

**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**

**September 8, 2008**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tussing**

**PLEDGE OF ALLEGIANCE – Mayor Tussing**

**INVOCATION – Councilmember Ulledalen**

**ROLL CALL**

**MINUTES – August 25, 2008**

**COURTESIES**

**PROCLAMATIONS**

**ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3 and 11**

**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) Non-Commercial Aviation Building and Ground Lease** for City-Owned Hangar located at 2431 Overlook Drive. (Opened 8/26/08). Recommend delay of award to September 22, 2008.

**(2) Two Current Model Year Fire Apparatus.** (Opened 8/19/08) Delayed from 8/25/08. Recommend Sutphen Corporation, \$808,776.

**B. Approval** of annual Data Processing Agreement with Yellowstone County Sheriff's Department, July 1, 2008 -- June 30, 2009, \$89,761.00 annual revenue.

**C. Approval** of two West End Hangar Ground Leases with John M. and/or Marcia A. Nash, Lots 3 and 4, Taxilane "D"; \$2,044.24 total first-year revenue.

**D. Approval** of Assignment of John M. and/or Marcia A. Nash West End Hangar Ground Lease to Hat Creek Hangar Co., LLC; \$975.75 first year revenue.

**E. Acknowledge Receipt of Petition to Annex #08-08:** 55.45 acres described as Tracts 7-A and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, generally described as the south side of Grand Avenue between 30<sup>th</sup> Street West to just west of Zimmerman Trail. Yegen Grand Avenue Farms, owner and petitioner, and setting a public hearing for September 22, 2008.

**F. Confirmation of Police Officers**

- (1) Mark Kostinko
- (2) Brandon Ihde
- (3) Nathan West
- (4) Andrew Martian
- (5) Brandon Wooley
- (6) Tanner Buechler

**G. SID 1372, Summerhill Subdivision**

(1) Approval and Acceptance of utility easement, at no cost to the City.  
(2) Bid Award: Sanitary sewer, water, storm drain and street improvements. (Opened 8/26/08). Recommend Western Municipal, \$465,462.00.

**H. Resolution** creating subcommittee (Ruegamer, Gaghen, Pitman, Clark) on Councilmember replacement to review applications and make recommendation to Mayor for council seat vacated by Joy Stevens.

**I. Street Closures:**

(1) Billings Central High School's Homecoming Parade – September 20, 2008; 5:15 p.m. to 6:30 p.m.; Wyoming Avenue to Division Street, west on Broadwater to 5<sup>th</sup> Street West and north on 5<sup>th</sup> Street West through Grand Avenue to the parking entrance behind Senior High School.

(2) Skyview High School's Homecoming Parade – October 3, 2008; 12:30 p.m. to 2:30 p.m.; beginning at Skyview High School parking lot and proceeding down Wicks Lane to St. Bernard's Church.

(3) Leadership Montana "Rock the Vote" – October 4, 2008; 1:00 p.m. to 8:00 p.m.; N. Broadway between 1<sup>st</sup> Avenue North and 2<sup>nd</sup> Avenue North under Skypoint.

**J. Approval** of Preserve America Grant application from the Montana State Historic Preservation Office for the Old Town Neighbors, Inc., \$13,750.

**K. Resolution** relating to \$230,000 Pooled Sidewalk Bonds Series 2008, awarding the sale and prescribing the form and detail (W.O. 04-12, Alkali Creek and W.O. 06-18, Broadwater Subdivision).

**L. Preliminary Subsequent Minor Plat** of William D. Pierce Subdivision, located on approximately 15.35 acres on the southeast corner of the intersection of Shiloh Road and Pierce Parkway; conditional approval of the plat and adoption of the Findings of Fact.

**M. Preliminary Subsequent Minor Plat** of Superior Homes Subdivision, located on approximately 19,200 square feet of land on the south side of Jaque Lane, addressed as 420 Jaque Lane; conditional approval of the plat and adoption of the Findings of Fact.

**N. Preliminary Subsequent Minor Plat** of Sunnyside Subdivision, 3<sup>rd</sup> Filing, located on approximately 15,000 square feet of land on the southwest corner of the intersection of 10<sup>th</sup> Avenue North and North 22<sup>nd</sup> Street; conditional approval of the plat and adoption of the Findings of Fact.

**O. Bills and Payroll**

- (1) August 11, 2008
- (2) August 15, 2008

(Action: approval or disapproval of Consent Agenda.)

**REGULAR AGENDA:**

2. **TRANSFER** of Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system to the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation).
3. **RESOLUTION** relating to \$1,075,000 Pooled Special Improvements District Bonds Series 2008A, awarding the sale and prescribing covenants (SIDs 1378, 1379, 1380, and 1383). Bids received September 8, 2008. Staff will present recommendation at meeting. (Action: approval or disapproval of staff recommendation).
4. **CONTINUATION OF PUBLIC HEARING FOR SPECIAL REVIEW #862:** A special review to remove a condition of approval from Special Review #836 and Special Review #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone on Lot 11A-1, CBH Industrial Park Subdivision at 1911 King Avenue West. KRP, LLC, owner, Blueline Engineering, agent. Action delayed from June 23; public hearing continued from July 14, 2008, at applicant's request. Zoning

Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation).

5. **PUBLIC HEARING AND RESOLUTION** levying and assessing the original assessment for Sidewalk, Curb and Gutter 2601. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
6. **PUBLIC HEARING AND RESOLUTION** levying and assessing the original assessment for Sidewalk, Curb and Gutter 2602. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
7. **PUBLIC HEARING AND RESOLUTION** setting FY 2009 mill levy rates for the Public Safety Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, and General Obligation Debt Service Baseball Stadium. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
8. **PUBLIC HEARING AND FIRST READING ORDINANCE AMENDMENT FOR ARTERIAL CONSTRUCTION FEES:** Two ordinance amendments to: (1) clarify that rates are set annually by resolution, and (2) to allow Residential Manufactured Home-zoned property owners to petition for a reduction of arterial construction fee assessments. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
9. **PUBLIC HEARING AND FIRST READING ORDINANCE AMENDMENT FOR STORM SEWERS:** An ordinance amendment for clarification purposes of the City's organizational structure or recent past practices within the Public Works Department. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
10. **PUBLIC HEARING AND FIRST READING ORDINANCE AMENDMENT FOR STREET MAINTENANCE DISTRICT:** An ordinance amendment to clarify the maximum assessment rate for vacant parcels. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
11. **MEDIATION OFFER FROM MMIA.** Staff recommends agreement to mediation. (**Action:** approval or disapproval of staff recommendation).
12. **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 notify Cari Martin, City Clerk, at 657-8210.*

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



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

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**TITLE:** Delay Award of a Non-Commercial Aviation Building and Ground Lease on a City Owned Hangar Located at 2431 Overlook Drive

**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 City owns a sixty-foot (60') by seventy-foot (70') hangar located in the executive hangar area of Billings Logan International Airport. The 4,200 square foot hangar is situated on a 14,400 square foot parcel of land and addressed as 2431 Overlook Drive. The hangar includes office space with full utilities. This type of hangar is typically used in a corporate setting and tends to be more difficult to lease to the general aircraft owner populace due to the higher square foot price. The lease expired on July 31, 2008. Due to numerous requests for this type of hangar space, staff opted to place a lease on this hangar up for bidding. The current occupant, FES Development, has been granted a month-by-month extension until the outcome of the bidding is determined. The Call for Sealed Bids was advertised in the *Billings Times* on August 14 and 21, 2008, and posted to the bid postings section of the City's Web Site. The following bids were received at the bid opening held at 2:00 p.m. on Tuesday, August 26, 2008.

<b><u>BIDDER</u></b>	<b><u>BID</u></b>
Aero Interiors	\$20,580.00

**FINANCIAL IMPACT:** The five (5) year Non-Commercial Aviation Building and Ground Lease will generate \$20,580.00 in the first year of the Lease. Future lease year rentals will be adjusted annually by the Consumer Price Index (CPI-U) on the anniversary date of the Lease.

**RECOMMENDATION**

Staff recommends delaying award of the bid to September 22, 2008, to allow staff additional time to finalize the language of the Lease.

**Approved By:** City Administrator City Attorney

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

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

# B

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 8, 2008

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**TITLE:** City of Billings/Yellowstone County Agreement to provide Law Enforcement Data Processing Services for the period July 1, 2008, through June 30, 2009

**DEPARTMENT:** Administrative Services – Information Technology Division

**PRESENTED BY:** David Watterson, Information Technology Manager

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**PROBLEM/ISSUE STATEMENT:** Approve the annual Data Processing Agreement between the City of Billings and the Yellowstone County Sheriff's Department. The City of Billings has contracted with Yellowstone County for the past several years to provide the Sheriff's Department with New World Public Safety access, disk storage, computer processing, program maintenance and operations to support its existing data processing requirements in exchange for a charge based on the actual cost of resources used during the prior fiscal year. This is an annual agreement.

**FINANCIAL IMPACT:** The annual charge for July 1, 2008, through June 30, 2009, is \$89,761.00. The annual charge for the prior year was \$85,779.00. The increase of \$3,982.00 is due to the increased usage of the Public Safety Systems.

#### **RECOMMENDATION**

Staff recommends that Council approve the agreement to provide data processing services for the Yellowstone County Sheriff's Department in the amount of \$89,761.00.

**Approved By:**      City Administrator               City Attorney         

#### **ATTACHMENT**

A – Data Processing Agreement

## AGREEMENT

This Agreement, made and entered into on July 29, 2008, by and between the Yellowstone County Sheriff, hereinafter called the "SHERIFF", and the City of Billings, Montana, hereinafter called the "CITY".

**WITNESSETH:**

Whereas, the SHERIFF is desirous of using the CITY's Computer Facility to support their existing law enforcement data processing requirements; and

Whereas, the CITY maintains and operates a Computer Facility with appropriate capabilities, capacity and security; and

Whereas, the CITY is willing to allow the SHERIFF to have access to the Computer Facility at all normal operating times which are seven (7) days a week, twenty-four (24) hours a day except for necessary back-ups and maintenance.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS between the parties hereto, it is mutually agreed that:

1. The CITY will provide to the Yellowstone County Sheriff's department the following described computer access, magnetic disk storage, computer processing, and maintenance support to support their existing Law Enforcement data processing system:
    - A. Communication capabilities allowing 24 hr computer access;
    - B. Magnetic disk storage shared with Billings Police Dept.;
    - C. Computer processing, program maintenance, operations to support current data processing system;
  2. The SHERIFF agrees to pay CITY the sum of Eighty Nine Thousand, Seven Hundred and Sixty One Dollars (\$89,761) specified in Paragraph Three below. This charge is based on actual computer usage for the period of January 1, 2007 thru December 31, 2007.
  3. This Agreement shall be in effect for twelve (12) months beginning July 1, 2008, and continuing until June 30, 2009.
  4. Payment shall be made in two equal installments of \$44,880.50. The first installment is due and payable on or before October 20, 2008, and the second is due and payable on or before April 15, 2009.

AGREEMENT DATED July 29, 20 08.

## **YELLOWSTONE COUNTY**

**CITY OF BILLINGS**

BY: Charles M. Wood  
sheriff

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**Mayor**

~~Chair, County Commission~~

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### City Administration

ATTEST: *John Karr*  
Clerk and Recorder

City Clerk

Approved as to Form

City Clerk

City Clerk

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

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**TITLE:** Approval of Two West End Hangar Ground Leases with John M. and/or Marcia A. Nash, Lots 3 and 4 on Taxilane D

**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 September 25, 2006, the Council approved two Leases to John M. and/or Marcia A. Nash on which they subsequently constructed a one hundred-twenty-foot (120') by sixty-foot (60') duplex style aircraft hangar. On May 29, 2007, the Council approved two more Leases to Mr. and Mrs. Nash on which they subsequently constructed a second one hundred-twenty-foot (120') by sixty-foot (60') duplex style hangar. On December 17, 2007, the Council approved a third set of two Leases to Mr. and Mrs. Nash on which they again constructed a third one hundred-twenty-foot (120') by sixty-foot (60') duplex style hangar. Of the six duplex style hangar units constructed to date, the Nashes have sold the hangars and assigned their interest in three (3) Leases, with a fourth sale and assignment pending. Mr. and Mrs. Nash desire to construct a fourth one hundred-twenty-foot (120') by sixty-foot (60') aircraft hangar in the City's west end general aviation area located at the Billings Logan International Airport. This area was specifically developed in the early 1990's to accommodate the general aviation tenants with this type of lease and hangar construction. The proposed hangar will have a steel partition wall that separates the hangar into two separate units, similar to a duplex. Each hangar unit will have its own hangar door. This will allow Mr. and Mrs. Nash the flexibility to sell each side of the hangar in the future, as they have done with the three previous hangar structures. To simplify potential future sale and assignment transactions, staff has opted to provide Mr. and Mrs. Nash with two separate lease parcels, Lots 3 and 4 that adjoin down the center of the proposed hangar, making a sale transaction and assignment of each side of the hangar fairly straightforward. These twenty (20) year ground Leases would be for two (2) adjoining 5,525 square foot parcels on the north side of general aviation Taxilane "D," for a total of 11,050 square feet. The ground lease rate of \$.1850 per square foot per annum is the same rate being paid by Pacific Tank and Pipeline on the two Leases approved by the City Council on July 28, 2008. The Leases identify that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language.

**FINANCIAL IMPACT:** Each of the two ground Leases will generate \$1,022.12 in the first year of the Leases, for a total of \$2,044.24 for both Leases. Future lease rentals will be adjusted annually by the Consumer Price Index (CPI-U) on the anniversary date of the Leases.

## **RECOMMENDATION**

Staff recommends that Council approve the authorization for the Mayor to execute two (2) new twenty-year West End Hangar Ground Leases at the Billings Logan International Airport with John M. and/or Marcia A. Nash.

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

# D

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 8, 2008

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**TITLE:** Assignment and Transfer of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Hat Creek Hangar Co., LLC

**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 December 17, 2007, John M. and/or Marcia A. Nash entered into two (2) twenty-year West End Hangar Ground Leases with the City of Billings, and subsequently built a 7,200 square foot duplex style hangar containing two 3,600 square foot units on a leased parcel in Township 1 North, Range 25 East, Section 25, referred to as Lots 12 and 13. This is the third hangar of this size and style built by Mr. and Mrs. Nash. The Nashes have opted to sell one-half of this third hangar, Hangar Unit #2809, to Hat Creek Hangar Co., LLC. This Assignment and Transfer will formally transfer the Ground Lease on Lot 12 from John M. and/or Marcia A. Nash to Hat Creek Hangar Co., LLC. The Nashes currently own the other one-half of this hangar, but a sale is pending. If the sale is finalized, an Assignment and Transfer for Lot 13 will be submitted to the Council at a future meeting.

**FINANCIAL IMPACT:** There is no financial impact from this action. The City will continue to receive \$975.75 per year, plus annual CPI-U adjustments for Lot 12. The name on the Lease is all that changes with this Assignment and Transfer, all other terms and conditions remain in full force and effect.

### **RECOMMENDATION**

Staff recommends that Council approve the Assignment and Transfer of the West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Hat Creek Hangar Co., LLC.

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

**TITLE:** Annexation Petition #08-08: Acknowledge Receipt of Petition and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Juliet Spalding, AICP, Planner II

**PROBLEM/ISSUE STATEMENT:** Owner and petitioner, Yegen Grand Avenue Farms, is requesting annexation of a property legally described as Tracts 7-A, and 6-A-1, C/S 2314 and Tract 1-A-1, C/S 2702 into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the south side of Grand Avenue from 30<sup>th</sup> St. West to just west of Zimmerman Trail. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property. The subject property has a farmhouse on it and has been used for pasture and crop production. A concurrent zone change application from Agricultural-Open Space (A-1) to Planned Development (PD) is being considered for the property as well as a subdivision proposal. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for September 22, 2008. The Council will take action on the annexation request at the September 22 public hearing.

**ALTERNATIVES ANALYZED:** Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on two sides by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next five (5) years.

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

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for September 22, 2008, to consider annexing this property.

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

**ATTACHMENTS**

- A. Property Data
- B. Annexation Petition
- C. Annexation Map

**ATTACHMENT A**  
Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Yegen Grand Avenue Farms
Purpose of annexation:	To obtain City Services
Property included:	Tract 7-A, C/S 2314 Amended, Tract 6-A-1, Amended Tract 6-A of C/S 2314 Amended, and Tract 1-A-1, Amended Tracts 1-A & 2 of C/S 2702
Location:	South side of Grand Ave., between 30 <sup>th</sup> St. West and just west of Zimmerman Trail
Total area:	55.45 acres
Current zoning:	A-1
Current land use:	Irrigated farmland
Future zoning:	Zone change application to PD in review
Future land use:	Commercial and multi-family residential

## **ATTACHMENT B**

### Annexation Petition



### **PETITION FOR ANNEXATION TO THE CITY OF BILLINGS**

#### **NOTICE TO PETITIONER**

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

#### **INSTRUCTIONS**

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.  
The map must show:
  - a. The present and proposed boundaries of the municipality;
  - b. The present streets, major trunk water mains and sewer mains;
  - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

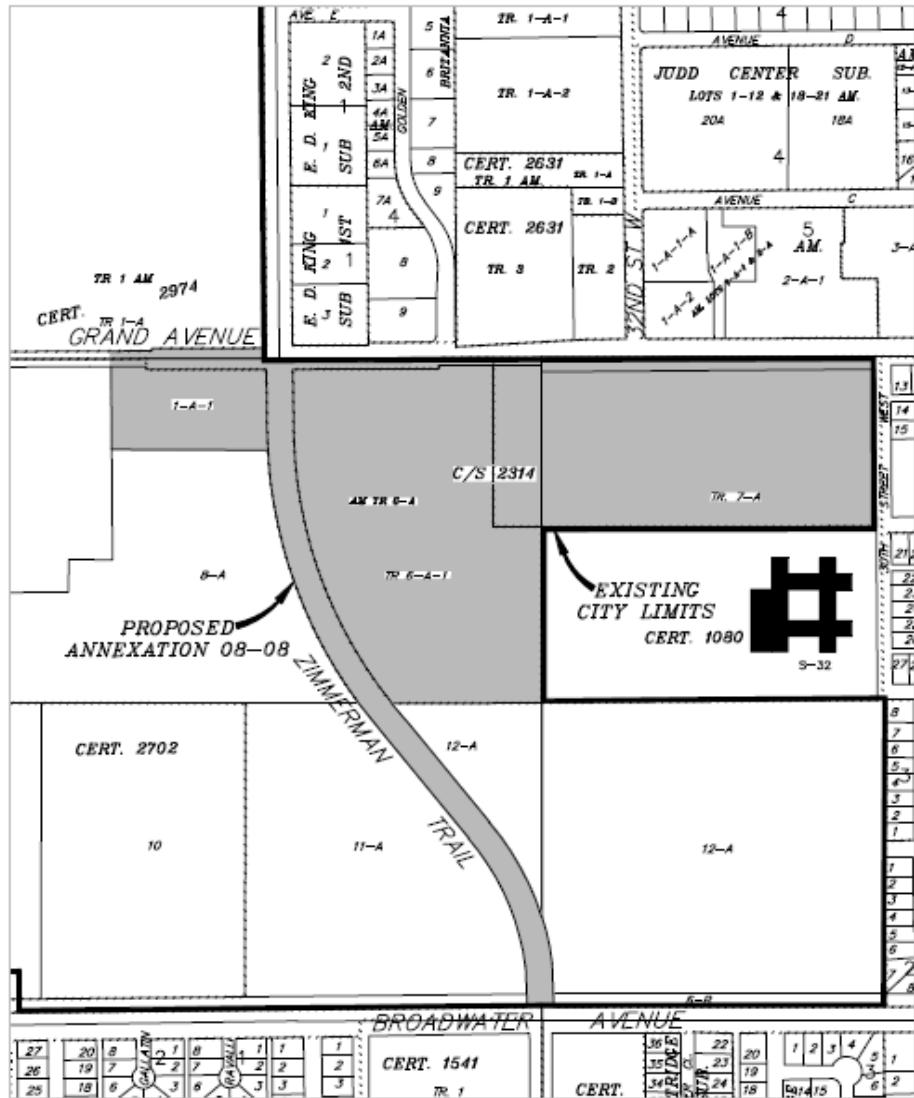
#### **RESIDENT FREEHOLDER ELECTORS**

Date	Print Name	Name Signature	Address
6/26/08	Yegen Grand Avenue Farm, Inc.		P.O. Box 959
			Billings, MT 59103

(continued on separate page)

**ATTACHMENT C**  
Annexation Map

*EXHIBIT A*



## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

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**TITLE:** Confirmation of Probationary Police Officers  
**DEPARTMENT:** Police Department  
**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** On September 4, 2007, Officers Mark Kostinko, Brandon Ihde, Nathan West, Andrew Martian, Brandon Wooley and Tanner Buechler were hired by the Billings Police Department as probationary Police Officers. According to MCA 7-32-4113, their probationary period is for one year from date of hire. At this time Officers Kostinko, Ihde, West, Martian, Wooley and Buechler have completed their one year probation, and according to state statute, their names are to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning the above named officers' performance are positive and indicate that they are doing a good job, and recommend confirmation.

**RECOMMENDATION**

City staff recommends Officers Mark Kostinko, Brandon Ihde, Nathan West, Andrew Martian, Brandon Wooley and Tanner Buechler be confirmed as Billings Police Officers.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****City of Billings, Montana**  
**Monday, September 8, 2008**

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**TITLE:** SID 1372 – Summerhill Subdivision Utility Easement  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** After bidding SID 1372 twice, it was determined to recreate SID 1372 and redesign the plans to save some construction costs. SID 1372 was recreated on April 14, 2008 and rebid on August 26, 2008. With the redevelopment of the plans for SID 1372, the sanitary sewer was redesigned to lower the cost of construction. The sanitary sewer will be constructed through the open space of Summerhill Subdivision and connect to the existing sanitary sewer in Hilltop Road. To accomplish this, it is required that the city obtain an utility easement through the open space which is owned by the Summerhill Subdivision Homeowner's Association.

**ALTERNATIVES ANALYZED:**

1. Approve and accept utility easement through the open space in Summerhill Subdivision;  
or
2. Do not approve and accept utility easement.

**FINANCIAL IMPACT:** There is no financial impact from acceptance of the utility easement.

**RECOMMENDATION**

Staff recommends that Council approve and accept through Summerhill Subdivision.

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

**ATTACHMENT:**

- A. Utility Easement

# G<sub>2</sub>

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 8, 2008

TITLE: SID 1372 – Summerhill Subdivision Bid Award  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for SID 1372 – Summerhill Subdivision on August 26, 2008. This project consists of installing sanitary sewer, water, storm drain and street improvements for a portion of Winter Green Drive, West Antelope Trail and Antelope Place located within Summerhill Subdivision.

#### ALTERNATIVES ANALYZED:

3. Award SID 1372 – Summerhill Subdivision, to Western Municipal Construction in the amount of \$465,462.00; or
4. Do not award SID 1372 – Summerhill Subdivision.

**FINANCIAL IMPACT:** The costs of the Improvements are to be paid from the following sources: (1) \$358,000.00 of Special Improvement District bonds; and (2) \$397,004.89 of cash contribution by Jeff Essman, the owner of 13 of the 23 lots in the District. We received two bids for this project as follows:

	<u>Bids</u>
Engineer's Estimate	\$ 557,125.00
H.L. Ostermiller Construction	\$ 470,485.00
COP Construction	\$ 601,097.00
Western Municipal Construction	\$ 465,462.00

#### RECOMMENDATION

Staff recommends that Council award SID 1372 – Summerhill Subdivision to Western Municipal Construction in the amount of \$465,462.00.

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

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**TITLE:** Resolution—Creating Subcommittee on Councilmember Replacement  
**DEPARTMENT:** City Council/City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** Ward II City Councilmember Joy Stevens has announced she will resign from the Council, effective Oct. 14, 2008, due to out-of-town employment. Section 3.09.C of the City Charter states a Councilmember must be replaced within 30 days of departing, or a special election must be held. BMCC 2-223 allows the Council to create from its number such ad hoc Council subcommittees, to be appointed by the Mayor with the consent of the Council.

Applicants for the position shall be a resident of the ward in which the vacancy occurs and a qualified voter of the city of Billings.

At the Aug. 25 Council business session, Mayor Ron Tussing asked for volunteers for a selection committee to interview applicants and recommend two finalists to fill the position to him. The Mayor will appoint one individual from among the finalists, with the appointment being subject to consent by the City Council. The pending vacancy has been advertised, with a resume, cover letter and proof of pertinent experience due by Sept. 29 to the City Council offices.

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

- Create the subcommittee; or
- Take no action at this time, which could result in a special election being required to fill the seat.

**FINANCIAL IMPACT:** The only anticipated financial impact would be if a special election were required.

**RECOMMENDATION**

Based on the Council discussion, Staff recommends that the Council appoint a subcommittee to interview candidates and make a recommendation on three finalists to the Mayor.

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

**ATTACHMENT:**

A: Resolution Creating a Council Subcommittee

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

A RESOLUTION CREATING A COUNCIL  
SUBCOMMITTEE FOR THE PURPOSE OF  
INTERVIEWING APPLICANTS FOR A  
PENDING VACANCY IN A WARD II COUNCIL  
SEAT.

**WHEREAS**, Ward II City Councilmember Joy Stevens has announced her intention to resign her position, effective October 14, 2008, to work out-of-state; and

**WHEREAS**, the City Council is required by Section 3.09.C of the City Charter to fill vacancies of the City Council by appointment by the Mayor with the advice and consent of the majority of the remaining City Council; and

**WHEREAS**, a vacancy shall be filled within thirty (30) days after it occurs or, if it is not filled within thirty (30) days, a special election shall be called in that ward.

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

1. That Councilmembers Richard Clark, Peggy Gaghen, Denis Pitman and Vince Ruegamer are hereby appointed to serve on a subcommittee to interview applicants for the pending vacancy in Ward II.

2. That, following the interviews, the subcommittee shall recommend two finalists to the Mayor from whom he can appoint a replacement with the consent of the Council no later than Nov. 13, 2008.

*ADOPTED AND APPROVED* by the City Council on the 8<sup>th</sup> day of September, 2008.

CITY OF BILLINGS:

By: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

By: \_\_\_\_\_  
Cari Martin, City Clerk

# I<sub>1</sub>

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 8, 2008

**TITLE:** Billings Central High School's Homecoming Parade Street Closure  
**DEPARTMENT:** Public Works Department  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** Billings Central High School requests permission to hold its annual Homecoming parade on Saturday, September 20, 2008, from 5:15 pm to 6:30 pm (including set up and disbanding time). The parade will be assembling at the school (Wyoming Ave) and will travel from Wyoming Avenue to Division Street, then proceed westward on Broadwater to 5<sup>th</sup> Street West and head north on 5<sup>th</sup> Street West through Grand Avenue, to the parking entrance behind Senior High School.

Recommended conditions of approval include Billings Central High School:

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

### ALTERNATIVES ANALYZED:

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

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

## **RECOMMENDATION**

Staff recommends that Council approve the closure named above on September 20, 2008, for Billings Central High School's Homecoming Parade.

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

### **ATTACHMENTS**

- A. Letter outlining event
- B. Right of Way Special Activity Permit
- C. Course map
- D. Certificate of insurance



"Faith, Family Spirit, Academic Excellence"

August 11, 2008

Director of Public Works – Engineering Department  
510 N. Broadway  
Billings, MT 59101

Re: Parade permit cover letter

Dear Sir or Madam:

We have finalized plans for our fall football schedule and our Homecoming game and festivities are scheduled for September 20, 2008.

Our plan is to have a car-cade from Billings Central Catholic High School to Daylis Stadium. We will be departing the staging area at approximately 6:00 PM and our route will be from Wyoming Avenue to Division Street to Broadwater Avenue. We will go West on Broadwater Avenue to 5<sup>th</sup> Street West; turn right heading North on 5<sup>th</sup> Street West through Grand Avenue, entering the parking lot behind Senior High School at which time the carcade will disband.

We expect to have approximately 15 floats and 5 or 6 convertibles with the Homecoming Royalty. I have asked all of the drivers to display flashing amber lights.

Should you have any questions, my point of contact is Mr. Chuck Carroll, and he may be reached at 245-6651 or on his cell phone at cell 861-9678.

Thank you,

Sheldon Hanser  
Principal



**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 SHELDON HANSEK  
ORGANIZATION MAKING APPLICATION BILLINGS CENTRAL CATHOLIC HIGH SCHOOL  
PHONE 406 245 6651

ADDRESS 36 BROADWATER AVE BILLINGS MT 59101  
CITY  STATE  ZIP   
EMAIL ADDRESS shelhanser@billingscatholicschools.org

APPROXIMATE TIME EVENT WILL:

Assemble 5:15 PM Start 6:00 PM Disband 6:30 PM

DATE OF EVENT SEPTEMBER 20, 2008

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

Homecoming PARADE/CARCADE, DEPARTING FROM BILLINGS CENTRAL H.S. AT APPROXIMATELY 6:00 PM 9-20-08 TRAVEL WEST ON BROADWATER TO 515 ST W, TURN NORTH AND TRAVEL TO SENIOR HIGH STUDENT PARKING, ENTER PARKING LOT AND DISBAND

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

FROM CENTRAL H.S -WEST ON BROADWATER - NORTH ON 515 ST WEST - ENTER SENIOR HIGH STUDENT PARKING LOT - DISBAND

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE Wilson DATE 8/12/08

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

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

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

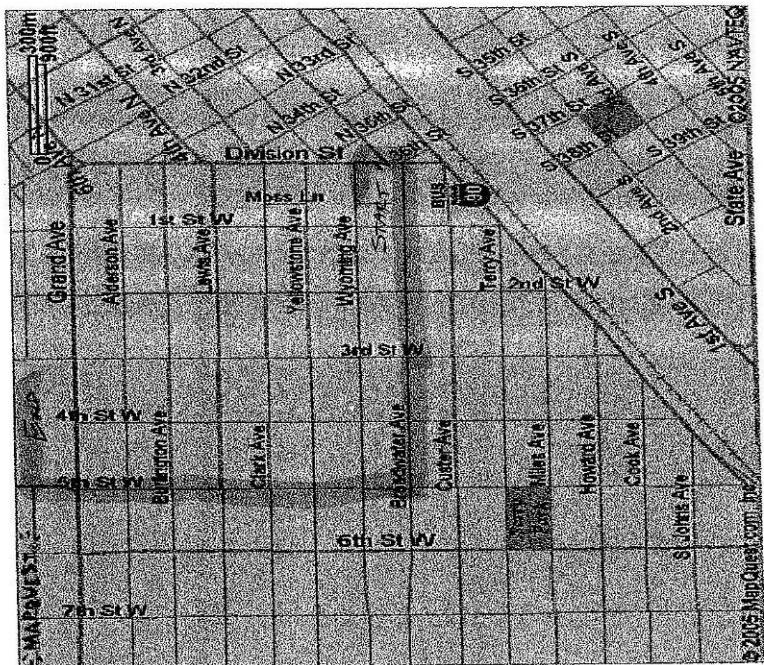
**FOR CITY USE ONLY**

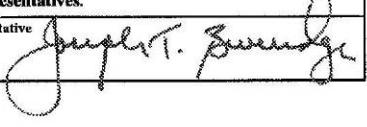
FEES: \_\_\_\_\_

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

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

<b>COPIES TO:</b>
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



Certificate of Coverage					Date: 8/20/2008	
<p><b>Certificate Holder</b>            The Roman Catholic Bishop of Great Falls            A Corporation Sole, Chancery Office            P O Box 1399            Great Falls, MT 59403</p>		<p><b>This Certificate is issued as a matter of information only and confers no rights upon the holder of this certificate. This certificate does not amend, extend or alter the coverage afforded below.</b></p>				
<p><b>Covered Location</b>            Billings Central Catholic High School            c/o Billings Catholic School            PO Box 31158            Billings, MT 59107</p>		<p><b>Company Affording Coverage</b>            THE CATHOLIC MUTUAL RELIEF SOCIETY            10843 OLD MILL RD            OMAHA, NE 68154</p>				
<p><b>Coverages</b></p> <p>This is to certify that the coverages listed below have been issued to the certificate holder named above for the certificate 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 coverage afforded described herein is subject to all the terms, exclusions and conditions of such coverage. Limits shown may have been reduced by paid claims.</p>						
	Type of Coverage	Certificate Number	Coverage Effective Date	Coverage Expiration Date	Limits	
	Property				Real & Personal Property	
	General Liability	8560	7/1/2008	7/1/2009	General Aggregate	
					Products-Comp/OP Agg	
					Personal & Adv Injury	
					Each Occurrence	1,500,000
					Fire Damage (Any one fire)	
					Med Exp (Any one person)	
	Excess Liability				Each Occurrence	
	Other				Each Occurrence	
<p><b>Description of Operations/Locations/Vehicles/Special Items</b>            Coverage only extends for claims arising out of Billings Central Catholic High School holding a "Homecoming Parade/Carcade", on September 20, 2008, from 5:00 PM to 6:15 PM.</p>						
<p><b>Holder of Certificate</b></p>			<p><b>Cancellation</b></p>			
Additional Protected Person(s) City of Billings  0069000208			<p>Should any of the above described coverages be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the holder of certificate named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.</p> <p>Authorized Representative</p> 			

**ENDORSEMENT**  
(TO BE ATTACHED TO CERTIFICATE)

Effective Date of Endorsement 9/20/2008 Charge \_\_\_\_\_ Credit \_\_\_\_\_

Cancellation Date of Endorsement 9/21/2008

Certificate Holder The Roman Catholic Bishop of Great Falls  
A Corporation Sole, Chancery Office  
P O Box 1399  
Great Falls, MT 59403

Certificate No. 8560 of The Catholic Mutual Relief Society is amended as follows:

**SECTION II - ADDITIONAL PROTECTED PERSON(S)**

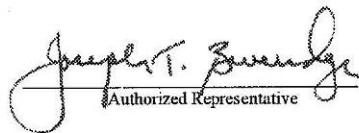
It is understood and agreed that Section II - Liability (only with respect to Coverage D - General Liability, Coverage F - Medical Payments to Others and Coverage H - Counseling Errors and Omissions) is amended to include as an Additional Protected Person(s) members of the organizations shown in the schedule, but only with respect to their liability for the Protected Person(s) activities or activities they perform on behalf of the Protected Person(s).

It is further understood and agreed that coverage extended under this endorsement is limited to and applies only with respect to liability assumed by contract or agreement; and this extension of coverage shall not enlarge the scope of coverage provided under this certificate or increase the limit of liability thereunder. Unless otherwise agreed by contract or agreement, coverage extended under this endorsement to the Additional Protected Person(s) will not precede the effective date of this certificate of coverage endorsement or extend beyond the cancellation date.

Schedule - ADDITIONAL PROTECTED PERSON(S)  
City of Billings

Remarks: Coverage only extends for claims arising out of Billings Central Catholic High School holding a "Homecoming Parade/Carcade", on September 20, 2008, from 5:00 PM to 6:15 PM.

PKS-122 (1-99)



\_\_\_\_\_  
Joseph T. Bawden  
Authorized Representative

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 8, 2008

**TITLE:** Skyview High School's Homecoming Parade Street Closure  
**DEPARTMENT:** Public Works-Engineering  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** Skyview High School requests permission to hold their annual Homecoming parade on Friday, October 3, 2008, from 12:30 pm to 2:30 pm (including set up and disbanding time). They will be assembling at the Skyview High School parking lot and proceeding down Wicks Lane to St. Bernard's Church.

Recommended conditions of approval include Skyview High School:

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

**ALTERNATIVES ANALYZED:**

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

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

**RECOMMENDATION**

Staff recommends that Council approve the closure named above on October 3, for Skyview High School's Homecoming Parade.

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

**ATTACHMENTS**

- A. Right of Way Special Activity Permit
- B. Map outlining route
- C. Certificate of insurance



**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 Kurt Wohler

ORGANIZATION MAKING APPLICATION Skyview Student Council

PHONE (w) 247-2472 (c) 671-7748

ADDRESS 1775 High Sierra Blvd. Billings MT 59105

EMAIL ADDRESS wohlerk@billings.k12.mt.us

APPROXIMATE TIME EVENT WILL:

Assemble 12:30 pm Start 1:00 pm Disband 2:30 pm

DATE OF EVENT Friday October 31 2008

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

Skyview Homecoming and Spirit week Parade,  
will consist of student made floats

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

Start in Skyview parking lot down (East) on

Wicks Lane until St. Bernard Church on Wicks

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

N/A

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

N/A

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

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

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

**COORDINATOR OF EVENTS AT WHICH ALCOHOL WILL BE CONSUMED IN PUBLIC RIGHT-OF-WAY  
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**

**DATE**

*Kurt C. Miller* 7/10/08

**APPLICATION APPROVED**

**DATE**

**APPLICATION DENIED**

**DATE**

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

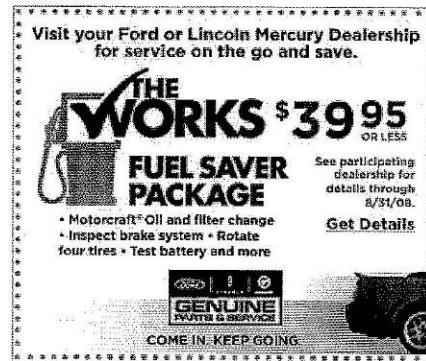
**FOR CITY USE ONLY**

**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



**A: 1775 High Sierra Blvd, Billings, MT 59105-5402**

- |              |   |        |
|--------------|---|--------|
| <b>START</b> | 1: Start out going SOUTH on HIGH SIERRA BLVD toward ANDELE AVE. | 0.2 mi |
| <b>◆</b>     | 2: Turn LEFT onto W WICKS LN.                                   | 1.8 mi |
| <b>END</b>   | 3: End at 226 Wicks Ln Billings, MT 59105-3725                  |        |
- Estimated Time: 4 minutes    Estimated Distance: 1.91 miles

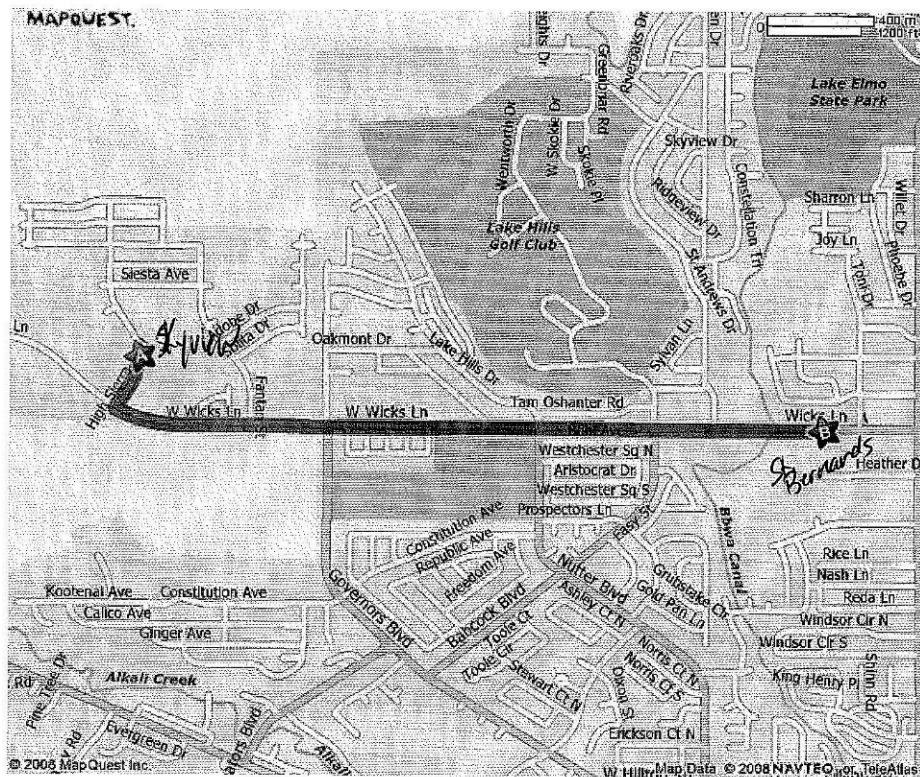
**B: 226 Wicks Ln, Billings, MT 59105-3725**

**Total Time: 4 minutes    Total Distance: 1.91 miles**

<http://www.mapquest.com/maps?1c=Billings&1s=MT&1a=1775+High+Sierra+Blvd.&1z=59105...> 7/10/2008

- Driving Directions from 1775 High Sierra Blvd, Billings, MT to 226 Wicks Ln, Billings, MT

Page 2 of 2



All rights reserved. Use subject to License/Copyright Map Legend

Directions and maps are informational only. We make no warranties on the accuracy of their content, road conditions or route usability or expeditiousness. You assume all risk of use. MapQuest and its suppliers shall not be liable to you for any loss or delay resulting from your use of MapQuest. Your use of MapQuest means you agree to our [Terms of Use](#)

<http://www.mapquest.com/maps?1c=Billings&1s=MT&1a=1775+High+Sierra+Blvd.&1z=59105...> 7/10/2008

## ACORD™ CERTIFICATE OF LIABILITY INSURANCE

PRODUCER Holness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Billings Public Schools (dba) School Dist #2 and High School Dist #2 415 North 30th Street Billings, MT 59101-1298		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: American Zurich Insurance Co.	
		INSURER B: American Alternative Insurance Compa	
		INSURER C:	
		INSURER D:	
		INSURER E:	

## COVERAGE(S)

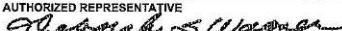
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS			
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PD Ded:\$15,000  GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	CPO399387202	07/01/08	07/01/09	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$100,000 MED EXP (Any one person) \$EXCLUDED PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000			
		ANY AUTO							
		ALL OWNED AUTOS							
		SCHEDULED AUTOS							
		Hired AUTOS							
		NON-OWNED AUTOS							
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO							
		 GARAGE LIABILITY <input type="checkbox"/> ANY AUTO							
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE  <input checked="" type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000				82A2UB000002303	07/01/08	07/01/09	COMBINED SINGLE LIMIT (EA accident) \$  BODILY INJURY (Per person) \$  BODILY INJURY (Per accident) \$  PROPERTY DAMAGE (Per accident) \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER							AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$  EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000  WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Operations performed by the above insured. Ten (10) days notice of cancellation applies for nonpayment of premium.

RE: Skyview Homecoming Parade, October 3, 2008

CERTIFICATE HOLDER	CANCELLATION
City of Billings ATTN: Susan c/o Billings Parmly Library 510 North 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 

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

---

**TITLE:** Leadership Montana "Rock the Vote" Street Closure  
**DEPARTMENT:** Public Works Department-Engineering Division  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

---

**PROBLEM/ISSUE STATEMENT:**

Leadership Montana requests the temporary closure of N. Broadway between 1<sup>st</sup> Ave. North and 2<sup>nd</sup> Ave. North under Skypoint on October 4, 2008 from 1:00 pm until 8:00 pm for voter education and civil discourse by providing a format that allows candidates of all parties to meet with voters. The street will be lined on each side with booths that will be reserved for candidates, political parties, voter registration and ballot proponents and opponents.

Recommended conditions of approval include Leadership Montana:

- Obtain proper permit for alcohol consumption in the right of way
- Obtain proper open container from Police Department
- Contact all businesses and make them aware of the event 2 weeks in advance
- Provide security for event
- Clean area to be used and provide and empty waste cans during event
- Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event
- Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a 20' emergency vehicle access lane on either side of the street which is free of kiosks or anything other than pedestrians
- Pedestrian access to adjacent businesses be maintained

**ALTERNATIVES ANALYZED:**

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 the application. Police, traffic control and litter removal are to be paid by Leadership Montana.

**RECOMMENDATION**

Staff recommends that Council approve the temporary closures named above for the Rock the Vote, “An Exercise in Civil Discourse” event.

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

**ATTACHMENTS**

- A. Draft from Leadership Montana outlining events
- B. Right of Way Permit Application
- C. Course map Certificate of insurance
- D. Soundstage rental application

(DRAFT)

**Rock The Vote, "An Exercise in Civil Discourse"**

Date: October 4<sup>th</sup>, 2008

Time: 2:00 – 8:00 PM

**Mission Statement**

Rock the Vote's mission is to promote voter education and civil discourse by providing a format that allows candidates of all parties to meet with voters in festive venue. The event is dedicated to celebrating our elective process (could be voting privilege) and the common desire for constructive dialogue and governance.

**Event Sponsors**

Leadership Montana

Billings Chamber of Commerce

Montana Dakota Utilities

Billings Gazette?

Montana Brewing Company

Others? 1<sup>st</sup> I, Q2, MSUB, Service Club, ??

**Event Layout**

The event will take place on Broadway Street primarily between 1<sup>st</sup> & 2<sup>nd</sup> Ave North. The stage will be set up under Skypoint. The street will be lined on each side with booths. The booths will be reserved for candidates, political parties, voter registration, and ballot proponents and opponents. These booths will be located on the southern end of the block.

Local micro-brewers will also be available on a controlled basis. We will also offer several non-profit organizations the opportunity to sell food products. These booths will be located on the north end of the block.

Each group will be responsible for setting up their own table or booth in the spot designated by the organizational committee.

**Proposed Event Timing & Activities- The schedule will change based on availability of candidates.**

- 1) Saturday morning the Farmers Market will run between 8:00 AM to 12:00 PM. We are trying to arrange a televised debates for major office races to be held in MSU-B's office during Farmers Market.
- 2) 12:00PM -2:00 PM Volunteers will need to be on duty to reset barricades and decorate the stage area and assist with booth placement and set-up.
- 3) 2:00-3:00 Open micro-beer areas and short concert set.
- 4) 3:00-4:00 Short Speeches for MT legislative offices.
- 5) 4:00-5:00 one hour concert set.
- 6) 5:00-6:00 Short Speeches by major office candidates.
- 7) 6:00-8:00 Concert

**Alcohol and Crowd Control**

It is important to control alcohol to prevent underage drinking and excessive consumption of beverages. We will need to monitor the crowd to make sure all attendees are conducting themselves in the spirit of the event.

Volunteers will check ID's. Once a valid ID has been verified, a wristband will be placed on the presenter to show they are of legal age. Only people with wristbands can buy alcoholic beverages.

All alcoholic drinks sold outside must be purchased with tickets. Tickets for drinks will be sold at 2 or 3 locations in the event area. The volunteers selling the tickets will be instructed not to sell tickets to people that appear intoxicated or belligerent.

We should have 6 volunteers at all times working in pairs of two to monitor the crowd for behavior issues. In soccer tournaments I've been involved with we give these people bags of dumb dumb suckers. If someone starts being too vocal, we offer them a sucker and remind them nicely (the 1<sup>st</sup> time) that this is an event in civil discourse.

**Charity Component**

For every drink ticket turned in for a drink at an outside beer vendor, \$1 will be donated to charity. The charity could be Leadership MT or the youth component of Leadership Billings or some other worthy charity as determined by the event committee.

**Target Audience**

The target audience is 18+. It is anticipated that the majority of attendees will be between 21-35.

**Volunteers**

We will need Volunteers.

10 for setup and decorations.

6 (2 shifts of 3 volunteers) for wrist bands.

6 (2 shifts of 3 volunteers) for ticket sales.

12 (2 shifts of 6 volunteers) for crowd control.

10 for cleanup.

**Event Coordination**

In order to organize and execute the event as efficiently as possible, we will need to delegate responsibilities. The major components might be as follows:

- 1) Volunteer recruitment (Rick with help from Jani)
- 2) Layout (Todd with help from Michael Young)
- 3) Voter registration & on-site voting (Shoots)
- 4) Setup, Cleanup
- 5) Media & Publicity (Bruce)
- 6) Decorations & logo (Melanie)
- 7) Politician contacts (Jani with help)
- 8) Proposed morning debate (Shoots)

- 9) Beer & Food Vendors (Mike)
- 10) Speeches & Scheduling (Shoots, Jami, & all)
- 11) Music

**Costs**

Street Closure (Might be covered already by Farmer's Market) (Mike/MBC)  
Stage (Mike/MBC)  
Decorations  
Porta-potties and trash receptacles (Mike)  
2-3 bands (Mike with some potentially some help from other Sponsors)  
Cleanup

**Event Action Items List**

Melanie will check Rock the Vote name with MTV.  
Possible use of Trolley.  
Call Jim at Max's Office



**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 Michael T. Schmecke

ORGANIZATION MAKING APPLICATION Leadership Montana "Rock the Voter"

PHONE (406) 259-7782

ADDRESS 100 N. 21st, 15th 320 Billings, MT 59101

EMAIL ADDRESS schmecke@wfp.net CITY Billings STATE MT ZIP 59101

APPROXIMATE TIME EVENT WILL:

Assemble 1:00 Start 2:00 pm Disband 8:00 pm

DATE OF EVENT October 4th, 2008

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

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

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

Under Sky Point Building, of 25<sup>th</sup> between 1st & 2nd Ave North

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

Event will sponsor clean up.

JUL-01-2008(TUE) 13:04

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P. 003/011

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE



DATE 6-19-08

APPLICATION APPROVED

DATE

APPLICATION DENIED

DATE

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

**FOR CITY USE ONLY**

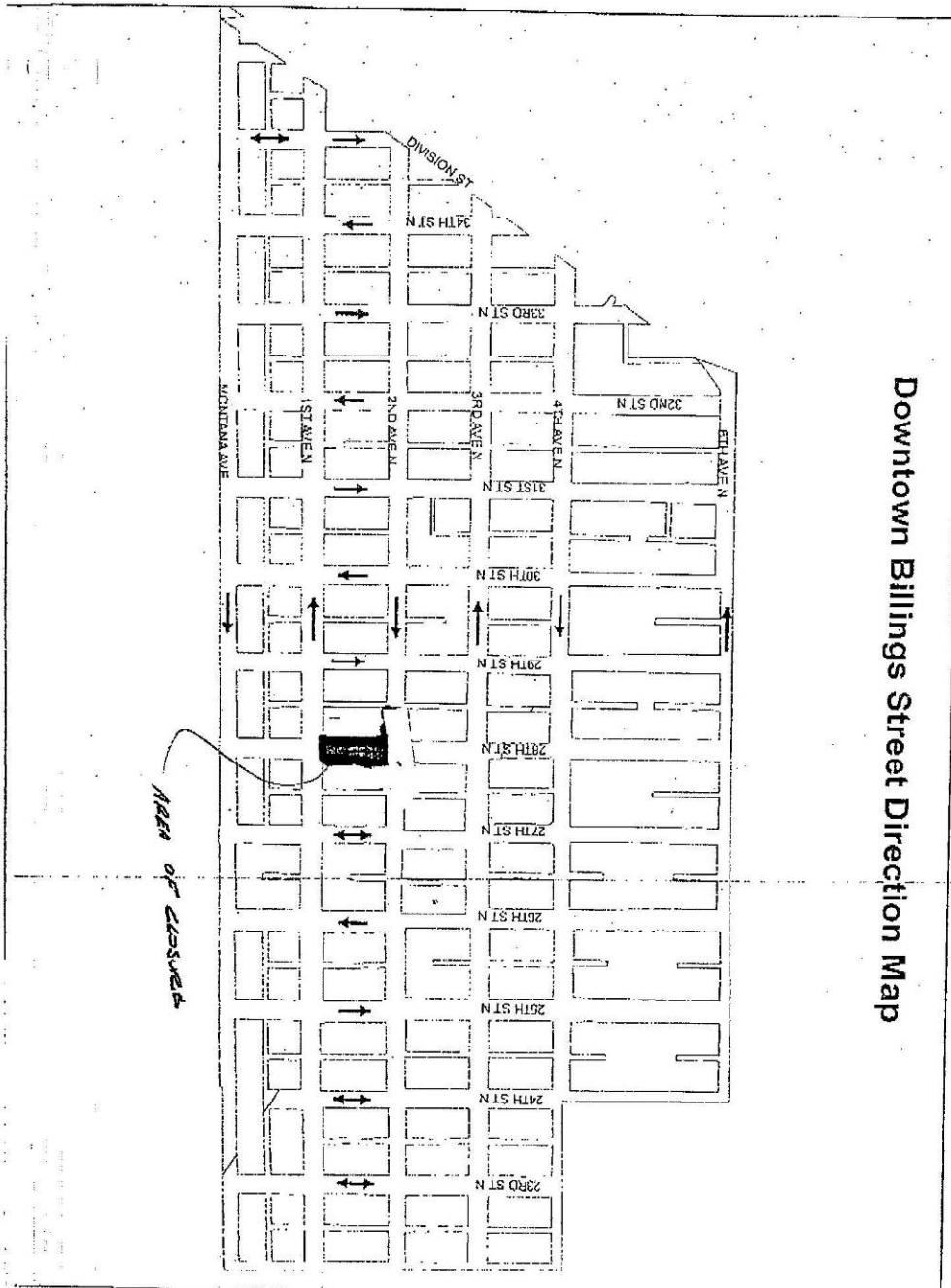
FEE: \_\_\_\_\_

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

Downtown Billings Street Direction Map



JUL-01-2008(TUE) 13:05 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 007/011  
 Rx Date/Time APR-02-2008(WED) 15:09 406 259 9271 P. 002  
 Apr 02 08 02:59p Tim Beeter Insurance 406 259 9271 p.2

## Commercial Certificate of Insurance

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

St. 70 Dist. 05 Agent 09

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

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



This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

### Companies Providing Coverage:

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

### Coverages

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

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

### Description of Operations/Vehicles/Restrictions/Special items:

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

### Certificate Holder

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

### Cancellation

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

  
 Authorized Representative

SG-2482 4-94

Copy Distribution: Service Center Copy and Agent's Copy

H-01

JUL-01-2008(TUE) 13:05

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P. 008/011

Apr. 24 08 09:39a

100 44 4000100 08:55

406 247 8641

CITY OF BILLINGS - PRPL D 406-247-8641

P. 002

p.2



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

Fax 247-8641

### APPLICATION FOR PORTABLE COMMUNITY SOUNDSTAGE RENTAL

#### APPLICANT

Application Date 10/12/08Organization LEADERSHIP MT

Event Chairman Mike Schrecker Day Phone 259-7782 Night Phone 860-7795  
 Address 100 N. 27th St. 320 Billings, MT 59101

#### COMMUNITY SOUNDSTAGE SPECIFICATIONS

The Community Soundstage is a self-contained trailer which converts into a portable band shell or stage. It can be used for a variety of purposes for the performing arts such as plays, concerts, etc. The trailer itself is 33'6" long, 9' wide, and 13'1" high. The actual size of the stage is 14' deep by 28' wide. It is equipped with a P.A. system which has two microphones and a CD player, overhead fluorescent lighting, eight colored can type floodlights, and has multiple receptacles for electrical use with a total amperage draw based on the electrical power source.

#### RENTAL RATES

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

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

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

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

#### EVENT

Type or name of event "ROCK THE VOTE"Contact or person in charge DAY OF EVENT Mike SchreckerAddress 100 N. 27th St. 320 Day Phone 259-7782 Night Phone 860-7795Date(s) of event 10-4-08 Day(s) of event 10/4/08Event starting time 2 Event ending time 8Time Soundstage must be set up by? 1:30 PM\*\*Earliest time Soundstage can be dismantled? 9:00 PMTime to meet person in charge the day of event for setup instructions? 10:30 AMPA System/CD Player needed? yes Colored can spotlights needed? no

\*\*See terms of Rental Agreement

(Please complete back of application)

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

---

**TITLE:** Preserve America Grant Application – Old Town Neighbors, Inc.  
(Minnesota Avenue)

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** In 2007, the City of Billings was designated as a Preserve America Community. By that designation, the City of Billings is able to apply for Preserve America grant funds for a variety of historic preservation activities. The Old Town Neighbors, Inc. is a non-profit organization comprised of property owners along Minnesota Avenue that have a desire to create the Old Town Historic District (See Attachment A). To create the historic district, a National Register Nomination must be completed and submitted to the Montana State Historic Preservation Office (MT SHPO). Therefore, the Old Town Neighbors, Inc. is submitting a grant application to MT SHPO for Preserve America Grant funds. The total project is estimated at \$27,500 with \$13,750 from Preserve America and \$13,750 of match being supplied through the Old Town Neighbors, Inc., Billings Preservation Society and the Downtown TIFD.

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

1. Approve the Mayor signing the Preserve America Grant Application
2. Deny the Mayor signing the Preserve America Grant Application
3. Delay action

**FINANCIAL IMPACT:** City Council approval would allow the Old Town Neighbors, Inc. to apply for Preserve America Grant Funds. There is no direct cost associated with applying for these funds to the City of Billings. However, the creation of the Old Town Historic District could encourage economic development and an increase in tax revenue to the city.

**RECOMMENDATION**

Staff recommends that the City Council designate the Mayor to sign the Preserve America Grant Application.

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

**ATTACHMENT**

- A.      Map of the proposed Old Town Historic District
- B.      Grant signature page

## **INTRODUCTION**

Preserve America is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation and the U.S. Department of the Interior, Commerce, Agriculture, and Housing and Urban Development. It highlights the efforts of the President and First Lady to preserve our national heritage.

## **BACKGROUND**

The Montana State Historic Preservation Office (MT SHPO) applied for and received Preserve America funding to subgrant to designated Montana Preserve America Communities. The main reason MT SHPO subgrants the funds is that the national requirements may be out of reach for some Montana communities due to local resource limitations. MT SHPO is able to offer smaller subgrants and some possible match assistance, and hopes to continue offering subgrants to Montana's Preserve America Communities. Montana Preserve America's goals include a greater shared knowledge about the state's past, strengthened regional identities and local pride, increased local participation in preserving the nation's cultural and natural heritage assets, and support for the economic vitality of our communities.

The Old Town Neighbors, Inc. is a non-profit organization comprised of property owners along Minnesota Avenue that have a desire to create the Old Town Historic District (See Attachment A). To create the historic district, a National Register Nomination must be completed and submitted to the Montana State Historic Preservation Office (MT SHPO). Therefore, the Old Town Neighbors, Inc. is submitting a grant application to MT SHPO for Preserve America Grant funds. The total project is estimated at \$27,500 with \$13,750 from Preserve America and \$13,750 of match being supplied through the Old Town Neighbors, Inc., Billings Preservation Society and the Downtown TIFD.

## **RECOMMENDATION**

Staff recommends that the City Council designate the Mayor to sign the Preserve America Grant Application.

## **ATTACHMENT**

- A. Map of the proposed Old Town Historic District
- B. Grant signature page

**Attachment A**  
**Proposed Old Town Historic District**



**MAP**



**HIGH PLAINS  
ARCHITECTS**  
601 10th Street, Suite 200  
Billings, MT 59102  
(406) 248-1000  
www.hpaarch.com

Drawn by: **MAP**  
 Project #: **MAP**  
 Date: **8/27/08**  
 Revised:

## Attachment B



# Expanding the Cultural & Historical Record of Montana

Montana State Historic Preservation Office

Grants to Preserve and Promote Montana's Heritage and Cultural Assets

## 2008 APPLICATION FORM

Deadline: September 12, 2008

Please follow the Guidelines and Application Instructions to complete this application. Applicants must submit one (1) signed original and four (4) copies – a total of 5 – complete application packages. See additional mailing instructions on the last page of the application form. Application shall not exceed 10 pages total and use 10 point or larger font.

### 1. GENERAL PROJECT INFORMATION

Project Title (10 words or less): Old Town Historic District

Name of Applicant (Preserve America Community/THPO): Billings, Montana

Type of Applicant (Select only one)

- Designated Preserve America Community  
 CLG / Community that submitted a Preserve America Community application Date submitted: \_\_\_\_\_  
 Tribal Historic Preservation Office

Amount Requested (Federal Share) \$ 13,750    TOTAL Project Cost \$ 27,500

### 2. APPLICANT CONTACT INFORMATION

Contact Person: Stacey Wagner Title: Chair

Organization: Old Town Neighbors, Inc.

Address: 2 South Broadway

City: Billings State: Montana Zip Code: 59101

Daytime Telephone: (406) 248-3141 FAX Number: (406) 248-1665

E-mail: stacey@kbcomco.com

### 3. SIGNATURE OF AUTHORIZING OFFICIAL

(The applicant's authorizing official (city, county, or Tribal) must sign and date this form. Signatures must be original and in ink.)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name and Title \_\_\_\_\_



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

---

**TITLE:** Resolution Relating to Pooled Sidewalk Bonds Series 2008;  
Awarding the Sale and Prescribing the Form and Execution of the  
Bonds

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** On August 25, 2008, a public sale was held for the sale of bonds relating to sidewalk WO 04-12 located in the Alkali Creek Road area as well as sidewalk WO 06-18, located in the Broadwater Subdivision. Because no bids were received, the City negotiated a sale with Royal Johnson. A negotiated agreement was reached for the sale of the bonds for \$230,000 at 5.75%.

**RECOMMENDATION**

Staff recommends that City Council approve the sale and the attached resolution.

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

**ATTACHMENT**

A - Resolution prepared by Dorsey & Whitney

## **CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Yellowstone County, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “RESOLUTION RELATING TO \$230,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BOND, SERIES 2008; CREATING SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH FUND AND PRESCRIBING COVENANTS OF THE CITY FOR THE SECURITY OF THE HOLDERS OF THE BOND” (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 September 8, 2008, and that the meeting was duly held by the City Council Members and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

\_\_\_\_\_ ; voted against the same: \_\_\_\_\_ ; abstained from voting thereon: \_\_\_\_\_ ; or were absent: \_\_\_\_\_

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

---

City Clerk

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

RESOLUTION RELATING TO \$230,000 POOLED SPECIAL  
SIDEWALK, CURB, GUTTER AND ALLEY APPROACH  
BOND, SERIES 2008; CREATING SPECIAL SIDEWALK,  
CURB, GUTTER AND ALLEY APPROACH FUND AND  
PRESCRIBING COVENANTS OF THE CITY FOR THE  
SECURITY OF THE HOLDERS OF THE BOND

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

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01 Sale of Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bond. This Council, by Resolution No. 08-18741, adopted August 11, 2008, authorized the issuance and public sale of pooled special sidewalk, curb, gutter and alley approach bonds of the City in the aggregate principal amount of \$230,000 (the “Bond”) for the purpose of financing the construction of certain sidewalks, curbs, gutter and alley approach projects (the “Projects”; each, a “Project”) heretofore ordered by this Council pursuant to Resolution Nos. 05-18253 and 07-18549, adopted April 11, 2006 and April 23, 2007, respectively, and as set forth on Exhibit A hereto, as the W.O. 04-12, Alkali Creek Road Sidewalk Project (the “Alkali Creek Road Sidewalk Improvements”), and the W.O. 06-18 Broadwater Subdivision – Phase V Improvements (the “Broadwater Subdivision - Phase V Improvements”) (together, the “Improvements”). Advertisements for bids for the purchase of the Bond were published in accordance with the provisions of Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106 (the “Act”). There were no bidders at the public sale conducted in accordance with applicable statutory provisions and scheduled for the August 25, 2008 meeting of the Council. As authorized by the Act, the City obtained and offer to purchase the Bond from Royal C. Johnson, of Billings, Montana (the “Original Purchaser”). The Original Purchaser has agreed to purchase from the City the Bond at a purchase price of \$230,000, plus accrued interest thereon from the date of original issue of the Bond, at the interest rate of 5.75% per annum.

In Resolution Nos. 05-18253 and 07-18549, adopted April 11, 2006 and April 23, 2007, respectively, this Council found that it is in the public interest, and in the best interest of the City and the properties, to secure payment of principal of and interest on the Bond by the Special Improvement District Revolving Fund of the City, on the basis of the factors required to be considered under Section 7-12-4225 of the Act. Those findings are hereby ratified and confirmed.

1.02 Costs. It is currently estimated that the costs and expenses to be assessed against properties benefited by the Improvements, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract and all other costs and expenses, including the deposit of proceeds in the Revolving Fund, is not less than \$230,000 (\$13,300 for the Alkali Creek Road Sidewalk Improvements, and \$216,700 for the Broadwater Subdivision - Phase V Improvements). Such amount will be levied

and assessed upon the assessable real property benefited by the Improvements. This Council has jurisdiction and is required by law to levy and assess such amount, to collect such special assessments and credit the same to the pooled special sidewalk, curb, gutter and alley approach sinking fund created for the Improvements, which fund is to be maintained on the official books and records of the City separate from all other City funds, for the payment of principal and interest when due on the bonds herein authorized.

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

Section 2. \$230,000 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bond, Series 2008.

2.01 Principal Amount, Maturities, Date, Denominations and Interest Rate. For the purpose of paying the costs and expenses incurred in the construction of the Improvements and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the contract of sale described in Section 1.01, the City shall forthwith issue and deliver to the Purchaser its Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bond, Series 2008, in the aggregate principal amount of \$230,000, payable solely from the 2008 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the “2008 Sidewalk Sinking Fund”). The Bond shall be issued as a single amortized bond in the principal amount of \$230,000 and bear interest at the rate of 5.75% per annum from the date of delivery until paid. Equal installments of principal and interest on the Bond shall be payable on each January 1 and July 1, commencing January 1, 2009 and continuing through July 1, 2020 in the amounts as shown on the schedule attached hereto as Exhibit C. The Bond shall represent all of the principal installments of the issue.

2.02 Registered Form; Payment. The Bond shall be issuable only in fully registered form, and the ownership of the Bond shall be transferred only upon the Bond Register of the City hereinafter described. Principal of and premium, if any, and interest on the Bond are payable in lawful money of the United States of America. Principal and premium, if any, shall be payable by wire transfer in immediately available funds to such account as the Holder of the Bond shall direct the Registrar, or otherwise by check or draft drawn on the Registrar hereinafter described, upon presentation and surrender of the Bond at maturity or upon redemption at the principal office of the Registrar; provided, however, the Holder shall not be required to surrender the Bond upon partial payment or partial redemption of the Bond, but only upon final maturity. Principal and interest on the Note shall be payable on January 1 and July 1 in each year, commencing January 1, 2009, by wire transfer in immediately available funds to such account as the Holder of the Bond shall direct the Registrar or otherwise by check or draft of the Registrar mailed to the owners of record thereof as such appear in the Bond Register as of the close of business on the first day of month in which the payment date occurs, whether or not such day is a business day.

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

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

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

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

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

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

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

(g) Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except for an exchange upon the partial redemption of any Bond pursuant to Section 2.05), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

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

2.04 Execution, Registration and Delivery of Bond. The Bond shall be prepared under the direction of the City Clerk and shall be executed on behalf of the City by the signatures of the Mayor, the Financial Services Manager and the City Clerk and sealed with the official seal of the City; provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bond shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificate of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Bond shall be delivered by the Registrar to the Original Purchaser upon payment of \$230,000 for the principal of the Bond plus accrued interest from the registration date to the date of such delivery and payment. The Original Purchaser shall not be obligated to see to the application of the purchase price, but from the proceeds of the Bond the Financial Services Manager shall credit forthwith the balance of such proceeds to the Construction Subaccounts in the respective Project Accounts in the 2008 Sidewalk Sinking Fund to be used solely for the payment of the cost and expenses necessarily incurred in the construction of the Improvements and costs of issuance and sale of the Bond, except that the accrued interest received shall be deposited in the Interest Subaccounts in the respective Project Accounts in the 2008 Sidewalk Sinking Fund and applied in payment of interest on the Bond when due.

2.05 Prepayment; when Mandatory Redemption Required. The principal installments of the Bond are subject to mandatory redemption in order of registration on any interest payment

date if, after paying all principal and interest then currently due on the Bond, there are monies available in or to the credit of the 2008 Sidewalk Sinking Fund, either from the prepayment of assessments or from surplus proceeds of the Bond not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The principal installments of the Bond are subject to redemption at the option of the City from other sources of funds available therefor on any interest payment date. The redemption price is equal to the amount of the principal installment or installments of the Bond to be redeemed plus interest accrued thereon to the date of redemption, without premium. The date of redemption shall be fixed by the Financial Services Manager, who shall give notice by first class mail, postage prepaid, to the owner or owners of the Bond at their address shown on the bond register, of the numbers of the principal installments to be redeemed and the date on which payment will be made, which date shall not be less than ten days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed interest on the principal installments of the Bond so redeemed shall cease to accrue.

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

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

(a) Deposit to the credit of the Interest Subaccounts in the respective Project Accounts in the 2008 Sidewalk Sinking Fund the amount of accrued interest, if any, paid by the Original Purchaser thereof to the date of delivery of the Bond, in proportion to the principal amounts of the Bond allocable to each of the Projects, as set forth in Section 1.02, which will be applied to payment of interest on the Bond when due;

(b) Deposit \$11,750.00 to the Revolving Fund (\$700 for the Alkali Creek Road Sidewalk Improvements, and \$11,050 for the Broadwater Subdivision - Phase V Improvements); and

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

Section 3. 2008 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund.

3.01 2008 Sidewalk Sinking Fund. The 2008 Sidewalk Sinking Fund is hereby created and designated as the “2008 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund.” The 2008 Sidewalk Sinking Fund shall be maintained as a separate bookkeeping account by the Financial Services Manager on the books and records of the City. Within the 2008 Sidewalk Sinking Fund there shall be maintained separate accounts for the Alkali Creek Road Sidewalk Improvements and the Broadwater Subdivision - Phase V Improvements shown on

Exhibit A hereto, designated accordingly (collectively, the “Project Accounts”). Within each Project Account there shall be maintained three separate subaccounts, designated as the “Construction Subaccount,” the “Principal Subaccount” and the “Interest Subaccount,” respectively.

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

**3.03 Principal Subaccounts and Interest Subaccounts.** Moneys in the Principal Subaccounts and the Interest Subaccounts shall be used only for payment of the principal of and interest on the Bond as such payments become due, or to prepay and redeem the Bond. Upon the collection of the installment of principal and interest due on November 30 and May 31 of each year on the special assessments to be levied with respect to the Improvements, the Financial Services Manager shall credit to the Interest Subaccounts in the respective Project Accounts so much of said special assessments as is collected as interest payment, and credit the balance of such assessments to the Principal Subaccounts. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the nearest bond call date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the 2008 Sidewalk Sinking Fund. All moneys in the Interest Subaccounts and the Principal Subaccounts shall be used first to pay interest due, and any remaining moneys shall be used to pay the Bond then due and, if moneys are available, to redeem the Bond or principal installments thereof in accordance with Section 2.05; provided that any money transferred to the Principal Subaccount from the Construction Subaccount pursuant to Section 3.02 or any prepaid special assessments shall be applied to redeem the Bond or principal installments thereof to the extent possible on the next interest payment date for which notice of redemption may properly be given pursuant to Section 2.05. Redemption of the Bond from the Principal Subaccount shall be in order of the principal installments they represent as provided in Section 2.05, and interest shall be paid from the Interest Subaccount as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Sections 7-12-4206.

**3.04 Loans From Revolving Fund.** The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Special Improvement District Revolving Fund to each of the Project Accounts in an amount sufficient to make good any deficiency then existing in the Interest Subaccount in the Project Account, and shall issue an order authorizing a loan or advance from the Revolving Fund to the Project Account in an amount sufficient to make good any deficiency then existing in the Principal Subaccount of the Project Account, to the extent that moneys are available in the Revolving Fund. Pursuant to Ordinance No. 1096 and in connection with the public offering of the Bond, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making

such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-4222. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City is not sufficient to make good all deficiencies then existing in the improvement district fund or sidewalk, curb, gutter and alley approach fund for which the City has promised to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City has been paid. On any date when all accrued interest on special improvement district bonds and sidewalk, curb, gutter and alley approach warrants of the City payable from funds for which the City has promised to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the improvement district fund or sidewalk, curb, gutter and alley approach fund for payment and redemption of bonds or warrants to the extent the improvement district fund or sidewalk, curb, gutter and alley approach fund is deficient for such purpose, in an amount proportionate to the amount of such deficiency.

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

Sectomp 4. City Covenants. The City covenants and agrees with the holder from time to time of the Bond that until the full principal amount of the Bond and interest thereon is fully paid:

4.01 Compliance with Covenants. The City will hold the 2008 Sidewalk Sinking Fund and the Special Improvement District Revolving Fund of the City created by Ordinance No. 1096, adopted June 3, 1930 (the “Revolving Fund”), as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this resolution. The covenants hereinabove made with respect to the 2008 Sidewalk Sinking Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the sale of the Bond as set forth in Section 1.01.

4.02 Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts entered into or to be entered into for the Improvements and to ensure the completion of the Improvements in accordance with the plans and specifications therefor and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Project Accounts in the Construction Subaccount and within the amount of the bond proceeds appropriated thereto.

4.03 Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable property benefited by the Improvements, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than \$230,000 of which \$13,300 shall be

assessed against properties benefited by the Alkali Creek Road Sidewalk Improvements, and \$216,700 for the Broadwater Subdivision - Phase V Improvements. Such special assessments shall be levied on each lot or parcel of land in front of which sidewalks, curbs and gutters are to be constructed and each lot or parcel of land having an access via the alley approach and, unless prepaid in full, shall be payable in equal semiannual installments over a period of twelve years, each installment being due in an amount equal to one twenty-fourth (1/24th) of the principal amount of each assessment with interest on the whole amount remaining unpaid at an annual rate equal to the sum of: (i) the average annual interest rate then borne by the outstanding principal of the Bond, plus (ii) one-half of one percent per annum (0.50%), interest being payable with principal installments. The assessments to be levied will be payable on the 30th day of November in each of the years 2008 through 2019, and on the 31st day of May in the years 2009 through 2020. The first partial payment of each such assessment shall include interest on the entire assessment, the date of original registration of the Bond, to January 1, 2009, and each subsequent partial payment shall include interest for six months on the unpaid balance of such special assessment. All installments of special assessments not paid in full on or before the date due shall become delinquent on that date. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-4191. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-309.

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

If proceeds of the Bond, including investment income thereon, are applied to the redemption of the Bond, as provided in Montana Code Annotated, Sections 7-12-4205 and 7-12-4206, or if refunding bonds are issued and the principal amount of the outstanding bonds is decreased or increased, the City will reduce or increase, respectively, the assessments levied in the project area and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this Council, its officers and employees will re-assess and re-levy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Montana Code Annotated, Sections 7-12-4176 through 7-12-4178.

4.05 Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened, questioning the validity or regularity of the ordering of the Improvements, any contract for construction of the Improvements, the levy and collection of special assessments as

described herein or the undertaking and agreement of the City to make up any deficiency in the collection of special assessments through the levy of taxes and the making of advances from the Revolving Fund, or the right and powers of the City to issue the Bond, or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Original Purchaser, and will furnish the Original Purchaser a copy of all documents, including pleadings, in connection with such litigation.

Section 5. Tax Matters.

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

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

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

5.04 Information Reporting. The City shall file with the Secretary of the Treasury, not later than February 15, 2009, a statement concerning the Bond containing the information required by Section 149(e) of the Code.

Section 6. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Original Purchaser and to the attorneys approving the legality of the

Bond certified copies of all proceedings relating to the issuance of the Bond and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the statements contained therein.

Section 7. Defeasance.

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

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

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

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

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

Section 8. Repeals and Effective Date.

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

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

PASSED by the City Council of Billings, Montana, this 8th day of September, 2008.

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Mayor

Attest:

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City Clerk

(SEAL)

**EXHIBIT A**  
**THE IMPROVEMENTS**

**General Description**

The Bond is being issued to pay a portion of the costs of engineering, reconstructing and installing certain local improvements to benefit certain properties in the City described below consisting of various sidewalk, curb, gutter and alley approach improvements all as a part of the W.O. 04-12, Alkali Creek Road Sidewalk Project (the “Alkali Creek Road Sidewalk Improvements”), and the W.O. 06-18 Broadwater Subdivision – Phase V Improvements (the “Broadwater Subdivision - Phase V Improvements”) (together, the “Improvements”) as shown below.

**Alkali Creek Road Sidewalk Improvements**

The Improvements described below constituting the Alkali Creek Road Sidewalk Improvements will be constructed adjacent to the properties shown under each category of Improvements.

**Replacement of Sidewalk:**

- 571 Pinion Dr. (Alkali Creek Road frontage)
- West side of Alkali Creek Road from Moon Valley Road to Pinion Drive

**Replacement of Sidewalk, Drive Approaches, and Miscellaneous Improvements:**

- West side of Alkali Creek Road between Tumbleweed Drive (North) and Tumbleweed Drive (South) including the frontage of the following properties: 550 Alkali Creek Rd., 540 Alkali Creek Rd., 530 Alkali Creek Rd., 520 Alkali Creek Rd., 510 Alkali Creek Rd., 480 Alkali Creek Rd., 470 Alkali Creek Rd., 460 Alkali Creek Rd., 450 Alkali Creek Rd., 440 Alkali Creek Rd., 430 Alkali Creek Rd., and 420 Alkali Creek Rd.

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

- East side of Alkali Creek Road between Moccasin Trail (North) and Moccasin Trail (South) (approximately 400 feet)

**Broadwater Subdivision - Phase V Improvements**

The Improvements described below constituting the Broadwater Subdivision - Phase V Improvements will be constructed adjacent to the properties shown under each category of Improvements.

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

- North and south side of Cook Avenue between 12<sup>th</sup> Street West and 13<sup>th</sup> Street West
- North and south side of St. Johns Avenue between 12<sup>th</sup> Street West and 13<sup>th</sup> Street West
- North and south side of Lynn Avenue between 12<sup>th</sup> Street West and 13<sup>th</sup> Street West
- East and west side of Plainview Street between Central Avenue and Cook Avenue

## EXHIBIT B

[Face of the Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
YELLOWSTONE COUNTY

### CITY OF BILLINGS

#### POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BOND, SERIES 2008

No. R-1		\$230,000.00
<u>Rate</u>	<u>Final Maturity Date</u>	<u>Date of Original Issue</u>
5.75%	July 1, 2020	_____, 2008

REGISTERED OWNER: ROYAL C. JOHNSON

PRINCIPAL AMOUNT: TWO HUNDRED THIRTY THOUSAND DOLLARS AND  
NO/100

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana (the "City"), will pay to the registered owner identified above or registered assigns, the principal amount specified above, or, if this Bond is prepayable as stated herein, on any date prior thereto on which this Bond shall have been duly called for redemption, and to pay interest on said principal amount to the registered owner hereof from its date of delivery or from such later date to which interest has been paid or duly provided for until this Bond is paid, solely from the revenues hereinafter specified, as authorized by Resolution No. \_\_\_\_, adopted on September 8, 2008 (the "Bond Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate of 5.75% from the date of registration of this Bond, as expressed herein, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Financial Services Manager. The City's Financial Services Manager shall serve as Registrar and Paying Agent on the Bond. Principal and interest on this Bond is payable semi-annually on each January 1 and July 1, commencing on January 1, 2009, by wire transfer in immediately available funds to such account as the Holder of the Bond shall direct the Registrar or otherwise by check or draft mailed by the Registrar to the person in whose name this Bond is registered as of the close of business on the first day (whether or not a Business Day) of the month in which the payment date occurs, at his address as it appears on the bond register maintained by the Registrar. The principal of and interest on this Bond are payable in lawful money of the United States of America.

The Series 2008 Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 14, Part 41 and Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing a portion of the cost of construction of sidewalk, curb, gutter and alley approach improvements in the City (the "Improvements"), to fund a deposit to the revolving fund and to pay costs associated with the sale and security of the Series 2008 Bond.

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

The City has also validly established a Special Improvement District Revolving Fund (the "Revolving Fund") to secure the payment of certain of its special improvement district bonds and sidewalk, curb, gutter and alley approach bonds or warrants, including the Series 2008 Bond. The City has also agreed, to the extent permitted by the Act, to issue orders annually authorizing loans or advances from the Revolving Fund to the 2008 Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund (the "2008 Sidewalk Sinking Fund"), in amounts sufficient to make good any deficiency in the 2008 Sidewalk Sinking Fund to pay principal of or interest on the Series 2008 Bond, to the extent that funds are available in the Revolving Fund, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement district bonds and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Bond Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

Outstanding principal of this Series 2008 Bond shall bear interest from its date of delivery until paid at the rate of 5.75% per annum. As used herein, "Business Day" means any day other than (i) a Saturday or Sunday, or (ii) a legal holiday in the State of Montana. [Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months.] Closing shall mean the day of execution and delivery of the Note and receipt of the purchase price thereof.

The principal installments of this Bond are subject to mandatory redemption in order of registration on any interest payment date if, after paying all principal and interest then currently due on this Bond, there are monies available in or to the credit of the 2008 Sidewalk Sinking Fund of the City, either from the prepayment of assessments or from surplus proceeds of the Bond not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The principal installments of this Bond are subject to redemption at the option of the City from other sources of funds available therefor on any interest payment date. The

redemption price is equal to the amount of the principal installment or installments of the Bond to be redeemed plus interest accrued thereon to the date of redemption, without premium. The date of redemption shall be fixed by the Financial Services Manager, who shall give notice by first class mail, postage prepaid, to the owner or owners of this Bond at their addresses shown on the bond register, of the numbers of the principal installments to be redeemed and the date on which payment will be made, which date shall not be less than ten days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed interest on the principal installments of this Bond so redeemed shall cease to accrue.

As provided in the Bond Resolution, and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series 2008 Bond of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

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

IT IS HEREBY CERTIFIED AND RECITED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance hereof; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Series 2008 Bond, dated the date of original issuance and delivery of the Series 2008 Bond.

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

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

CITY OF BILLINGS, MONTANA

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Mayor

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Financial Services Manager

(Seal)

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City Clerk

Date:

**CERTIFICATE OF AUTHENTICATION**

This is one of the Series 2008 Bond delivered pursuant to the Bond Resolution mentioned herein.

CITY OF BILLINGS, MONTANA,  
as Registrar

By \_\_\_\_\_  
Financial Services Manager

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

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

Additional abbreviations may also be used.

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#### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

---

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

Dated:

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE:

---

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

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/\_\_\_\_\_/  
SIGNATURE GUARANTEED

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Signature(s) must be guaranteed by an  
"eligible guarantor institution" meeting  
the requirements of the Registrar, which

requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

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**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 3, Block 2, William D. Pierce Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On August 1, 2008, the preliminary plat application for a subsequent minor plat was submitted to the Planning Division. The proposed plat would create 3 lots on approximately 15.35 acres for commercial and industrial development. The subject property is zoned Entryway Light Industrial (ELI) and is located on the southeast corner of the intersection of Shiloh Road and Pierce Parkway. The owner is Pierce Buildings, LLP and Engineering, Inc. is the agent.

**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 19, 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 conditional approval of the preliminary plat of Amended Lot 3, Block 2, William D. Pierce Subdivision and adoption of the Findings of Fact as presented within 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 August 1, 2008, the preliminary plat application for a subsequent minor plat was submitted to the Planning Division. The proposed plat would create 3 lots on approximately 15.35 acres for commercial and industrial development. The subject property is zoned ELI and is located on the southeast corner of the intersection of Shiloh Road and Pierce Parkway.

## **PROCEDURAL HISTORY**

- The pre-application meeting for this subdivision was conducted on July 3, 2008.
- The completeness and sufficiency review for this subdivision was submitted on July 15, 2008.
- The preliminary plat application was submitted on August 1, 2008.
- The City Council will consider the preliminary plat application on September 8, 2008.

## **BACKGROUND**

General location:	Southeast corner of the intersection of Shiloh Road and Pierce Parkway
Legal Description:	Amended Lot 3, Block 2, William D. Pierce Subdivision
Subdivider/Owner:	Pierce Buildings, LLP
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	ELI
Existing land use:	Vacant
Proposed land use:	Commercial and Industrial Uses
Gross area:	15.35 acres
Net area:	15.35 acres
Proposed number of lots:	3
Lot size:	Max: 8.28 acres Min.: 2.62 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. To minimize effects on local services, an updated trip generation analysis shall be submitted with the development of each lot. These trip generation analyses must identify any traffic impacts beyond those identified in the original Traffic Accessibility Study submitted for William D. Pierce Subdivision. This shall be added as a statement to the Conditions that Run with the Land portion of the SIA. *(Recommended by the City Engineering Division)*
3. To minimize effects to local services, the subdivider shall work with the County GIS Department, the United States Postal Service and the Billings Fire Department to rename the road "spur" located along the western border of the subdivision, as it creates two Shiloh Roads. *(Recommended by the County GIS Department)*
4. To minimize impacts to local services, Section VI of the SIA shall be revised as follows *(Recommended by the Public Utilities Department):*
  - Remove the last sentence of Paragraph 1 regarding the water and wastewater construction fees.
  - Remove the second paragraph, which references water and wastewater construction fees.
5. 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.

6. 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.

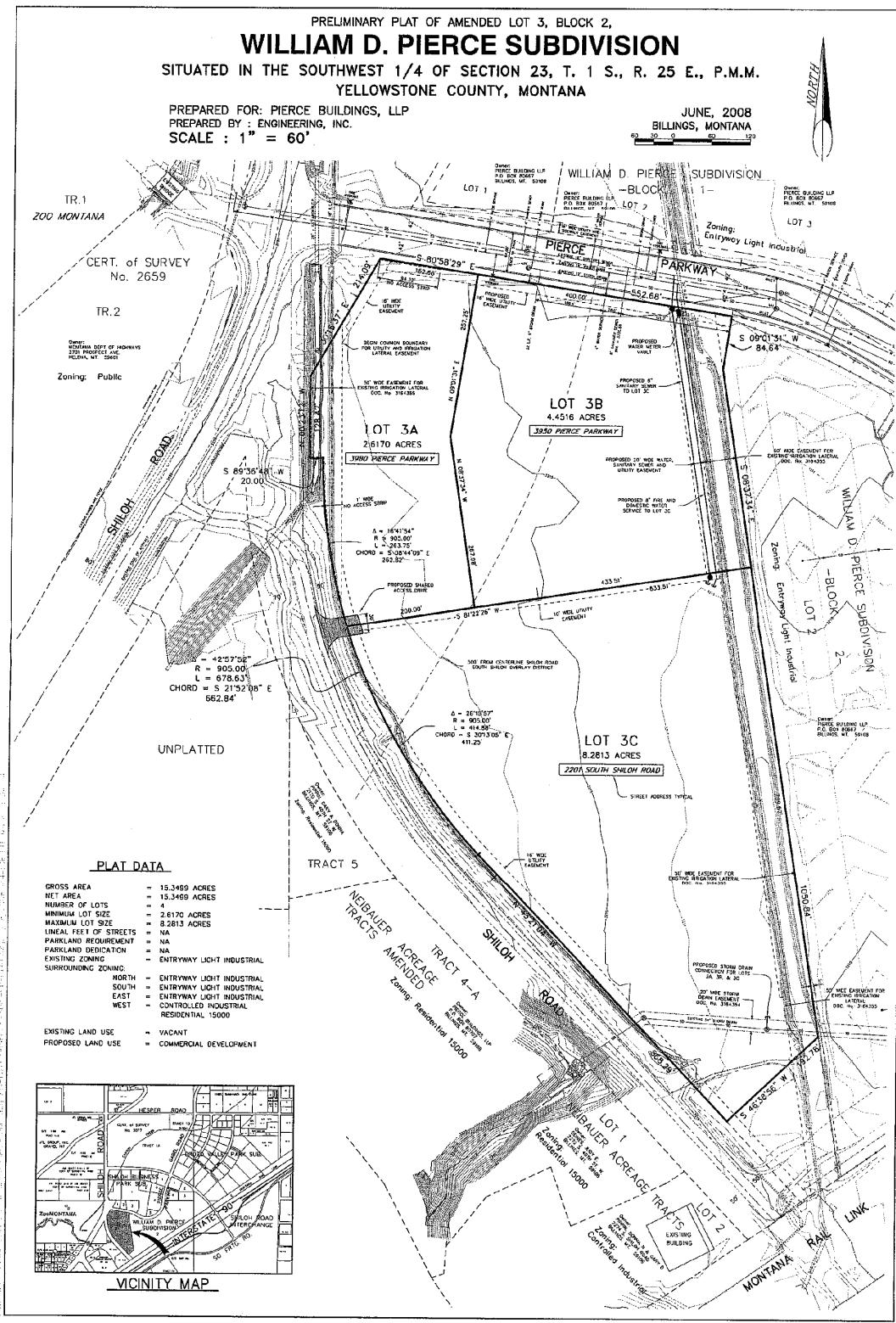
### **RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Amended Lot 3, Block 2, William D. Pierce Subdivision and adoption of the Findings of Fact as presented within the staff report to the City Council.

### **ATTACHMENTS**

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

**ATTACHMENT A**  
Preliminary Plat



## **ATTACHMENT B**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 3, Block 2, William D. Pierce 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**

There are no agricultural uses on this property or surrounding properties. However, there are two lateral ditches located on the property, one along the eastern border and one located along the northwestern portion. These 50-foot wide easements are recorded, as indicated on the plat.

**2. Effect on local services**

- a. **Utilities** – Water to the subject property will be extended from the 16-inch water main located in Pierce Parkway. Sanitary sewer will be extended from the 18-inch main line within Pierce Parkway. Utility construction fees have been eliminated within the City, therefore, Condition #4 requires references to this fee be removed from the SIA.
- b. **Stormwater** – 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. Stormwater will be handled onsite through surface flow on the accesses and parking lots. Collection will be through a network of catch basins, inlets, and piping with discharge to the existing trunk storm drain located across the southern portion of Amended Lot 3.
- 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 private access roads from Pierce Parkway and the South Shiloh Road spur. No accesses will be permitted to Amended Lot 3 from the arterial frontage of Shiloh Road except for the street approach from Pierce Parkway. A 1-foot no access strip has been depicted along the western border of Amended Lot 3.

The County GIS Department reviewed this plat and expressed concerns regarding the Shiloh Road “spur” located along the western border of the property. The United States Postal Service references this portion of Shiloh Road as South 40<sup>th</sup> Street West. However, emergency services recognizes it as Shiloh Road or South Shiloh Road. Since this can become a serious issue for emergency services accessing the correct properties, Condition #3 requires the subdivider to work with the County GIS Department, the United States Postal Service and the Fire

Department to determine a possible road name and remedies to addressing along this portion of Shiloh Road.

Shiloh Road is classified as a principal arterial and Pierce Parkway is a local commercial street. Improvements to Pierce Parkway were completed through private contract with William D Pierce Subdivision. Shiloh Road is proposed for reconstruction from Canyon Creek to Poly Drive by the Montana Department of Transportation (MDT) and has an anticipated construction start date of 2009. No improvements are required for Shiloh Road at this time. The subdivider has included a waiver for future improvements.

A Traffic Accessibility Study was completed for William D. Pierce Subdivision. The Engineering Division specified that updated trip generation analysis shall be submitted for each of the proposed lots prior to development, as required by Condition #2. These trip generations must identify any traffic impacts beyond those identified in the original TAS. A statement regarding these required trip generation analyses shall be added to the Conditions that Run with the Land section of the SIA.

- e. **Emergency services - 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).

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

A geotechnical study update from the original William D. Pierce Subdivision 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.

**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 industrial 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 and industrial development within the immediate vicinity.*

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

*The subject property is located in an urbanized portion of the city and is considered infill.*

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

Shiloh Road is classified as a principal arterial and Pierce Parkway is a local commercial street. Improvements to Pierce Parkway were completed through private contract with William D Pierce Subdivision. Shiloh Road is proposed for reconstruction from Canyon Creek to Poly Drive by the Montana Department of Transportation (MDT) and has an anticipated construction start date of 2009. No improvements are required for Shiloh Road at this time. The subdivider has included a waiver for future improvements.

**3. Heritage Trail Plan**

The Heritage Trail Plan identifies the west side of Shiloh Road, Canyon Creek, and the railroad right-of-way located along the southern portion of the property as possible trail corridors. No portion of the trail is identified for Lot 3.

**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 Pierce Parkway.

**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 ELI 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 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 through private access roads from Shiloh Road and Pierce Parkway.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 3, Block 2, William D. Pierce 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, September 8, 2008

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Ron Tussing, Mayor

**ATTACHMENT C**  
Mayor's Approval Letter

September 8, 2008

Pierce Buildings, LLP  
P.O. Box 80667  
Billings, MT 59108

Dear Property Owner:

On September 8, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 3, Block 2, William D. Pierce 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. To minimize effects on local services, an updated trip generation shall be submitted with the development of each lot. These trip generations must identify any traffic impacts beyond those identified in the original Traffic Accessibility Study submitted for William D. Pierce Subdivision. This shall be added as a statement to the Conditions that Run with the Land portion of the SIA. (*Recommended by the City Engineering Division*)
3. To minimize effects to local services, the subdivider shall work with the County GIS Department, the United States Postal Service, and the Billings Fire Department to rename the road “spur” located along the western border of the subdivision, as it creates two Shiloh Roads. (*Recommended by the County GIS Department*)
4. To minimize impacts to local services, Section VI of the SIA shall be revised as follows (*Recommended by the Public Utilities Department*):
  - Remove the last sentence of Paragraph 1 regarding the water and wastewater construction fees.
  - Remove the second paragraph, which references water and wastewater construction fees.
5. 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.

6. 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.

# M

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 8, 2008

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**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 8, Block 6, Superior Homes Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On August 1, 2008, the preliminary plat application for Amended Lot 8, Block 6, Superior Homes Subdivision, was submitted to the Planning Division. The proposed subsequent minor subdivision would create two lots on approximately 19,200 square feet of land. The subject property is zoned Residential 7000 (R-70) and is located on the south side of Jaque Lane in the Heights and is addressed as 420 Jaque Lane. The property owners are Curtis J. and Greta White and the representing agent is Soelter Surveying.

**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 19, 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:** The property has existing homes on it so additional tax revenue for the City is not expected.

### **RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of Amended Lot 8, Block 6, Superior Homes Subdivision and adoption of the Findings of Fact as presented within 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 August 1, 2008, the preliminary plat application for a subsequent minor subdivision was submitted to the Planning Division. The proposed plat would create two lots on approximately 19,200 square feet of land. The subject property is zoned R-70 and is located at 420 Jaque Lane in the Heights. The subject property contains one duplex and one single family residence. The subject property is surrounded on all sides by existing single-family residences and duplexes.

## **PROCEDURAL HISTORY**

- The preliminary plat application for this subdivision was submitted to the Planning Division on August 1, 2008.
- The City Council will consider the preliminary plat application on September 8, 2008.

## **BACKGROUND**

General location:	420 Jaque Lane in the Heights
Legal Description:	Amended Lot 8, Block 6, Superior Homes Subdivision
Subdivider/Owner:	Curtis J. and Greta White
Engineer and Surveyor:	Soelter Surveying
Existing Zoning:	R-70
Existing land use:	Duplex and Single Family Residential
Proposed land use:	Same
Gross area:	19,200 square feet
Net area:	19,200 square feet
Proposed number of lots:	2
Lot size:	max. 10,236 square feet min. 8,964
Parkland requirements:	A parkland dedication is not required, as this is a subsequent minor subdivision.

## **ALTERNATIVES ANALYSIS**

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

## **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. 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.
2. 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.

## **STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property 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**

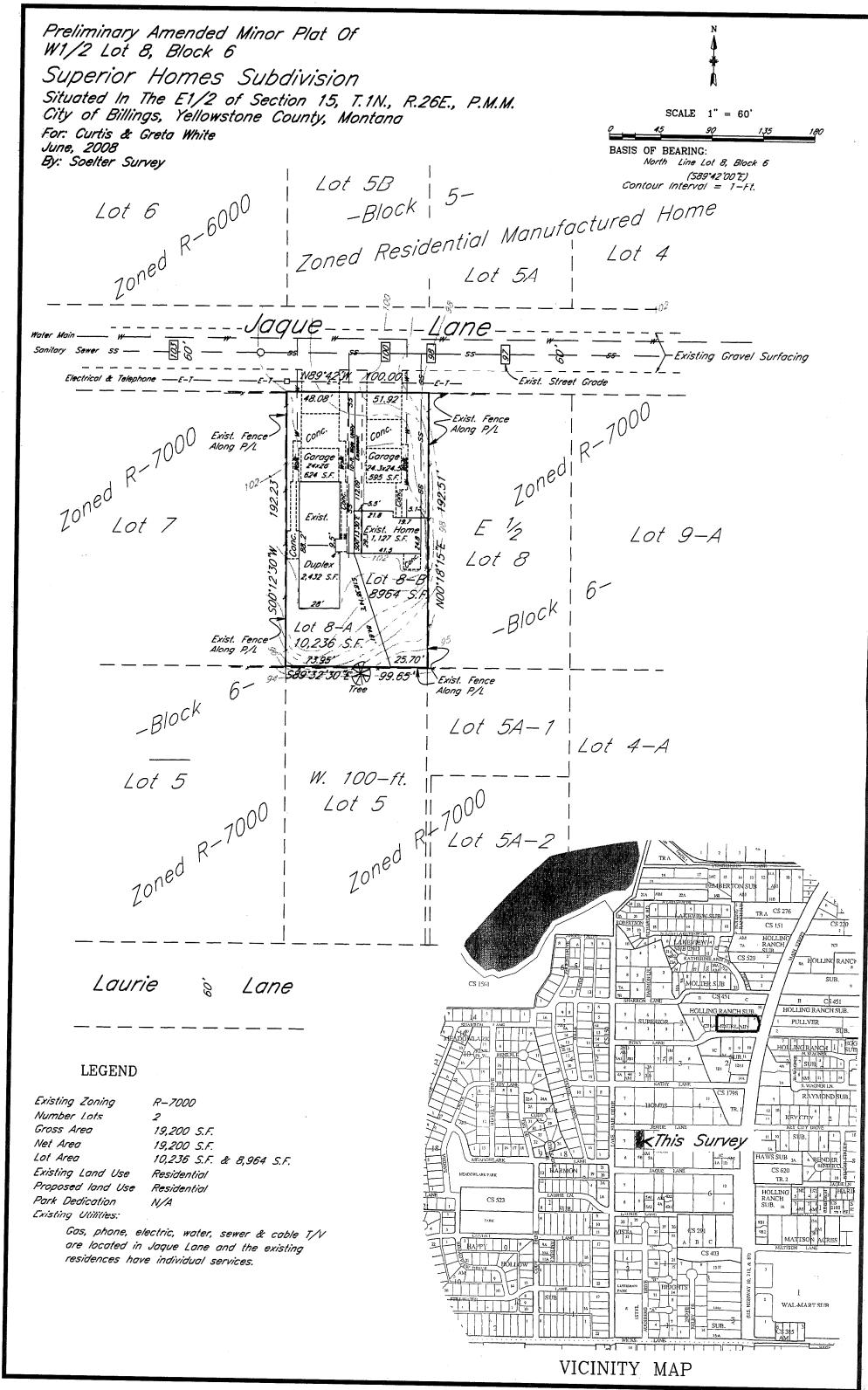
Staff recommends conditional approval of the preliminary plat of Amended Lot 8, Block 6, Superior Homes Subdivision and adoption of the Findings of Fact as presented within the staff report to the City Council.

## **ATTACHMENTS**

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

**ATTACHMENT A**

Preliminary Plat



**ATTACHMENT B**  
Findings of Fact

Staff is forwarding the recommended Findings of Fact for Amended Lot 8, Block 6, Superior Homes Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Article 23-100, BMCC).

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

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

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

**2. Effect on local services**

- a. **Utilities** – Water and sanitary sewer mains are currently in place in Jaque Lane. Lines have been extended to the existing residential structures on the lot and will not change with this subdivision.
- b. **Stormwater** – Storm drainage improvements have been constructed. However, if any additional stormwater improvements are necessary, all drainage improvements shall comply with the provisions of the Billings Stormwater Management Manual.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the lots will be via private driveways from Jaque Lane. Jaque Lane is a gravel street and there are no sidewalks. There will be no additional right-of-way required as the street dedication is the correct width. Engineering has stated that they will not be requiring street improvements at this time but language about street improvements will be included in the SIA and Waiver of Right to Protest.
- 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 (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review to the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Beartooth Elementary School, Castlerock Middle School and Skyview High School.

- g. **Parks and Recreation** –A parkland dedication is not required for this subsequent minor subdivision.

**3. Effect on the natural environment**

A geotechnical report was not submitted to the Building Department with the subdivision as the buildings already exist on the site with no immediate plans for additional construction.

No streams, lakes or reservoirs will be altered by the subdivision.

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

There are no known endangered or threatened species on the property.

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

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

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

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

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

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

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

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

*The proposed subdivision does provide more residential housing options within this portion of the city by dividing this property into two lots. The housing on the lot is compatible with the surrounding residentially developed properties.*

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

*The subject property and the homes built on the site are compatible with the character of the surrounding residential buildings. The site is within an urbanized portion of the City and is surrounded by residential uses.*

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

*The subject property is a replat of an existing subdivision within the city and maintains infill development.*

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

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

**3. Heritage Trail Plan**

No specific trails are identified in this area and none are proposed with this subdivision.

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

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

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

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

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

The subject property is located within the R-70 zoning district and complies 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? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)**

The lots are already developed with utilities installed. The plat will show the existing utility locations on the site and the easements they are located in.

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

Legal and physical access to the proposed subdivision will be provided via Jaque Lane.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 8, Block 6, Superior Homes Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, September 8, 2008

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Ron Tussing, Mayor

**ATTACHMENT C**  
Mayor's Approval Letter

September 9, 2008

Curtis and Greta White  
2648 Lake Elmo Drive  
Billings, MT 59105

Dear Applicant:

On September 8, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 8, Block 6, Superior Homes Subdivision, subject to the following conditions of approval:

1. 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.
2. 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

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

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**TITLE:** Preliminary Subsequent Minor Plat of an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3<sup>rd</sup> Filing

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On August 1, 2008, the preliminary plat application for a subsequent minor subdivision was submitted to the Planning Division. The proposed plat would create two lots on approximately 15,000 square feet. The subject property is zoned Residential 6000 (R-60) and is located on the southwest corner of the intersection of 10<sup>th</sup> Avenue North and North 22<sup>nd</sup> Street. The property owner is Steve Kerns and the representing agent is Tom Kelly, North Star Land Services, Inc.

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

**RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside

Subdivision, 3<sup>rd</sup> Filing and adoption of the Findings of Fact as presented within the staff report to the City Council.

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

**ATTACHMENTS**

- D. Preliminary Plat
- E. Findings of Fact
- F. Mayor's Approval Letter

## **INTRODUCTION**

On August 1, 2008, the preliminary plat application for a subsequent minor subdivision was submitted to the Planning Division. The proposed plat would create two lots on approximately 15,000 square feet. The subject property is zoned R-60 and is located on the southwest corner of the intersection of 10<sup>th</sup> Avenue North and North 22<sup>nd</sup> Street. The subject property is currently vacant and is proposed for duplexes. The subject property is surrounded on all sides by existing single-family residences and duplexes.

## **PROCEDURAL HISTORY**

- The pre-application meeting for this subdivision was conducted on June 12, 2008.
- The completeness and sufficiency review for this subdivision was submitted on July 14, 2008.
- The preliminary plat application was submitted on August 1, 2008.
- The City Council will consider the preliminary plat application on September 8, 2008.

## **BACKGROUND**

General location:

Southwest corner of the intersection of 10<sup>th</sup> Avenue North and North 22<sup>nd</sup> Street

Legal Description:

An Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3<sup>rd</sup> Filing

Subdivider/Owner:

Steve Kerns

Engineer and Surveyor:

Tom Kelly, North Star Land Services, Inc.

Existing Zoning:

R-60

Existing land use:

Vacant

Proposed land use:

Two Duplexes

Gross area:

15,000 square feet

Net area:

15,000 square feet

Proposed number of lots:

2

Lot size:

7,500 square feet

Parkland requirements:

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

## **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Planning 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:

3. To minimize impacts to local services, section III.B of the SIA shall be revised to state that *“any deficient sidewalks or curb and gutter shall be replaced upon development of the lots. The subdivider shall install an ADA compliant ramp at the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North with the development of Lot A.”* (Recommended by the Engineering Division)
4. To minimize impacts to local services, Section V of the SIA shall be revised to state that *“Development of this property shall meet all requirements set forth in the City of Billings Stormwater Management Manual.”* (Recommended by the Engineering Division)
5. To minimize impacts to local services, the 10-foot wide utility easement abutting the western border of the subject property shall be dedicated to the public. (Recommended by the Engineering Division)
6. To minimize impacts to local services, Section VI of the SIA shall be revised as follows (Recommended by the Public Utilities Department):
  - Remove the last sentence of Paragraph 1 regarding the water and wastewater construction fees.
  - Remove the second paragraph, which references water and wastewater construction fees.
  - Section VI.A shall be revised to state *“Lot B, when it is developed, will require a new service connection to the water main located in north 22<sup>nd</sup> Street.”*
  - Section VI.B shall be revised to state *“Each lot, when they are developed, will require a new service connection to the sewer main, as approved by the City of Billings Public Works Department.”*
7. 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*)

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

### **STAKEHOLDERS**

A public hearing is not scheduled for the City Council meeting; however nearby property 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.

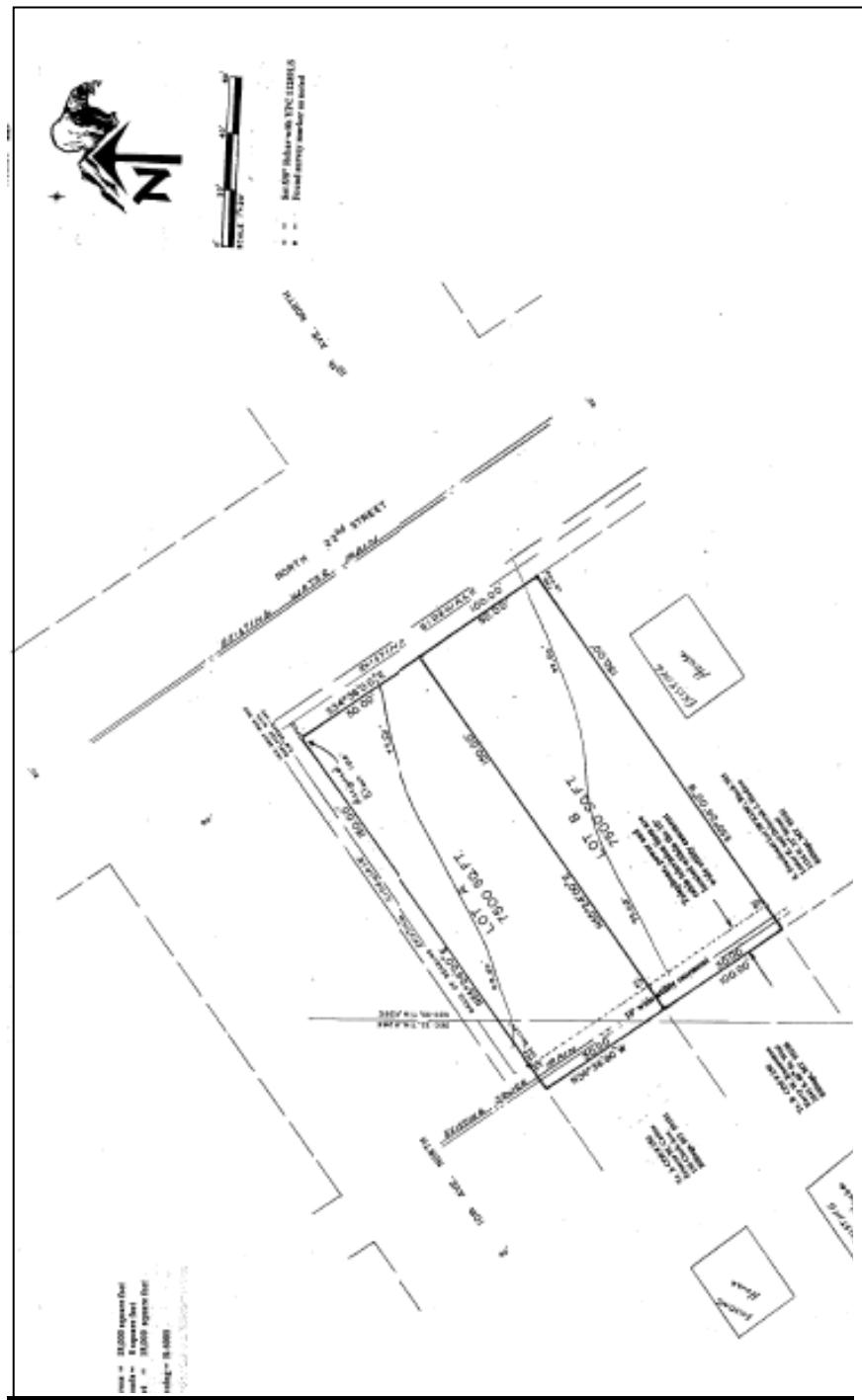
### **RECOMMENDATION**

Staff recommends conditional approval of the preliminary plat of An Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3<sup>rd</sup> Filing and adoption of the Findings of Fact as presented within the staff report to the City Council.

### **ATTACHMENTS**

- D. Preliminary Plat
- E. Findings of Fact
- F. Mayor's Approval Letter

**ATTACHMENT A**



## **ATTACHMENT B**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3<sup>rd</sup> 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 (Article 23-100, BMCC).

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

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

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

**2. Effect on local services**

- h. **Utilities** – Water and sanitary sewer mains are currently in place in both North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North. Lines will be extended at the time of lot development. Utility construction fees have been eliminated within the City, therefore, Condition #4 requires references to this fee be removed from the SIA. Additionally, minor corrections are necessary to both the water and wastewater information contained within Section VI of the SIA, as specified in Condition #4.

There is a 10-foot utility easement located along the western border of the subject property. An existing city sewer main exists through the alley located within this easement. Since the alley already exists, Condition #3 requires that the depicted 10-foot wide easement be dedicated to the public. This will eliminate approximately 1,000 square feet from the subject property, which will not affect the proposed development of the property or the minimum square footage required for the proposed duplexes. The site plans submitted with the building permit for this property still satisfy setbacks and lot coverage necessary for the R-60 zoning district.

- i. **Stormwater** – Storm drainage improvements have been constructed in the streets in this area. A statement shall be added to Section V of the SIA that “development of this property shall comply with all requirements set forth by the Billings Stormwater Management Manual,” as required by Condition #2.
- j. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- k. **Streets** – Access to the lots will be via the existing alley along the western border of the property from 10<sup>th</sup> Avenue North. The Engineering Division did express concerns regarding the condition of the existing sidewalk adjacent to the proposed subdivision. Therefore, Condition #1 requires section III.B of the SIA be revised

to state that “any deficient sidewalks or curb and gutter shall be replaced upon development of the lots. The subdivider shall install an ADA compliant ramp at the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North with the development of Lot A.”

- l. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 2305 8<sup>th</sup> Avenue North (Station #1). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- m. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend McKinley Elementary School, Riverside Middle School and Senior High School. Senior High School responded to the request for comments and did state that they are 250 students over their maximum occupancy. Riverside Middle School specified that they have space for 60 students and that the subdivision is located on a bus route.
- n. **Parks and Recreation** –A parkland dedication is not required for this subsequent minor subdivision.

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

A geotechnical report was submitted to the Building Department with the subdivision. The study is sufficient for the proposed subdivision.

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

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

There are no known endangered or threatened species on the property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3. Heritage Trail Plan**

The subdivision is within the jurisdictional area of the Heritage Trail Plan. However, no specific trails are identified in this area and none are proposed with this subdivision.

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

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

The subject property was recently rezoned from Residential 7000 to R-60. The subject property is located within the R-60 zoning district and shall comply with the standards set forth in Section 27-308, BMCC. The elimination of 1,000 square feet due to the dedication of the alley along the western border of the subject property will not affect this subdivision, as the submitted building plans meet lot coverages and setbacks and the minimum requirement for duplexes in the R-60 zoning district.

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

Utilities are already installed within the existing alley depicted as a 10-foot wide utility easement on the plat. The City Engineering Division is requiring that the 10-foot utility easement be dedicated as right-of-way with this subdivision to match the existing half right-of-way already existing.

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

Legal and physical access to the proposed subdivision will be provided from 10<sup>th</sup> Avenue North via the alley.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3<sup>rd</sup> 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 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, September 8, 2008

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Ron Tussing, Mayor

**ATTACHMENT C**  
Mayor's Approval Letter

September 8, 2008

Steve Kerns  
885 Bluegrass Drive East  
Billings, MT 59106

Dear Applicant:

On September 8, 2008, the Billings City Council conditionally approved the preliminary plat of an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3<sup>rd</sup> Filing, subject to the following conditions of approval:

1. To minimize impacts to local services, section III.B of the SIA shall be revised to state that *“any deficient sidewalks or curb and gutter shall be replaced upon development of the lots. The subdivider shall install an ADA compliant ramp at the intersection of North 22<sup>nd</sup> Street and 10<sup>th</sup> Avenue North with the development of Lot A.”* (Recommended by the Engineering Division)
2. To minimize impacts to local services, Section V of the SIA shall be revised to state that *“Development of this property shall meet all requirements set forth in the City of Billings Stormwater Management Manual.”* (Recommended by the Engineering Division)
3. To minimize impacts to local services, the 10-foot wide utility easement abutting the western border of the subject property shall be dedicated to the public. (Recommended by the Engineering Division)
4. To minimize impacts to local services, Section VI of the SIA shall be revised as follows (Recommended by the Public Utilities Department):
  - Remove the last sentence of Paragraph 1 regarding the water and wastewater construction fees.
  - Remove the second paragraph, which references water and wastewater construction fees.
  - Section VI.A shall be revised to state *“Lot B, when it is developed, will require a new service connection to the water main located in north 22<sup>nd</sup> Street.*
  - Section VI.B shall be revised to state *“Each lot, when they are developed, will require a new service connection to the sewer main, as approved by the City of Billings Public Works Department.”*

5. 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*)
6. 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.
7. 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

# O<sub>1</sub>

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, September 8, 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 \$730,180.69 have been audited and are presented for your approval for payment. A complete listing of the claims dated

August 11, 2008, are on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

# O<sub>2</sub>

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, September 8, 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 \$724,338.11 have been audited and are presented for your approval for payment. A complete listing of the claims dated

August 15, 2008, are on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008****TITLE:** Rehberg Ranch Wastewater Facilities Transfer**DEPARTMENT:** Public Works**PRESENTED BY:** David D. Mumford, Public Works Director

**PROBLEM/ISSUE STATEMENT:** As part of the development of the Rehberg Ranch Subdivision the developer constructed, in addition to the normal sanitary sewer collection system, a sewer lift station, force main, and effluent storage pond and dispersal system while the City contracted for construction of a wastewater lagoon treatment system. While the City previously accepted a portion of the sewer collection system, the lift station, force main, treatment lagoons and storage pond and dispersal system were not accepted due to outstanding issues needing to be addressed and resolved. Those issues have been satisfactorily addressed and the City Council is requested to accept and transfer these facilities to the City by approving the attached documents and authorize the Mayor to execute same.

**ALTERNATIVES ANALYZED:** The following alternatives are available for consideration:

- Do not approve transfer of the facilities.
- Approve transfer of the facilities under conditions outlined in attached documents.

**FINANCIAL IMPACT:** The following impacts are associated with the identified alternatives:

- Do not approve transfer – there would be no direct financial impact to the City under this scenario; however, the expectation of the developer and the understanding all along is that the City would accept the facilities once they met standards.
- Approve transfer and execute documents – there will be added cost to the City for operation and maintenance of these facilities. These costs have not been specifically identified but can be accommodated in the budget. These costs will be offset when the Briarwood wastewater treatment plant is eliminated next year. There is no cost associated with the land transfers.

**RECOMMENDATION**

Staff recommends that Council approve the transfer of the Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system and authorize the Mayor to execute the necessary documents.

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

**ATTACHMENTS**

A-Grant Deed of Estate on Special Limitation with Possibility of Reverter, Reservation of Easement and Covenants, Lot 5, Block 12, Rehberg Ranch Estates Subdivision, Second Filing

B-Grant Deed of Estate on Special Limitation with the Possibility of Reverter and Covenants, Tracts 4B and 4C, Certificate of Survey 3091

C-Sewage Effluent Storage and Dissemination License

D-Access, Construction and Maintenance Easement

## **INTRODUCTION**

The City Council is being asked to accept the remaining portions of the sanitary sewer collection and treatment system that serves the Rehberg Ranch Subdivision. These portions consist of a sewer lift station, force main, treatment lagoons, and storage pond and effluent dispersal system.

## **BACKGROUND**

As part of the development of the Rehberg Ranch Subdivision, the City constructed a wastewater lagoon treatment system while the developer constructed all other portions of the sanitary sewer system, which included the collection system, lift station, force main, and effluent storage pond and dispersal system. The understanding was that once the system was complete, the City would assume ownership of the system and responsibility for ongoing operation and maintenance. The City will operate the lagoon system as a satellite facility to the main wastewater treatment plant. Because of outstanding construction issues, only a portion of the sewer system was originally accepted by the City. Since that time the engineer and developer continued working to resolve the outstanding issues and have now finished that effort. As such, the remaining portions of the system are ready to be accepted by and transferred to the City through the following documents:

- Two Grant Deeds: These two documents convey to the City the property upon which is located the treatment lagoon system and the sewer lift station. These grants will remain in effect for as long as the City maintains the subject facilities in operation. If the facilities should no longer be needed, the City will be obligated to remove all facilities, perform an environmental assessment and convey the property back to the developer or successor.
- Sewage Effluent Storage and Dissemination License: This document grants a license to the City to operate an effluent storage and application operation on land owned by the developer. The City and developer will cooperate on a regular basis to determine the area to be irrigated.
- Access, Construction and Maintenance Easement: This document provides legal permission to enter upon land owned by the developer, construct and maintain a road to the sewage lagoons, lift station and effluent dissemination areas.

## **ALTERNATIVES ANALYSIS**

- Do not approve transfer of facilities - Not accepting these portions of the system will perpetuate a confusing situation regarding service responsibilities since the collection system portions are already being operated and maintained by the City. The City constructed the lagoon treatment system under separate contract with the understanding from the beginning that the entire system would eventually be operated by the City. Not accepting these remaining facilities would raise legal questions about responsibilities and create potential liability to the City should systems not be properly maintained and operated. Not accepting the facilities will

also cause a problem with the state Department of Environmental Quality as their expectation is that the City will be the party responsible for operation of this system in its entirety.

- Approve transfer and execute documents - Accepting these facilities will place the operation and maintenance in the hands of the City and place service to this subdivision on the same level as all other customers. This situation will be the same as when Briarwood was annexed and the City took over responsibility of operating the treatment plant at Briarwood.

### **RECOMMENDATION**

Staff recommends that Council approve the transfer of the Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system and authorize the Mayor to execute the necessary documents.

### **ATTACHMENTS**

A-Grant Deed of Estate on Special Limitation with Possibility of Reverter, Reservation of Easement and Covenants, Lot 5, Block 12, Rehberg Ranch Estates Subdivision, Second Filing

B-Grant Deed of Estate on Special Limitation with the Possibility of Reverter and Covenants, Tracts 4B and 4C, Certificate of Survey 3091

C-Sewage Effluent Storage and Dissemination License

D-Access, Construction and Maintenance Easement



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

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**TITLE:** Resolution Relating to Pooled Special Improvement District Bonds Series 2008A; Awarding the Sale and Prescribing Covenants

**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 SID Series 2008A. This resolution recommends award of the sale of bonds totaling \$1,075,000 for the financing of construction for following projects:

SID 1378-Clevenger Avenue

SID 1379-King Ave West 31<sup>st</sup> to Shiloh

SID 1380-Terra West Subdivision (Park strip along Monad)

SID 1383-Cherry Hills Road

The resolution also approves the form and detail of the bonds.

**BACKGROUND INFORMATION:** Bids on \$1,075,000 for bonds will be received September 8, 2008, and a report will be made at the Council meeting.

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**RECOMMENDATION**

Staff recommends that City Council approve the attached resolution.

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

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**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 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICT NOS. 1378, 1379, 1380 AND 1383), SERIES 2008A; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on September 8, 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 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 September, 2008.

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City Clerk

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

**RESOLUTION RELATING TO POOLED SPECIAL  
IMPROVEMENT DISTRICT BONDS (SPECIAL  
IMPROVEMENT DISTRICT NOS. 1378, 1379, 1380 AND 1383),  
SERIES 2008A; FIXING THE FORM AND DETAILS AND  
PROVIDING FOR THE EXECUTION AND DELIVERY  
THEREOF AND SECURITY THEREFOR**

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

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Establishment of Special Improvement District Nos. 1378, 1379, 1380 and 1383.

(a) Intent Resolutions. This Council has duly and validly created and established in the City various special improvement districts (individually a “District” and, collectively, the “Districts”), designated as the following: (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”). The City expressed its intention to create each District pursuant to the following resolutions of this City Council: (i) pursuant to Resolution No. 07-18555, adopted on May 19, 2007, with respect to District No. 1379; (ii) pursuant to Resolution No. 07-18579, adopted on July 23, 2007, with respect to District No. 1380; (iii) pursuant to Resolution No. 07-18629, adopted on December 10, 2007, with respect to District No. 1380; and (iv) pursuant to Resolution No. 08-18669, adopted on January 28, 2008, with respect to District No. 1383. Resolution No. 07-18555, Resolution No. 07-18579, Resolution No. 07-18629 and Resolution No. 08-18669 are each referred to herein as an Intent Resolution and collectively as the “Intent Resolutions”.

The Districts were formed for the purpose of financing certain public improvements, and incidental costs thereto, for the special benefit of the properties located in the Districts. Each Intent Resolution designated the number of each District, described the boundaries thereof, stated the general character of the public improvements (the “Improvements”) to be made in each District and specially benefiting property located therein, and an estimate of the costs thereof, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”). Pursuant to each Intent Resolution, this City Council also declared its intention to cause the cost and expense of making the Improvements to be assessed against the owners of the properties (the “Property Owners”) included within the boundaries of each District in accordance with one or more methods of assessment authorized in Sections 7-12-4161 to 7-12-4165 of the Act. Capitalized terms used in this resolution and not defined herein shall have the meanings given them in each Intent Resolution.

In the Intent Resolutions (except with respect to District No. 1380 which is described below), this City Council further found that it is in the public interest, and in the best interest of the City and the Districts, to secure payment of principal of and interest on the Bonds by the Revolving Fund of the City (the “Revolving Fund”), on the basis of the factors required to be considered under Section 7-12-4225 of the Act. Those prior findings are hereby ratified and confirmed. This City Council, in each Intent Resolution, also declared its intention to reimburse the City for costs paid before issuance of the Bonds, as required by Section 1.150-2 of the Income

Tax Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code").

(b) Notices. Notices of the passage of each of the Intent Resolutions were given by two publications in *The Billings Times*, the official newspaper of the City and a qualified newspaper of general circulation in the City, as required by the Act. Notice of the passage of each Intent Resolution was also mailed to all persons, firms or corporations or the agents thereof owning real property within the Districts listed in their names upon the last completed assessment roll for State of Montana (the "State"), Yellowstone County (the "County"), and school district taxes, at their last known addresses. The notice of passage of each Intent Resolution (except with respect to District No. 1380 which is described below), in accordance with the provisions thereof, stated the following: (i) the general character of the Improvements; (ii) the estimated cost of the Improvements; (iii) the method or methods of assessment of such costs against properties in the Districts; (iv) the time when and the place where the City Council would hear and pass upon all protests made against the making of the Improvements or the creation of the Districts; (v) referred to the Intent Resolutions as being on file in the office of the City Clerk for a description of the boundaries of the Districts; and (vi) included a statement that, subject to the limitations of Section 7-12-4222 of the Act, 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. The notice of passage of the Intent Resolution with respect to District No. 1380 stated the items set forth in (i)-(v) of this section. The notice of public hearing with respect to the pledge of the Revolving Fund published by the City in *The Billings Times* and Resolution No. 08-18747, adopted on August 25, 2008, included the items set forth in (vi) above in this section.

(c) Formation of the Districts. At regularly scheduled meetings, this City Council met to hear, consider and pass upon all protests made against the making of the Improvements and the creation of each of the Districts. After the public hearings and deliberations with respect to the formation of each District, this City Council, pursuant a resolution duly adopted of this City Council with respect to each District determined and declared that insufficient protests against the creation of each of the Districts or the proposed work had been filed in the time and manner provided by law by the owners of the property to be assessed for the Improvements in the Districts. This City Council, in the resolutions with respect to the formation of District No. 1378, District No. 1379, and District No. 1383, also confirmed the findings it previously made in the Intent Resolutions with respect to the pledge of the Revolving Fund to the portion of the Bonds allocable to each District. Pursuant to Resolution No. 08-18747 of the City Council adopted on August 25, 2008, after a properly noticed public hearing, this City Council made findings with respect to the pledge of the Revolving Fund to the Bonds allocable to District No. 1380. The boundaries of the Districts have not been amended or altered since the passage of the resolutions authorizing their formation.

1.02. Construction Contracts and Related Costs. Plans, specifications, maps, profiles and surveys for construction of the Improvements in each District were prepared by the engineers acting for the City with respect to the Improvements in each District, and were thereupon examined and approved by this City Council. An advertisement for bids for construction of the Improvements in each District was published in *The Billings Times*, the official newspaper of the City, in accordance with the provisions of Section 7-12-4141 of the Act, after which the bids theretofore received were opened and examined. The City subsequently reviewed the bids with engineer selected by the City for the Improvements to each District and the City subsequently award the contract for construction of the Improvements in each District to the contractor that was determined to be the lowest bidder for the furnishing of all work and material required for constructing the improvements in each District.

Contracts for the construction of the Improvements were therefore awarded to said bidders, subject to the right of owners of property liable to be assessed for the costs thereof to elect to take the work and enter into written contracts therefor in the manner provided by Section 7-12-4147 of the Act, which election the property owners failed to make. Thereafter, the City and the successful bidders for the construction contracts related to the Improvements entered into written contracts for construction of the Improvements upon the bidders having executed and filed bonds satisfactory to this City Council and in the form and manner provided by Montana Code Annotated, Title 18, Chapter 2, Part 2, as amended.

1.03. Costs. It is currently estimated that the total costs and expenses of the Improvements, including the incidental costs, are as set forth in Resolution No. 08-1874, adopted on August 11, 2008. The City currently estimates that the costs and expenses to be assessed against properties benefited by the Improvements in each District for which the City has not already received payment, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the special assessments, the cost of work and materials under the construction contract and all other costs and expenses, including the deposits of Bond proceeds to the Revolving Fund, are not less than \$1,075,000. Such amount will be levied and assessed upon the assessable real property within the Districts on the basis described in each Intent Resolutions, and the City will not contribute funds to the construction of the Improvements, other than from proceeds of the Bonds.

This City Council has jurisdiction and is required by law to levy and assess \$1,075,000, together with interest thereon, to collect such special assessments and credit the same to the special improvement District Account (as defined herein) created for each of the Districts, which District Accounts are to be maintained on the official books and records of the City separate from all other City funds, for the payment of principal of and interest due on the Bonds.

1.04. Sale and Issuance of Bonds. For the purpose of financing a portion of the costs and expenses of making the Improvements, which are to be assessed against the Property Owners, this City Council determined that the issuance and sale of the Bonds in a pooled single offering was in the best interests of the City and the Property Owners and would facilitate the sale of the Bonds at lower interest rates. Pursuant to the Authorizing Resolution, this City Council called for the public sale of Bonds in the total aggregate amount not to exceed \$1,075,000, which amount represents Bonds allocable for each District as follows:

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

Advertisements for bids for the purchase of the Bonds were published in accordance with the provisions of Sections 7-12-4204, 7-7-4252 of the Act and Montana Code Annotated, Section 17-5-106, as amended. After a public sale conducted in accordance with applicable statutory provisions and pursuant to Resolution No. 08-18740, adopted by this City Council on August 11, 2008. The bid of \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the "Purchaser") is hereby accepted by the City Council and the sale of the Bonds is hereby awarded to the Purchaser. The bids of the Purchaser and the other bidders that submitted bids with respect to the Bonds are listed in Exhibit B attached to this resolution and made a part hereof. The City is authorized to enter into a purchase contract with the Purchaser, as the lowest responsible bidder (representing the lowest true interest cost (TIC)) pursuant to which the Purchaser agreed to purchase the Bonds from the City at a purchase price of \$\_\_\_\_\_, without accrued interest, at the rates of interest and prices set forth in Section 2.01 hereof and contained on the bid of the

Purchaser. The bid of the Purchaser represents a true interest cost (TIC) of \_\_\_\_\_% and a total net dollar interest cost of \$\_\_\_\_\_. The Purchaser has represented to the City that the Purchaser will resell the Bonds to the public at a price of one hundred percent (100%) of the principal amount thereof.

1.05. Recitals. All acts, conditions and things required by the Constitution and laws of the State, including the Act, as amended, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

## Section 2. Description of the Bonds.

2.01. Principal Amount, Maturities, Denominations, Date, Interest Rates. For the purpose of paying the costs and expenses incurred in construction of the Improvements, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the proposal described in Section 1.05, the City shall forthwith issue and sell the Bonds to the Purchaser. The Bonds are payable solely from amounts deposited in the Special Improvement District Nos. 1378, 1379, 1380 and 1383 Debt Service Fund (the “Debt Service Fund”) and the District Accounts and subaccounts established therein. The Bonds shall be denominated “Pooled Special Improvement District Bonds (Special Improvement District Nos. 1378, 1379, 1380 and 1383) Series 2008”. The Bonds shall be dated, as originally issued, and be registered as of September 29, 2008, shall each be in minimum denominations of \$5,000 or any integral multiple thereof of single maturities, shall mature on July 1 in the years and principal amounts set forth below. The Bonds maturing in such years and principal amounts shall bear interest from the date of original registration until paid or duly called for redemption at the rates per annum set forth opposite such years and amounts, respectively:

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

2.02. Interest Payment Dates. Interest on the Bonds shall be payable on each January 1 and July 1, commencing January 1, 2009 (each a “Payment Date”), to the owners of record thereof as such appear on the bond registrar at the close of business on the fifteenth (15<sup>TH</sup>) day of the immediately preceding month, whether or not such day is a business day. Upon the original delivery of the Bonds to the Purchaser and upon each subsequent transfer or exchange of a Bond pursuant to Section 2.04, the Registrar shall date each Bond as of the date of its authentication.

2.03. Method of Payment. The Bonds shall be issued only in fully registered form. The interest on and, upon surrender thereof at the operations center of the Registrar (as hereinafter defined), the principal of each Bond, shall be payable by check or draft drawn on the Registrar.

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

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

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

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

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

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

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

(g) Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except for an exchange upon the partial redemption of any Bond pursuant to Section 2.05 hereof), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the

Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

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

## 2.05. Redemption of the Bonds.

(a) Mandatory Redemption. If on any Payment Date there will be a balance in the Debt Service Fund after payment of the principal and interest due on all Bonds drawn against it, either from (i) the prepayment of special assessments levied in the Districts or (ii) the transfer of surplus money from a Construction Subaccount to a District Account and, subsequently, to the Debt Service Fund, as provided in Section 3.02, then the Director of Administrative Services shall call for redemption on the Payment Date outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the Payment Date, will equal the amount of such funds on deposit in the Debt Service Fund on that date are subject to mandatory redemption on that Payment Date. The redemption price of the Bonds on such Payment Date shall equal the amount of the principal amount of the Bonds to be redeemed, plus interest accrued to the date of redemption on the applicable Payment Date.

(b) Optional Redemption. The Bonds with stated maturities on or after July 1, 2019 are subject to redemption, in whole or in part, on July 1, 2018, and any date thereafter, at the option of the City, in whole or in part, from sources of funds available therefor other than those described in Subsection (a) of this Section 2.05, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

(c) Selection of Bonds for Redemption; Partial Redemption. If less than all of the Bonds are to be redeemed, Bonds shall be redeemed in order of the stated maturities thereof. If less than all Bonds of a stated maturity are to be redeemed, the Bonds of such maturity shall be selected for redemption in \$5,000 principal amounts selected by the Registrar by lot or other manner it deems fair. Upon partial redemption of a Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount thereof outstanding.

(d) Notice and Effect of Redemption. The date of redemption and the principal amount of the Bonds shall be fixed by the Director of Administrative Services, who shall give notice thereof to the Registrar in sufficient time for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bonds at their addresses appearing in the bond register, of the numbers of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which

date shall be not less than thirty (30) days after the date of mailing notice. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease.

2.06. Form. The Bonds shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

2.07. Execution, Registration and Delivery. The Bonds shall be prepared under the direction of the Director of Administrative Services and shall be executed on behalf of the City by the signatures of the Mayor, Director of Administrative Services, and the City Clerk, provided that the signatures and the corporate seal may be printed, engraved or lithographed facsimiles of the originals. The seal of the City need not be impressed or imprinted on any Bond. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless a certificate of authentication and registration on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication and registration on different Bonds need not be signed by the same representative. The executed certificate of authentication and registration on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution. The Bonds shall be registered in order of their serial numbers by the Registrar, as attested by the Certificate of Authentication, as of September 29, 2008. When the Bonds have been so executed, authenticated and registered, they shall be delivered by the Registrar to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed.

2.08. Application of Bond Proceeds. The Purchaser shall not be obligated to see to the application of the purchase price of the Bonds. The City's Director of Administrative Services (or his/her designee) shall credit the proceeds of the Bonds (taking into account the Purchaser's discount of \$\_\_\_\_\_) as follows:

(a) \$\_\_\_\_\_ to the Revolving Fund, as required by Section 7-12-4169(2) of the Act;

(b) \$\_\_\_\_\_ the General Fund of the City for the City's administration fee with respect to the Districts; and

(c) \$\_\_\_\_\_ to the Construction Subaccounts in each District Account (on a pro-rata basis in accordance with the allocation set forth in Section 1.04 of this resolution) of the Debt Service Fund for the cost of the Improvements and the payment of costs of issuance for the Bonds.

2.09. Securities Depository for the Bonds.

(a) Definitions. For purposes of this Section 2.08, the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person's subrogee.

“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer; bank or other financial institution for which DTC holds the Bonds as securities depository.

“Representation Letter” shall mean the Blanket Issuer Letter of Representations from the City to DTC, which is hereby incorporated by reference and made a part hereof.

(b) Book-Entry Only System. The Bonds shall be initially issued as separately authenticated fully registered Bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the Bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this Resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any Person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other Person which is not shown on the Bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this Resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No Person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (e) hereof.

(c) Discontinuing Book-Entry System. In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of Bond certificates, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (e) hereof.

(d) Blanket Letter of Representations. The Representation Letter sets forth certain matters with respect to, among other things, notices, consents and approvals by registered owners of the Bonds and Beneficial Owners and payments on the Bonds. The Registrar shall have the

same rights with respect to its actions thereunder as it has with respect to its actions under this resolution.

(e) Transfer of Bonds. In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this Resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of Bond certificates and the method of payment of principal of and interest on such Bonds in the form of Bond certificates.

Section 3. Debt Service Fund; Accounts Created Therein; and Special Assessments.

3.01. Debt Service Fund. There is hereby created and established a fund designated as the "Special Improvement District Nos. 1378, 1379, 1380 and 1383 Fund" (the "Debt Service Fund"), which shall be maintained by the Director of Administrative Services on the books and records of the City separate and apart from all other funds of the City. Within the Debt Service Fund there shall be created and maintained separate accounts for each of the Districts and designated as the District No. [13\_] Account (each a "District Account" and collectively, the "District Accounts"). Within each District Account there shall be maintained two separate subaccounts, designated as the "Construction Subaccount" and the "Debt Service Subaccount," respectively.

3.02. Construction Subaccounts. There shall be credited to the Construction Subaccount in each of the District Accounts the pro-rata portion of the proceeds of the sale of the Bonds as provided in Section 2.08. Any earnings on investment of money in the Construction Subaccount shall be retained therein. All costs and expenses of constructing the Improvements to be paid from proceeds of the Bonds shall be paid from time to time as incurred and allowed from the Construction Subaccount in accordance with the provisions of applicable law, and money in the Construction Subaccount shall be used for no other purpose; provided that upon completion of the Improvements and after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any amount of money remaining in the Construction Subaccount shall be transferred to the applicable Debt Service Subaccount and then to the Debt Service Fund and used to redeem Bonds as provided in Sections 2.05 and 3.03(b).

3.03. Debt Service Subaccounts. (a) Debt Service Subaccounts Generally. Money in the Debt Service Subaccounts shall be used only for (i) payment of the principal of and interest on the Bonds as such payments become due or (ii) to redeem Bonds.

(b) Deposits to Debt Service Subaccounts. The Director of Administrative Services shall credit to the applicable Debt Service Subaccount so much of a special assessment as is collected with respect to the installment of principal of and interest due on November 30 and May 31 of each year on the special assessments to be levied by the City with respect to the Improvements in each of the Districts. Interest income on money in the Debt Service Subaccounts shall be retained therein and used as any other funds therein. Any installment of a special assessment paid prior to its due date with interest accrued thereon to the next succeeding Payment Date shall be credited with respect to principal and interest payments in the same manner as other special assessments are credited to Debt Service Subaccounts. All money in the Debt Service Subaccounts shall be used first to pay interest due, and any remaining money shall be used to pay Bonds then due and, if money is available, to redeem Bonds in accordance with Section 2.05(a); provided that any money transferred to the Debt Service Subaccounts from the

Construction Subaccount pursuant to Section 3.02 shall be transferred to the Debt Service Fund and applied to redeem Bonds to the extent possible on the next Payment Date for which notice of redemption may properly be given pursuant to Section 2.05(a). Prior to the applicable Payment Date, the Director of Administrative Services shall transfer the applicable amount from each Debt Service Subaccount to the Debt Service Fund to make the payment due on the Bonds on such Payment Date. Redemption of Bonds shall be as provided in Section 2.05, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Section 7-12-4206 of the Act.

3.04. Loans from Revolving Fund. The City Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to the Debt Service Fund in an amount sufficient to replenish any deficiency then existing in the Debt Service Fund and shall issue an order authorizing a loan or advance from the Revolving Fund to the Debt Service Fund in an amount sufficient to make good any deficiency then existing in the Debt Service Fund in such order to the extent that money is available in the Revolving Fund. Provided, however, that at the time any such loan or advance is to be made, Reserve Account shall have been or shall remain depleted on the next Payment Date. A deficiency shall be deemed to exist in the Debt Service Fund if the money on deposit therein, on any June 15 or December 15 (excluding amounts in the Debt Service Fund representing prepaid special assessments) is less than the amount necessary to pay Bonds due (other than upon redemption), and interest on all Bonds payable, on the next succeeding Payment Date.

Pursuant to Ordinance No. 1096, as amended, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Section 7-12-4222 of the Act. In the event that the balance on hand in the Revolving Fund fifteen (15) days prior to any date when interest is due on special improvement district bonds or warrants of the City is not sufficient to make good all deficiencies then existing in the special improvement Debt Service Funds for which the City has covenanted to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds of the special improvement districts in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds or warrants of the City has been paid. On any date when all accrued interest on special improvement district bonds and warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be lent or advanced to the special improvement Debt Service Funds for payment and redemption of bonds to the extent the special improvement Debt Service Funds are deficient for such purpose, and, if money in the Revolving Fund is insufficient therefor, pro rata, in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law (including SB 184, adopted by the Montana Legislature in 1999) or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly. In addition, the City hereby covenants to comply with the requirements of the Code and the Regulations in order that the Revolving Fund comply and continue to qualify as "reasonably required" debt service reserve fund for the Bonds.

Section 4. Covenants. The City covenants and agrees with the owners from time to time of each of the Bonds that until all the Bonds and interest thereon are fully paid.

4.01. Compliance with Resolution. The City will hold the Debt Service Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers-and agents, will comply with all covenants and agreements contained in this resolution. The provisions

hereinabove made with respect to the Debt Service Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering of the Bonds and the sale of the Bonds as set forth in Section 1.04.

4.02. Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts and bonds referred to in Section 1.03 and to ensure the completion of the Improvements for the benefit of the Districts in accordance with the plans and specifications and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Debt Service Fund and within the amount of the proceeds of the Bonds appropriated thereto.

4.03. Levy of Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property within the boundaries of the Districts in accordance with the Constitution and laws of the State and the Constitution of the United States, in an aggregate principal amount not less than \$1,075,000. In addition the levy of special assessments with respect to each of the Districts shall not be less than the amounts set forth in the following table:

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

The special assessments shall be levied on the basis set forth in each Intent Resolutions; and shall be payable in equal, semiannual installments over a period of fifteen (15) years, with interest on the whole amount remaining unpaid at an annual rate equal to the sum of: (i) the average annual interest rate borne by the Bonds, plus (ii) one-half of one percent (0.50%) per annum, interest being payable with principal installments. The special assessments to be levied will be payable on the 30th day of November in each of the years 2008 through 2022, and on the 31st day of May in the years 2009 through 2023, inclusive, if not theretofore paid, and shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Bonds to January 1, 2009 and each subsequent partial payment shall include interest for six (6) months on that payment and the then remaining balance of the special assessment. The special assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Section 7-12-4191 of the Act. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

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

If proceeds of the Bonds, including investment income thereon, are applied to the redemption of such Bonds, as provided in Sections 7-12-4205 and 7-12-4206 of the Act, or if refunding bonds are issued

and the principal amount of the outstanding Bonds of the Districts is decreased or increased, the City will reduce or increase, respectively, the special assessments levied in the Districts and then outstanding pro rata by the principal amount of such prepayment or the amount above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this City Council, its officers and employees will reassess and re-levy such special assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Sections 7-12-4176 through 7-12-4178 of the Act.

4.06. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatening or questioning: the validity or regularity of the creation of the Districts, the contracts for construction of the Improvements or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund as security for the Bonds; the right and power of the City to issue the Bonds; or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser, and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

4.07. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent special assessments levied on property in the Districts for costs of the Improvements, unless the City determines, by resolution of the City Council, that such waiver is in the best interest of the owners of the outstanding Bonds.

#### Section 5. Tax Matters.

5.01. Use of Improvements. The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Code and the applicable Regulations.

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

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

Section 6. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to bond counsel certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as maybe required to show the right,

power and authority of the City to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

**Section 7. Discharge.**

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

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

7.03. Prepayment. The City may discharge its liability with respect to any Bond, or installment of interest thereon which is due on any date, by depositing with the Registrar on or before that date a sum sufficient and providing proceeds available for the payment thereof in full; or if any Bond or installment of interest thereon shall not be paid when due, the City may, or, if a City officer is the Registrar, mailing to the registered owner of such Bond a check or a draft in a sum sufficient and providing proceeds available, for the payment of the principal, interest and redemption premium, if any, which are then due; provided that a proper notice of such redemption has been duly given as provided herein or irrevocably provided for.

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

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

**Section 8. Continuing Disclosure.**

8.01. City Compliance with Provisions of Continuing Disclosure Undertaking. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking, dated as of September 29, 2008 (the "Continuing Disclosure Undertaking"), with respect to the Bonds. Notwithstanding any other provision of this resolution, failure of the City to comply with the Continuing Disclosure Undertaking is not to be considered an event of default with respect to the Bonds; however, any Bondholder may take such actions as may be necessary and appropriate, including

seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this section.

8.02. Execution of Continuing Disclosure Undertaking. “Continuing Disclosure Undertaking” means that certain Continuing Disclosure Undertaking executed by the Mayor, Director of Administrative Services and City Clerk and dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

Section 9. Repeals and Effective Date.

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

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

PASSED by the City Council of the City of Billings, Montana, this 8th day of September, 2008.

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Mayor

Attest:

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City Clerk

**EXHIBIT A**

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

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

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

<u>Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
____ %	July 1, 20____	September 29, 2008	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana (the "City"), will pay to the registered owner identified above, or registered assigns, on the maturity date specified above the principal amount specified above, solely from the revenues hereinafter specified, as authorized by Resolution No. 08-18740, adopted on August 11, 2008 (the "Authorizing Resolution"), and Resolution No. 08-\_\_\_\_\_, adopted on September \_\_, 2008 (the "Bond Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of registration of this Bond, as expressed herein, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Director of Administrative Services. Interest on this Bond is payable semiannually, commencing January 1, 2009, on the first day of January and the first day of July in each year, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the 15th day (whether or not such is a business day) of the immediately preceding month. Interest on and, upon presentation and surrender hereof at the operations center of U.S. Bank National Association in Seattle, Washington, as bond registrar and paying agent (the "Registrar"), the principal of this Bond are payable by check or draft of the Registrar, or its successor. The principal of and interest on this Bond are payable in lawful money of the United States of America.

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

This Bond is one of an issue in the aggregate principal amount of \$1,075,000 (the "Bonds"), all of like date of original issue and tenor, except as to serial number, denomination, date, interest rate and maturity date. The Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), to finance the costs of certain local public improvements (collectively, the "Improvements") for the special benefit of property located in Special Improvement District No. 1378, 1379, 1380 and 1383 of the City (collectively, the "Districts"). The Bonds are issuable only as fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

This Bond is payable from the collection of a special tax or special assessments levied upon all assessable real property within the boundaries of each District, in an aggregate principal amount of not less than \$1,075,000, except as such amount may be reduced or increased in accordance with provisions of Montana law. Such special assessments constitute a lien against the assessable real estate within the Districts and are to be deposited into the Special Improvement District Nos. 1378, 1379, 1380 and 1383 Fund of the City (the "Debt Service Fund") and the Debt Service Subaccount of the District Accounts established therein.

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

The Bonds are subject to mandatory redemption in order of stated maturities and within a stated maturity in \$5,000 principal amounts selected by lot or other manner deemed fair by the Registrar on any Payment Date if, after paying all principal and interest then due on the Bonds, there are funds to the credit of the Debt Service Fund, from the prepayment of special assessments levied in the Districts or from surplus proceeds of the Bonds not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The Bonds maturing on or after July 1, 2019 are subject to redemption, at the option of the City, from other sources of funds available therefor on July 1, 2018 or any date thereafter. The redemption price is equal to the principal amount of the Bonds or portions thereof to be redeemed plus interest accrued thereon to the date of redemption. The date of redemption of Bonds and principal amount of Bonds to be redeemed shall be fixed by the Director of Administrative Services, who shall give notice thereof to the Registrar in sufficient time for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bonds at their addresses shown on the Bond register, of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall not be less than thirty (30) days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease to accrue.

Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

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

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

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

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

(The remainder of this page is intentionally left blank.)

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

**CITY OF BILLINGS, MONTANA**

Dated, September 29, 2008

(SEAL)

By \_\_\_\_\_ (facsimile signature)  
Mayor

By \_\_\_\_\_ (facsimile signature)  
Director of Administrative Services

By \_\_\_\_\_ (facsimile signature)  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds delivered pursuant to the Bond Resolution mentioned within.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Bond Registrar, Transfer Agent, and Paying Agent

By: \_\_\_\_\_  
Authorized Signer

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

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

Additional abbreviations may also be used.

## ASSIGNMENT

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

Dated: \_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE  
\_\_\_\_\_  
\_\_\_\_\_

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

## SIGNATURE GUARANTEED

Signature(s) must be guaranteed by an "eligible guarantor institution meeting the requirements of the Bond Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Bond Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**EXHIBIT B**  
Bids for the Bonds

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

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**TITLE:** Public Hearing for Special Review #862 – 1911 King Avenue West

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a special review request to remove a condition of approval from Special Review (SR) #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone, on Lot 11A-1, CBH Industrial Park Subdivision. The property is addressed as 1911 King Avenue West and is currently a developed commercial property. The property is located on the northwest corner of the intersection of King Avenue West and Carbon Street. KRP, LLC, is the owner, and Blueline Engineering, is the agent. The Zoning Commission held a public hearing on this request on June 3, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

The City Council was scheduled to conduct a public hearing and take action on this application at its meeting on June 23. The applicant requested the Council delay action until its meeting on July 14. The Council approved this delay request. On July 14 staff received a letter from the applicant requesting the public hearing be delayed until September 8 for the applicant and a neighboring property owner to work out a solution that is acceptable to both parties, see Attachment F. At its July 14 meeting, the Council approved the applicant's request to delay action on this item until its meeting on September 8.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;

- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should have no effect on the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #862 on a 4-0 vote.

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

**ATTACHMENTS**

- A: Zoning/Location Map.
- B: Original Site Plan
- C: Letter of support
- D: Letter of opposition
- E: Request for delay
- F: Request for additional delay
- G: New site layout

## **INTRODUCTION**

This is a request to remove a condition of approval from SR #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a CI zone, on Lot 11A-1, CBH Industrial Park Subdivision. The property is addressed as 1911 King Avenue West.

## **PROCEDURAL HISTORY**

- A special review application to modify the condition of approval for SR #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a Controlled Industrial (CI) zone was submitted on May 1, 2008.
- The City Zoning Commission held a public hearing on June 3, 2008, and is forwarding a recommendation of conditional approval.
- The City Council at its meeting on June 23 approved a request by the applicant to delay action on this application until July 14, 2008.
- The City Council was scheduled to conduct a public hearing and consider this application on July 14, 2008. At the July 14 City Council meeting the applicant requested an additional delay until September 8. The Council approved the delay until September 8.
- The City Council will conduct a public hearing and consider this application on September 8, 2008.

## **BACKGROUND**

This is a special review request to remove a condition of approval from SR #836 and SR #841 restricting vehicle access across the west property line to adjacent property on a 2.303 acre parcel of land in a CI zone, on Lot 11A-1, CBH Industrial Park Subdivision. The property is addressed as 1911 King Avenue West and is currently a developed commercial property. The property is located on the northwest corner of the intersection of King Avenue West and Carbon Street.

SR #836 and SR #841 required the applicant to close the north parking lot, on the west end, to prevent traffic from cutting through to South 20<sup>th</sup> Street West from Carbon Street.

The applicants have stated in a letter that they have signed a reciprocal parking and access agreement with the owner of the adjacent property northwest of their property with the intention of improving the lot south of Perkins Restaurant. The proposed layout of the parking will allow access to South 20<sup>th</sup> Street West but will not be a “straight shot” that causes traffic conflicts. The proposed parking lot addition prevents access to the Holiday Station parking, and the access that currently exist at the Holiday Station on the north west corner of the lot and accesses South 20<sup>th</sup> Street West will be narrowed to approximately 24 feet wide.

On June 23, 2008 the applicant sent a letter to the Planning Division (See Attachment E) requesting that the City Council delay action on this application until they are able to discuss their proposal with a neighboring property owner (See Attachment D). At the City Council meeting on June 23, 2008 the council voted to delay action on this special

review as requested by the applicant until July 14. On July 14 staff received a letter from the applicant requesting the public hearing be delayed until September 8 for the applicant and a neighboring property owner to work out a solution that is acceptable to both parties, see Attachment F. The City Council at its meeting on July 14 voted to delay action on the application until its meeting on September 8.

On August 15<sup>th</sup>, the applicant submitted a drawing to planning staff showing a new layout of the site that will still allow access to the west into the Perkins parking lot but does not increase the size of the parking lot. They propose to relocate the existing dumpster and install a wall from the north west corner of the building going west then north around the relocated dumpster and ending at the existing curb of the Perkins parking lot (See Attachment G). The area that they had formerly shown as additional parking lot will be sold to the property owner to the west of 1911 King Avenue West.

With the newly submitted site plan, the conditions of approval need some modification. Recommended changes have been made to the conditions in this report and are described as follows:

- Condition number 1 where it says “May 1, 2008” needs to be modified to say “August 15, 2008.”
- Condition number 2 where it says “May 1, 2008” needs to be modified to say “August 15, 2008.”
- In Condition number 3, the beginning of the condition needs to be modified to state “A directional sign shall be installed on the gates of the dumpster enclosure to direct traffic” in place of “Directional signs shall be installed in the proposed parking lot south of Perkins Restaurant to direct traffic”.
- Condition number 5 needs to be changed to state “The applicant shall meet all requirements of Section 27-1107 Solid Waste Storage Facilities” instead of “Landscaping shall be provided in the new parking lot area as required by Section 27-1101 (Landscaping) of the Unified Zoning Regulations”.
- Condition number 6 needs to be removed as the applicant, with the submitted drawing from August 15, 2008, is showing a solid wall barrier along the property line between the subject property and the property owner to the west. Condition 6 required a fence or bollards between the subject property and the property to the west. Conditions 7 and 8 are standard conditions for Special Reviews and do not require modification although they are now number 6 and 7 respectively with the removal of original condition 6.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations.*
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

*This application is consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage land uses that are sensitive to and compatible with the character of the surrounding uses.*

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The zoning regulations adopted by the City Council require separations and landscaping to reduce negative impacts on surrounding properties. Since this is an addition to a parking lot surrounded by businesses the impact to the neighborhood will be minimal. There are no existing residential developments immediately adjacent to this property.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #862 on a 4-0 vote.

### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lots 11A and 12A, of Block 1, of CBH Industrial Park Subdivision for a parking lot addition on Lot 11A-2, Block 1, CBH Industrial Park Subdivision as shown on the site plan submitted with this application on August 15, 2008.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application on August 15, 2008. Deviations from the approved site plan that change the location of the proposed parking lot, the parking lot circulation, layout and access will require additional special review approval.
3. A directional sign shall be installed on the gates of the dumpster enclosure to direct traffic from the parking lot behind the building on the subject property, Lots 11A and 12A of Block 1 of CBH Industrial Park Subdivision that they must turn right to exit to South 20<sup>th</sup> Street West.
4. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
5. The applicant shall meet all requirements of Section 27-1107 Solid Waste Storage Facilities.

6. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

The Zoning Commission conducted a public hearing on June 3, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote.

The applicants' agent, Marshall Phil from Blueline Engineering, was present at the Zoning Commission meeting and spoke in favor of the special review. Mr. Phil stated that he had a copy of an email from a surrounding property owner in support of this special review report. He provided copies of the email to all commission members. (See Attachment C) He stated that the previous special reviews had conditions placed on them in response to concerns the Police Department had about cut through drivers and the unsafe situation this created. Mr. Phil stated that the owners developed this new plan and discussed it with the police. He stated that the police felt this was a workable solution to the traffic concerns they originally had about cut through traffic.

Mr. Phil asked that condition number 6 be modified to allow a fence instead of bollards along a portion of the south edge of the new parking area. He stated that the bollards would take up too much space to install and that it may make it so they were not able to get the clearances they needed for the drive isle along the angled parking stalls. He stated that the owners also felt the fence would look better than the bollards.

There was no other public comment at the meeting.

A motion was made to approve the special review with a modification to condition number 6 to allow either bollards or a fence along a portion of the south side of the new parking lot. The Zoning Commission voted 4-0 to forward a recommendation of conditional approval with one modification to condition 6 to the city council.

The Planning Division received a letter of support from the Conlin Furniture property owner stating that they were very supportive of the proposed parking lot addition, see Attachment C.

The Planning Division also received a letter of opposition from a property owner to the west of the subject property, the Holiday Service Station. The applicant asked for delays two different times to work out the concerns that the property owner had with the proposed new parking area. The applicant and the property owner to the west have reached a solution to these issues with the revised site plan, see Attachment G.

#### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

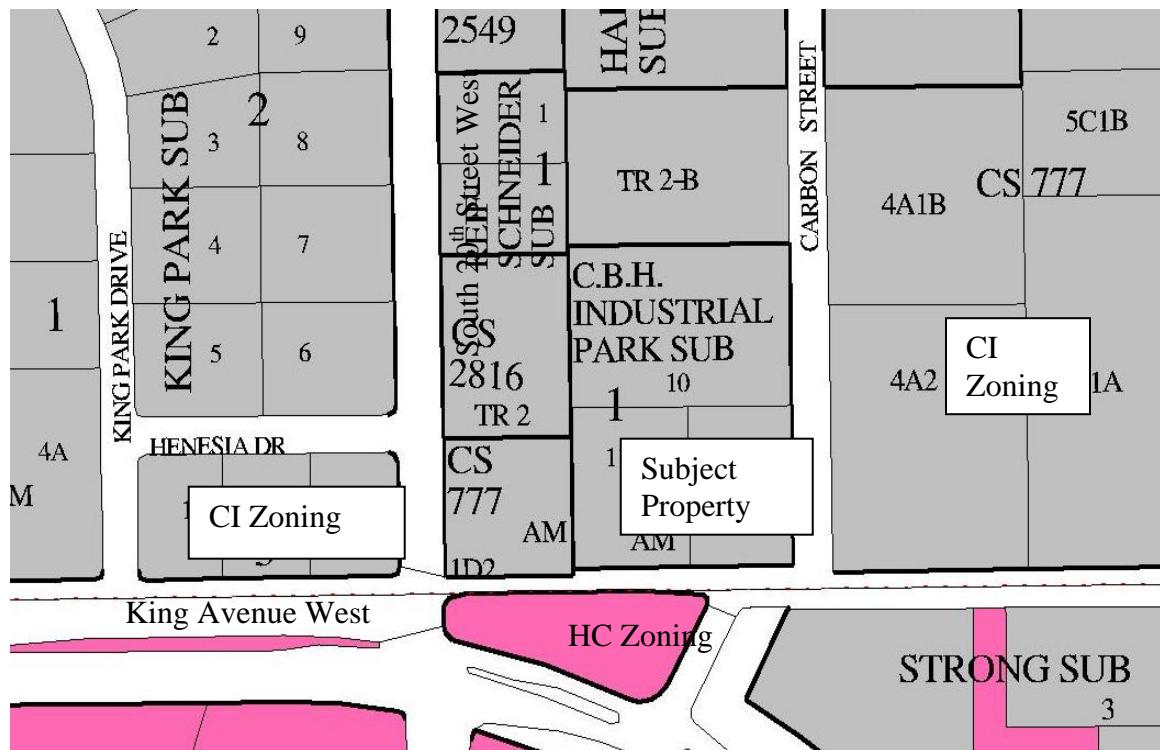
#### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #862 on a 4-0 vote.

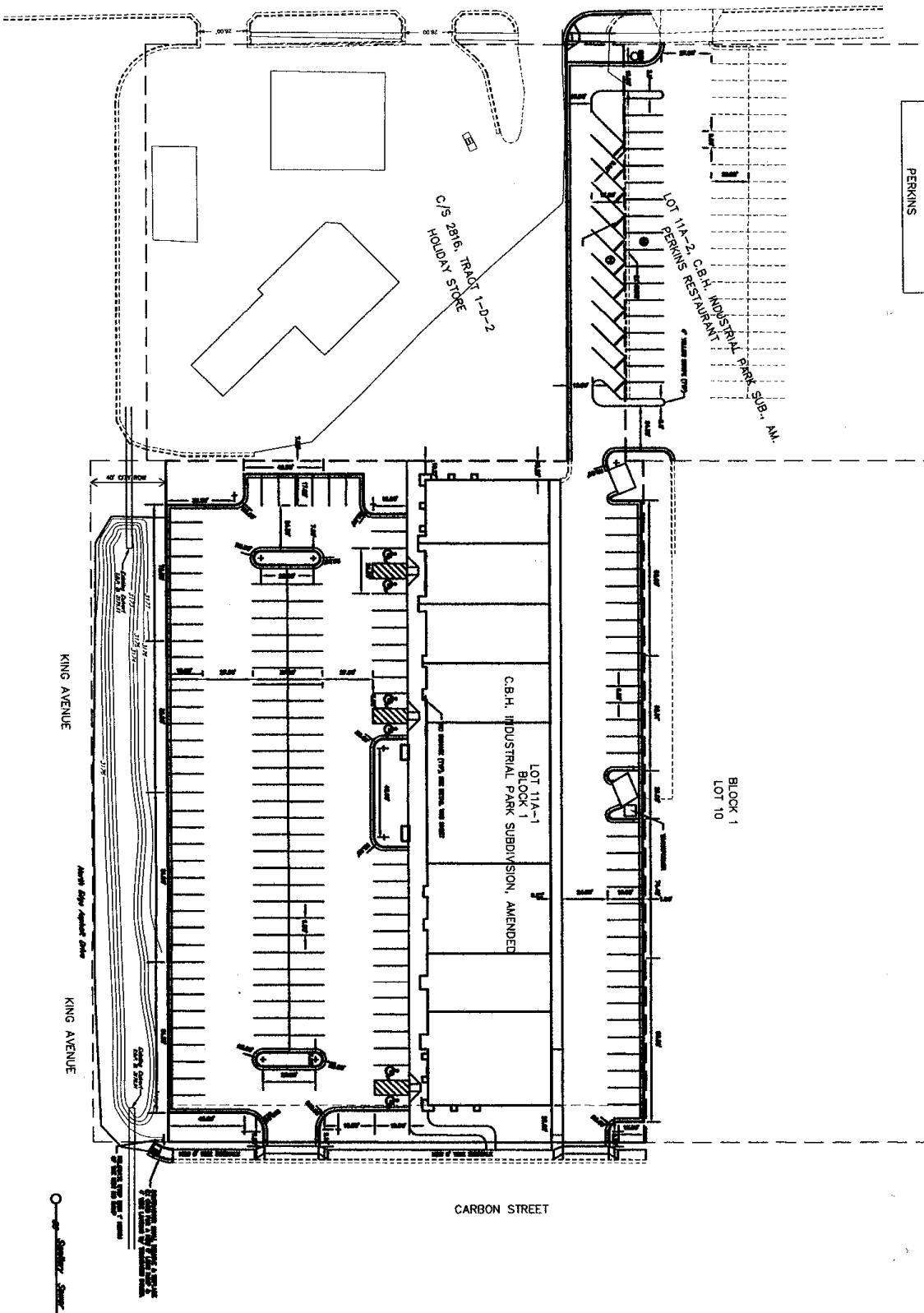
#### **ATTACHMENTS**

- A: Zoning/Location Map.
- B: Original Site Plan
- C: Letter of support
- D: Letter of opposition
- E: Request for delay
- F: Request for additional delay
- G: New site layout

**ATTACHMENT A**  
Zoning Map



**ATTACHMENT B**  
Original Site Plan



**ATTACHMENT C**  
Letter of support

**Marshall Phil**

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**From:** KW Signature Homes [kwhomes@kwsignature.com]  
**Sent:** Tuesday, June 03, 2008 3:10 PM  
**To:** Blueline Engineering  
**Subject:** FW: Special Review Application

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**From:** GUN30@aol.com [mailto:GUN30@aol.com]  
**Sent:** Tuesday, June 03, 2008 3:02 PM  
**To:** kwhomes@kwsignature.com  
**Subject:** Special Review Application

Dear Shawn,

My name is Paul Gunville, I'm one of the partners that own the building that Conlin Furniture is the tenant. I have reviewed your plans under city SR#862 and both our partners as property owners and the tenant, Conlin Furniture are very excited about the improvements you plan to do to this property. We think this is a great plan and we are sure the city will approve this. Best of luck,  
Paul

**ATTACHMENT D**  
Letter of opposition

**Green, Dave**

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**From:** Laura Boyer [laura@boyerproperties.com]  
**Sent:** Friday, June 20, 2008 1:43 PM  
**To:** Beaudry, Candi; Green, Dave; Volek, Christina  
**Subject:** Special Review #862

June 20, 2008

Planning Department:

As the property owner to the south and the west of the subject property for Special Review #862 I have several concerns:

1. Applicant on the City Special Review application was only KRP, Inc but in fact there is a second property involved and that property is owned by Fred Madsen.
2. The Legal description shown on the application is stated as only L11A-1 but the site plan clearly shows that they intend to use the entrance of L11A-2 so that legal should also be included on the application.
3. The 300 foot radius that was used to send out notices was it for only the 300 feet from the property owned by KRP, Inc. or did they also include the 300 feet radius around the property owned by Fred Madsen.
4. The sign that was placed on the subjected property was only placed on the east side of one of the subjected properties. There was no sign placed on the west side of either of the two subjected properties and clearly those are the affected areas.
5. Were other departments made fully aware of this site layout and its limitations; such as the 20' drive path from the east portion to the west portion. We were told by the engineering department that this does not meet the requirements for two way traffic.
6. Was this application thoroughly studied for its appropriateness and effect on existing land uses? Currently the west end of the building has entrances facing and walking paths directly unto the Holiday Stations parking lot to the west. Holiday and Boyer's have repeatedly expressed to the owners and the representatives of the 1911 King Ave. property that they are not to use the Holiday parking area and they have been asked to install a fence to stop this. What they have done is install a fence with an opening and walking path encouraging their patrons to use the Holiday parking area. The proposed new site plan shows a fence along there South property abutting Holiday but what about the property to the West that abuts Holiday. This new parking area does not detour people in any way from using Holidays parking lot in fact it will encourage them to use it.
7. When the Perkins and Holiday buildings were built and the two sites developed the owners chose to have one large entrance to the two properties and it has been this way for over 20 years. When this was installed it was agreed that only Perkins and Holiday

would share use the entrance. Now it appears that there will be a curb installed and this joint access closed off.

8. When notices were sent out about this Special Review Jim and JoAnn Boyer's notice was mailed to the incorrect address. When they moved their office Yellowstone County Tax Department was notified of the change and asked to change all addresses. As much work as they do with the City and as much mail as the city mails to them it is rather surprising that this was not noticed.

I do have photos to show you or would be more than happy to meet you out there to go over our concerns.

**Laura Boyer**

Design Builders, Inc.  
2810 Central Ave. Unit C  
Billings, MT 59102

[laura@boyerproperties.com](mailto:laura@boyerproperties.com)

406-256-5454 work  
406-698-5455 cell  
406-256-5473 fax



**ATTACHMENT E**  
Request for delay

June 23, 2008

Tina Volek, City Administrator  
Mayor and Council Members  
Cari Martin, City Clerk  
Nicole Cromwell, Zoning Coordinator

Re: Special Review #862

We are asking that you delay the Public Hearing for Special Review #862 until July 14, 2008.

The land owner to the west of the site has expressed concern over the development and we would like the opportunity to review the project with that owner prior to holding the public Hearing.

Sincerely,



KRP, LC  
Member



**ATTACHMENT F**  
Request for additional delay

July 14, 2008

Tina Volek, City Administrator  
Mayor and Council Members  
Cari Martin, City Clerk  
Nicole Cromwell, Zoning Coordinator  
Dave Green, Planning

Re: Special Review #862

We are asking that you delay the Public Hearing for Special Review #862 until September 8, 2008.

The land owner to the west of the site has expressed concern over the development and we would like the opportunity to review the project with that owner prior to holding the Public Hearing.

We have held a meeting with the land owner and now need time for both parties to review the project.

There has been a request for their attorney to review the Special Review documents and any additional agreements between the owners. The involvement of more individuals will require that we are provided with this delay.

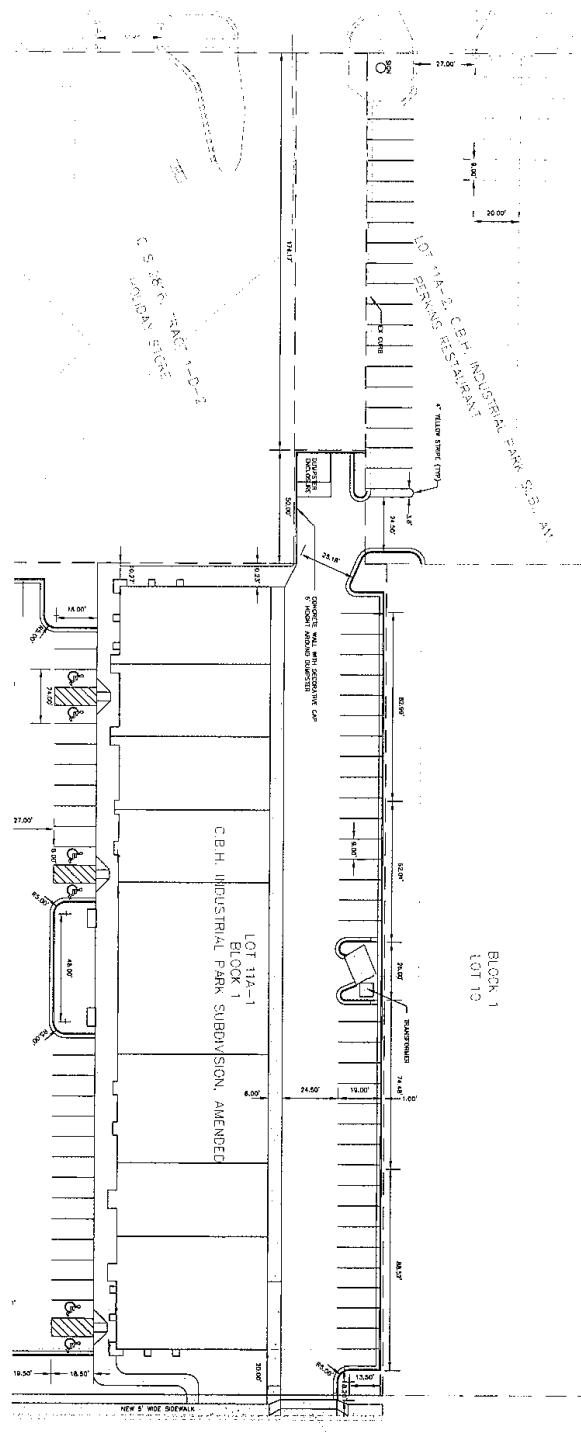
Sincerely,

  
Shawn Wickhorst  
KRP, LLC

## **ATTACHMENT G**

### New Site Layout

SOUTH 20TH STREET WEST



CARBON STREET



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, SEPTEMBER 8, 2008**

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**SUBJECT:** Public Hearing regarding the Original Spread Resolution Sidewalk, Curb & Gutter 2601

**DEPARTMENT:** Administration- Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The following assessment resolution Sidewalk, Curb & Gutter 2601 has been completed by the Finance Department and is ready to spread on the tax rolls. This project is for developer and related project improvements located in various locations. The net effective interest rate is 5.75 %. Under the State statute 7-12-4189, the City is required to add  $\frac{1}{2}$  of 1% for a total rate of 6.25 %. The  $\frac{1}{2}$  of 1% will be used as additional security on bond issues, as stated in the final bond resolution.

**RECOMMENDATION**

Staff recommends that a public hearing be held and that Council pass the proposed resolution on September 8, 2008.

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

**ATTACHMENTS**

A-Lot & Block Description

## RESOLUTION NO. 08\_\_\_\_\_

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 2601, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as 2601 and;

WHEREAS, it is necessary to levy a special assessment tax upon each benefited property in the district or project area to defray the cost and expenses of said district or project; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Billings, Montana as follows:

SECTION 1: LEVY AND ASSESSMENT. That for the purpose of defraying the cost and expense of making improvements in a special improvement district or project known as 2601 of the City of Billings, Montana, there is hereby levied and assessed upon each lot or parcel of land described below, owned by persons respectively indicated, a special assessment tax payable in semi-annual installments with interest. Each lot and parcel assessed and the owner thereof is hereinafter described:

Tax Code /Owner Name /Legal Description	Assessment Amount	Interest Rate	Years Assessed
A21424 12 CONCEPCION, JOSE A JR & TAMI R ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 14A, LT 1	\$391.50	6 . 250	
A21425 12 HABURCHAK, ROBERT H & JANE N TRSTES ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 15A, LT 1	\$924.60	6 . 250	
A21427 12 EICHENTOPF, GRETCHEN L ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 17A, LT 1	\$938.80	6 . 250	

A21428	\$874.00	6.250
12		
BELL, BRADLEY M & KATHERINE P		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 18A,		
LT 1		
A21429	\$1,120.50	6.250
12		
BAUER, KALE		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 19A,		
LT 1		
A21431	\$1,101.80	6.250
12		
ADAMS, MARK W & KATHREN KEMP		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 21A,		
LT 2		
A21432	\$921.10	6.250
12		
DOTY, THOMAS DEAN		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 22A,		
LT 2		
A21433	\$384.50	6.250
12		
LINDGREN, SCOTT & TRACIE V		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 23A,		
LT 2		
A21434	\$496.20	6.250
12		
RAFFERTY, SEAN AKA SEAN A &		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 24A,		
LT 2		
A21435	\$1,035.90	6.250
12		
LAFURGE, ALISA N		
ALKALI CREEK SUBD FIRST FILING, S29, T01 N, R26 E, BLOCK 001, Lot 25A,		
LT 2		
A25934	\$5,111.10	6.250
12		
BOYER, JAMES W & JOANN		
SPRING VALLEY SUBD, S28, T01 N, R26 E, BLOCK 003, Lot 013, UNIT 1		
JUNIPER T		

**SECTION 2: DISPOSITION OF COLLECTION.** All monies collected from the assessment shall be paid into a special improvement district or project Fund. Assessments become delinquent based on the semi-annual due dates of real property taxes, currently December 1 and June 1 of each year.

SECTION 3: NOTICE AND HEARING. On Monday, 9/08/2008, at 6:30 p.m., or as soon thereafter as the matter was considered on the agenda of the City Council at a regular meeting held in the Council Chambers of the Police Facility, 220 N. 27<sup>th</sup> St., Billings, Montana, the City Council held a public hearing to hear comments and/or objections to the adoption of this resolution. The City Clerk published notice of the public hearing twice with at least six (6) days separating each publication in a newspaper of general paid circulation with a periodicals mailing permit. The final publication was made at least 10 days prior to the public hearing per MCA 7-12-4177.

SECTION 4: EFFECTIVE DATE. This resolution shall be effective immediately upon approval.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF BILLINGS:

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

Mayor

ATTEST:

BY: \_\_\_\_\_  
City Clerk



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, SEPTEMBER 8, 2008**

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**SUBJECT:** Public Hearing regarding the Original Spread Resolution Sidewalk, Curb & Gutter 2602

**DEPARTMENT:** Administration- Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The following assessment resolution Sidewalk, Curb & Gutter 2602 has been completed by the Finance Department and is ready to spread on the tax rolls. This project is for developer and related project improvements located in various locations. The net effective interest rate is 5.75 %. Under the State statute 7-12-4189, the City is required to add  $\frac{1}{2}$  of 1% for a total rate of 6.25 %. The  $\frac{1}{2}$  of 1% will be used as additional security on bond issues, as stated in the final bond resolution.

**RECOMMENDATION**

Staff recommends that a public hearing be held and that Council pass the proposed resolution on September 8, 2008.

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

**ATTACHMENTS**

A-Lot & Block Description

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

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 2602, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as 2602 and;

WHEREAS, it is necessary to levy a special assessment tax upon each benefited property in the district or project area to defray the cost and expenses of said district or project; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Billings, Montana as follows:

SECTION 1: LEVY AND ASSESSMENT. That for the purpose of defraying the cost and expense of making improvements in a special improvement district or project known as 2602 of the City of Billings, Montana, there is hereby levied and assessed upon each lot or parcel of land described below, owned by persons respectively indicated, a special assessment tax payable in semi-annual installments with interest. Each lot and parcel assessed and the owner thereof is hereinafter described:

Tax Code /Owner Name /Legal Description	Assessment Amount	Interest Rate	Years Assessed
A07452 12 THRIFTY ROOTER INC GIVENS SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 003, LTS 3-4 BLK 1 GIVENS SU	\$4,384.55		6.250
A07453 12 SANCHEZ, DAVID R & PHYLLIS GIVENS SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 005, ALSO LT 6	\$2,720.75		6.250
A07454 12 HAMAN, DANIEL J & KONSTANCE GIVENS SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 007, ALSO LT 8	\$2,481.29		6.250
A07455 12 HAMAN, ROBERT A & HANNAH	\$7,289.13		6.250

GIVENS SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 009, ALSO LTS 10 TO 13

A07456 \$5,629.21 6.250

12

HICKS, JESSICA

GIVENS SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 016, LTS 16-17 BLK 1  
GIVENS

A07456A \$2,481.29 6.250

12

WILLIAMS, AIMEE L

GIVENS SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 014, LTS 14-15 BLK 1  
GIVENS

A09480 \$3,174.92 6.250

12

ZIER, ROBERT J

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 007, LT 7 BLK 1 KEIRLE  
SUBD

A09481 \$6,589.22 6.250

12

DIMICH, MARY LOU

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 008, LT 8-9 BLK 1 KEIRLE  
SUB

A09483 \$5,013.33 6.250

12

ALTA M SWAINSON TRUST

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 001, Lot 010, LT 10 BLK 1 KEIRLE  
SUBD

A09484 \$6,142.16 6.250

12

TRENT, ROBERT D

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 001, LT 1 & E2 LT 2 BLK  
2 KE

A09485 \$7,359.12 6.250

12

JENSON, DEAN A &

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 002, W2 LT 2 ALL LT 3  
BLK 2

A09486 \$6,815.73 6.250

12

DUBRAY, RICHARD J

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 004, LT 4 BLK 2 KEIRLE  
SUBD1

A09489 \$5,798.24 6.250

12

MUMM, JERRY L

KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 007, LT 7 BLK 2 KEIRLE  
SUBD

A09490	\$3,242.59	6.250
12		
SWIFT, KENT T & JOANNE N &		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 008, LT 8 BLK 2 KEIRLE		
SUBD		
A09491	\$3,301.10	6.250
12		
BOYER, DEN'ETTE G		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 009, LT 9 BLK 2 KEIRLE		
SUBD		
A09492	\$3,397.67	6.250
12		
FOWLER, DIANE R		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 010, LT 10 BLK 2 KEIRLE		
SUBD		
A09493	\$3,536.88	6.250
12		
CUCCIARDI, JASON		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 001, LT 1 BLK 3 KEIRLE		
SUB 1		
A09494	\$5,786.97	6.250
12		
CLARK, MARK R		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 002, LT 2 BLK 3 KEIRLE		
SUBD		
A09495	\$4,027.79	6.250
12		
DAVIDSON, JOHNNY L &		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 003, LT 3 BLK 3 KEIRLE		
SUBD		
A09496	\$3,063.54	6.250
12		
MATSON, MATT L & STACEY L		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 004, LT 4 BLK 3 KEIRLE		
SUBD		
A09498	\$5,458.82	6.250
12		
TRUSTEES OF GOSPEL BAPTIST CHURCH		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 006, ALSO LTS 7 AND 8		
A09499	\$6,879.86	6.250
12		
SHELLENBERGER, JOE DEE ANN		
KEIRLE SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 009, LTS 9 & 10 BLK 3		
KEIRLE		
A10992	\$6,010.27	6.250
12		
ANDREWS, CRAIG A		

MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 002, LT 2 BLK 2 MELLOR  
SUBD

A10993 \$5,907.49 6.250  
12  
TODD, JOHN W  
MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 003, LT 3 BLK 2 MELLOR  
SUBD

A10994 \$5,915.11 6.250  
12  
CROY, SYLVIA I  
MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 004, LT 4 BLK 2 MELLOR  
SUBD

A10995 \$5,929.99 6.250  
12  
REINHOLZ, LAUREL A  
MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 005, LT 5 BLK 2 MELLOR  
SUBD

A10996 \$5,259.73 6.250  
12  
NICHOLS, LOREN L & AGNES K  
MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 006, LT 6 BLK 2 MELLOR  
SUBD

A10997 \$3,225.68 6.250  
12  
SANCHEZ, DAVID R & PHYLLIS V  
MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 007, LT 7 BLK 2 MELLOR  
SUBD

A10998 \$3,788.12 6.250  
12  
REINHARDT, ARTHUR R  
MELLOR SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 008, LT 8 BLK 2 MELLOR  
SUBD

A13782 \$13,619.92 6.250  
12  
CENEX PETROLEUM INC-CENTRAL AVE  
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 001, LT 1-4 BLK 2  
SANDERS

A13783 \$7,771.36 6.250  
12  
WILSON, DAVID R  
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 005, LT 5 BLK 2  
SANDERSON

A13784 \$4,282.14 6.250  
12  
BLACK, ANDREW G & ELAINE S  
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 006, LT 6 BLK 2  
SANDERSON

A13785	\$3,366.16	6.250
12		
HENDRY, BRIAN E &		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 002, Lot 007, LT 7 BLK 2		
SANDERSON		
A13788	\$5,852.80	6.250
12		
PARIS, ROBERT J		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 002, LT 2 BLK 3		
SANDERSON		
A13789	\$4,651.51	6.250
12		
WALLACE RAYMOND E		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 003, LT 3 BLK 3		
SANDERSON		
A13790	\$8,744.75	6.250
12		
GUNN, DANIEL T &		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 004, LT 4 BLK 3		
SANDERSON		
A13791	\$9,266.90	6.250
12		
SHIPP, JULIE ANN		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 005, LT 5 BLK 3		
SANDERSON		
A13792	\$5,787.60	6.250
12		
HUFFORD, LEWIS L & SYLKE		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 006, LT 6 BLK 3		
SANDERSON		
A13793	\$5,742.91	6.250
12		
LARSEN, TIM		
SANDERSON SUBD, S05, T01 S, R26 E, BLOCK 003, Lot 007, LT 7 BLK 3		
SANDERSON		
A17649	\$2,481.29	6.250
12		
GLENN, BRUCE K		
WEST BILLINGS HEIGHTS, S05, T01 S, R26 E, BLOCK 002, Lot 027, LT 27-28		
BLK		
A17650	\$4,521.89	6.250
12		
REYNOLDS, SHARON A		
WEST BILLINGS HEIGHTS, S05, T01 S, R26 E, BLOCK 002, Lot 029, LT 29-31		
BLK		

SECTION 2: DISPOSITION OF COLLECTION. All monies collected from the assessment shall be paid into a special improvement district or project Fund.

Assessments become delinquent based on the semi-annual due dates of real property taxes, currently December 1 and June 1 of each year.

SECTION 3: NOTICE AND HEARING. On Monday, 09/08/2008, at 6:30 p.m., or as soon thereafter as the matter was considered on the agenda of the City Council at a regular meeting held in the Council Chambers of the Police Facility, 220 N. 27<sup>th</sup> St., Billings, Montana, the City Council held a public hearing to hear comments and/or objections to the adoption of this resolution. The City Clerk published notice of the public hearing twice with at least six (6) days separating each publication in a newspaper of general paid circulation with a periodicals mailing permit. The final publication was made at least 10 days prior to the public hearing per MCA 7-12-4177.

SECTION 4: EFFECTIVE DATE. This resolution shall be effective immediately upon approval.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF BILLINGS:

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

Mayor

ATTEST:

BY: \_\_\_\_\_  
City Clerk

**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, September 8, 2008**

**TITLE:** Approval of Resolution Setting Mill Levy Rates  
**DEPARTMENT:** Administration-Finance Division  
**PRESENTED BY:** Patrick Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** This resolution establishes the 2008 city property tax year mill levy rates for the Public Safety Fund (44.34 mills), General Obligation Debt Service Parks (1.12 mills), General Obligation Debt Service Streets (2.85 mills), and General Obligation Debt Service Baseball Stadium (6.45 mills) for the 2008 tax year. These mills are based on predetermined dollar amounts and could not be calculated until the City received a copy of the certified taxable valuation from the Montana Department of Revenue.

The total mill levy rate for tax year 2008 will be 163.76, which is 6.23 more than tax year 2007. This increase in the total mill levy rate is due to the fourth year increase in the Public Safety levy.

**RECOMMENDATION**

Staff recommends that the City Council approve the resolution setting the mill levy rates for tax year 2008.

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

**ATTACHMENT**

A -Resolution Establishing the Annual Public Safety Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, and General Obligation Debt Service Baseball Stadium for the 2008 Tax Year.

**Attachment A**

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

A RESOLUTION ESTABLISHING THE MILL LEVIES FOR  
PUBLIC SAFETY, GENERAL OBLIGATION DEBT FOR PARKS,  
STREET, AND BASEBALL STADIUM DEBT SERVICE FOR  
TAX YEAR 2008.

WHEREAS, pursuant to law, the City of Billings is required to make annual mill levies.

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

1. That a Public Safety Mill Levy, which voters approved in November of 2004 in the amount of \$6.8 million (44.34 mills), is hereby imposed on all taxable property within the City of Billings, Montana, for the Fiscal Year **July 1, 2008 through June 30, 2009**.

**2. That additional Mill Levies in the amounts stated are hereby imposed on all taxable property within the City of Billings, Montana, to provide payment for the following:**

- A. 1.12 mills-General Obligation Debt Service Parks
- B. 2.85 mills-General Obligation Debt Service Streets
- C. 6.45 mills-General Obligation Debt Service Baseball Stadium

3. That when said taxes are collected, the same shall be placed in respective funds for the City and expended pursuant to the annual budget.

4. This Resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **8<sup>th</sup> day of September, 2008**

CITY OF BILLINGS:

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

ATTEST:

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

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 8, 2008

**TITLE:** Public Hearing and First Reading - Arterial Construction Fee  
Ordinance Amendment

**DEPARTMENT:** Public Works Department

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

**PROBLEM/ISSUE STATEMENT:** There are two housekeeping issues that should be addressed within Article 22-1003 *Rates for Arterial Construction*.

1. The existing ordinance states, “The per square foot charges for each parcel shall be as follows...” followed by a table listing the rates by zoning district. However, later in the ordinance, it says, “The arterial construction assessment rates shall be established on an annual basis consistent with state law **by resolution...**” (Emphasis added). Because the existing zoning classification/rate table does not match the zoning districts in Article 27-300 *Zoning Districts and Official Maps*, and because past practice has been to annually set rates by resolution, the ordinance should be amended to clarify that rates are set annually by resolution.
2. During the City Council discussion regarding the 2007 Petitions for Reduction of Arterial Construction Fees, the City Council directed staff to pursue an ordinance amendment that would allow Residential Manufactured Home-zoned property owners to petition for a reduction of their arterial construction fee assessments if their parcel is being used solely as an owner-occupied single family residence. The reduction was to be the same as stipulated for commercially-zoned properties being used solely as a single-family residence. The proposed ordinance amendment would address this, effective for future assessment years (not retroactive).

**ALTERNATIVES ANALYZED:**

- Approve the proposed ordinance amendment
- Do not approve the proposed ordinance amendment

**FINANCIAL IMPACT:** Unknown at this time due to the fact that we do not know how many RMH-zoned parcels are currently being used solely as single-family residences and

how many of those will petition for a reduction of their arterial construction fee assessments.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance amendment.

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

**ATTACHMENTS:**

Attachment A – Proposed Ordinance Amendment (5 pages)

Attachment B – Legal Meeting Notice (1 page)

## **INTRODUCTION**

There are two housekeeping issues that should be addressed within Article 22-1003 *Rates for Arterial Construction*.

1. The existing ordinance states, “The per square foot charges for each parcel shall be as follows...” followed by a table listing the rates by zoning district. However, later in the ordinance, it says, “The arterial construction assessment rates shall be established on an annual basis consistent with state law **by resolution...**” (Emphasis added). Because the existing zoning classification/rate table does not match the zoning districts in Article 27-300 *Zoning Districts and Official Maps*, and because past practice has been to annually set the rates by resolution, the ordinance should be amended to clarify that rates are set annually by resolution.
2. During the City Council discussion regarding the 2007 Petitions for Reduction of Arterial Construction Fees, the City Council directed staff to pursue an ordinance amendment that would allow Residential Manufactured Home-zoned property owners to petition for a reduction of their arterial construction fee assessments if their parcel is being used solely as an owner-occupied single family residence. The reduction was to be the same as stipulated for commercially-zoned properties being used solely as a single-family residence. The proposed ordinance amendment would address this, effective for future assessment years (not retroactive).

## **BACKGROUND**

- The City Council approved Ordinance 04-5300 establishing the Arterial Construction Fee on September 13, 2004.
- Arterial construction fee assessments were calculated according to the rates specified in the ordinance and included on property tax statements mailed out in October 2004.
- The City Council discussed the assessment appeal process, Planned Development (PD) underlying zoning issues, and assessments on commercial property not being used for commercial uses at their January 3, 2005, work session.
- The City Council directed staff to pursue an ordinance amendment to address the PD underlying zoning issues and provide relief to commercially-zoned properties that are owner-occupied as a single family residence if the property owner annually petitions the City for relief.
- The City Council approved Ordinance 05-5322 on April 11, 2005, which addressed the PD underlying zoning issues and provided relief to commercially-zoned properties that are owner-occupied as a single family residence.
- During the City Council’s discussion of the 2007 Petitions for Reduction of Arterial Construction Fees, the City Council directed staff to pursue an ordinance amendment that would allow Residential Manufactured Home-zoned property owners to petition for a reduction of their arterial construction fee assessments if their parcel is owner-occupied as a single family residence.

## **ALTERNATIVES ANALYSIS**

- Approve the proposed ordinance amendment
- Do not approve the ordinance amendment

## **RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance amendment.

## **ATTACHMENTS:**

Attachment A – Proposed Ordinance Amendment (5 pages)

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

**AN ORDINANCE OF THE CITY OF BILLINGS,  
MONTANA PROVIDING THAT THE BILLINGS,  
MONTANA CITY CODE SECTION 22-1003 PROVIDING  
FOR AN ARTERIAL CONSTRUCTION FEE, PROVIDING  
FOR A PROCEDURE WHEREBY FEES CAN BE  
DETERMINED, IMPOSED, AND APPEALED,  
ESTABLISHING AN EFFECTIVE DATE, AND  
PROVIDING A SEVERABILITY CLAUSE BE AMENDED  
FOR CLARIFICATION.**

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

Section 1. That the Billings, Montana City Code Section 22-1003 be amended to read as follows:

(a) For the purpose of paying the cost of construction and/or reconstruction of arterial roadways and depreciation and replacement of arterial roadways to provide safe facilities on which citizens and visitors may travel, including the principal and interest on all revenue bonds to be issued for that purpose, as authorized by MCA Title 7 Chapter 7 Part 44 or Title 7 Chapter 13 Part 43, as amended, an annual arterial construction fee is imposed and made applicable to all premises within the city limits. The financial services manager shall report to the city council when all revenue bonds issued for the construction or reconstruction of such arterial roadways, and bond refunding the same, have been fully paid and redeemed, and the city council shall then provide for the reduction of the charge to such amount as will be sufficient to pay the reasonable expense of the construction or reconstruction of arterial roadways. The charge shall be based on both the area of the parcel of land and its zone classification. Charges against properties zoned Residential-5000 (R-50), Residential-6000 (R-60), **Residential 6,000 Restricted**

**(R-60R), Residential-7000 (R-70), Residential 7,000 Restricted (R-70R), Residential-8000 (R-80), and Residential-9600 (R-96)** shall be capped at a maximum of the applicable rate for that zoning classification times 9600 square feet per parcel. Other residential zoning classifications created in the future will be similarly treated, except that Residential Multi-Family (RMF), Residential Manufactured Home (RMH), Residential Professional (RP), and Residential Multi-Family-Restricted (RMF-R) will not be subject to any such maximum square footage cap. Planned Development (PD) zones will be charged based on their underlying zoning classifications and will be subject to the maximum 9600 square footage cap for the underlying zoning classifications of R-50, R-60, **R-60R, R-70, R-70R, R-80, and R-96**. All other underlying zoning classifications will not be subject to any such maximum square footage cap. If the underlying zoning does not match any zoning classification listed **below in Article 27-300. Zoning Districts and Official Maps**, the parcel will be charged at the rate of the most reasonably comparable zoning classification. If there is no reasonably comparable zoning classification, the parcel will be charged at the Planned Development (PD) zoning rate. The city council may provide an exemption to commercially zoned **and Residential Manufactured Home (RMH)-zoned** properties that are currently owner-occupied as a single-family residence. The property owner must annually request the exemption through the public works department by August 31 of each year. The per square foot charges for each parcel shall be ~~as follows~~ set by resolution and shall be made to the owner of the parcel as the same shall appear according to the tax code number or account number thereof in the office of the Department of Revenue, Yellowstone County, Montana:

**TABLE INSET:**

Zoning—	Proposed Rate—	-
P—	0.00212—	-
R-96—	0.00371—	-
R-80—	0.00404—	-
R-70—	0.00425—	-
RMH—	0.00477—	-
R-50—	0.00512—	-
PD—	0.00585—	-
R-60—	0.00638—	-
RP—	0.00692—	-
RMF-R—	0.00721—	-
RMF—	0.00748—	-
NCL—	0.00769—	-
NC—	0.00824—	-
ELC—	0.00824—	-
MCPZD—	0.00850—	-
CC—	0.00879—	-
ELG—	0.00902—	-
PZD—	0.00892—	-
HC—	0.00902—	-
CI—	0.00960—	-
HI—	0.01068—	-
CBD—	0.01279—	-
ELI—	0.00902—	-
-	-	-
Undeveloped—Any zoning—	0.00125—	Cap \$988.00—

The arterial construction assessment rates shall be established on an annual basis consistent with state law by resolution passed by a simple majority of the city council, but the assessment rates may only be changed through passage of a resolution by a super-

majority of the city council consisting of at least two-thirds (2/3) of all council members present and voting. The zone classification shall be that which is on the official map on record at the city-county planning department.

(b) The financial services manager shall, on or before the last day of October of each year, cause to be mailed by the county treasurer to every owner of a lot or parcel within the city, on the same date and in the same manner as are real property taxes, a separate statement of arterial construction charges setting forth the annual charge to be assessed on the lot or parcel for arterial roadway construction thereto. Such charge shall be due and payable on or before 5:00 p.m. on the thirtieth day of November of each year. Upon failure of the owner to pay the charge, the same will be in arrears and delinquent on December 31st of such year, and shall be collected by the financial services manager according to the provision and authority of MCA §§ 7-1-101 through 120, and the City Charter.

(c) All arterial construction charges shall be collected as provided in this article and credited to a fund to be known as the "municipal arterial construction system fund", which fund shall be at all times segregated and maintained by financial services manager on the books of the city as a separate and special fund. Upon adoption by the city council of a resolution authorizing the issuance of revenue bonds of the city payable from arterial roadway construction charges or otherwise establishing a system of funds and accounts for such charges, all arterial construction charges shall be applied and accounted for in the manner provided in such resolution.

(d) Any party who considers the charges applicable to his premises unfair, inequitable or unreasonable may apply to the public works director for adjustment thereof, stating the facts and grounds of complaint, and the public works director may notify the owner of any premises as to which he considers the rates and charges to be inadequate. In either case, the public works director shall cause appropriate investigation and report to be made by himself or his duly authorized representative.

(e) The public works director, or his duly authorized representative, shall consider each and all of such complaints and reports and communicate his findings with respect thereto to the city council. The city council shall have the right to order a public hearing as to any such matter and, if convinced that an adjustment of the charges for such premises is necessary to provide reasonable equality with those charged to others, it shall so provide, either by ordinance amendatory hereto, or by resolution fixing special charges for individual premises during the period of continuance of special circumstances which make the standard charges unfair, inequitable, unreasonable or inadequate.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

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

PASSED by the City Council on first reading this \_\_\_\_ day of \_\_\_\_\_, 2008.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of  
\_\_\_\_\_, 2008.

CITY OF BILLINGS

By \_\_\_\_\_

\_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

By \_\_\_\_\_  
Cari Martin, City Clerk

**ATTACHMENT B**

**NOTICE OF PUBLIC HEARING**

The Billings City Council intends to conduct the following Public Hearing:

**Date of Public Hearing:** Monday, September 8, 2008

**Time:** 6:30 p.m.

**Location:** City Council Chambers  
Police Facility – 2<sup>nd</sup> Floor  
220 North 27<sup>th</sup> Street, Billings, MT  
59101

**Purpose of Public Hearing:** Ordinance Amendment, BMCC 22-1003  
*Rates for Arterial Construction*

**For Additional Information Contact:** Tam Rodier, CAP  
Public Works Administration  
510 N Broadway – 4<sup>th</sup> Floor  
Billings, MT 59101  
657-8230

Dated this 18<sup>th</sup> day of August 2008.

CARI MARTIN  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

Public Works  
5 copies  
Publish: 8/21/08 & 8/28/08

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 8, 2008**

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**TITLE:** Public Hearing and First Reading – Storm Sewer Ordinance Amendment

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** Some housekeeping issues within the existing ordinance should be addressed. BMCC Section 22-800 *Storm Sewers* is no longer representative of the City's organizational structure or recent past practices within the Public Works Department. Most of these are job title changes, department names, etc. As a result, Staff proposes the attached ordinance amendment for clarification purposes.

**ALTERNATIVES ANALYZED:**

- Approve the proposed ordinance amendment
- Do not approve the proposed ordinance amendment

**FINANCIAL IMPACT:** There are no known financial impacts.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance amendment.

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

**ATTACHMENTS:**

Attachment A – Proposed Ordinance Amendment (5 pages)  
Attachment B – Legal Meeting Notice (1 page)

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

**AN ORDINANCE OF THE CITY OF BILLINGS,  
MONTANA PROVIDING THAT THE BILLINGS,  
MONTANA CITY CODE SECTION 22-800 STORM  
SEWERS BE AMENDED FOR CLARIFICATION.**

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

Section 1. That the Billings, Montana City Code Section 22-802 be amended to read as follows:

Sec. 22-802. Duties of ~~finance director~~ **financial services manager**.

The ~~finance director~~ **financial services manager** shall have full responsibility for billings and collection of all storm sewer accounts in the manner provided in this article, and for the purposes of fulfilling the obligations imposed on the public ~~utilities~~ **works** department by Ordinance 3251, the ~~finance director~~ **financial services manager** shall be deemed agent of the public ~~utilities~~ **works** department.

Section 2. That the Billings Montana City Code Section Sec. 22-803 be amended to read as follows:

Sec. 22-803. Duty of the public ~~utilities~~ **works** department.

Upon notification by the ~~finance director~~ **financial services manager** to the public ~~utilities~~ **works** department of delinquency in any account, the public ~~utilities~~ **works** department shall discontinue water service, except for water service to fire lines, to the premises involved until payment of all past due bills for water and sewer service and compliance with all applicable rules and regulations. Notice of such payment and such compliance shall be given to the public utilities department by the ~~finance director~~ **financial services manager** before resumption of water service to the premises. In those

instances where a property owner is not carried on tax rolls and is not given a code number or account number by the Yellowstone County Assessor's office and special assessment therefore cannot be levied by the ~~finance director~~, **financial services manager**, the ~~finance director~~ **financial services manager** shall mail directly to the property owner in such individual instances a billing for storm sewer charges. In the event of discontinuance or resumption of water service by the public ~~utilities works~~ department as provided in this article, the public **utilities works** department shall be entitled to be paid for such services at the uniform rate from time to time established for such services.

Section 3. That the Billings Montana City Code Section Sec. 22-804 be amended to read as follows:

Sec. 22-804. Rates for storm sewers.

(a) For the purpose of paying the cost of construction, operation, maintenance, depreciation and replacement of sewers to dispose of stormwater and divert it from the sewage disposal plant and prevent pollution of sources of water supply, including the principal of and interest on all revenue bonds to be issued for that purpose, as authorized by MCA Title 7 Chapter 7 Part 44, or Title 7 Chapter 13 Part 43, as amended, an annual storm sewer service charge is imposed and made applicable to all premises within the city limits. The ~~finance director~~ **financial services manager** shall report to the city council when all revenue bonds issued for the construction of such storm sewers, and bond refunding the same, have been fully paid and redeemed, and the council shall then provide for the reduction of the charge to such amount as will be sufficient to pay the reasonable expense of the operation, maintenance, depreciation and replacement of the

sewers. The charge shall be based on the area of the parcel of land and its zone classification. All charges shall be set by resolution and shall be made to the owner of the parcel as the same shall appear according to the code number or account number thereof in the office of the county assessor, Yellowstone County, Montana. The zone classification shall be that which is on the official map on record at the city-county planning board.

(b) The ~~finance director~~ **financial services manager** shall, on or before the last day of October of each year, cause to be mailed by the county treasurer to every owner of a lot or parcel within the city, on the same date and in the same manner as are real property taxes, a separate statement of storm sewer charges setting forth the annual charge to be assessed on the lot or parcel for the storm sewer service thereto. Such charge shall be due and payable on or before 5:00 p.m. on the thirtieth day of November of each year. Upon failure of the owner to pay the charge, the same will be in arrears and delinquent on December 31st of such year, and shall be collected by the ~~finance director~~ **financial services manager** according to the provision and authority of MCA §§ 7-13-4304, 7-13-4305, 7-13-4306 and 7-13-4309.

(c) All storm sewer charges shall be collected as provided in this article and credited to a fund to be known as the municipal storm sewer system fund, which fund shall be at all times segregated and maintained by the city clerk and ~~finance director~~ **financial services manager** on the books of the city as a separate and special fund. This fund shall be subdivided into the separate accounts provided in Ordinance 3251, and administered as therein provided, except that storm sewer funds shall be segregated and kept separate from sanitary sewer funds. Upon adoption by the city council of a

resolution authorizing the issuance of revenue bonds of the city payable from storm sewer charges or otherwise establishing a system of funds and accounts for such charges, all storm sewer charges shall be applied and accounted for in the manner provided in such resolution.

(d) Any party who considers the charges applicable to his premises unfair, inequitable or unreasonable may apply to the ~~city engineer~~ **public works director** for adjustment thereof, stating the facts and grounds of complaint, and the ~~city engineer~~ **public works director** may notify the owner of any premises as to which he considers the rates and charges to be inadequate. In either case, the ~~city engineer~~ **public works director** shall cause appropriate investigation and report to be made by himself or his duly authorized representative.

The city engineer, or his duly authorized representative, shall consider each and all of such complaints and reports and communicate his findings with respect thereto to the city council. The council shall have the right to order a public hearing as to any such matter and, if convinced that an adjustment of the charges for such premises is necessary to provide reasonable equality with those charged to others, it shall so provide, either by ordinance amendatory hereto, or by resolutions fixing special charges for individual premises during the period of continuance of special circumstances which make the standard charges unfair, inequitable, unreasonable or inadequate.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the

other provisions of this ordinance, which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_ day of \_\_\_\_\_, 2008.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF BILLINGS

By \_\_\_\_\_

---

Ron Tussing, Mayor

ATTEST:

By \_\_\_\_\_  
Cari Martin, City Clerk

**ATTACHMENT B**

**NOTICE OF PUBLIC HEARING**

The Billings City Council intends to conduct the following Public Hearing:

**Date of Public Hearing:** Monday, September 8, 2008

**Time:** 6:30 p.m.

**Location:** City Council Chambers  
Police Facility – 2<sup>nd</sup> Floor  
220 North 27<sup>th</sup> Street, Billings, MT  
59101

**Purpose of Public Hearing:** Ordinance Amendment, BMCC 22-800  
*Storm Sewers*

**For Additional Information Contact:** Tam Rodier, CAP  
Public Works Administration  
510 N Broadway – 4<sup>th</sup> Floor  
Billings, MT 59101  
657-8230

Dated this 18<sup>th</sup> day of August 2008.

CARI MARTIN  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

Public Works  
5 copies  
Publish: 8/21/08 & 8/28/08

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 8, 2008

**TITLE:** Public Hearing and First Reading – Street Maintenance District  
Ordinance Amendment

**DEPARTMENT:** Public Works Department

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

**PROBLEM/ISSUE STATEMENT:** Street Maintenance District rates have historically been set by annual resolution. The annual resolution has included a maximum annual assessment for vacant parcels, tracts or lots. Staff recently became aware that BMCC Section 22-500 *Street Maintenance District* specifically calls out a \$300 maximum, which is a contradiction to the City Council-approved rates resolution. Staff therefore proposes the attached ordinance amendment to clarify the maximum assessment rate for vacant parcels.

**ALTERNATIVES ANALYZED:**

- Approve the proposed ordinance amendment
- Do not approve the proposed ordinance amendment

**FINANCIAL IMPACT:** The City of Billings has been assessing properties according to annual rate resolutions. As a result, there are no known financial impacts.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance amendment.

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

**ATTACHMENTS:**

Attachment A – Proposed Ordinance Amendment (3 pages)

Attachment B – Legal Meeting Notice (1 page)

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

**AN ORDINANCE OF THE CITY OF BILLINGS,  
MONTANA PROVIDING THAT THE BILLINGS,  
MONTANA CITY CODE SECTION 22-500 STREET  
MAINTENANCE DISTRICT BE AMENDED BY SETTING  
THE MAXIMUM ANNUAL ASSESSMENT FOR VACANT  
PARCELS BY ANNUAL RESOLUTION, ESTABLISHING  
AN EFFECTIVE DATE, AND PROVIDING A  
SEVERABILITY CLAUSE BE AMENDED FOR  
CLARIFICATION.**

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

Section 1. That the Billings, Montana City Code Section 22-500 be amended to read as follows:

**Sec. 22-501. Designation.**

Whenever any portion of the city shall have been designated as a street maintenance district, the streets and avenues and intersections of streets and avenues in such district may be maintained as maintenance is defined in MCA 7-12-4401(2) for such time and in such manner, and under the supervision of the city.

**Sec. 22-502. By whom work may be done.**

Maintenance as referred to in section 22-501, may be done by contract, or by forces in the employ of the city, or both.

**Sec. 22-503. Use of city forces.**

Whenever any portion of the work within a maintenance district has been done by any forces employed by the city, the city administrator shall certify to the council on or before the first Monday in October, of each year, the cost and expense such forces used in each maintenance district of the city, together with an estimate of the cost for the portion of the

time such forces may be required to be used in each district for the balance of the fiscal year.

**Sec. 22-504. Assessment of costs.**

All of the costs and expenses of each maintenance district, exclusive of the cost of maintaining public places and the intersections of streets with avenues or alleys, shall in all cases be assessed and taxed to the lots or parcels of land within the district.

**Sec. 22-504.1. Maximum annual assessment for parcels, tracts or lots which are undeveloped and unimproved.**

The maximum annual assessment for street maintenance for any tract, parcel or lot which is undeveloped and unimproved shall be ~~three hundred dollars (\$300.00)~~ set by **resolution.**

**Sec. 22-505. Assessment method.**

Each lot or parcel of land shall bear its share of the costs and expenses of each maintenance district according to the options set forth in MCA Title 7, Chapter 12 (section 7-12-101 et seq.). The city council shall determine and fix the proportion to be assessed in each district by each such method. The assessment shall be exclusive of the costs and expenses of maintaining public places.

**Sec. 22-506. Certification of tax.**

The taxes for maintenance districts assessed under sections 22-504 and 22-505 shall be extended in the same manner as other special assessments and shall be certified to the county clerk.

PASSED by the City Council on first reading this \_\_\_\_ day of \_\_\_\_\_, 2008.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of  
\_\_\_\_\_, 2008.

CITY OF BILLINGS

By \_\_\_\_\_

\_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

By \_\_\_\_\_  
Cari Martin, City Clerk

**ATTACHMENT B**

**NOTICE OF PUBLIC HEARING**

The Billings City Council intends to conduct the following Public Hearing:

**Date of Public Hearing:** Monday, September 8, 2008

**Time:** 6:30 p.m.

**Location:** City Council Chambers  
Police Facility – 2<sup>nd</sup> Floor  
220 North 27<sup>th</sup> Street, Billings, MT  
59101

**Purpose of Public Hearing:** Ordinance Amendment, BMCC 22-500  
*Street Maintenance District*

**For Additional Information Contact:** Tam Rodier, CAP  
Public Works Administration  
510 N Broadway – 4<sup>th</sup> Floor  
Billings, MT 59101  
657-8230

Dated this 18<sup>th</sup> day of August 2008.

CARI MARTIN  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

Public Works  
5 copies  
Publish: 8/21/08 & 8/28/08

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, Sept. 8, 2008**

**TITLE:** Consider Mediation Offer from MMIA

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** The Montana Municipal Insurance Authority (MMIA) asks that the City Council consider mediating the financial award in Feuerstein vs. the City of Billings.

At its meeting on Aug. 11, the City Council declined to pay any part of the award. The MMIA Board of Directors at its meeting on Aug. 22 directed its staff to attempt to reach resolution informally rather than through litigation. Alan Hulse, MMIA CEO, has proposed that the City and MMIA agree upon a Montana mediator, with the costs to be split among the two parties.

**ALTERNATIVES ANALYZED:** The Council may:

- Agree to mediation as proposed by MMIA;
- Litigate the matter if MMIA files a lawsuit; or
- Pay all or part of the award as originally requested by MMIA.

**FINANCIAL IMPACT:** Mediation likely will cost \$2-3,000 per day. The remaining impact would depend on whether the City agreed to pay a portion of the award at the end of the mediation, or as a result of an adverse finding in court.

**RECOMMENDATION**

Agree to mediation.

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

**Attachments:**

A: Letter from Alan Hulse



PO Box 6669 • Helena, MT 59604-6669

Toll Free: (800) 635-3089 • Tel: (406) 443-0907 • Fax: (406) 449-7440

**RECEIVED**

AUG 29 2008

**City Administrator**

August 28, 2008

Christina Volek, City Manager  
City of Billings  
PO Box 1178  
Billings MT 59103

RE: Feuerstein vs. City of Billings

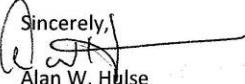
Dear Tina:

Thank you for your letter of August 21, 2008 wherein you advised me of the Billings City Councils vote to decline our request for partial reimbursement of 2/3 of the costs paid toward the judgment and attorneys fees in the Feuerstein vs. the City of Billings et al. lawsuit.

As you know, we discussed this issue with the MMIA Board of Directors at our August 22, 2008 meeting. It was the consensus of the MMIA Board of Directors that this matter needs to be resolved and it is in the best interest of both the MMIA and the City of Billings to attempt to reach resolution informally rather than through litigation. The MMIA Board of Directors has directed me to continue negotiation and dialogue with the City of Billings in an attempt to reach terms that both parties can agree to.

As it currently stands, the MMIA has made a request for reimbursement from the City of Billings, and the City of Billings has denied that request. Given the current position of both parties, I would propose that we enter into mediation with the goal of reaching resolution. I believe that an impartial third party with expertise in Montana law, and how Montana courts may apply the law will assist both parties in finding common ground. I would request that you present this proposal to the Billings City Council and ask that they agree to mediate this matter.

Please advise if the City of Billings is agreeable to this proposal, so that we can move forward in selection of a mutually acceptable mediator. I would propose that we agree upon a Montana mediator who is familiar with both the law and judicial climate in Montana and that the costs be split between the City of Billings and MMIA as is normal and customary in this process.

Sincerely,  
  
Alan W. Hulse  
CEO

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