it acceptable for the scope of work.

**FINANCIAL IMPACT:**

The total cost of this Service Agreement is \$60,480. The source of funding is in the Airport's operating budget.

**RECOMMENDATION**

Staff recommends that the City Council award the Window Cleaning Services Three-Year Service Agreement for the Airport Terminal Building to the lowest bidder Skyline Services, for the amount of \$60,480.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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**TITLE:** Bid Award – Two Current Model Year Fire Apparatus  
**DEPARTMENT:** Fire  
**PRESENTED BY:** Paul A. Dextras, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** Specifications were developed by the Fire Departments Internal Equipment Committee. The call for sealed bids notice was published on August 7, and 14, 2008. Twelve bid packets were mailed, emailed or picked up by fire apparatus vendors between July 24, 2008 and August 14, 2008. Bid opening was August 19, 2008. Four vendors responded: Northern Focus Fire Apparatus, Hughes Fire Equipment, Big Sky Fire Equipment and Sutphen Corporation. Big Sky Fire Equipment submitted a letter of No Bid.

The three remaining proposals were reviewed by the members of the Equipment Committee. A comparison summary of Base Bid #1 which is the price delivered by the Manufacturer: Northern Focus Fire Apparatus bid \$413,467 per truck for a total bid of \$826,934 for two trucks; Hughes Fire Equipment bid \$454,849 per truck for a total bid of \$909,698 for two trucks; Sutphen Corporation bid \$408,288 per truck for a total bid of \$816,576 for two trucks.

A comparison summary of Base Bid #2 which is the price if we take delivery at the manufacturer's location: Northern Focus Fire Apparatus bid \$409,967 per truck for a total bid of \$819,934; Hughes Fire Equipment bid \$450,349 per truck for a total bid of \$900,698; Sutphen Corporation bid \$404,388 per truck for a total bid of \$808,776.

**ALTERNATIVES ANALYZED:** To award or not award the bid.

**FINANCIAL IMPACT:** The approved FY2009 Vehicle Replacement Fund contains the funds earmarked for the replacement of the Fire Department's two (2) existing 1991 E-One Fire Trucks (Unit #4090 and #4091) in the amount of \$881,166.

The proposal from Sutphen Corporation included a payment option where by the City could earn 3.5% on any pre-payment over and above the one-quarter down payment required at contract signing. The City of Billings average investment interest rate as of June 30, 2008 was 2.88%. If we were to take advantage of this offer and establish a payment plan of 60%

down at contract signing; 25% at mid-construction and the balance upon completion would reduce the final cost of these trucks by approximately \$9,900.

**RECOMMENDATION**

Staff recommendation is to accept the proposal from Sutphen Corporation, take delivery of the trucks direct from the manufacturer and take advantage of the 60% pre-payment option.

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

## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

**TITLE:** W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer System Improvements, Contract Award

**DEPARTMENT:** Public Works - Engineering

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

**PROBLEM/ISSUE STATEMENT:** This project will construct water and sanitary sewer system improvements throughout the Shiloh Road Corridor between Poly Drive and Pierce Parkway. Since MDT is scheduled to begin its own road project in the Shiloh Corridor in the spring of 2009, these utilities must be installed prior to construction of the road improvements.

Approximately 5,700 feet of water main and 5,200 feet of sewer main will be installed by the project. In addition to constructing the mains themselves, underground casings for future mains and water and sewer services to both presently developed properties as well as future developments along the corridor will also be installed.

**FINANCIAL IMPACT:** Funding for this project will be provided from water and wastewater funds. Bids were opened on August 12, 2008 with the results listed below:

	<b>Engineer's Estimate</b>	<b>COP Construction</b>	<b>Western Municipal Construction</b>
Schedule I	\$308,327.00	\$263,210.00	\$301,280.00
Schedule II	\$109,995.00	\$97,170.00	\$115,090.00
Schedule III	\$651,046.50	\$521,373.00	\$851,953.00
Schedule IV	\$655,261.00	\$647,465.00	\$771,750.00
Schedule V	\$136,840.00	\$166,390.00	\$225,380.00
Schedule VI	\$308,647.50	\$211,142.00	\$395,650.00
Schedule VII	\$232,324.50	\$241,930.00	\$318,903.00
<b>TOTAL</b>	<b>\$2,402,441.50</b>	<b>\$2,148,680.00</b>	<b>\$2,980,006.00</b>

It has been determined that work forces within the Public Works Department Distribution and Collection Division can be scheduled and can complete the water main taps and extensions included under bid Schedule II. Since provision was made in the bidding documents to delete the award of any schedule, Schedule II is being deleted from the project contract. Since COP Construction is low bidder, the value of the contract recommended for award to COP would be \$97,170.00 less than their total bid of \$2,148,680.00 for a final award amount of \$2,051,510.00.

### **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 07-16 to COP Construction LLC in the amount of \$2,051,510.00 plus 10% City Administrator approval authority (\$205,151.00). Of the total contract amount, \$1,310,135.52 would be applied to water funds and \$741,374.48 would be applied to wastewater funds.

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

## INTRODUCTION

This project will construct water and sanitary sewer system improvements throughout the Shiloh Road Corridor between Poly Drive and Pierce Parkway. MDT is currently scheduled to begin its road project in the Shiloh Corridor in the spring of 2009, so these utility improvements must be installed prior to construction of the road improvements.

## BACKGROUND

During preliminary engineering design, it was determined that water and sewer utility construction would be limited to only what would eliminate impacts to the MDT project. Utility alignments would also be selected to minimize traffic disruption within the Shiloh Road Corridor and adjacent areas. It was determined that the most cost effective approach would be to construct nearly all the necessary improvements now under this City work order rather than to become subject to MDT's funding policies. Major improvements under the project will include the following:

- Sch. I (Poly Dr. to Grand Ave.): 12" WM (replacement)--1150'
- Sch. II (Grand Ave. to Broadwater Ave.): 12" WM--440'
- Sch. III (Broadwater Ave. to Central Ave.): 18" SS--1480', 15" SS--1,470', WM--130'
- Sch. IV (Monad Rd. to King Ave.): 24" WM--2580', 12" WM--290', 8" WM--70'
- Sch. V (south of King Ave.): 16" WM--650'
- Sch. VI (Hesper Rd. area): 18" SS--540', 8" SS--1040'
- Sch. VII (Hesper Rd. to Pierce Pkwy.): 8" SS--680', 12" WM--400', 24" casing--360'

In summary, approximately 5,700 feet of water main and 5,200 feet of sewer main will be installed by the project. In addition to the mains themselves, water and sewer services to both presently developed properties as well as future developments along the corridor will be installed to eliminate future disruption to and cutting of asphalt in Shiloh Road. Where there is no present need for an active water main, underground casings will be installed to accommodate future installation. As discussed under the Financial Impact section, Schedule II is being deleted from the contract award.

## ALTERNATIVES ANALYSIS

1. Construct the Shiloh Road Corridor Water & Sanitary Sewer System Improvements now.
2. Defer construction of the water and sewer improvements until they are needed to serve properties adjacent to and west of Shiloh Road.

If the project is not constructed ahead of the MDT road improvements, the City will face serious difficulties in providing water and sewer service to properties along and to the west of Shiloh Road and experience major and ongoing costly disruption and reconstruction of Shiloh Road.

Water and sewer service to many of these properties will likely be required in the near future, and construction of this project will serve well to define the various locations along the corridor where these future water and sewer main extensions and service connections may be made.

### **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 07-16 to COP Construction LLC in the amount of \$2,051,510.00 plus 10% City Administrator approval authority (\$205,151.00). Of the total contract amount, \$1,310,135.52 would be applied to water funds and \$741,374.48 would be applied to wastewater funds.



## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 25, 2008

TITLE: W.O. 08-06, King Avenue Lift Station Re-Bid, Contract Award  
DEPARTMENT: Public Works - Engineering  
PRESENTED BY: David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** This project will construct a sewer lift station, including installing a cast-in-place valve vault, pre-purchased pumps and control panel, additional electrical components, and completing surface improvements. The lift station and associated components will be built within a dedicated easement inside Shiloh Crossing Subdivision located at the southeast corner of King Avenue West and Shiloh Road.

As a result of this project, infrastructure will be established to support further growth west of Shiloh Road. Sewer service will be available to areas immediately adjacent to the lift station, to areas south of King Ave. W. between 36<sup>th</sup> St. W. and Shiloh Rd., and to a large area west of Shiloh Road mainly north of King Ave. W. Projections indicate that the lift station will be capable of supporting growth in the area for the next ten years. Potential future upgrades could significantly expand this lift station's service area.

**FINANCIAL IMPACT:** Funding for this project will be provided from wastewater funds. Bids were opened on August 12, 2008, for W.O. 08-06 with the results listed below:

- Engineer's Estimate: \$192,420.00
- COP Construction: \$453,440.00
- Williams Brother Construction: \$380,415.00

### RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 08-06 to Williams Brother Construction in the amount of \$380,415.00 plus 10% contingency (\$38,041.50) for a total of \$418,456.50 using wastewater funds.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Animal Shelter Privatization Contract  
**DEPARTMENT:** City Council/City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City of Billings issued a request for proposals for privatization of the Animal Shelter on February 22, 2008. The City received only one response, from Yellowstone Valley Animal Shelter, Inc., (YVAS), and began negotiations with the group on Aug. 21. In order to allow the negotiations to be completed, consideration of this item needs to be extended to Sept. 22, 2008.

**ALTERNATIVES ANALYZED:** The City Council may:

- Continue the item to Sept. 22, 2008;
- Award the contract to YVAS, based on its original submittal; or
- Reject all bids.

**FINANCIAL IMPACT:** The financial impact would depend on the negotiated contract.

**RECOMMENDATION**

Continue the contract to the Sept. 22, 2008, City Council meeting.

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, August 25, 2008

**TITLE:** Memorandum of Understanding – Billings Heights Water District

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** The City Council approved resale water rates for the Billings Heights Water District (District) on April 14, 2008 as part of the overall rate restructure. As provided for in the service agreement with the District, staff provided the District with the consultant study that determined these rates. As allowed for in the service agreement, the District objected to several items in the rate calculation. As a result, city and District staff, City Administrator Volek, City Attorney Brooks and rate consultants for both parties met on July 18, 2008 in an informal mediation session in an attempt to resolve the differences. The subject Memorandum of Understanding (MOU) is the outcome of the mediation. The MOU has been submitted to the District for its consideration and approval. If both parties approve the MOU, the current rate dispute will be settled. Since the new rates were effective July 1, the MOU needs to be considered as quickly as possible.

**ALTERNATIVES ANALYZED:** Staff has identified the following alternatives:

- Approve the MOU
- Do Not Approve the MOU

**FINANCIAL IMPACT:** In accordance with the service agreement with the District, its resale water rate is determined on a cost-of-service basis, which is an accepted methodology in the water industry. While the items that are part of the MOU may result in a change in the District's rates, staff believes any such changes are justified and are in conformance with the cost-of-service determination. Any such changes will be brought back to the Council for their formal approval should it be deemed necessary.

**RECOMMENDATION**

Staff recommends that Council approve the Memorandum of Understanding between the City and the County Water District of Billings Heights covering the resale water rate.

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

**ATTACHMENT**

A - Memorandum of Understanding

## **INTRODUCTION**

The City Council approved resale water rates for the Billings Heights Water District (District) on April 14, 2008. As provided for in the service agreement with the District, staff provided the District with the consultant study that determined these rates. As allowed for in the service agreement, the District objected to several items in the rate calculation. As a result, city and District staff, City Administrator Volek, City Attorney Brooks and rate consultants for both parties met on July 18, 2008 in an informal mediation session in an attempt to resolve the differences. The subject Memorandum of Understanding (MOU) is the outcome of the mediation. The MOU has been submitted to the District for its consideration and approval. If both parties approve the MOU, the current rate dispute will be settled. Since the new rates were effective July 1, the MOU needs to be considered as quickly as possible.

Staff recommends that Council approve the MOU.

## **BACKGROUND**

The service agreement between the City and the District provides for the following steps regarding determination of the water rates to be charged to the District:

- Rates to be determined on a cost-of-service basis.
- City supplies copy of rate study to the District for their review with the District allowed 45 days to respond to the City with any concerns or objections.
- Parties attempt to resolve any differences with informal mediation.
- If mediation fails, the final outcome is determined through binding arbitration using “baseball” arbitration. Baseball arbitration means that the arbitrator must choose one parties position or the other and nothing in between.

With the District having objected to several issues, the parties met in a mediation session on July 18, 2008. Attendees included City Administrator Tina Volek, City Attorney Brent Brooks, Deputy Director Alan Towlerton, Public Works division manager Dwile Weagel, city rate consultant Paul Matthews, District manager Duke Nieskens, District rate consultant Ed Cebron, District Board President Sandy Reitz and District Vice-President Wynn Pippin.

Because there are inherently differences of opinion between rate consultants regarding individual components that go into determining rates, such as rates of return on equity, staff believes the agreements reached in the mediation reflect a reasonable resolution to the differences.

## **ALTERNATIVES ANALYSIS**

Staff offers the following discussion regarding the identified alternatives:

Approve the MOU – If both parties approve the MOU then the rate dispute is settled, at least for the rate period approved by the Council, which is through FY11. While staff could continue to debate some of the items in the MOU, given the cost of arbitration and the inherent risk, staff believes the prudent course is to approve the MOU.

Do Not Approve the MOU – If either party fails to approve the MOU then the next step per the service agreement is binding arbitration. As noted above, staff could continue to debate some of the issues but does not believe it is prudent to do so in light of the inherent risk and cost of arbitration.

### **RECOMMENDATION**

Staff recommends that Council approve the Memorandum of Understanding between the City and the County Water District of Billings Heights covering the resale water rate.

### **ATTACHMENTS**

Attachment A - Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
CITY OF BILLINGS  
AND  
COUNTY WATER DISTRICT OF BILLINGS HEIGHTS**

**I. Parties of the Memorandum**

The parties to this MEMORANDUM OF UNDERSTANDING (MOU) are the City of Billings (CITY) and the County Water District of Billings Heights (DISTRICT).

**II. Purpose of Memorandum**

The purpose of this MOU is to outline the understandings reached between the parties as a result of the July 18, 2008 informal mediation as allowed for in the December 14, 1998 agreement (AGREEMENT) between the parties.

**III. Term of the Memorandum**

This MOU shall be in effect from the date both parties execute the MOU until September 1, 2008, which is the time by which the parties agree the issues outlined herein shall be resolved, or an attempt to resolve shall be made. After September 1, any further action taken shall be in conformance with the AGREEMENT.

**IV. Understanding and Agreement of the Parties**

- A. Working Capital – The DISTRICT agrees with the CITY’S methodology, that the amount is de minimus, and the DISTRICT agrees to accept this item as presented in the March 2008 Resale Water Cost-of-Service Study (STUDY) by Red Oak Consulting.
- B. Allocation of Fixed Assets – The parties agree that under the original 1963 agreement between the parties that the DISTRICT was responsible for constructing a 16-inch diameter water main to provide service to the DISTRICT and for which the DISTRICT contends the rate study did not grant credit for the remaining value of this asset. Because of the age of the asset and that there is apparently no record of the asset, that a significant portion of the main is no longer in service, and that the remaining portion is fully depreciated based on a 33-year life, the DISTRICT agrees to accept the CITY’S methodology as presented in the STUDY.
- C. Peaking Factor – The parties agree that there is currently no definitive data to better support the respective positions on maximum-day and peak-hour demand factors. In addition, the parties are aware that, once the upgrade to the Walter Pump Station is complete, data will be available that will allow further evaluation of these demand factors. Accordingly, in recognition of the CITY not including a peak-hour demand factor in the determination of the DISTRICT’S rates, the parties agree to forego further discussion of this

issue until such time as data is available to better define these demand factors. In addition, since the CITY controls the pumps to supply the DISTRICT, the parties agree to discuss remedies available for minimizing the peak demands that the DISTRICT places on the CITY'S delivery system provided such remedies are reasonable with respect to water system operation and do not place undue hardship on the CITY'S operations.

- D. Projection of Rate Base – The parties agree that the CITY'S and DISTRICT'S rate consultant shall converse with each other and verify for the DISTRICT that the rate base used in the STUDY remains constant throughout the study period and that any apparent changes noted in the STUDY are due to other acceptable factors.
- E. Administrative Cost Allocation – The parties agree that there are two generally accepted methods for allocating administrative costs; one with power and chemical costs being included along with all other costs in determining the allocation percentages; and one with power and chemical costs being excluded. While the parties agree that the most accurate method may be somewhere between these two methods, the CITY believes it would be administratively burdensome to proportion these costs so it agrees to exclude power and chemical costs in determining the allocation percentages used to allocate the administrative cost portion of the STUDY.
- F. Cost Basis – The parties agree that the ratio of actual versus budgeted operation and maintenance costs can vary from year-to-year. The parties agree that the CITY will provide the DISTRICT with a summary of its actual versus budgeted operation and maintenance expenses for the recent past.
- G. Rate of Return – The parties acknowledge that each has divergent positions on reasonable rates of return for a water utility operation. The CITY agrees to furnish the DISTRICT the results of the recent rate of return survey undertaken by the CITY'S rate consultant. In an effort to resolve this issue, now and in the future, the parties agree to utilize a return on equity value for the current study period of 9.55 percent. In addition, the parties agree to cooperatively develop a formula that will be used in the future to determine a reasonable return on equity taking into account applicable factors. The parties further agree that this formula will govern all future rate determinations unless mutually agreed otherwise by the parties.
- H. Billing Rate – The parties agree that until such time as the DISTRICT'S water billing rate is finally resolved, the CITY will bill the DISTRICT at the rate as determined in the STUDY and approved by the City Council effective July 1, 2008. Should this result in any overbilling, the DISTRICT will receive credit against future water bills.

#### V. Amendment of the Memorandum

This MOU may be amended from time to time by mutual agreement of the parties. Such amendments shall be in writing and executed by authorized persons from each party.

VI. Termination of the Memorandum

Either party may terminate this MOU upon 14 days written notification to the other party.

THIS MEMORANDUM OF UNDERSTANDING, consisting of three pages, is executed on \_\_\_\_\_, 2008 by the persons signing below.

CITY OF BILLINGS, MONTANA

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

Approved as to form: \_\_\_\_\_  
City Attorney

Attest:

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

(SEAL)

COUNTY WATER DISTRICT OF  
BILLINGS  
HEIGHTS

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(SEAL)



## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Amendment of Federal Aviation Administration Airport Improvement Program (AIP) Grant 34

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On May 12, 2008, City Council approved the acceptance of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant 34 for \$1,621,208.25 with a City 5% match of \$85,144.75. City Council also authorized this year's engineering design and construction of the AIP 34 projects, which include the Taxiway "H" Rehabilitation, ARFF Staging Area Pavement Reconstruction, and the Security Perimeter Fence Replacement. Recently, additional FAA funds were appropriated by Congress, and the FAA approached the Airport to see if additional projects were available for grant funding. Subsequently, the Airport would like to amend its current AIP 34 Grant and add to the existing Security Perimeter Fence project and complete the remaining 4,400 lineal feet of perimeter security fencing. This additional fencing would start at the corner by Rimtop Drive and go west just past the view lot. The Grant Amendment would cover 95% of the additional design and fence install costs of \$196,324.81.

The FAA would also like to incorporate the reimbursement of the proceeds received from the State of Montana for the State's purchase of the Airport land for the Montana Department of Transportation Airport Road Project. As you may recall, Airport land purchased with a 90% Federal Grant was sold to the State to expand the right-of-way for the highway project. Since the Federal proceeds from the land sale must be returned to the FAA, the FAA Montana Airport District Office in Helena is recommending that a credit of \$23,775.30 (the 90 % Federal share) be applied to this Grant Amendment to clear up this balance.

**FINANCIAL IMPACT:** The total amount of the Amendment to AIP 34 is \$162,773 bringing the total of the AIP 34 Grant amount to \$1,783,981. Local share of \$8,565 is available in the Airport's Capital fund.

**RECOMMENDATION**

Staff recommends that City Council approve and authorize the Mayor's signature on the request for the Amendment to the AIP 34 Grant.

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, August 25, 2008

**TITLE:** Approval of Amendment Five with Morrison-Maierle, Inc., for Additional Engineering Services for Airport Improvement Program (AIP) 34 Perimeter Security Fence Project

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide the design surveys for the project, development of projects plans, specifications and bidding documents, contract administration, to include coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, construction surveys, and development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment Five for \$38,165 includes all services indicated above for AIP 34 Perimeter Security Fence Project Change Order One. Change Order One adds 4,400 lineal feet of perimeter security fencing to the existing AIP 34 project. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff and approved by the FAA. Including Amendment Five, the total amount of this engineering contract is \$874,648 and has produced an estimated \$3,600,000 in construction projects.

**FINANCIAL IMPACT:** The total cost of Amendment Five to the five-year engineering Contract with Morrison-Maierle, Inc. is \$38,165, and will be funded 95% with AIP entitlement grant and 5% local funds. The FAA's portion will be \$36,256.75 and the City's match is \$1,908.25. Funding is available in the Airport's Capital fund.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment Five with Morrison-Maierle, Inc. in the amount of \$38,165 for additional engineering services required for Airport Improvement Program Project AIP 34 Perimeter Security Fence.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Approval of Change Order One with Frontier Fence for the Airport Improvement Program (AIP) 34 Perimeter Security Fence Project

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On May 12, 2008, the City Council approved the award of the contract for the Airport Improvement Program (AIP) 34 Perimeter Security Fence Project. The Federal Aviation Administration (FAA) has recently made available additional entitlement grant money for the fourth quarter, and the Airport desires to use these funds to construct an additional 4,400 lineal feet of perimeter security fencing to the project that will complete the remaining fencing as required by the FAA. The total cost of Change Order One is \$158,159.81, which will increase the total contract amount to \$813,415.34. This amount has been negotiated with the contractor whom agreed to hold their labor price for the installation and to increase their costs on material to match their cost increases. This Change Order has been reviewed by staff and our consulting engineer, and has been approved by the FAA.

**FINANCIAL IMPACT:** The total cost of Change Order One for Airport Improvement Program (AIP) 34 Perimeter Security Fence Project with Frontier Fence is \$158,159.81, and will be funded 95% with AIP entitlement grant and 5% local funds. The FAA's portion will be \$150,251.82 and the City's match is \$7,907.99. Funding is available in the Airport's Capital fund.

**RECOMMENDATION**

Staff recommends that the City Council approve Change Order One with Frontier Fence for Airport Improvement Program (AIP) 34 Perimeter Security Fence Project for the amount of \$158,159.81.

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




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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 25, 2008

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**TITLE:** Work Order 07-16 – Contract for Professional Engineering Services, Shiloh Road Corridor Utility Improvements; Amendment No. 1

**DEPARTMENT:** Public Works - Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider authorizing Amendment No. 1 to the City's Professional Services Contract with Engineering, Inc. to include construction administration services on the Shiloh Road Corridor Utility Improvements project. Engineering, Inc. was selected to perform project design and is now completing project bidding. The Request for Proposals written for the project included an option to amend the contract to include construction administration. Bids for project construction are scheduled to be opened on August 12, 2008 and the construction project is scheduled for award on August 25, 2008.

**ALTERNATIVES ANALYZED:**

1. Authorize a contract amendment with Engineering, Inc. as set forth in this staff memo.
2. Request that City staff perform construction administration on the project.
3. Delay project award and construction.

**FINANCIAL IMPACT:** Funding for this project has been approved in the CIP projects – Water Main Replacement (FY08 \$4 million) and Sanitary Sewer Replacement (FY08 \$4 million). Funding is sufficient for construction contract administration which is now under consideration as well as for project construction.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign Amendment No. 1 to the professional services contract with Engineering, Inc. in the amount of \$173,517.13. This increase would bring the total contract price from its original amount of \$456,005.25 to a not to exceed value of \$629,522.38.

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

**ATTACHMENT**

- A. Amendment No. 1 (5 pages)

## **INTRODUCTION**

This contract amendment would extend Engineering, Inc.'s project services to include administration of the Shiloh Road Corridor Utility Improvements Project construction contract.

## **PROCEDURAL HISTORY**

Completed Items:

- Engineering, Inc. was chosen by a selection committee through the Request for Proposals and Consultant Selection policy to perform project design.
- Bids for project construction are scheduled to be opened on August 12, 2008 and the construction project is scheduled for award on August 25, 2008.
- The Request for Proposals written for the project included an option to amend the contract to include construction administration.

Items to be Completed:

- Council authorizes the Mayor to sign the contract amendment with Engineering, Inc.
- Engineering, Inc. provides construction administration services for the project.

## **BACKGROUND**

Design work for the Shiloh Road Corridor Utility Improvements resulted in planned construction of approximately 5,700 linear feet of water main and 5,200 linear feet of sewer main.

Extensive preliminary design review reduced the level of effort required on subsequent design, so only \$354,700.00 of the original contract amount of \$456,005.25 will be utilized. Since the cost to administer the construction contract would total \$274,822.38, the resulting net increase to the original contract price would be \$173,517.13 for a new total contract amount of \$629,522.38.

Since the State of Montana Department of Transportation (MDT) plans to begin road construction in the Shiloh Corridor in May of 2009, it is in the City's best interest to follow-through with construction of the buried public utility improvements in coordination with and ahead of MDT's construction schedule.

## **ALTERNATIVES ANALYSIS**

If the project is not constructed ahead of the MDT road improvements, the City will face serious difficulties in providing water and sewer service to properties along and to the west of Shiloh Road without major and ongoing costly disruption and reconstruction of Shiloh Road.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign Amendment No. 1 to the professional services contract with Engineering, Inc. for the Shiloh Road Corridor Utilities Improvements project in the amount not to exceed \$173,517.13 resulting in an amended total contract price of \$629,522.38.



**AMENDMENT NO. 1**  
**TO**  
**CONTRACT FOR PROFESSIONAL SERVICES**  
**W.O. 07-16, SHILOH ROAD CORRIDOR WATER AND SANITARY**  
**SEWER SYSTEM IMPROVEMENTS**

THIS AGREEMENT, made and entered into on \_\_\_\_\_, by and between the following:

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

and

Engineering, Inc.  
1300 North Transtech Way  
Billings, Montana 59102  
Hereinafter designated the Consultant

**WITNESSETH:**

WHEREAS, the City and Consultant have entered into a contract dated October 22, 2007 for Consultant to provide engineering services to the City for Work Order 07-16, Shiloh Road Corridor Water and Sanitary Sewer System Improvements and;

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

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

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

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree to amend the original contract, as previously amended, as follows:

Amend the Basic Contract, Part I, Special Provisions, Section 3.C to read:

This Contract shall terminate at midnight on September 30, 2010.

Amend Appendix A, Basic Services of Engineer, Section 3, Scope of Work to add the following:

**D. Construction Services**

1. Construction Layout and Control.
  - i. Provide personnel, equipment, and supplies for construction layout and control. Construction layout shall include, but not be limited to, measurements, lines, locations, and grades necessary for construction.
  - ii. Reference and preserve all existing survey monuments and benchmarks. All monuments required within the project shall be punched and elevations shown on as-built drawings.
2. Inspection and Testing.
  - i. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
  - ii. Provide review of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Review of work shall be made on a full-time basis while any major item of work is in progress. Major items of work shall be water, sanitary sewer, storm drain, and irrigation utilities; subgrade preparation; gravel base course preparation; concrete pouring and finishing; paving; signalization, lighting, and striping. The Engineer shall provide a minimum of **48** hours notice for Billings personnel when specific inspections or testing require their presence on the project. Each daily review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the daily review reports shall be furnished to Billings as requested during construction. Engineer will notify Billings immediately of contract problems or deviation from approved plans.
  - iii. Provide the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality assurance testing and geotechnical engineering between the project engineer, field inspector, and a project construction materials engineer. Geotechnical and materials engineering shall

include interpretation and recommendations for the Engineer and Billings based upon field observation.

- iv. The Engineer shall record the location of all underground utilities (including, but not limited to, conduit for all street lighting, signalization, or flasher assemblies) installed under and on the surface within the public right-of-way and show these facilities, together with a representation of the general corridors in which other underground utilities are located, on the record drawings.

### 3. Submittal Review and Document Preparation.

- i. Review the construction operations and the traffic controls for construction, prior to the start of work. Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- ii. Check shop drawings, samples, equipment, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- iii. Prepare change orders that do not require additional engineering design or inspection.
- iv. Prepare monthly pay estimates and final pay estimates for construction and prepare contract administration forms on a monthly basis. These will be submitted in Billings' approved format.
- v. Issue notice to the Contractor to suspend work in whole or in part when, at the recommendation of the Engineer, it is the opinion of Billings that work is not being performed or cannot be performed in accordance with the contract documents and specifications.
- vi. Contact Billings for any proposed plan or specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept. Plan and specification changes shall be prepared by the design engineer.
- vii. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction. The Engineer is not authorized to order additional work without the approval of Billings' Task Director. Any work resulting in contract overages will be processed by approved change orders using Billings standard forms.

### 4. Public Involvement Services.

- i. Schedule and hold a neighborhood meeting at the beginning of the project. At a minimum, all affected property owners and businesses shall be invited to attend. Engineer will develop a mailing list to be used for notification.
  - ii. Develop an overall public involvement plan to be used during construction. At a minimum, plan will include provisions for providing information to Billings to be included in monthly newsletters; press releases and road closure notifications; weekly construction meetings; and Contractor handouts. Plan to be approved by Billings prior to implementation. Additional approvals by Billings may be required for release of public involvement plan materials to the public.
  - iii. Schedule and hold a minimum of two (2) public meetings during the course of construction. Meeting times and locations are to be determined by Engineer and approved by Billings.
  - iv. Additional meetings if requested by Billings would be compensated for in accordance with the provisions of this contract.
5. Provide one (1) bound copy (may include multiple volumes) of a project manual through final completion. At a minimum, the project manual shall include: project specifications and contract documents, pay estimates, correspondence, any change orders, Contractor submittals, test reports, daily inspection reports, public involvement plan and documentation, and other appropriate project records as determined by Billings.
6. Schedule and make final inspection with Billings and certify to Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
7. Schedule and make an inspection with Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.

Amend Appendix B, Section 1.A to read:

- A. For services rendered prior to **and throughout** construction, Appendix A, the Engineer shall be paid based on the actual time accrued, but not to exceed **\$629,522.38**; based on the following tasks:

- |   |               |
|---|---------------|
| 1. Prepare Base Map and Conduct Preliminary Design: | \$ 295,000.00 |
| 2. Geotechnical Engineering Services:               | \$ 33,200.00  |
| 3. Final Design, Bidding Services, and Award:       | \$ 24,500.00  |

4. Produce As-Built Drawings:	\$ 2,000.00
5. Construction Services	
a) Schedule I	\$ 31,554.84
b) Schedule II	\$ 12,492.00
c) Schedule III	\$ 76,015.98
d) Schedule IV	\$ 77,367.72
e) Schedule V	\$ 14,973.60
f) Schedule VI	\$ 35,549.70
g) Schedule VII	\$ 26,868.54

TOTAL INCREASE THIS AMENDMENT: \$173,517.13.

All other terms and conditions of the contract to which this amendment applies shall remain in full effect.

CONSULTANT - Engineering, Inc.

NAME: Rick Leuthold, P.E.

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

TITLE: President

DATE: \_\_\_\_\_

CITY OF BILLINGS, MONTANA

BY: \_\_\_\_\_  
Mayor, City of Billings

DATE: \_\_\_\_\_

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, August 25, 2008

**TITLE:** Approval of Amendment One for the Project Development and Construction Agreement for the South Billings Blvd. and Midland Road Signal Between the Montana Department of Transportation and the City of Billings

**DEPARTMENT:** Public Works Department

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

**PROBLEM/ISSUE STATEMENT:** The Montana Department of Transportation (MDT), working with the City Of Billings, will construct a new traffic signal at the intersection of South Billings Boulevard and Midland Road. The original project development and construction agreement for this project The City Of Billings was signed on June 14, 2004. Since that time it has been determined that MDT will bid and provide construction administration services for this project. In addition, project cost estimates have risen. Both issues result in the need for this amendment to the original agreement.

**ALTERNATIVES ANALYZED:**

- Approve amendment one for the Project Development and Construction Agreement for the South Billings Blvd. and Midland Road Signal.
- Do not approve this amendment.

**FINANCIAL IMPACT:** There is currently \$491,519 of federal safety funding being administered by MDT for this project. This funding will pay for all project costs up to \$491,519 and as such the City Of Billings will not be required to pay any portion of this project up to that amount. The current total project cost estimates is approximately \$452,000. The original agreement and this amendment state that any costs over that amount will be paid by the City. If funding is required, the City Arterial Funds will be used.

**RECOMMENDATION**

Staff recommends that Council approve amendment one for the Project Development and Construction Agreement for the South Billings Blvd. and Midland Road Signal.

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

**ATTACHMENT**

- A. Amendment One for the Project Development and Construction Agreement for the South Billings Blvd. and Midland Road Signal

AMENDMENT ONE  
PROJECT DEVELOPMENT AND  
CONSTRUCTION AGREEMENT  
STPU 1033(1)  
SOUTH BILLINGS BLVD/MIDLAND ROAD SIGNAL

The undersigned parties, the State of Montana through its Department of Transportation, hereinafter called the State, and the City of Billings, a Montana municipal corporation, hereinafter called the City, hereby agree and acknowledge that the Project Development and Construction Agreement entered into June 14, 2004, SIGNAL- S. Billings Blvd & Midland Rd- Billings, also known as SIGNAL-MIDLAND RD-BLGS, is amended as follows:

1) The second paragraph, first sentence on page 2 of the original agreement is revised and replaced as follows:

It is understood and agreed that the Federal and State share of eligible costs for this project will not exceed \$491,519 for all phases, including indirect costs at the applicable rate unless additional funds are allocated through the local planning process in accordance with federal planning regulations. If additional funds are not allocated the City remains responsible for all costs exceeding \$491,519.

2) F. BIDS AND CONSTRUCTION ADMINISTRATION

The paragraph on page 6 of the original agreement is replaced with the following: Once all approvals, right-of-way acquisition, clearances and permits are obtained, the State will advertise, award and administer the construction contract in accordance with normal MDT procedures including obtaining concurrence in the award from FHWA.

The City will be billed in advance for its portion, if any, of the estimated required match (13.42%) of the total estimated construction costs, construction engineering costs, indirect costs and city-applicable costs of the project no more than (60) days before bid opening. Although the anticipated expenses will have been discussed with City representatives before that time, the State will provide a detailed breakdown of all estimated project costs with the billing. The billed amount includes the required match for Preliminary Engineering (PE), Right-of-Way (RW) and Utilities (IC). PE, RW or IC costs accrued after submitting the bill to the city will be included either in a change order billing or in the final billing.

The City will submit payment to the State within thirty (30) days of billing. The State will not proceed further with the project's development if payment is not made within that time. If the federal government requires a reimbursement or return of any federal funds because a project doesn't advance due to the City's failure to make any scheduled payment, the City agrees that it will reimburse the State for those federal funds within (30) days of billing.

If, after initial payment is made, bid opening or contract award by the State is delayed or postponed by 30 days or more, or canceled for any reason, the State agrees to immediately



refund the City's initial payment upon the City's request. If the lowest acceptable bid exceeds the State's estimate by more than 10%, the City and State will confer and decide whether or not the project will be awarded, since the City is also responsible for the cost increase. If the City does not concur the project will not be awarded. If the City does concur, the project will be awarded and the City will be billed for the amount exceeding the initial payment. The City will pay that amount within thirty (30) days of the billing. If the City's share of the cost of the awarded project exceeds the amount paid by the City, the City may determine if other eligible federal funds are available and reach an agreement with the State to allocate those funds to pay the excess. If other federal funds are not available, the City will pay the excess as stated herein.

The contact for billing, accounting and change order questions for the City shall be:

Vern Heisler  
City of Billings  
510 N Broadway - 4th Floor  
Billings, MT 59102

The parties understand that it is possible that the estimate may be exceeded once construction is begun, and any change orders, increases, or unforeseen expenses applicable to the City's portion of the project will be borne by the city. State's Project Manager will inform the City's point of contact beforehand, and as early as possible, of anything that appears will result in a cost increase, and will discuss the need for any possible change order with the City and will consider the City's comments and concerns for that change order. None of this will prevent, delay, or excuse the City from paying for any change orders deemed necessary by State.

The City's portion of the cost of any change order will be billed as early as it can be readily determined, and will be due and payable by the City within thirty (30) days of the statement.

Within six (6) months after the project has been finally accepted with the final costs submitted, the State will submit a final statement to the City. Monthly and final statements will be provided, detailing any expenses in change orders or that may be identified as "miscellaneous". The final statement will include a refund of unspent portions of the City's initial payment, payable to the City in an amount equaling the difference between that payment and the City's share of the final costs. If the final statement exceeds the City's payments thus far, the City will remit to the State within thirty (30) days of the final statement the difference between City's share of final costs and City's earlier payment. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full. If the City is billed for additional funds, MDT will not participate in any future funding agreement with the City until full payment, including interest, is received from the City.

Payments to this project will be coordinated through MDT's Administration Division (to be directed to the State's Accounts Receivable collections Technician and Accounting Systems Operations Supervisor). Payments to this project will be provided to the above State staff in the form of a check to be credited to this project.

3) Revise G. ROLES AND RESPONSIBILITIES for CONSTRUCTION CONTRACT ADMINISTRATION by deleting "for CONSTRUCTION CONTRACT ADMINISTRATION".

Under the section **The STATE agrees that:**

On pages 6 and 7 of the original agreement, delete 3, 4 and 5.

Under the section **The CITY agrees that:**

On pages 7, 8, 9 and 10 of the original agreement, delete 1, 1, 2-6, 8, 14-28 in their entirety.

On page 8 of the original agreement, item 13, delete the sentence "The City agrees not to advertise for bids until the State has approved the PS&E package."

4) Under **I. OTHER** add the following:

8. Section 17-1-105, MCA, requires any state agency, including the Montana Department of Transportation (MDT) that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. The MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 14.06% for fiscal year 2009 (July 1, 2008 to June 30, 2009).

For this project, indirect costs (IDC) will be charged to the federal funding and the required non-federal match for all phases and applied against the total project budget for costs incurred after June 30, 2007. In addition, MDT will bill the City for IDC applicable to costs exceeding the total project budget of \$491,519, and other locally provided costs, if any, occurring after June 30, 2007. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

5) Page 13 of the original agreement, "EXHIBIT A", is deleted in its entirety.

6) EXHIBIT B in the original agreement is replaced with the following:

**NON-DISCRIMINATION NOTICE      EXHIBIT B**

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

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

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national

origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.

- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

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

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

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

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

The agreement between the City and State executed June 14, 2004, as amended herein, constitutes the entire agreement between the parties and no statement, promises or inducements made by either party or agents of either party, which are not contained in the written agreement is binding or valid. All other terms, conditions, requirements, and specifications remain as stated in the original agreement.



IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of the State of Montana and the Mayor has signed and affixed hereto the seal of said City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

BY \_\_\_\_\_, 2008  
Loran Frazier, P.E.  
Chief Engineer, Engineering Division

APPROVED FOR LEGAL CONTENT  
AND CIVIL RIGHTS CONTENT:

\_\_\_\_\_  
MDT Legal Counsel

APPROVED AS TO FORM

City Official

\_\_\_\_\_  
Billings City Attorney

\_\_\_\_\_  
Mayor, City of Billings

I, \_\_\_\_\_, Clerk of the City of Billings, hereby certify that amendment was regularly adopted by the CITY COUNCIL at a meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and that the CITY COUNCIL authorized the Mayor to sign this amendment on behalf of CITY COUNCIL.

[Official Seal]

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Amendment One to Non-Commercial Aviation Ground Lease with First Interstate Bancsystem, Inc.

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** First Interstate Bancsystem, Inc. entered into a Non-Commercial Aviation Ground Lease with the City on July 23, 2007, for a term of ten (10) years and sixteen (16) days, commencing on August 15, 2007, and terminating on August 31, 2017. The unusual lease term established an end-of-month termination date and renewed the Lease that was originally approved by the City Council on July 7, 1997, to King Management for a ten (10) year term and which expired on August 14, 2007. King Management subsequently assigned its leasehold interest to First Interstate Bancsystem, Inc. in two steps: 50% on July 7, 1998, and the remaining 50% on October 10, 2000. First Interstate Bancsystem, Inc. has requested an amendment to the annual readjustment provision to reset the adjustment date to the beginning of a month to facilitate automatic monthly rental payments. This change will allow the Bank to make twelve (12) equal annual rental payments, instead of a prorated rent payment in August and equal rental payments for the remaining eleven (11) months of the Lease year.

**FINANCIAL COMMENT:** The Amendment will have no additional financial impact on the Lease and resets the annual adjustment date to September 1 from the current date of August 14.

**RECOMMENDATION**

Staff recommends that Council approve Amendment One to the First Interstate Bancsystem, Inc. Non-Commercial Aviation Ground Lease. This Amendment resets the annual adjustment date to September 1 from August 14.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

---

**TITLE:** Appoint Council Subcommittee to Establish the Process and Schedule for the 2008 City Administrator Performance Review

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Charter and the Employment Agreement with Christina Volek require the City Council to annually review the City Administrator's performance. The Employment Agreement specifically requires the City Council to review performance during September of each year. The Council expressed a desire to appoint a Council subcommittee to establish the process and schedule for the 2008 evaluation. The City Council or the Mayor may appoint this subcommittee pursuant to the Council's operating procedures found in the City Code at Section 2-223. Councilmembers Astle, McCall, Ronquillo and Ruegamer have volunteered to serve on the subcommittee.

**ALTERNATIVES ANALYZED:** As stated above, the Charter and Employment Agreement require annual performance evaluations, so there are no alternatives to performing the review. Section 12 of the Employment Agreement states that the evaluation will be subject to the review form that was approved with the original Employment Agreement in 2006, but it gives the City Administrator and Council the option of changing the form if both parties agree. While this subcommittee cannot independently affect the Agreement's term, the Council should be aware that the term of this agreement is September 8, 2006 through October 1, 2008, subject to renewal and severance contained in Section 1 and Section 10.

**FINANCIAL IMPACT:** There are no financial impacts from appointing this subcommittee. The only other financial impacts are the negotiated salary and benefits that may need to be budgeted for the remainder of FY 2009.

**RECOMMENDATION**

Staff recommends that Council appoint a subcommittee to establish the process and schedule for reviewing the City Administrator's performance in September, 2008 and that the subcommittee's membership shall be Councilmembers Astle, McCall, Ronquillo and Ruegamer.

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

**ATTACHMENT:**

A:      Employment Agreement



# **Employment Agreement**

## **Introduction**

This Agreement, made and entered into September 8, 2006, by and between the **City of Billings**, Montana, a municipal corporation, (hereinafter called "Employer") and **Christina F. Volek** (hereinafter called "Employee"), an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

## **Section 1: Term**

The term of this agreement shall be for an initial period of two years, from September 8, 2006, to October 1, 2008. This Agreement shall be reviewed annually on its anniversary date, and shall be renewed for an additional 2-year year term unless notice is given by the Employer at least 12 months before the expiration date that the Agreement shall be terminated. If the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. If the Employee is terminated, as defined in Section 9 of this agreement, the Employee shall be entitled to all compensation including salary, accrued vacation,  $\frac{1}{4}$  of accrued sick leave, car allowance paid in lump sum, plus continuation of all benefits for the remainder of the term of this agreement.

## **Section 2: Duties and Authority**

Employer agrees to employ Christina F. Volek as City Administrator to perform the functions and duties specified in Section 4.03 of the City Charter of the City of Billings, Montana.

## **Section 3: Compensation**

A. Base Salary: Employer agrees to pay Employee in the first year of this Agreement an annual base salary of \$105,833 payable in biweekly installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be amended each subsequent October 1 to reflect a cost-of-living adjustment (COLA) and an increase in compensation as agreed by the Employer and Employee, dependent upon successful completion of the performance evaluation conducted under the provisions of Section 12 of this Agreement.

#### **Section 4: Health, Disability and Life Insurance Benefits**

A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and her dependents equal to that which is provided to other employees of the City of Billings, Montana

B. Employer shall pay the amount of premium due for term life insurance in the amount of the Employee's two-year annual base salary. The Employee shall name the beneficiary of the life insurance policy.

C. Should Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and transporting the Employee's remains back to the custody of the Employee's family.

#### **Section 5: Vacation and Sick Leave**

A. On the effective date of this agreement, Employee shall be credited with her existing sick and vacation leave earned to date. The Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees.

B. Employee is entitled to accrue all unused leave, up to 500 hours, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, and other benefits to date.

#### **Section 6: Automobile**

Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$4,800 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The amount of the vehicle allowance may be increased in the future by mutual consent of the parties. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee on the basis of gasoline receipts for any business use of the vehicle beyond the greater Billings area. For purposes of this Section, use of the car within the greater Billings area is defined as travel to locations within a 50-mile radius of Billings.

#### **Section 7: Retirement**

A. Employer agrees to contribute 6.8% of the Employee's annual salary into the Montana Public Employees' Retirement System (MPERS) or its successor. Employee will contribute 6.9% of her annual salary to MPERS.

B. In addition to Employer's payment to MPERS as referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to pay ICMA-RC an amount equal to 6.8% of Employee's base salary, in equal proportionate amount each pay period. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

#### **Section 8: General Business Expenses**

A. Employer agrees to budget for and to pay for:

1. Professional dues and subscriptions of the Employee for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
3. Reasonable travel and subsistence expenses of Employee for short courses, institutes, and seminars for the Employee's professional development and for the good of the Employer.

B. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations reasonably related to Employee's duties. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

#### **Section 9: Termination**

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- B. If the Employer, citizens or legislature acts to amend any provisions of the City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the majority of the governing body, then the Employee may declare a termination as of the date of the suggestion.

#### **Section 10: Severance Compensation**

A. Severance compensation shall be paid to the Employee if employment is terminated as defined in Section 9.

B. If the Employee is terminated, the Employer shall provide a minimum severance compensation payment equal to one year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

C. The Employee shall also be compensated for all accrued vacation leave and  $\frac{1}{4}$  of accrued sick leave. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

D. For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4A;
2. Life insurance as provided in Section 4B;
3. Out-placement services should the employee desire them in an amount to be negotiated at time of separation.
4. Any other benefits as negotiated at the time of separation.

E. If the Employee is terminated for cause, the Employer is not obligated to pay severance under this section.

#### **Section 11: Resignation**

If the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

#### **Section 12: Performance Evaluation**

Employer shall annually review the performance of the Employee in September, subject to a review form shown as Attachment A or to another process for the evaluation which shall be

mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to:

1. Prepare a written evaluation;
2. Meet and discuss the evaluation; and
3. Present a written summary of the evaluation results, along with specific suggestions for improvement. The final written evaluation shall be completed and delivered to the Employee within 30 days of the evaluation meeting.

### **Section 13: Hours of Work**

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

### **Section 14: Residency**

Employee agrees to maintain residence within the corporate boundaries of the City of Billings.

### **Section 15: Indemnification**

Employer shall defend, save harmless and indemnify Employee as provided in the current version of Montana Code Annotated Section 2-9-305(2005) which is set forth in its entirety below. This obligation shall survive and extend beyond the Employee's separation from Employer and Employee shall be indemnified and held harmless for any post-separation costs or expenses incurred in connection with the investigation or defense of any claim related to her employment.

1. It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
2. In any non-criminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.
3. Upon receiving service of a summons and complaint in a non-criminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If

the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

4. In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection 6.
5. Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).
6. In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:
  - (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
  - (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
  - (c) the employee compromised or settled the claim without the consent of the government entity employer; or
  - (d) the employee failed or refused to cooperate reasonably in the defense of the case.
7. If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those

exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

#### **Section 16: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### **Section 17: Other Terms and Conditions of Employment**

A. Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other exempt employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

#### **Section 18: Notices**

Notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### **Section 19: General Provisions**

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on September 8, 2006.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Approved this 10th day of October, 2006,



The City of Billings:

By:

  
Ron Tussing, Mayor

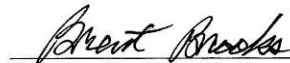
Attest:

  
Marita Herold, CMC/AEE, City Clerk

Employee:

  
Christina F. Volek, Employee

Approved as to Form:

  
Brent Brooks, City Attorney





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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 25, 2008

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TITLE: Montana Tow Truck Association Parade  
DEPARTMENT: Public Works – Engineering Division  
PRESENTED BY: David D. Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The Montana Tow Truck Association requests temporary street closure for a Tow Truck Parade on Friday September 12, 2008, from 5:30 pm to 7:00 pm.

Recommended conditions of approval include the Montana Tow Truck Association:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Coordinate with the Police and Traffic Engineering Departments to ensure proper traffic control with blocker trucks and police assistance
5. Provide a certificate of insurance naming City of Billings as additional insured

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

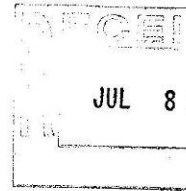
Staff recommends that Council approve Tow Truck Parade as described above on Friday September 12, 2008.

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

**ATTACHMENTS**

- A. Letter from MTTA
- B. Right of Way Special Activity Permit
- C. Parade specifications
- D. Certificate of insurance

**Montana Tow Truck Association  
P.O. Box 80291  
Billings MT 59108**



June 30, 2008

Public Works Dept.  
510 N. Broadway  
Billings MT 59101

Dear Events Coordinator:

The Montana Towing Association will again be sponsoring the Annual Tow Truck Convention and Hope Project on September 12<sup>th</sup> – September 14<sup>th</sup>.

The Tow Truck Parade will be held on Saturday, September 13, 2008. The parade assembly will begin at the Billings Hotel & Convention Center at 2:30 p.m. This is also where the convention will be held. The parade will follow the established route outlined on the enclosed map. The tow trucks will proceed down the parade route in single file.

Attached is the parade permit and map of the route. An insurance rider from Hub International will be presented upon approval of our parade.

We have a MTTA parade every year in different cities. The last parade we had in Billings was in 2004. It was a show of lights and was very impressive. It was conducted with pride and with safety in mind.

If you have any questions, or comments, please contact Tom Ruschkewicz at 670-4395. Thank you.

Sincerely,

Tom Ruschkewicz

A handwritten signature in black ink, appearing to read "Tom Ruschkewicz", written over the printed name.



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 Tom Rusch Kewicz

ORGANIZATION MAKING APPLICATION Montana Tow Truck Association

PHONE 406 670-4395

ADDRESS P.O. Box 80291 Billings MT 59108

EMAIL ADDRESS DowntownWrecker @ Bresnaw.net

APPROXIMATE TIME EVENT WILL:

Assemble 5:30 pm Start 6:00 PM Disband 2:00 PM pm

DATE OF EVENT 9-12-08

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

A parade for MTTA and project HOPE.

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

See attached map

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

N/A

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

N/A IF there is a mess MTTA will clean up

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE [Signature] DATE 7-6-08

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

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

**FOR CITY USE ONLY**

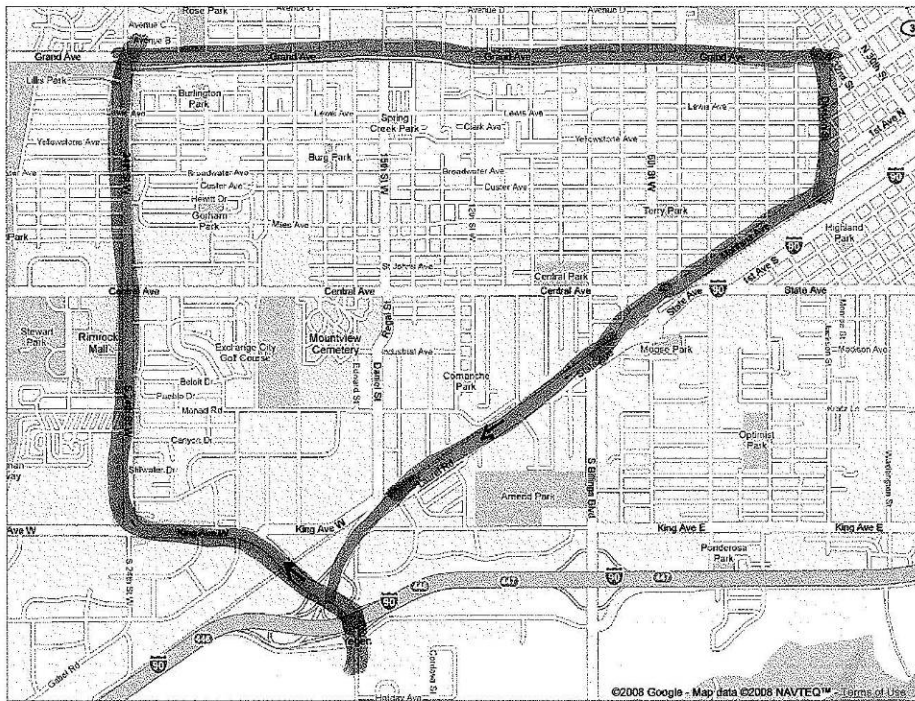
FEE: \_\_\_\_\_

APPLICANT NOTIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

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

Google  
Maps



We could not understand the location **Billings Hotel**

**Suggestions:**

- Make sure all street and city names are spelled correctly.
- Make sure your address includes a city and state.
- Try entering a zip code.
- Know about this place and want everyone to find it? Add it to Google Maps!

Client#: 83795

MTTOWTRU1

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 08/06/08
<b>PRODUCER</b> Payne Financial Group P.O. Box 3327 145 West Front Street Missoula, MT 59806-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> Montana Tow Truck Association Tom Ruschkewicz PO Box 80291 Billings, MT 59108		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: Mount Vernon Fire Insurance Company INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #


## COVERAGES

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.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	BINDER792512	09/12/08		EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$1,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		<b>OTHER</b>				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Certificate holder is listed as Additional Insured.						

## CERTIFICATE HOLDER

## CANCELLATION

<b>CITY OF BILLINGS</b> 510 N Broadway Billings, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Quarterly Report for Pledged Collateral for Wells Fargo Certificate of Deposit, First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Deposit type securities (i.e., certificates of deposit) shall be collateralized according to Montana Code Annotated Section 7-6-207.

On June 30, 2008, the City had a certificate of deposit at Wells Fargo Bank for \$1,500,000, and First Interstate Bank for \$1,514,795; also \$31,057,558 invested in the U.S. Bank Municipal Investor Accounts; and \$3,305,348 in the US Bank Repurchase Account. The City has \$3,500,000 in two certificates of deposit at US Bank, Billings.

Because Well Fargo Bank, First Interstate Bank and US Bank's net worth ratio to total assets ratio is over 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. Well Fargo Bank has collateralized the City's deposits with 97% in pledged securities. First Interstate Bank has collateralized the City's deposits with 99% in pledged securities. US Bank has collateralized the City's Municipal Investor Account and two certificates of deposit with 119% in pledged securities. The Repurchase Account is collateralized with 102% in pledged securities.

**RECOMMENDATION**

Staff recommends that Council approve securities pledged by Wells Fargo Bank, First Interstate Bank and US Bank as collateral for their respective certificates of deposit, MIA, and repurchase account.

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





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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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

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

On June 30, 2008 the City had the following amounts invested:

US Bank Municipal Investor	\$	31,057,558
Montana State Short Term Investment Pool	\$	6,122
U.S. government and U.S. agency obligations	\$	61,550,000
Certificates of deposit	\$	6,514,795
Compensating certificates of deposit	\$	2,400,000
Repurchase Agreements	\$	3,305,348
 Total Investments	 \$	 104,833,823
 Funds Average Days to Maturity	 	 304 Days
 Effective Rate of Return	 	 2.88%

The portfolio summary on attachment A does not include the US Bank repurchase account and the US Bank compensating certificate of deposit.

**RECOMMENDATION**

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

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

# ATTACHMENT- Portfolio Summary



## City of Billings, MT Portfolio Management Portfolio Summary June 30, 2008

210 No  
Billin

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
Certificates of Deposit - Bank	6,514,794.52	6,514,794.52	6,514,794.52	6.57	484	263	4.152
Federal Agency Coupon Securities	61,535,000.00	61,532,774.67	61,575,384.32	62.09	551	481	3.118
Treasury Coupon Securities	15,000.00	15,708.60	15,000.00	0.02	2,495	471	6.165
STIP	6,122.37	6,122.37	6,122.37	0.01	1	1	2.400
MIA	31,057,558.07	31,057,558.07	31,057,558.07	31.32	1	1	2.771
<b>Investments</b>	<b>99,128,474.96</b>	<b>99,126,958.23</b>	<b>99,168,859.28</b>	<b>100.00%</b>	<b>375</b>	<b>304</b>	<b>3.078</b>
<b>Cash and Accrued Interest</b>							
Accrued Interest at Purchase		4,913.86	4,913.86				
Ending Accrued Interest		533,150.92	533,150.92				
Subtotal		538,064.78	538,064.78				
<b>Total Cash and Investments Value</b>	<b>99,128,474.96</b>	<b>99,665,023.01</b>	<b>99,706,924.06</b>		<b>375</b>	<b>304</b>	<b>3.078</b>
<b>Total Earnings</b>	<b>June 30</b>	<b>Month Ending</b>					
<b>Effective Rate of Return</b>		<b>2.88%</b>					

This is in accordance with the City Investment Policy

  
Patrick M Weber, Financial Services Manager

8/7/08



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, Aug. 25, 2008**

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**TITLE:** Resolution—Temporary Suspension of the Camping Ordinance  
**DEPARTMENT:** City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Big Sky Polka Club is seeking an exemption from the City's RV and camper parking ordinance for its annual Polkafest, to be held Labor Day Weekend (Aug. 28-31, 2008) at the Shrine Auditorium, 1125 Broadwater Ave.

BMCC 24-411. Parking for Camping Purposes. prohibits parking for camping in anything other than an authorized tourist park, except for a 10-hour rest period in a parking lot in which the owner permits it. The ordinance also provides, however, for a temporary suspension of the ordinance for a special event, as follows:

"Upon approval by resolution, the city council may temporarily suspend the requirements and restrictions imposed by section 24-411 in order to accommodate special events held within the city. The resolution of suspension shall become effective forty-eight (48) hours prior to the official start of the scheduled event and shall terminate forty-eight (48) hours after official conclusion of the event."

**ALTERNATIVES ANALYZED:**

- Approve a resolution allowing RV and camper parking in the Shrine Auditorium for the Polka Festival. Such an exemption was granted in 2005 -2007 for the same event.
- Do not approve the resolution.

**FINANCIAL IMPACT:** None anticipated.

**RECOMMENDATION**

Approve a resolution allowing RV and camper parking in the Shrine Auditorium parking lot for 48 hours on either side of the Big Sky Polka Club's Polkafest, Aug. 28-31, 2008.

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

**Attachments:**

- A: Resolution  
B: Letter from Big Sky Polka Club, Inc.

**RESOLUTION 08-\_\_\_\_**

**A RESOLUTION OF THE BILLINGS CITY COUNCIL  
TEMPORARILY SUSPENDING BMCC 24-411 TO  
ALLOW CAMPING IN THE SHRINE AUDITORIUM  
PARKING LOT FOR THE 2008 BIG SKY POLKA  
FESTIVAL.**

**WHEREAS**, BMCC 24-411. Parking for Camping Purposes. prohibits parking for camping in the City of Billings in anything but authorized tourist parks, but allows a temporary suspension 48 hours before and after special events held within the City if a resolution is obtained from the City Council; and

**WHEREAS**, the Big Sky Polka Club, Inc., will hold its annual Big Sky Polka Festival from Aug. 28-31, 2008, at the Shrine Auditorium, 1125 Broadwater Avenue; and

**WHEREAS**, the owners of 14-18 recreational vehicles and campers are expected to attend the event, and the Big Sky Polka Club has asked that they be allowed to park their vehicles at the event site.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA** that BMCC 24-411 is hereby temporarily suspended for a period of 48 hours on either side of Aug. 28 to Sept. 1, 2008, at the Shrine Auditorium, 1125 Broadwater, for the Big Sky Polka Festival.

**PASSED AND APPROVED** by the City Council this 25th day of August, 2008.

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, CITY CLERK

AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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**TITLE:** Preliminary Plat of Marisela Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** On July 15, 2008, the subdivider, High Sierra Development Corporation, applied for preliminary minor plat approval for Marisela Subdivision. The proposed subdivision creates 4 large lots and a 332-acre remainder parcel from a 400-acre tract of land. The subject property is located on the north side of Matador Drive and Annandale Road, in the northwest corner of the Heights. The entire 400-acre property was recently annexed and rezoned to Residential-9600 (R-96) and Residential-7000 Restricted (R-70-R) zoning. These 4 lots will become the first two filings of the master planned subdivision of the 400 acres. The City Council will review the preliminary plat, and approve, conditionally approve, or deny the proposed subdivision at the August 25, 2008, meeting. The representing agent is Engineering, Inc.

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

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

**RECOMMENDATION**

Planning staff recommends conditional approval of the preliminary plat of Marisela 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. Findings of Fact
- C. Mayor's Approval Letter

## **INTRODUCTION**

On July 15, 2008, the subdivider, High Sierra Development Corporation, applied for preliminary minor plat approval for Marisela Subdivision. The proposed subdivision creates 4 large lots and a 332-acre remainder parcel from a 400-acre tract of land. The subject property is located on the north side of Matador Drive and Annandale Road, in the northwest corner of the Heights. The 4 lots will become the first two filings of the master planned subdivision of the entire 400 acres.

## **PROCEDURAL HISTORY**

- A pre-application meeting was held on June 19, 2008, to discuss the proposal.
- The preliminary plat application was submitted to the Planning Division on July 15, 2008.
- The City Council will consider the preliminary plat on August 25, 2008.

## **BACKGROUND**

The proposed subdivision will create 4 large lots that will be further subdivided into the first two filings of an eight-filing master planned subdivision. The subject property is split into two sections; one just north of Matador Drive and High Sierra Boulevard, and the other north of Annandale Road. The property is bordered on the south and east by single-family residential lots.

General location:	North of Matador Drive and Annandale Road, in the northwest extent of the Heights.
Legal Description:	A portion of Amended Tract 1, of Certificate of Survey 2017, located in Sections 9 and 17, T1N, R26E
Subdivider:	High Sierra Development, Corp.
Owner:	Dover Ranch
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-96, R-70-R
Existing land use:	Ranch land
Proposed land use:	Single-family residential
Gross area:	68.117 acres
Proposed number of lots:	4
Lot sizes:	Max: 25.447 acres Min.: 7.180 acres

Parkland requirements:

Parkland dedication is not required for minor subdivisions.

### **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 Division staff develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. The remaining half-street width for Annandale Road shall be dedicated with this subdivision, and shown as such on the final plat. *Required by BMCC, 23-406.A.7*
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

None

### **STAKEHOLDERS**

A public hearing is not required for minor subdivisions. However, any interested party may review the proposal and make comments. The Planning Division has received no public input on this proposal at the time this staff report was completed.

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

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

### **RECOMMENDATION**

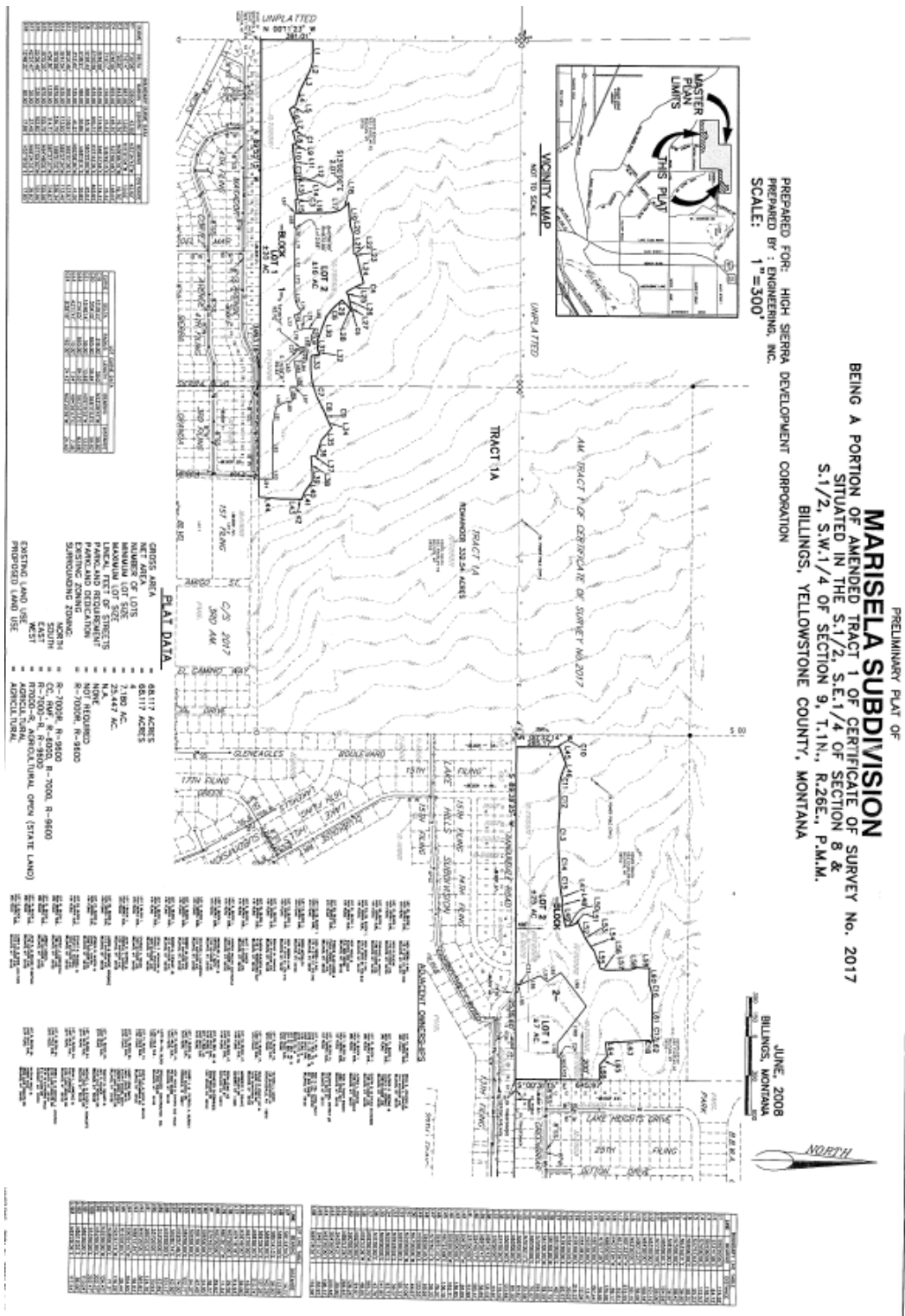
Planning staff recommends conditional approval of the preliminary plat of Marisela Subdivision, and adoption of the Findings of Fact as presented in the staff report to the City Council.

**ATTACHMENTS**

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



# Preliminary Plat of Marisela Subdivision



## **ATTACHMENT B**

### **Findings of Fact**

The Planning staff is forwarding the recommended Findings of Fact for Marisela 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, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-304 (c) (1)]**

##### **1. Effect on agriculture and agricultural water user facilities**

The subject property is located in the City limits and has been Master Planned for residential development. This is a small portion of the Dover Ranch dry land pasture. It should have a minimal effect on the agricultural industry.

The BBWA irrigation ditch is located approximately ¼ mile northeast of the property. This subdivision does not contain any ditches or water shares, and therefore will not have an effect on agricultural water user facilities.

##### **2. Effect on local services**

- a. **Utilities** – Water services can be provided by the County Water District of Billings Heights for Lots 1 & 2, Block 2, and by the City of Billings for Lots 1 & 2, Block 1. The subdivider will extend water mains from the existing main lines in the area after the lots are re-platted in the future. No water extensions are proposed at this time.

Sanitary sewer service can be provided by connecting to the existing sewer mains in Annandale Road and Matador Avenue. The subdivider will extend sewer mains from the existing main lines in the area after the lots are re-platted in the future. No sewer extensions are proposed at this time.

MDU will provide gas services, and Northwestern Energy and Yellowstone Valley Electric Cooperative will provide electric services to the subdivision in the future.

- b. **Storm water** – No storm water management facilities are proposed at this time. A storm water master plan has been prepared for when the lots are re-platted. All improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

- d. **Streets** – The eastern portion of proposed subdivision fronts Annandale Drive, which is a minor arterial road. At this time, only half of the required right-of-way is platted, so with this plat, the remaining half width shall be dedicated (Condition #1). Construction of Annandale Road will be addressed when the property is re-platted. Matador Avenue fronts the western portion of the subdivision. No right-of-way dedication or street improvements are proposed or required for Matador Ave. at this time.
- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – School District #2 provides educational services to elementary through high school students. Sandstone Elementary School, Castle Rock Middle School, and Skyview High School will serve the children in this subdivision. Responses from these schools were not received at the time this report was written.
- g. **Parks and Recreation** – There are no parkland requirements for minor subdivisions.
- h. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and details will be worked out upon re-platting.

### **3. Effect on the natural environment**

The creation of these large lots should have minimal effects on the natural environment. Effects of urban development on the natural environment will be evaluated at the time the lots are re-platted into smaller lots for development.

### **4. Effect on wildlife and wildlife habitat**

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer and antelope in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat, as it is on the edge of an urbanized area.

### **5. Effect on the public health, safety and welfare**

The subdivision is located in an area with no known natural hazards.

### **B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304 (c) (1)]**

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 Urban Area 200 Transportation Plan Update and the Heritage Trail Plan? [BMCC 23-304 (c) (3)]**

**1. Yellowstone County-City of Billings 2003 Growth Policy**

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

- a. **Goal: More housing and business choices within each neighborhood (p. 6).**
- b. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).**
- c. **Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).**
- d. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (p. 10).**

**2. Urban Area 2005 Transportation Plan Update**

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

**3. Heritage Trail Plan**

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. No trail corridors are identified on the plan within this subdivision.

**D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-304 (c) (4)]**

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

**E. Does the subdivision conform to sanitary requirements? [BMCC 23-304 (c) (5)]**

The subdivision will eventually utilize the Heights Water District system and City of Billings water system, the City's sanitary sewer system, and the City's 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? [BMCC 23-304 (c) (6)]**

The subject property is located within the R-96 and R-70-R zoning districts and shall comply with the standards set forth in Section 27-308, BMCC.

**G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-304 9 (c) (7)]**

The subdivider will provide utility easements as requested by MDU, NWE, and YVEC upon re-platting.

**H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-304 9 (c) (8)]**

Legal and physical access is provided to the proposed lots from Annandale Road and Matador Avenue.

**CONCLUSIONS OF FINDING OF FACT**

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

Approved by the Billings City Council, August 25, 2008.

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Ron Tussing, Mayor

**ATTACHMENT C**  
Mayor's Approval Letter

August 26, 2008

Dover Ranch  
633 Sindelar Road  
Billings, MT 59105

Dear Applicant:

On August 25, 2008, the Billings City Council conditionally approved the preliminary plat of Marisela Subdivision. The conditions of approval are as follows:

1. The remaining half-street width for Annandale Road shall be dedicated with this subdivision, and shown as such on the final plat.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Department at 247-8684 or by email at [spaldingj@ci.billings.mt.us](mailto:spaldingj@ci.billings.mt.us).

Sincerely,

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Ron Tussing, Mayor

Pc: High Sierra Development Corporation  
Mac Fogelsong, Engineering, Inc.



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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**TITLE:** Preliminary Subsequent Minor Plat of Gabel Subdivision, 4<sup>th</sup> Filing  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** On June 16, 2008, the subdivider applied for preliminary subsequent minor plat approval of Gabel Subdivision, 4<sup>th</sup> Filing, which contains five lots on approximately 11.35 acres for commercial development. The subject property is located on the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road. The owner is Bottrell Family Investments, LP, and Engineering, Inc. is the agent. The subject property currently has a building on proposed Lot 3, with the rest of the site being undeveloped. The property is zoned Controlled Industrial (CI).

This subdivision was before the City Council at its meeting on July 28, 2008, as Gabel Subdivision 3<sup>rd</sup> Filing. After the City Council conditionally approved the subdivision on July 28, it was discovered by staff and the applicant that Gabel Subdivision, 3<sup>rd</sup> Filing, already exists. Therefore, the same subdivision is back before the city council corrected as Gabel Subdivision 4<sup>th</sup> Filing. No other changes have been made to the plat or documents.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on August 4, 2008. Because the subdivision was submitted with the incorrect filing number the applicant has requested an extension of the 35 working days until August 25, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

**RECOMMENDATION**

Staff recommends the City Council conditionally approve the preliminary minor plat of Gabel Subdivision, 4th Filing, and adopt the Findings of Fact as presented in the staff report.

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

**ATTACHMENTS**

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



## **INTRODUCTION**

On June 16, 2008, the subdivider applied for preliminary subsequent minor plat approval of Gabel Subdivision, 4th Filing, which contains five lots on approximately 11.35 acres for commercial development. The subject property is located on the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road. The owner is Bottrell Family Investments, LP, and Engineering, Inc. is the agent. The subject property currently has a building on proposed Lot 3, with the remainder of the proposed subdivision being undeveloped, the property is zoned Controlled Industrial (CI).

This subdivision was before the City Council at its meeting on July 28, 2008, as Gabel Subdivision 3<sup>rd</sup> Filing. After the City Council conditionally approved the subdivision on July 28, it was discovered by staff and the applicant that Gabel Subdivision, 3<sup>rd</sup> Filing, already exists. Therefore, the same subdivision is back before the city council corrected as Gabel Subdivision 4<sup>th</sup> Filing. No other changes have been made to the plat or documents.

## **PROCEDURAL HISTORY**

- On May 15, 2008, a pre-application meeting was held for the proposed subsequent minor subdivision.
- On June 16, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On July 28, 2008, the City Council voted to conditionally approve the preliminary plat for the proposed subsequent minor subdivision.
- After the title error was found, the applicant requested an extension of the 35 working days until August 25, 2008.
- On August 25, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

## **BACKGROUND**

General location:	On the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road
Legal Description:	Lot 14A-1, Block 1, of the Amended Plat of Lots 4 and 14A, Block 1, of Gabel Subdivision, 2 <sup>nd</sup> Filing.
Subdivider/Owner:	Bottrell Family Investments, LP
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	CI
Existing land use:	Commercial Development/Vacant
Proposed land use:	Business Park

Gross area:	11.35 acres
Net area:	11.35 acres
Proposed number of lots:	5
Lot size:	Max: 130,655 square feet Min.: 61,313 square feet
Parkland requirements:	A parkland dedication is not required, as this is a commercial minor subdivision.

### **ALTERNATIVES ANALYSIS**

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

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the local office of the United States Postal Service. *(Recommended by the United States Postal Service)*
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

There are no variances requested.

### **STAKEHOLDERS**

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

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

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

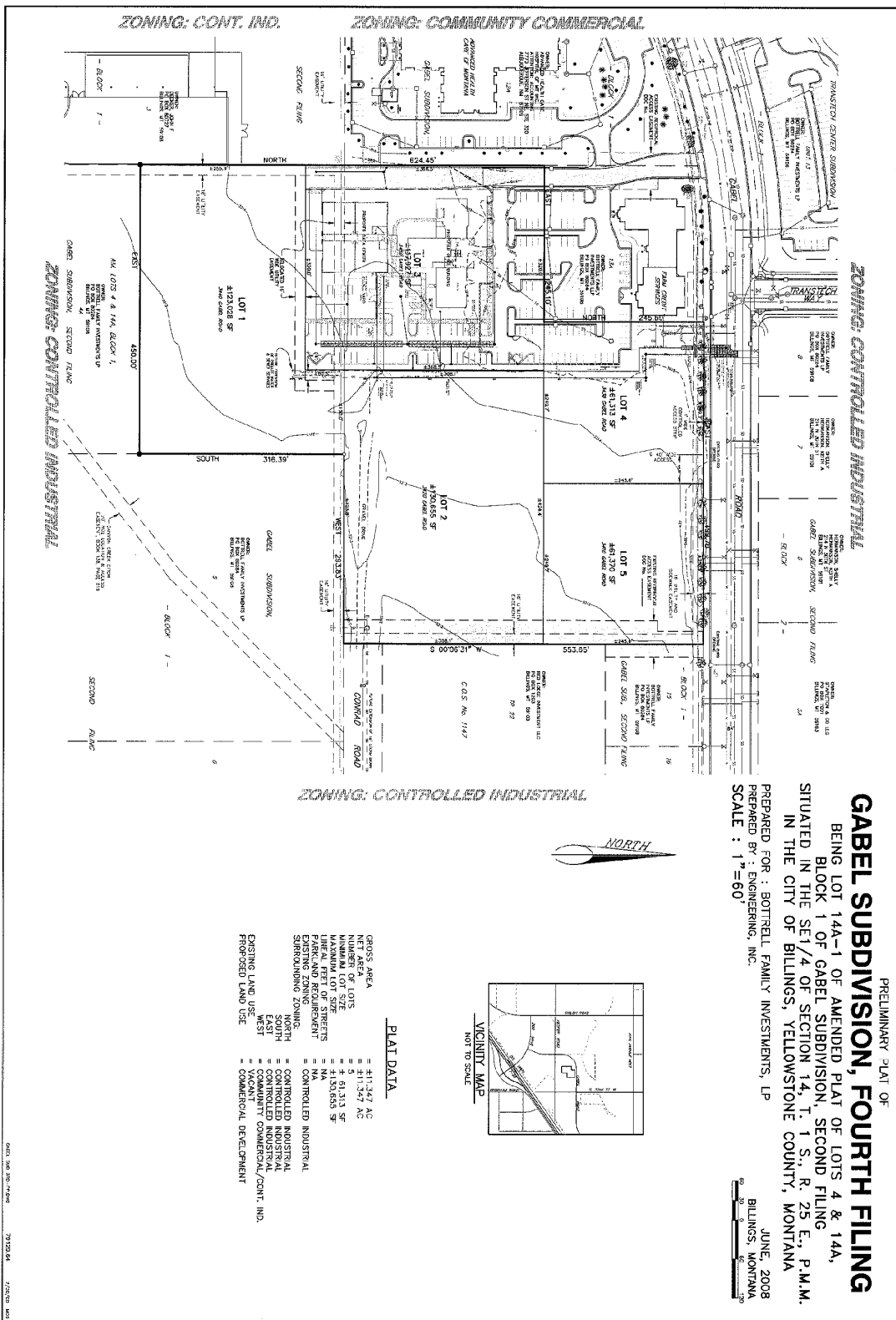
### **RECOMMENDATION**

Staff recommends the City Council conditionally approve the preliminary minor plat of Gabel Subdivision, 4th Filing, and adopt the Findings of Fact as presented in the staff report.

### **ATTACHMENTS**

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

## Preliminary Plat of Gabel Subdivision, 4th Filing



## **ATTACHMENT B**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Gabel Subdivision, 4th Filing, for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

##### **1. Effect on agriculture and agricultural water user facilities**

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

##### **2. Effect on local services**

- a. **Utilities** –Currently there is a 12 inch water main in Gabel Road adjacent to this subdivision. Internal, domestic and fire service will be provided by an extension of an 8 inch main from Gabel Road through a meter vault and south to a second vault at the existing 6 inch service located in Lot 4A, Gabel Subdivision, 2<sup>nd</sup> Filing, adjacent to Hesper Road. Separate domestic water service and fire sprinkler lines will be provided for each building from this private main within the subdivision.

Currently there is an 8 inch sanitary sewer main in Gabel Road adjacent to the proposed subdivision. Lot 5 of the subdivision will be serviced by the existing service off of the Gabel Road main and Lots 1 through 4 will be served from a new 8 inch private main which will be extended from the Gabel Road main south to Lots 1 through 4 within an easement.

- b. **Stormwater** – Stormwater will be handled on site through surface flow on the streets and parking lots, collected through a network of catch basins, inlets, and piping. There will be required detention areas that will be discharged to the existing storm stubs on Gabel Road. As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via private internal subdivision streets from Gabel Road. As specified in the SIA, the subdivider will build all streets to a minimum width of 34 feet of paved surface, and all internal streets will be constructed to city standards. A site plan of the proposed subdivision will be reviewed by all applicable city reviewing divisions before construction begins. A

reciprocal access easement document was submitted for the shared driveways and parking lots for the proposed commercial subdivision.

Access to this proposed subdivision shall be through three existing accesses from Gabel Road as outlined in the SIA Section III E. All internal roads shall provide interconnectivity between lots in accordance with the reciprocal easement provision included in the Fourth Amendment of Covenants and Restrictions for Gabel Subdivision, Second Filing and Third filing, to be filed with the final plat of this proposed subdivision.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24<sup>th</sup> Street West (Station #5).
- f. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The location of this centralized delivery box is to be approved by the local office of the United States Postal Service prior to installation, (see Condition #2).

### **3. Effect on the natural environment**

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

### **4. Effect on wildlife and wildlife habitat**

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

### **5. Effect on the public health, safety and welfare**

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

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

An Environmental Assessment is not required, as this is a commercial minor plat within the City Limits.

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

### **1. Yellowstone County-City of Billings 2003 Growth Policy**

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

*The proposed subdivision is consistent with the surrounding commercial development that is taking place in the Transtech Center and will be compatible with the standards that are required by that development.*

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

*The subject property is compatible with the commercial development within Gabel Subdivision inside the Transtech Center that is a commercial development in this area of the City of Billings.*

## **2. Urban Area 2005 Transportation Plan Update**

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

## **3. Heritage Trail Plan**

A Heritage Trail corridor is identified along the Hogan Slough and a portion of Gabel Road through the Transtech Center. The section fronting this proposed subdivision has been constructed and in use at this time. No further trail improvements are anticipated at this time.

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

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

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

The property will be served by public water and sewer services from Gabel Road.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI zoning district and all other applicable zoning regulations.

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

The City Engineering Division will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

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

Access to the lots will be via private internal streets from Gabel Road as stated in the SIA Section III E.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Gabel Subdivision, 4th Filing, does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, August 25, 2008

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Ron Tussing, Mayor



**ATTACHMENT C**  
Mayor's Approval Letter

August 26, 2008

Bottrell Family Investments, LP  
Attn: Jerry Thomas  
P.O. Box 80284  
Billings, MT 59108

Dear Mr. Thomas:

On August 25, 2008, the Billings City Council conditionally approved the preliminary plat of Gabel Subdivision, 4th Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the local office of the United States Postal Service. *(Recommended by the United States Postal Service)*
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact David Green with the Planning Division at 247-8654 or by email at [greend@ci.billings.mt.us](mailto:greend@ci.billings.mt.us).

Sincerely,

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Ron Tussing, Mayor

pc: Robert Sanderson, Engineering, Inc.



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On July 15, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, which contains three lots on approximately 5.41 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and is zoned Controlled Industrial (CI).

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on September 2, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

4. Approve;
5. Conditionally Approve; or
6. Deny the Preliminary Plat

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

**RECOMMENDATION**

Staff recommends the City Council conditionally approve the preliminary subsequent minor plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On July 15, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, which contains three lots on approximately 5.41 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and is zoned CI.

## **PROCEDURAL HISTORY**

- On June 26, 2008, a pre-application meeting was conducted regarding the proposed 3-lot subsequent minor subdivision.
- On July 15, 2008, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On August 25, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

## **BACKGROUND**

General location:	Southeast corner of the intersection of Shiloh Road and King Avenue West
Legal Description:	Lot 5E, Block 1, Shiloh Crossing Subdivision
Subdivider/Owner:	Shiloh Crossing, LLC
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	CI
Existing land use:	Vacant
Proposed land use:	Commercial Shopping Center
Gross area:	5.41 acres
Net area:	5.41 acres
Proposed number of lots:	3
Lot size:	Max: 2.14 acres Min.: 1.38 acres
Parkland requirements:	A parkland dedication is not required, as this is a commercial minor subdivision.

### **ALTERNATIVES ANALYSIS**

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

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

There are no variances requested, however, a variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved by the Council with the original Shiloh Crossing Subdivision on September 10, 2007.

### **STAKEHOLDERS**

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

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

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

### **RECOMMENDATION**

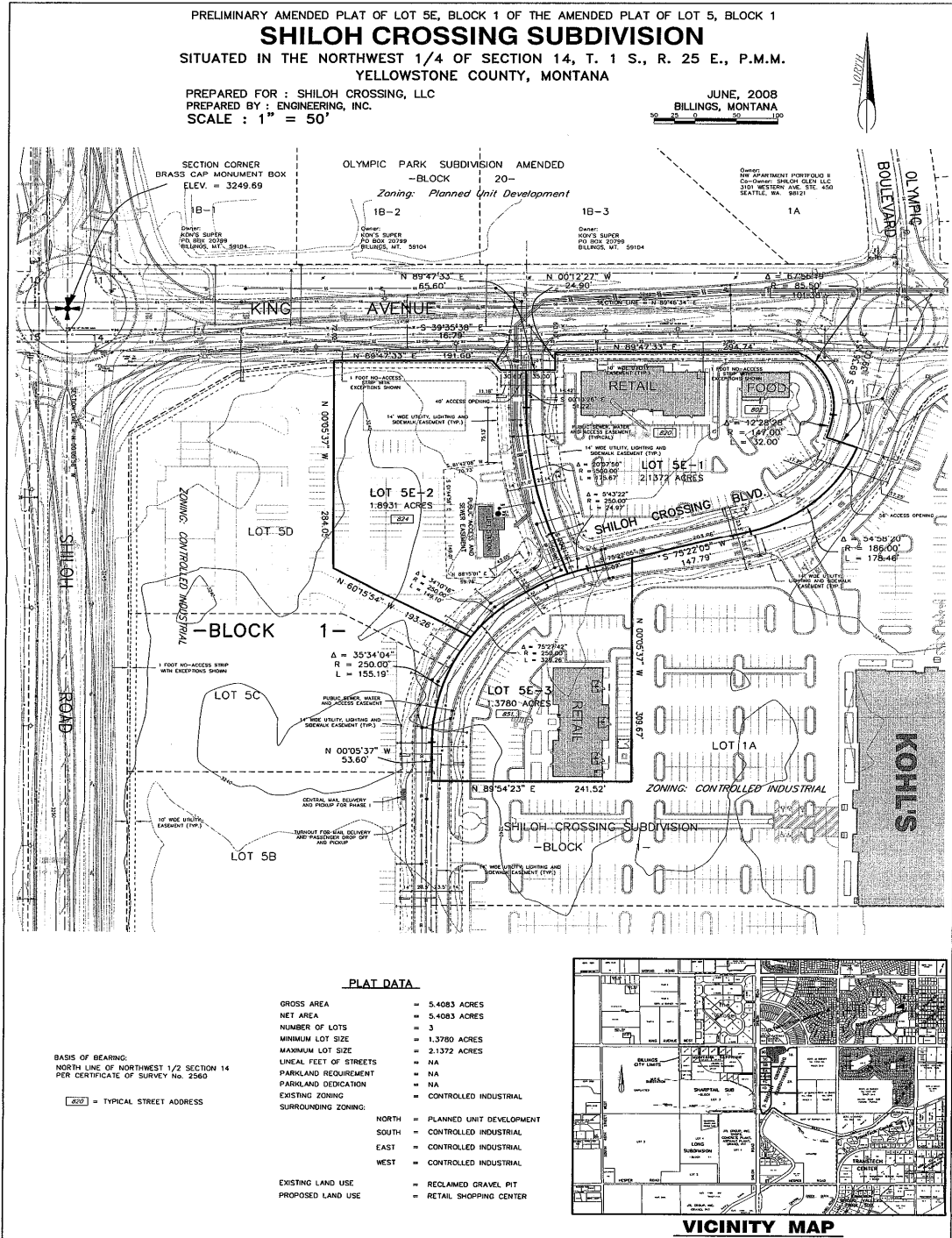
Staff recommends the City Council conditionally approve the preliminary subsequent minor plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

**ATTACHMENTS**

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

# ATTACHMENT A

## Preliminary Plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision



## **ATTACHMENT B**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 5E, Block 1, Shiloh Crossing 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, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? (76-3-608 (3)(a), MCA) (23-302(H)(2), BMCC)**

**1. Effect on agriculture and agricultural water user facilities**

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property. The BBWA canal is located along the southern boundary of the subdivision and is located within its own deeded parcel.

**2. Effect on local services**

- e. **Utilities** – Water to the subject property will be extended from the 12-inch main line in Shiloh Road and the 16-inch main line in King Avenue West. The SIA does specify that the 12-inch main will be extended along Shiloh Road to the south property line of Shiloh Crossing at the time of the Shiloh Road reconstruction. An internal water main will be installed during Phase I of construction through a private contract, as specified within the SIA.

A 27-inch sanitary sewer main exists in King Avenue at the northwest corner of the subdivision. The SIA specifies that the subdivision will be served by the 2008 extension of the 27-inch main east along King Avenue to a lift station located on Lot 5E-2.

- f. **Stormwater** – There is no storm drain system available to this area at this time, therefore, stormwater will be handled through a combination of onsite surface flow on streets and parking lots with collection through a network of basins, inlets, and piping. Discharge of the stormwater will be in the existing gravel pit pond on the site. Storm drainage for King Avenue West adjacent to the proposed subdivision will be accomplished in the future once the drain is extended from 31<sup>st</sup> Street West as part of a 2008 reconstruction process. Storm drainage for Shiloh Road adjacent to the proposed subdivision is currently handled by barrow ditches to Hogan's Slough and the Shiloh Drain. An upgrade of this drainage system will occur in 2009, as part of a Montana Department of Transportation Shiloh Road reconstruction. As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- g. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.



- h. **Streets** – Access to the proposed lots will be via internal private subdivision streets from King Avenue West and Shiloh Road. As specified in the SIA, the subdivider is proposing a 65-foot wide shared access on King Avenue West to allow for the roundabout on the common lot line between Lots 1 and 5. There are also two additional 40-foot wide right-in/right-out approaches along King Avenue West.

There are two main accesses proposed on Shiloh Road, as specified within the SIA. The Shiloh Road accesses have been included in the Shiloh Road reconstruction project. Shiloh Crossing Boulevard is the major internal street and will be constructed to city standards. A reciprocal access easement document was submitted for the shared driveways and parking lots for the commercial development.

A variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved with the Shiloh Crossing Subdivision by the City Council on September 10, 2007. The subdivider is proposing to provide a multi-use trail within the subdivision instead of standard sidewalks. This will provide for easy access through the site, as it will be constructed to interconnect all commercial buildings and parking lots on the site

A Traffic Accessibility Study was submitted with the original Shiloh Crossing Subdivision and all necessary traffic control devices will be installed as outlined within the study and approved by the City of Billings during construction. All improvements have been specified within the SIA.

- f. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24<sup>th</sup> Street West (Station #5).
- g. **Mail Delivery** - The United States Postal Service has requested that the applicant provide centralized delivery for the proposed subdivision. As specified in the SIA, the centralized mailbox will be located on Lot 5B for Phase 1 of Shiloh Crossing. Additional mailbox locations for future phases will be reviewed and approved by the United States Postal Service.

### **3. Effect on the natural environment**

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

#### **4. Effect on wildlife and wildlife habitat**

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property. However, a statement has been added to the SIA, that lot owners should be aware that interactions with wildlife could occur and that any damage to property is the lot owner's responsibility.

#### **5. Effect on the public health, safety and welfare**

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

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

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

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

##### **1. Yellowstone County-City of Billings 2003 Growth Policy**

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

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

*The proposed subdivision is consistent with the surrounding commercial and multi-family uses.*

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

*The subject property is compatible with the commercial development within Montana Sapphire Subdivision to the west and the proposed commercial development to the northwest.*

The subdivision is inconsistent with the following goal of the 2003 Growth Policy:

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

*While the subject property is surrounded by annexed portions of the City and developing parcels, the property is not located within an area surrounded by an existing population center and could be considered sprawl.*

## **2. Urban Area 2005 Transportation Plan Update**

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

## **3. Heritage Trail Plan**

A Heritage Trail corridor is identified on the west side of Shiloh Road, Hogan's Slough, and along the BBWA canal. An easement for a segment of trail has been depicted on the north side of the BBWA canal. No improvements are proposed at this time. The subdivider is proposing an internal multi-purpose trail within the entire Shiloh Crossing Subdivision for connectivity to the proposed parking lots and commercial buildings.

## **4. West Billings Plan**

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

- Conditional approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.
- The West Billings Plan identifies the intersection of King Avenue West and Shiloh Road as a community commercial center.

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, medical facilities, and parks. This subdivision will be close to these amenities once Shiloh further develops.

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

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

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

The property will be served by public water and sewer services from King Avenue West and Shiloh Road.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CI zoning district. The subject property will also be required to comply with the South Shiloh Road Overlay 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)**

Access to the lots will be via private internal streets from King Avenue West and Shiloh Road.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, August 25, 2008

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Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

August 25, 2008

Shiloh Crossing, LLC  
Attn: Steve Corning, Managing Member  
Corning Companies  
2280 Grant Road  
Billings, MT 59102

Dear Mr. Corning:

On August 25, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

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Ron Tussing, Mayor

pc: Robert Sanderson, Engineering, Inc.

AGENDA ITEM:

P1



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$3,726,738.80 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 25, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$2,817,431.88 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 1, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Public Hearing to Vacate a portion of North 19<sup>th</sup> Street  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

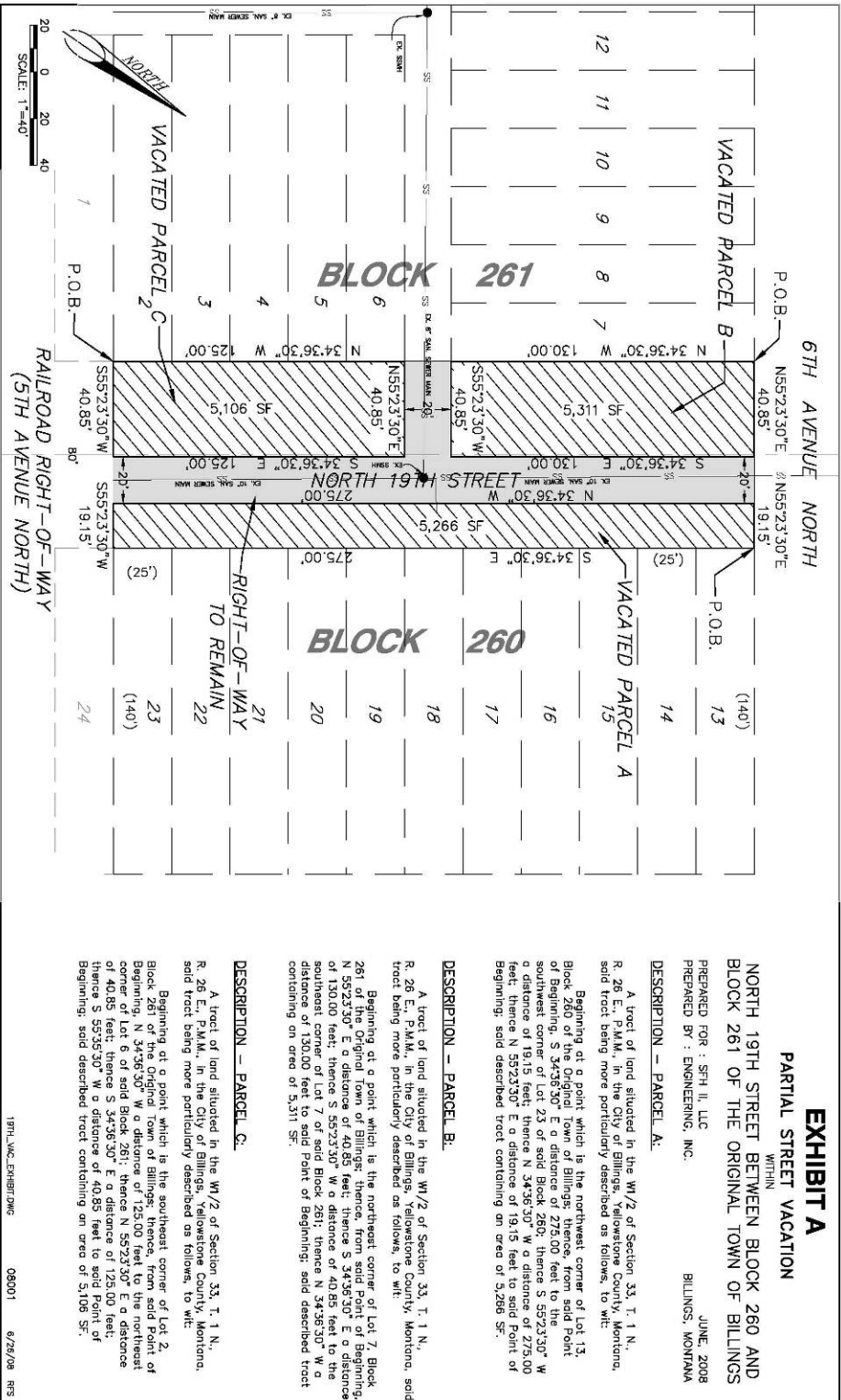
After holding the public hearing, staff recommends that Council approve the vacation of a portion of North 19<sup>th</sup> Street.

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

**ATTACHMENTS**

- A. Map Depicting Areas to be Vacated
- B. Resolution to Vacate





**EXHIBIT A**  
**PARTIAL STREET VACATION**

**NORTH 19TH STREET BETWEEN BLOCK 260 AND  
BLOCK 261 OF THE ORIGINAL TOWN OF BILLINGS**

WITHIN  
PREPARED FOR : SFH II, LLC  
PREPARED BY : ENGINEERING, INC.  
JUNE, 2008  
BILLINGS, MONTANA

**DESCRIPTION - PARCEL A:**

A tract of land situated in the W1/2 of Section 33, T. 1 N., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:  
Beginning at a point which is the northwest corner of Lot 13, Block 260 of the Original Town of Billings; thence, from said Point of Beginning, S 34°36'30" E a distance of 130.00 feet to the southwest corner of Lot 23 of said Block 260; thence S 55°23'30" W a distance of 19.15 feet; thence N 34°36'30" W a distance of 275.00 feet; thence N 55°23'30" E a distance of 19.15 feet to said Point of Beginning; said described tract containing an area of 5,296 SF.

**DESCRIPTION - PARCEL B:**

A tract of land situated in the W1/2 of Section 33, T. 1 N., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:  
Beginning at a point which is the northeast corner of Lot 7, Block 261 of the Original Town of Billings; thence, from said Point of Beginning, N 55°23'30" E a distance of 40.85 feet; thence S 34°36'30" E a distance of 130.00 feet; thence S 55°23'30" W a distance of 40.85 feet to the southeast corner of Lot 7 of said Block 261; thence N 34°36'30" W a distance of 130.00 feet to said Point of Beginning; said described tract containing an area of 5,311 SF.

**DESCRIPTION - PARCEL C:**

A tract of land situated in the W1/2 of Section 33, T. 1 N., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:  
Beginning at a point which is the southeast corner of Lot 2, Block 261 of the Original Town of Billings; thence, from said Point of Beginning, N 34°36'30" W a distance of 125.00 feet to the northeast corner of Lot 6 of said Block 261; thence N 55°23'30" E a distance of 40.85 feet; thence S 34°36'30" E a distance of 125.00 feet; thence S 55°23'30" W a distance of 40.85 feet to said Point of Beginning; said described tract containing an area of 5,106 SF.

RESOLUTION NO. 08-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS,  
MONTANA, DISCONTINUING AND VACATING a  
portion of North 19<sup>th</sup> Street.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of a portion of North 19<sup>th</sup> Street as described hereinafter; and

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

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., a portion of North 19<sup>th</sup> Street more particularly described as follows:

PORTION OF NORTH 19<sup>TH</sup> STREET SOUTH OF 6<sup>TH</sup> AVENUE NORTH

A tract of land situated in the W1/2 of Section 33, T. 1 N., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point which is the northwest corner of Lot 13, Block 260 of the Original Town of Billings; thence, from said Point of Beginning, S 34°36'30" E a distance of 275.00 feet to the southwest corner of Lot 23 of said Block 260; thence S 55°23'30" W a distance of 19.15 feet; thence N 34°36'30" W a distance of 275.00 feet; thence N 55°23'30" E a distance of 19.15 feet to said Point of Beginning; said described tract containing an area of 5,266 SF.

A tract of land situated in the W1/2 of Section 33, T. 1 N., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point which is the northeast corner of Lot 7, Block 261 of the Original Town of Billings; thence, from said Point of Beginning, N 55°23'30" E a distance of 40.85 feet; thence S 34°36'30" E a distance of 130.00 feet; thence S 55°23'30" W a distance of 40.85 feet to the southeast corner of Lot 7 of said Block 261; thence N 34°36'30" W a distance of 130.00 feet to said Point of Beginning; said described tract containing an area of 5,311 SF.

A tract of land situated in the W1/2 of Section 33, T. 1 N.,

R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point which is the southeast corner of Lot 2, Block 261 of the Original Town of Billings; thence, from said Point of Beginning, N 34°36'30" W a distance of 125.00 feet to the northeast corner of Lot 6 of said Block 261; thence N 55°23'30" E a distance of 40.85 feet; thence S 34°36'30" E a distance of 125.00 feet; thence S 55°35'30" W a distance of 40.85 feet to said Point of Beginning; said described tract containing an area of 5,106 SF.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **a portion of North 19<sup>th</sup> Street** is in the best interest of the public and can be done without any public detriment.  
PASSED by the City Council and APPROVED this 25<sup>th</sup> day of August 2008.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin CITY CLERK



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** Pledge of Revolving Fund for Special Improvement District 1380  
Public Hearing and Resolution

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** During the creation of Special Improvement District 1380, information regarding five percent (5%) of the bond cost being pledged to the revolving fund was omitted in the resolution. The resolution declaring the intent to create the special improvement district dated November 13, 2007 did include the dollar amount of revolving fund contribution in the engineer's estimate in Exhibit D. The standard procedure is to include a section in the resolution on pledging the revolving fund. This resolution will formally pledge the contribution to the revolving fund.

**RECOMMENDATION**

Staff recommends City Council holds a public hearing and 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 PLEDGE OF THE REVOLVING FUND OF THE CITY TO THE BONDS ALLOCABLE TO DISTRICT NO. 1380 AND TAKING CERTAIN ACTIONS WITH RESPECT THERETO" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 25, 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 PLEDGE OF THE  
REVOLVING FUND OF THE CITY TO THE BONDS  
ALLOCABLE TO DISTRICT NO. 1380 AND TAKING CERTAIN  
ACTIONS WITH RESPECT THERETO"**

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 City 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 to be 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").

(b)      On November 13, 2007, this City Council adopted Resolution No. 07-18629 (the "Intent Resolution") expressing the intention of the City to create District No. 1380. The City published a notice of passage of the Intent Resolution to create District No. 1380 in the *Billings Times* on November 15 and November 22, 2007. On December 10, 2007, this City Council adopted Resolution No. 07-18650 (the "Formation Resolution") creating District No. 1380. Both the Intent Resolution and the Formation Resolution expressed the intention of the City to issue the Bonds to finance the cost of the Improvements to District No. 1380; however, neither the Intent Resolution nor the Formation Resolution expressed the intent of the City to pledge the Revolving Fund of the City. The City has always intended to pledge the Revolving Fund as security for the Bonds allocable to District No. 1380.

(c)      The City Clerk previously published notice (the "Notice") of a public hearing (the "Hearing") relating to pledging the Revolving Fund to the Bonds allocable to District No. 1380 in substantially the form of the attached EXHIBIT A (which is hereby incorporated herein and made a part thereof), which Hearing was held on the date hereof prior to consideration of this Resolution. The Notice was published for two successive weeks prior to the Hearing on August 14 and August 21, 2008 in the *Billings Times*, the official newspaper of the City. The public and all interested parties were allowed to testify at the public hearing and the City Council also considered any written comments submitted to the City Clerk prior to the hearing or submitted to the City Council during the hearing.

(d)      On August 11, 2008, this City Council adopted a resolution authorizing the public, competitive sale of the Bonds on September 8, 2008. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Improvements

Section 2.      Actions Relating to the Pledge of the Revolving Fund to the Bonds Allocable to Special Improvement District No. 1380.

(a)      The previous action taken by City employees is hereby ratified in establishing the date and time of the Hearing before the City Council as a condition to pledging the Revolving Fund to the Bonds allocable to District No. 1380. This City Council ratifies the publication of the Notice in the *Billings Times* for two successive weeks (on August 14 and August 21, 2008) prior to the Hearing.

(b)      Montana Code Annotated, Section 7-12-4225 requires that the City shall consider certain specific factors prior to pledging the Revolving Fund to secure special improvement district bonds of the City. In determining to whether to pledge the Revolving Fund of the City to the Bonds allocable to Special Improvement District No. 1380, this City Council has taken into consideration the following factors:

(i)      Estimated Market Value of Parcels. The special assessments to be levied against each lot, tract or parcel for the Improvements in District No. 1380, as a general matter, is insignificant in comparison to the market value of such lot, tract or parcel in the Improvement areas.

(ii)      Diversity of Property Ownership. Substantially all the lots, tracts or parcels in District No. 1380 are under separate ownership. Given the diversity of ownership, it is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.

(iii)      Comparison of Special Assessments, Property Taxes and Market Value. The estimated total principal amount of the assessments for District No. 1380 range from \$\_\_\_\_\_ to \$\_\_\_\_\_ on a per property basis. Given the amount of the proposed assessment for Improvements in District No. 1380 and the amount of other special assessments and property taxes levied against the various parcels in District No. 1380 and the respective market value of the parcels, if the City had to enforce the assessment lien against the properties in District No. 1380, there would be more than sufficient value in the property to secure the obligation to the City.

(iv)      Delinquencies. The tax delinquency rate for properties in District No. 1380 is no greater than the delinquency rate of the City at large, and therefore, no unusual need for loans from the Revolving Fund are expected.

(v)      The Public Benefit of the Improvements. The Improvements in District No. 1380 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 in District No. 1380, and therefore, the use of the Revolving Fund to secure the Bonds is in the public interest.

Passed by the City Council of the City of Billings, Montana, this 25th day of August, 2008.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

**NOTICE OF PUBLIC HEARING WITH RESPECT TO PLEDGE OF  
REVOLVING FUND OF THE CITY OF BILLINGS TO POOLED SPECIAL  
IMPROVEMENT DISTRICT BONDS RELATING TO SPECIAL  
IMPROVEMENT DISTRICT NO. 1380**

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of the City of Billings, Montana (the "City") will meet on August 25, 2008, at or after 6:30 P.M. in the Council Chambers, 2<sup>nd</sup> Floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana for the purpose of conducting a public hearing on pledging the City's Special Improvement District Revolving Fund (the "Revolving Fund") to a portion of 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 (the "Bonds"), allocable to Special Improvement District No. 1380. After the Hearing, the Council will consider adoption of a resolution relating to pledging the Revolving Fund to the portion of the Bonds allocable to Special Improvement District No. 1380 (the "Resolution").

The City will issue the Bonds in order to finance costs of certain public improvements (the "Improvements") of special benefit to the properties within the Special Improvement District Nos. 1378, 1379, 1380, and 1383 (collectively, the "Districts") and paying costs incidental thereto, including (i) costs associated with the sale and the security of the Bonds, (ii) the creation and improvement of the Districts, and (iii) funding of a deposit to the Revolving Fund.

Subject to the limitations of Montana Code Annotated, Section 7-12-4222, the general fund of the City may be used to provide loans to the Revolving Fund or a general tax levy may be imposed on all taxable property in the City to meet the financial requirements of the Revolving Fund. Pursuant to the Resolution, the City Council will consider factors as to why the pledge of the Revolving Fund to the Bonds allocable to District No. 1380 may be determined to be in the public interest.

Further information regarding the Improvements, Revolving Fund, District No. 1380, or the Bonds or other matters in respect thereof may be obtained from the City Clerk at City Hall, 210 North 27<sup>th</sup> Street, Billings, Montana or by telephone at (406) 657-8210.

Dated: August 12, 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





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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, August 25, 2008**

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**TITLE:** Awarding Sale of Bonds Relating to \$230,000 Pooled Sidewalk Series 2008

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The City Council has previously approved the authorization for the sale of bonds relating to Pooled Sidewalk Series 2008. This staff memo recommends award of the sale of bonds totaling \$230,000 for the financing of construction for the following projects:

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

**BACKGROUND INFORMATION:** Bids on \$230,000 for bonds will be received August 25, 2008, and a report will be made at the Council meeting.

**RECOMMENDATION**

Due to the sale date, a recommendation will be made at the council meeting

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

**ATTACHMENT**

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; AWARDING THE SALE THEREOF AND APPROVING CERTAIN MATTERS WITH RESPECT THERETO" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on August 25, 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;  
AWARDING THE SALE THEREOF AND APPROVING CERTAIN MATTERS  
WITH RESPECT THERETO

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

1. This Council on August 11, 2008 adopted Resolution No. \_\_\_\_\_ providing for the public sale of \$230,000 Pooled Special Sidewalk, Curb, Gutter, and Alley Approach Bonds (the "Bonds") to finance the costs of certain local improvements to be undertaken in or for the benefit of certain property owners. Notice of the sale has been duly published in accordance with Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. Pursuant to the notice of sale, \_\_\_\_\_ (\_\_\_\_\_) sealed bids and bids transmitted electronically through Parity™ for the purchase of the Bonds were received at or before the time specified for receipt of bids. The bids have been opened or accessed and publicly read and considered, and the purchase price, interest rates and net interest cost under the terms of each bid have been determined.

2. The bid of \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the "Purchaser"), attached as Exhibit A, to purchase the Bonds of the City, is hereby determined to comply with the notice of sale, and to be the lowest, most reasonable bid for the purchase of the Bonds. The bid of the Purchaser is hereby accepted by the Council and the sale of the Bonds is hereby awarded to the Purchaser. The bid security of the Purchaser shall be retained pending delivery of the payment for the Bonds and the bid security of all other bidders shall be promptly returned.

3. The Mayor and City Clerk are hereby authorized and directed to execute a purchase contract with the Purchaser with respect to the Bonds.

4. This Council shall prescribe the form and security for the Bonds in a subsequent resolution.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this 25th day of August, 2008.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, August 25, 2008**

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**TITLE:** MDU Landfill Gas Sales Agreement**DEPARTMENT:** Public Works Department**PRESENTED BY:** David Mumford, P.E., Director, Public Works Department

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

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

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

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

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

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

#### **FINANCIAL IMPACT:**

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

#### **RECOMMENDATION**

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

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

#### **ATTACHMENT**

A. MDU Landfill Gas Sales Agreement

## LANDFILL GAS SALES AGREEMENT

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

### WITNESSETH:

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

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

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

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

### SECTION 1 – DEFINITIONS

**1.1 Certain Definitions.** For purposes of this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

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

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

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

**1.2 Other Terms**

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

**SECTION 2 - TERM**

**2.1 Interim Term**

The Interim Term of this Agreement shall commence on the date first written above and shall terminate two (2) years from the date of this agreement by the parties, or on the first day of the Initial Term, whichever occurs sooner, unless cancelled or terminated as provided herein.

**2.2 Initial Term**

The Initial Term of this Agreement shall commence on the Commissioning Date, and shall terminate ten (10) years thereafter, unless earlier terminated as provided herein. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall automatically terminate if the Commissioning Date does not occur within two (2) years from the date of this Agreement."

**2.3 Extension**

The Agreement shall automatically renew at the end of the Initial Term for successive ten year terms unless either party shall provide not less than six (6) months written notice of nonrenewal or the Agreement is otherwise terminated as provided herein. Upon renewal, all applicable terms of the Agreement will apply.

**SECTION 3 – METHANE GAS TESTING AND FACILITIES**

**3.1 Methane Gas Testing**

During the Interim Term, MDU will drill and monitor test wells within the vertical and horizontal boundaries of the Landfill to confirm the availability of sufficient quality and quantity of recoverable methane gas on a sustained basis to economically support the construction and operation of the Facilities. If MDU

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

**3.2 Design and Construction**

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

**3.3 Facilities and Site Easement**

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

**SECTION 4 – METHANE GAS PURCHASE TERMS**

**4.1 Rates and Payments**

**4.1.1 Methane Gas Payment**

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



#### **4.1.2 Title Transfer of Methane Gas**

This Agreement shall not be deemed to grant to MDU any rights to or interests in any oil or natural gas located under the Landfill which is not produced by the Landfill. Title transfer of the Landfill-produced methane gas between the parties shall occur at the MDU measurement facilities identified in section 4.1.1.

#### **4.2 Carbon Credits**

The Parties agree that 15% of all carbon credits, renewable energy credits, emission credits, or other certification of emission reduction or carbon methane destruction or displacement attributable to the extraction of methane gas from the Landfill (hereinafter "Credits") shall inure to the benefit of and be the property of the City or its assignee or designee and 85% of all such credits shall inure to the benefit of and be the property of MDU or its assignee or designee. The City agrees to execute any assignment, or other document reasonably requested by MDU transferring any right of the City in the credits or acknowledging MDU's interest and ownership in the Credits.

#### **4.3 Taxes**

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

##### **4.3.1 Personal, Property and Income Taxes**

Each Party shall be responsible for any personal or real property taxes on property it owns or leases, and taxes on its share of any proceeds received pursuant to this Agreement.

##### **4.3.2 Sales, Use, Excise and Value-Added Taxes**

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

##### **4.3.3 Production Taxes**

MDU and the City agree to petition the Montana Department of Revenue for a declaratory ruling that the methane gas extracted from the Landfill under this Agreement is not natural gas for purposes of taxation under the Montana Oil and Gas Production Tax. If it is determined that the methane gas extracted from the Landfill under this Agreement is subject to any existing or future local, state or federal tax on production, severance, extraction, or similar tax, each Party respectively shall pay or bear any such tax or taxes imposed by a taxing authority attributable to the proportional share of extracted methane or proceeds from extracted methane received by such Party under this Agreement to the extent the proportional share of extracted methane or proceeds from extracted methane received by such party are not exempt from taxation.

#### **4.4 Payments**

##### **4.4.1 Billings and Statements**

Beginning the month following the Commissioning Date, MDU will prepare and deliver each month to the City a written statement for the preceding month prepared in accordance with, and subject to the terms and conditions in the Agreement. Such statement shall be dated and delivered to the City on or before the 10<sup>th</sup> day of the month in which it is prepared (e.g. the month following the delivery of the methane gas reflected therein) and shall set forth the total amount due by MDU under Section 4.1.1. Amounts due and owed shall be paid by MDU not later than fifteen (15) days after the date of such statement. Amounts not paid when due under this section, shall accrue interest at one hundred five percent (105%) of the Federal Reserve Prime Rate of interest, as quoted in the *Wall Street Journal*. Such interest due shall accrue from the due date to the date of payment.

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

The Parties shall have two (2) years after receipt or delivery of any statement to question the correctness thereof. If a statement has not been challenged in writing by either Party during such one-year period, then such statement shall become final for all purposes and no longer subject to challenge or adjustment.

#### **SECTION 5 – OPERATION OF FACILITIES**

##### **5.1 Operational Responsibilities**

###### **5.1.1 Operation and Maintenance**

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

###### **5.1.2 Personnel**

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

###### **5.1.3 Utility Expense**

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

###### **5.1.4 Curtailments**

MDU, in its sole discretion, may determine that regulatory requirements, market conditions, flow conditions or other operational considerations

require the curtailment or the shut down of any of the Facilities for any period of time. Further, industry and market conditions may require MDU to curtail or shutdown the Facilities for equipment upgrades and replacement. Such curtailments and shut-downs shall not be considered a breach or event of default under this Agreement.

**5.1.5 Operational Emergency**

If, in MDU's reasonable judgment, it determines that any of the operations of the Facilities is creating an emergency or safety concern, endangering the Facilities or MDU's gas transportation or distribution system, or other equipment or personnel, then MDU may cease operations until the emergency or safety concern ceases to exist. To the extent necessary to comply with environmental or other regulatory requirements, the City will be permitted to flare gas from the landfill during the period of suspended operations.

**5.2 Permits and Approvals**

**5.2.1 Permits**

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

**5.2.2 Regulatory Approval and Treatment**

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

**SECTION 6 – INSURANCE**

**6.1 Delivery of Certificates of Insurance**

MDU shall insure that all of its employees as well as its contractors, subcontractors and their employees performing services in accordance with this Agreement have in effect Commercial General Liability Insurance, Workers' Compensation Insurance, Automobile Liability Insurance and Excess Liability Insurance with the coverage limits set forth in Exhibit 4. The liability coverages required by this section shall contain the following clauses: (i) "It is agreed that this policy shall not be canceled, non-renewed, or reduced in scope of coverage until after thirty (30) days written notice has been given to the City." (ii) "The City of Billings, Montana is an additional insured under insurance policies evidenced by this certificate, as respects work done by the named insured for the City of Billings." (iii) "Insurance evidenced by this certificate is primary insurance for claims arising out of the named insured's operations, and any insurance maintained by the City of Billings shall only provide coverage in excess of the

insurance evidenced by this certificate.” Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve MDU for liability in excess of such coverage.

## **6.2 Proof of Insurance**

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

## **SECTION 7 – PERIODIC REVIEWS; AUDIT RIGHTS**

### **7.1 Annual Reviews**

MDU agrees to maintain its books and records in accordance with generally accepted accounting principles. The City shall have the right, upon reasonable notice to MDU and at City expense, to inspect and audit those books and records and other supporting evidence of MDU that the City deems necessary to verify: (i) the quantity and quality of methane gas extracted, conditioned and transported from the Landfill, and (ii) that MDU is in compliance with the terms of this Agreement, regulatory authorities, or other laws and regulations that govern the operation of the Facilities.

## **SECTION 8 – TERMINATION**

### **8.1 Termination for Cause**

In the event that MDU or the City commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of breach, the other Party may terminate this Agreement in whole or in part, as of the date specified in the notice of breach. If it is determined by a final order of a court of competent jurisdiction, that the City does not have title to all or a portion of the methane gas extracted from the Landfill, MDU may terminate this Agreement upon one hundred eighty (180) days written notice unless the City shall acquire such title prior to the date of the termination set forth in the written notice.

### **8.2 Effect of Termination**

#### **8.2.1. Reimbursement for Facilities.**

In the event this Agreement is terminated by nonrenewal by the City as provided in paragraph 2.3 less than forty (40) years from the Commissioning date, the City shall pay MDU the greater of (1) the appraised fair market value of the Facilities, or (2) the net book value of the Facilities at the time of termination. In either case, this sum shall be calculated less the net salvage value of any Facilities removed from the Landfill by MDU. The provisions of this paragraph shall not apply if this Agreement is terminated for cause pursuant to Paragraph 8.1.

#### **8.2.2. Removal of Facilities**

Unless the City is required to pay for the Facilities pursuant to Paragraph 8.2.1, upon termination of this Agreement, MDU shall have the right to remove the Facilities from the Landfill and shall have the obligation, upon the written request of the City, to plug the methane wells, remove any above ground Facilities from the Landfill and restore the surface of the Landfill where above ground Facilities were located to a condition consistent with surrounding undisturbed areas of the Landfill. Buried pipe may be abandoned in place upon termination.

## **SECTION 9 – RELATIONSHIP OF THE PARTIES**

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

## **SECTION 10 – REPRESENTATIONS AND WARRANTIES**

### **10.1 Work Standards**

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

### **10.2 Compliance with Laws and Regulations**

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

### **10.3 Title**

It is understood and agreed that this Agreement is issued only under such title as the City may now have or hereafter acquire, and that the City shall not be liable for any damages sustained by MDU in the event that it is determined that the City does not have title to all or some portion of the methane gas in the Landfill except that MDU shall be entitled to receive and the City shall be obligated to refund any part of the Methane Gas Payment theretofore paid to the City attributable to extracted methane gas for which it is determined the City did not have title. Any such refund by the City shall be limited to, and shall be no greater than, any amounts the City has received under the terms of this Agreement. If the City owns a lesser interest in the methane gas in the Landfill than the entire and undivided estate in such methane gas for which the Methane Gas Payments are payable under the terms hereof, then the Methane Gas Payments herein provided shall be paid to the City only in the proportion which its interest bears to

the whole and undivided estate in the methane gas in the Landfill for which Methane Gas Payments are payable.

#### **SECTION 11 – INDEMNIFICATION**

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

#### **SECTION 12 – LIABILITY**

**12.1 Liability Restrictions**

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

**12.2 Force Majeure and Other Events Excusing Performance**

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

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

**SECTION 13 – CONTINUATION DURING DISPUTES**

**13.1 Continuation of Service**

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

**SECTION 14 – MISCELLANEOUS**

**14.1** Notices under this Agreement shall be sufficient only if personally delivered by a commercial prepaid delivery or courier service or mailed by certified or registered mail, return receipt requested to a Party at its address set forth below or as amended by notice pursuant to this Section 14.1. If not received sooner, notice

by mail shall be deemed received five (5) business days after deposit in the U.S. mail. All notices shall be delivered as follows:

If to the City:

Office of the City Attorney  
City of Billings  
210 North 27<sup>th</sup> Street  
Billings, Montana 59101

If to MDU:

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

**14.2 Binding Nature; Entire Agreement**

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

**14.3 Amendment**

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

**14.4 Severability**

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



**14.5 Headings**

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

**14.6 Compliance with Laws and Regulations**

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

**14.7 Governing Law and Venue**

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

**14.8 Nondiscrimination**

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

**14.8 Binding Nature and Assignment**

This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may or shall have the power to assign this Agreement without the prior written consent of the other party which consent will not be unreasonably withheld, except that MDU may assign its rights and obligations under this Agreement without the approval of the City to an entity which acquires all or substantially all of its assets of MDU, or to any subsidiary or affiliate or successor in a merger or acquisition of MDU. In no event shall any assignment or partial assignment hereunder relieve the assigning Party of its obligations under this Agreement without the written consent of the other Party and any assignment or partial assignment hereunder is subject to the written assumption by the assignee of the obligations of the assigning Party.

**14.9 No Waivers**

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

**14.10 Survival**

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

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

**CITY OF BILLINGS**

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

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibits:**

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

## **Exhibit 1**

### **Landfill Description**

C/S 1098 Tract 1 Amended in the south  $\frac{1}{2}$  of Section 30, 1 South, 26 East

C/S 796 Tract 1 in the west  $\frac{1}{2}$  of Section 29, 1 South, 26 East

C/S 1130 in the south  $\frac{1}{2}$  of the southwest corner of Section 29, 1 South, 26 East

## **Exhibit 2**

### **FACILITIES EASEMENT AGREEMENT**

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

#### **WITNESSETH:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or as otherwise provided by notice given as herein provided.

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

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



(Seal)

\_\_\_\_\_  
Notary Public



Exhibit A

**LANDFILL SITE DESCRIPTION:**

C/S 1098 Tract 1 Amended in the south  $\frac{1}{2}$  of Section 30, 1 South, 26 East

C/S 796 Tract 1 in the west  $\frac{1}{2}$  of Section 29, 1 South, 26 East

C/S 1130 in the south  $\frac{1}{2}$  of the southwest corner of Section 29, 1 South, 26 East

**Exhibit 3**

**FACILITIES**

Gas wells

Gas piping

Condensate tanks

Blower and Flare

Compressor

Gas treatment system

Concrete foundation for equipment

Building to house equipment

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

#### **Exhibit 4**

##### **MINIMUM INSURANCE REQUIREMENTS**

###### **Workers Compensation and Employers Liability Insurance**

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

Workers Compensation      Statutory

Employer's Liability	\$1,000,000 Each Accident (Minimum)
	\$1,000,000 Disease Each Employee

###### **General Liability**

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

Bodily Injury	\$1,500,000 Each Occurrence (Minimum)
Property Damage	\$1,500,000 Each Occurrence (Minimum)

or

Bodily Injury and Property Damage	\$1,500,000 Combined Single Limit Each Occurrence
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###### **Automobile Liability Insurance**

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

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

or

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

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

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

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