

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 22, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Mayor Tussing

ROLL CALL

MINUTES – September 8, 2008

COURTESIES

PROCLAMATIONS

- Family Day – A Day to Eat Dinner with Your Children, Sept. 22, 2008
- American Indian Heritage Day – Sept. 26, 2008

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, 3, 10(c), 15, 16, 17, and 18 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** (5-year) for city-owned hangar located at 2431 Overlook Drive. (Opened 8/26/08) Delayed from 9/8/08. Recommend Aero Interiors; \$20,580 first year revenue; subsequent years adjusted annually by CPI-U.

**(2) W.O. 08-18, Airport Road Water Line Relocations** to accommodate upcoming MDT Airport Road Construction Project. (Opened 9/9/08) Recommend COP Construction; \$395,179.40.

**(3) 2009 4-Wheel Mechanical Broom High Dump Sweeper** (Opened 9/16/08) Staff recommends delay of award until 10/14/08.

**B. Memorandum of Agreement** with Montana State University-Billings (MSU-B) for architectural and building consultant services for the future Joint Community Library on the MSU-B College of Technology campus. \$75,000 City contribution; \$75,000 MSU-B contribution.

**C. Maintenance Agreement** between the City of Billings and Yellowstone County for the traffic signal at the Johnson Lane/Old Hardin Road intersection; City to be reimbursed actual costs for parts, materials, and services.

**D. Amendment #1** to Professional Services Contract with Interstate Engineering for W.O. 01-05, Lake Hills Storm Drain Project; \$67,685.

**E. Amendment #1** to Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc., dba Alpine Air, adding 1,047 square feet to leasehold for construction of additional office space; \$1,738.08 increase in revenue first year, for total first year revenue of \$19,007.04.

**F. Assignment and Transfer** of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Coal Black Cattle Company, L.L.C.; with no financial impact to the City.

**G. Right-of-Way Easement Request** from NorthWestern Energy to relocate electric power lines for upcoming MDT Airport Road Construction Project; with no financial impact to the City.

**H. Right-of-Way Easement Request** from Yellowstone Pipe Line to relocate 10-inch pipeline for upcoming MDT Airport Road Construction Project; with no financial impact to the City.

**I. Declaring surplus property** and authorizing a public auction of surplus City equipment and police recovered property on September 27, 2008.

**J. Acceptance of donations** from various donors to the Ballpark Construction Fund for \$57,308 and the Ballpark Maintenance Fund for \$13,400.

**K. Acceptance of donation** from Kenneth Hollar for \$15,030 for picnic shelter at Francis's Park in Lake Hills Subdivision.

**L. Resolution of Intent** creating SILMD 305, King Avenue West from South 31<sup>st</sup> Street West to Shiloh Road; repealing SILMD 303; and setting a public hearing date of October 14, 2008.

**M. Transfer** of three RSIDs from Yellowstone County to the City of Billings.

**N. Approval** of City Administrator Evaluation: Date and Evaluation criteria.

**O. Second/Final Reading Ordinance** for Street Maintenance Fee Ordinance Amendment clarifying the maximum assessment rate for vacant parcels.

**P. Second/Final Reading Ordinance** for Storm Sewer clarifying purposes of the City's organizational structure or recent past practices within the Public Works Department.

**Q. Second/Final Reading Ordinance** for Arterial Construction Fee Ordinance Amendment clarifying that rates are set annually by resolution, and allowing Residential Manufactured Home-zoned property owners to petition for a reduction of arterial construction fee assessments.

**R. Preliminary Subsequent Minor Plat** of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</sup> Filing, generally located on the southeast corner of the intersection of Daniels Street and Industrial Avenue and addressed as 227 Daniels Street; Monad Daniels LLC, Dennis Witmore, and Roland Grunstead, owners; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

**S. Bills and Payroll**

(1) August 22, 2008

(2) August 29, 2008

## **REGULAR AGENDA:**

**2. AGREEMENT** with Yellowstone Valley Animal Shelter, Inc. for a 2-year contract for private operation of the Billings Animal Shelter. (Delayed from 5/27/08, 6/23/08 and 8/25/08) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

**3. TRANSFER** of Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system to the City of Billings. Delayed from 9/8/08. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).

**4. RESOLUTION** relating to Special Improvement District Bonds 1385; awarding the sale and approving the form and detail of the bonds. Staff recommends

delaying action until 10/14/08. (**Action:** approval or disapproval of staff recommendation.)

5. **PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1378. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. **PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1379. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
7. **PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1380. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
8. **PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1383. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
9. **PUBLIC HEARING AND RESOLUTION** approving a reduction in the Arterial Construction Fee assessments for five (5) Commercially-zoned parcels and one (1) Residential Manufactured Home-zoned parcel used solely as owner-occupied, single family residences. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
10. **PUBLIC HEARING** for the FY2007-2008 Draft Comprehensive Annual Performance Evaluation Report (CAPER) Community Development Block Grant (CDBG) and HOME Programs.
11. (a) **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #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 located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)  
  
(b) **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #848:** A zone change from Agriculture-Open Space, a county zoning district, to Planned Development with two underlying districts – Community Commercial and Residential Multi-Family on property described as Tracts 6-A and 7-A, Certificate of Survey 2314 and Tract 1-A, Certificate of Survey 2702, generally located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (**Action:** approval or disapproval of Zoning Commission recommendation.)

**(c) PRELIMINARY PLAT** of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing, generally located on the south side of Grand Avenue between 30<sup>th</sup> Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner. Planning Board recommends conditional approval and adoption of the Findings of Fact. **(Action:** approval or disapproval of Planning Board recommendation.)

- 12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #847:** A zone change from Residential 9600 to Residential 6000 Restricted on property described as Tracts 1 & 2 of Certificate of Survey 3139, Tract 1-B of Certificate of Survey 2379, and an unplatted parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East, generally located south of Grand Avenue and west of 56<sup>th</sup> Street West. Dorn-Wilson Development, Douglas and Deborah Frank, and Ronald Frank, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. **(Action:** approval or disapproval of Zoning Commission recommendation.)
- 13. PUBLIC HEARING FOR SPECIAL REVIEW #865:** A special review to allow Commercial Recreation for the rental of the existing grounds and building for special events on a 20,620 square foot parcel of land described as Lots 7 and 8, Block 2, Graham Subdivision; addressed as 2323 Azalea Lane; and known as the Fortin Mansion. Jim and Debbie Eliason, owners; Daniel Horman, Don Lohrenz, and Nicholas and Mary Okon, agents. Zoning Commission recommends denial. **(Action:** approval or disapproval of Zoning Commission recommendation.)
- 14. PUBLIC HEARING FOR SPECIAL REVIEW #866:** A special review to add an outdoor patio to a location with an existing all-beverage liquor license with gaming on a 25,650 square-foot parcel of land in a Community Commercial zone described as Lot 3, Block 1; the south 150' of the east 52' and the south 150' of the west 96' of Lot 3, and the south 150' of the west 23' of Lot 4, Block 1, Van Ornum Subdivision, located at the Squire Lounge, 1525 Broadwater Avenue. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)
- 15. PUBLIC HEARING AND SPECIAL REVIEW #867:** A special review to locate an all-beverage liquor license with gaming on a 33,036 square foot parcel of land in a Highway Commercial zone described as Lot 9, Block 1, Winemiller Subdivision, located at 1423 Main Street in Billings Heights. HOBS, a Montana General Partnership, owner; Al Koelzer, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)
- 16. 2009 UNIFIED PLANNING WORK PROGRAM (UPWP)** for the Billings Metropolitan Planning Organization. Staff recommends approval of the Draft

2009 UPWP and authorizing the Mayor to take this recommendation to the Policy Coordinating Committee (PCC) meeting of September 26, 2008. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).

17. **DEVELOPMENT AGREEMENT** between the City of Billings, Downtown Billings Partnership, Inc., The Babcock, LLC, for the Babcock Building. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
18. **NORTH 27<sup>TH</sup> STREET TIFD BOUNDARIES.** Staff recommends approval of the proposed expansion of the North 27<sup>th</sup> Street District. (**Action:** approval or disapproval of staff recommendation.)
19. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

### **Council Initiatives**

### **ADJOURN**

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

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
CITY OF BILLINGS, MONTANA  
Monday, September 22, 2008

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TITLE: 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. The lease expired on July 31, 2008. Because more than one inquiry was received for the use of this hangar, staff opted to place a lease on this hangar up for bidding. The current occupant, FES Development (FES), was granted a month-by-month extension until the outcome of the bidding was determined. FES chose not to submit a bid. 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 bid was received at the bid opening held at 2:00 p.m. on Tuesday, August 26, 2008.

**BIDDER**

Aero Interiors

**BID**

\$20,580.00

Aero Interiors is a local business that proposes to replace, repair, retrofit and modify aircraft interiors/upholstery and perform interior and upholstery repair for other Airport tenants from this hangar.

**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 awarding a five (5) year Limited Commercial Aviation Building and Ground Lease to Aero Interiors.

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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

**TITLE:** W.O. 08-18; Airport Rd. Water Line Relocations, Contract Award  
**DEPARTMENT:** Public Works - Engineering  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** This project lowers two critical sets of large-diameter water mains to accommodate road grade and alignment changes to be built in the Montana Department of Transportation’s (MDT) forthcoming Airport Road reconstruction project.

It was determined by City staff that the water main lowerings should be accomplished under the timing and control of a City project rather than as a utility relocation under MDT’s road construction project. One set of mains to be lowered provide the only City water feed into the Billings Heights; these 30-inch and 16-inch water mains must be lowered by 9-10 feet in the vicinity of Walter Pump Station to accommodate a new road access near the 6<sup>th</sup> Avenue Bypass. Another set of 20-inch and 16-inch water mains is located in Alkali Creek Road and must be lowered to accommodate construction of a new multi-use path tunnel.

City staff will be utilized to provide on-site construction inspection and construction contract administration.

**FINANCIAL IMPACT:** Funding for this project will be provided from water funds. Bids were opened on September 9, 2008, for W.O. 08-18 with the results listed below:

- Engineer’s Estimate: \$217,050.00
- Western Municipal Construction: \$393,310.00
- COP Construction: \$359,254.00

**RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 08-18 to COP Construction in the amount of \$359,254.00 plus 10% City Administrator approval authority (\$35,925.40) for a total of \$395,179.40.

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**SUBJECT:** Sweeper Bid  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David D. Mumford, P.E., Director of Public Works

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**PROBLEM/ISSUE STATEMENT:** The Street/Traffic Division intends to purchase a 4-wheel mechanical broom high dump sweeper in FY09. This purchase was approved by the City Council in the FY09 budget process for replacement of an existing sweeper to be purchased in the Equipment Replacement Plan (ERP). Bids were opened on Tuesday, September 16, 2008, at 2:00pm.

**FINANCIAL IMPACT:** This expense was budgeted for FY09 in the Equipment Replacement Fund (\$149,400).

**RECOMMENDATION**

Staff recommends delay of award until October 14, 2008, to allow additional time to review the bids received.

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

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Memorandum of Agreement with Montana State University - Billings  
DEPARTMENT: Library  
PRESENTED BY: Bill Cochran

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**PROBLEM/ISSUE STATEMENT:**

The approved City Budget for FY 2009 includes the re-budgeting of \$150,000 from FY2008 for planning for the Joint Community Library project on the campus of the Montana State University –Billings College of Technology. The Joint Community Library Planning Committee developed a Memorandum of Agreement to permit the expenditure of up to \$75,000 by the City, from Library reserves, and an equal amount by the University, for a total of \$150,000, for the purpose of retaining an architect and a building consultant to develop preliminary plans for the project.

**FINANCIAL IMPACT:**

If the City Council and Montana State University – Billings both approve the Memorandum of Agreement, up to \$75,000 of budgeted Library reserves will be available for funding architectural and building consultant services for the Joint Community Library project during FY 2009. The Memorandum of Agreement provides that the University will act as fiscal agent for the project and invoice the Library for one-half of expenditures incurred.

**RECOMMENDATION**

Staff recommends that Council approve the Memorandum of Agreement with Montana State University – Billings so that planning of the Community Library on the College of Technology Campus can proceed.

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

**ATTACHMENT:**

Attachment A – Joint Community Library Draft Memorandum of Agreement with MSU-Billings  
Attachment B – Proposed Budget for Joint Community Library

**Attachment A**  
**Draft Memorandum of Agreement with MSU-Billings**

**MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement is entered into by the City of Billings [“City”] and Montana State University – Billings [MSU-B] concerning project oversight and disbursement of funds for a joint-planning project related to the establishment of a joint library for use by both parties.

This Agreement consists of this Memorandum of Agreement and Exhibits A and B, which are attached hereto and hereby incorporated by reference.

RECITALS:

The parties desire to create an opportunity for a joint library which would be developed, constructed and financed jointly by the parties for provision of library services to the city residents and MSU-B students and faculty; and

The parties have each contributed funds to develop plans and materials for the project to be used for fundraising and other purposes;

Based upon the recitals set forth about, the parties have agreed to the following terms and conditions for oversight of the project, disbursement of funds, and implementation of project activities;

**Section 1. Oversight of the Project.** MSU-B will act as the primary contracting entity for purposes of contracting with an architect and such other contractors as the party agree upon to accomplish the work set forth in the scope of work attached as Exhibit A [hereafter referred to as the Project].

**Section 2. Provision of Funds for Project.** The City will provide Seventy Five Thousand Dollars (\$75,000) and MSU-B will provide Seventy Five Thousand Dollars (\$75,000) for the support of the project. The parties agree to expend the funds as outlined in the budget attached as Exhibit B. The City will transfer funds to MSU-B as invoiced by MSU-B to pay one- half of expenditures incurred. The transfer of funds from the City must comply with City policies and procedures.

**Section 3. Contractor and Owner.** For purposes of this project, MSU-B will enter into all contracts related to the expenditure of the funds dedicated to the project and will act as owner in connection with the description of the work in the Scope of Work. MSU-B will follow all requirements necessary for such contracts under state law and university policy.

**Section 4. Disbursement of Funds.** MSU-B will disburse all funds under the contract(s) entered into to achieve the work described in the attached Scope of Work. The funds will be disbursed in accordance with the budget set forth in Exhibit B. Any spending variance of more than ten percent from the approved budget in Exhibit B must be approved,

prior to spending, by both parties. All disbursements by MSU-B will be consistent with MSU-B's policies and procedures.

**Section 5. Accounting for Funds.** MSU-B shall account for the funds received under this Agreement in compliance with its accounting practices. Spending under this Agreement shall be in accordance with MSU-Billings procedures.

**Section 6. Modifications.** This Agreement may be modified at any time upon the mutual written agreement of the parties.

**Montana State University – Billings**

**City of Billings**

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **Billings Community Library Planning Study**

### **1.1 PROGRAMMING AND CONCEPTS**

- 1.1.1 The Programming shall commence with the execution of the Agreement and shall be complete with the Owner's approval and acceptance of the Programming Documents.
- 1.1.2 The Programming effort shall provide the following:
  - 1.1.2.1 develop and define the needs for the Project based upon the Owner's preliminary project program, the recommendations of a Library Consultant retained by the selected firm and any other information obtained through the data gathering process, interviews, charettes, surveys and operational parameters;
  - 1.1.2.2 review, develop, and document detailed requirements for the project, covering items such as project goals and objectives, design objectives, limitations, and criteria; gross area and space requirements; spatial relationships; needs and options for flexibility or expandability; identifying the need for special equipment and systems; site requirements; project schedule and budget requirements;
  - 1.1.2.3 space concepts and flow diagrams, functional relationships, access, circulation, and flow patterns within the building and on the site;
  - 1.1.2.4 define and develop programmatic and conceptual level documents consistent with the following:
    - 1.1.2.4.1 Architectural - services responding to the programming and project requirements and consisting of preparation of conceptual site and building diagrams for each level or floor, investigation of alternative approaches, key diagrammatic sections, typical diagrammatic elevations, preliminary selection/recommendation of building systems and materials, development of approximate dimensions, areas and volumes, and review of any existing project documentation;
    - 1.1.2.4.2 Structural - recommendations regarding structural materials and systems;
    - 1.1.2.4.3 Mechanical and Electrical - for mechanical design, consideration and recommendations regarding systems and equipment, development of conceptual design solutions for energy sources/conservation and general space requirements. For electrical design, consideration and recommendations regarding basic electrical systems and equipment, analysis and development of conceptual design solutions for energy sources/conservation, service distribution, and general space requirements;
    - 1.1.2.4.4 Civil - site planning analysis including layout of site features, building position, general topography, location of paving for walkways, driveways and parking. Also must include connections for building utilities such as water, sewer, gas/steam and power;
    - 1.1.2.4.5 Budget - develop the project budget in conjunction with the Owner and assist in the analysis of soft costs and establishment of a preliminary construction budget. Provide a conceptual level cost estimate of the master plan (if incorporated in this Agreement) concept designs; and,
    - 1.1.2.4.6 Scheduling/Phasing – develop the project schedule in conjunction with the Owner. Perform review and analysis of the project schedule and phasing plan(s) (if a phased project).

- 1.1.3 The Programming Document shall contain the following items:
  - 1.1.3.1 Executive Summary with Project Statement;
  - 1.1.3.2 Project Summary and Design Goals;
  - 1.1.3.3 Space Program;
  - 1.1.3.4 Planning and Design Criteria including, but not limited to, codes, zoning, clustering and layout criteria, building massing, blocking and stacking diagrams, space planning module, dimensional criteria, envelope interface, physical accessibility and ADA, style issues and constraints;
  - 1.1.3.5 Building Performance Criteria including, but not limited to, general notes and comments on: building envelope, structure, interior construction, hvac systems, plumbing systems, fire suppression systems, electrical systems, and information technology systems;
  - 1.1.3.6 Site Requirements including, but not limited to, preliminary building siting, site analysis, parking, traffic flow, grading and landscaping;
  - 1.1.3.7 Budget and cost of the work involving estimates of construction, design fees and all other identifiable costs; and,
  - 1.1.3.8 Schedules for funding, design, and construction.
- 1.1.4 The Architect/Engineer shall provide 4 sets of Programming Documents including Estimate of Construction for review and approval to the Owner's point of contact.

## **1.2 FUND RAISING AND DELIVERABLES**

- 1.2.1 The Fund Raising Effort shall commence with the signing of the Agreement and shall be complete upon conclusion of the Owner's acceptance and approval of Fund Raising Deliverables.
- 1.2.2 The Architect/Engineer's assistance to the Owner for fund raising efforts includes: 6 public presentations.
- 1.2.3 Fund Raising Deliverables shall include:
  - 1.2.3.1 Presentation Boards - 2 perspectives;
  - 1.2.3.2 Project Brochures - 150 copies; and
  - 1.2.3.3 3-D Computer Graphic Animation.
- 1.2.4 All computer presentation materials shall be able to be viewed by any user/viewer/presenter without the need to purchase or own any proprietary software. All web-based or disc-based presentation materials shall have all necessary software pre-loaded on the disc in order to operate any presentation materials.
- 1.2.5 The Architect/Engineer shall provide all Fund Raising Deliverables to the Owner's point of contact.

## **1.3 EVALUATION OF THE BUDGET AND ESTIMATE OF CONSTRUCTION COST**

- 1.3.1 When the Project Program requirements have been sufficiently identified, the Architect/Engineer shall prepare an Estimate of Construction Cost. This estimate may be based on current area, volume, similar conceptual or recent construction history estimating techniques. As the programming process progresses through to the end of the preparation of the Programming Documents, the Architect/Engineer shall update and refine the Estimate of Construction Cost. The Architect/Engineer shall advise the Owner of any adjustments to previous Estimates indicated by changes in Project requirements or general market conditions. If at any time the Architect/Engineer's Estimate of Construction Cost exceeds the Owner's budgeted construction cost, the Architect/Engineer shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget. The Owner shall cooperate with the Architect/Engineer in making such adjustments.
- 1.3.2 Evaluations of the Owner's budget for the Project, the Estimate of Construction Cost, and updated Estimates of Construction Cost prepared by the Architect/Engineer, are to represent the Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/Engineer nor the Owner has control over the cost of labor, materials or equipment, the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or present that bids or negotiated prices will not vary from the Owner's budget for the Project or from any Estimate of Construction Cost or evaluations prepared by the Architect/Engineer.
- 1.3.3 The Construction Cost is part of the Project Budget and shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project programmed, designed, or specified by the Architect/Engineer. Estimates of Construction Cost shall include the cost at projected market rates of labor and materials and equipment designed, specified, selected or specially provided for by the Architect/Engineer, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. The Estimate of Construction Cost does not include "Soft" costs as defined in the Agreement.

#### **1.4 LEED CRITERIA AND SUSTAINABLE PLANNING**

- 1.4.1 As directed by the Owner, the Architect/Engineer shall define and develop conceptual level requirements for the project that include sustainable planning and design concepts, as defined by the U.S. Green Building Council's LEEDS Program, covering items such as:
- 1.4.1.1 building design analysis and building performance as it relates to energy use, sustainability concepts, and productivity of the interior environment;
  - 1.4.1.2 energy use effectiveness including natural convection in HVAC, natural lighting and water use / recycling / integration;
  - 1.4.1.3 development of integrated systems for environmentally responsible architecture;
  - 1.4.1.4 potential application of green building concepts for LEED certification; and,
  - 1.4.1.5 special equipment and systems for use of alternative energy and energy consumption modeling.
- 1.4.2 It is the Owner's intent that the Project be programmed to include sustainable architectural and engineering solutions, environmentally efficient materials, and shall include consideration of "state of the art" design solutions in all areas of the project design whether or not LEED certification is pursued.

**Attachment B**

**Proposed Budget**

Master Plan	\$ 15,000
Develop Program	50,000
Conceptual Design	50,000
LEEDS Evaluation	2,500
Construction Cost Estimate	7,500
Presentation Boards	750
Brochures	500
3-D Animation	5,000
Travel and Presentations	5,000
Contingency	<u>10,000</u>
Total	\$ 146,250

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

**TITLE:** Johnson Lane Signal Maintenance Agreement between the City of Billings and Yellowstone County, Montana  
**DEPARTMENT:** Public Works Administration  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:**

The City and Yellowstone County entered into an agreement in 1997 for the City to provide ongoing maintenance to the traffic signal at Johnson Lane and Old Hardin Road. The County had requested the City provide this service as Yellowstone County has no other traffic signal systems within their jurisdictional area. The Yellowstone County Commissioners have previously approved and executed the agreement. The term of this agreement is July 1, 2008 through June 30, 2015, or seven years.

**ALTERNATIVES ANALYZED:**

- Approve the agreement between the City and Yellowstone County
- Do not approve the agreement between the City and Yellowstone County

**FINANCIAL IMPACT:**

Approval of this agreement would result in reimbursement to the City from Yellowstone County for actual costs for parts, materials, and services.

**RECOMMENDATION**

Staff recommends that Council approve the agreement between the City and Yellowstone County for the maintenance of the traffic signal system at the intersection of Johnson Lane and Old Hardin Road.

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

**ATTACHMENT:**

A. Agreement

**JOHNSON LANE SIGNAL MAINTENANCE AGREEMENT BETWEEN THE  
CITY OF BILLINGS AND YELLOWSTONE COUNTY, MONTANA**

THIS AGREEMENT is entered into this 26 day of August, 2008 by and between the CITY OF BILLINGS, hereinafter designated "City" and YELLOWSTONE COUNTY, MONTANA, hereinafter designated "County".

WITNESSETH THAT:

WHEREAS, the purpose of this agreement is to define the traffic control maintenance responsibilities of the City and County.

WHEREAS, State law allows the County to enter into an agreement with the City to provide maintenance for traffic control devices outside the City corporate limits with provision for full reimbursement.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and covenants herein specified, it is mutually agreed as follows:

1. **LIMITS OF AGREEMENT.** The following is a full and complete listing of traffic control devices covered by this agreement:
  - A. The Traffic Signal System located at the Johnson Lane Interchange.
2. **SCOPE OF AGREEMENT.** This agreement covers only the activities ordinarily associated with traffic signal maintenance practices. The agreement specifically excludes any other activities and costs including, but not limited to, maintenance of adjacent street areas, replacement of cabinet or other external components, or other activities not related to maintenance of the traffic signal system.
3. **ITEMS COVERED.** Payment to the City for this agreement shall be handled as follows:
  - A. **TRAFFIC CONTROL MAINTENANCE ACTIVITIES:**
    - (1.) County shall provide and pay the cost of electrical power (energy) for all traffic signal systems within its jurisdiction.
    - (2.) City will provide all maintenance necessary to operate the Traffic Signal System, and the County will reimburse the City in accordance with Appendix A for actual costs of labor, equipment, and materials required for the proper maintenance of the Traffic Signal System.
    - (3.) Maintenance at the Johnson Lane Interchange will include signal maintenance only; no signs, etc. will be covered by this agreement.

(4.) Street lighting facilities, except as specifically noted, are not covered by this agreement and will remain the responsibility of the County.

4. COSTS. The costs associated with this agreement shall be shown in Appendix A.
  - A. This shall be actual costs for the maintenance portion of the agreement, and shall be paid to the City on an annual basis.
  - B. In the event that this budget encounters a major cost overrun in any item shown in Appendix A because of unusual weather conditions or other factors, the City reserves the right to submit a claim to the County for additional costs incurred or to reduce the level of service to compensate for this additional cost.
5. RECORDS. The City presently has an approved budget system for these affected activities. Record keeping shall be kept by the City to break out actual costs associated with the location that is covered in this agreement.
6. PAYMENT. The City shall submit billing each July for the preceding fiscal year ending June 30 reflecting actual costs associated with the maintenance performed. The County agrees to make payment within 20 calendar days of receipt of the billing.
7. TERM. The term of this agreement shall be for the seven year period of July 1, 2008 through June 30, 2015. This agreement may be terminated upon thirty days written notice by either party except as specifically detailed herein otherwise.
8. COMPENSATED DAMAGES. It is understood that any damages that are caused by third parties will be repaired by the City, and a billing for these repairs shall be sent to the County along with any documentation which the City has available to help the County in making the collection. The County shall pay the City for these repairs on an actual documented cost plus 10% administration and overhead. Payment under this provision shall be in addition to the payment detailed in Appendix A.
9. CONTROL OF ACCESS AND UTILITIES. The control of access and utilities within the vicinity of the traffic signal system shall remain with the County.
10. INDEMNIFICATION. The County agrees to hold harmless and/or indemnify the City for damages resulting from the construction or design done by the County of the streets adjacent to the areas covered by this agreement. This hold harmless/indemnification clause shall not cover damages which are caused either directly or indirectly by the work done by the City pursuant to this agreement. City agrees to defend, protect, indemnify and save harmless the County against and from all claims, liabilities, demands, causes of action, judgments, and losses claimed to be due to the City's performance of the activities of this agreement, specifically including any claims that any work was not done in a proper or timely manner.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed on the date set forth herein.

**YELLOWSTONE COUNTY**

BY  August 26, 2008  
County Commissioner

BY Bill Kennedy August 26, 2008  
County Commissioner

BY  August 26, 2008  
County Commissioner

ATTEST:  
BY  August 26, 2008  
Clerk and Recorder

**CITY OF BILLINGS**

BY \_\_\_\_\_, 2008  
Ron Tussing  
Mayor

ATTEST:  
BY \_\_\_\_\_, 2008  
Cari Martin  
City Clerk

APPROVED AS TO FORM:  
BY \_\_\_\_\_, 2008  
Brent Brooks  
City Attorney

## APPENDIX A

### Johnson Lane Signal Maintenance

#### Rates:

Aerial Truck	\$30.00 per hour
Flatbed Truck	\$5.00 per hour
Personnel	Billed at actual hourly wages including benefits

#### Estimated July 1, 2008 – June 30, 2009 Hours for Basic Service:

1. Signal check weekly: Personnel – 2 people x 1.25 hrs = 2.5 weekly (130 hrs annually)  
Aerial truck - 1.25 hours weekly (65 hours annually)
2. Cabinet maintenance (twice yearly): Personnel – 2 people x 8 hrs = 16 hours annually  
Aerial truck - 8 hours annually
3. Conflict monitor checks: Personnel – 2 people x 8 hours = 16 hours annually  
Aerial truck - 8 hours
4. Technician: Personnel - 1 hour monthly = 12 hours annually  
Flatbed truck - 12 hours annually
5. Yearly database inclusion: Personnel - 12 hours annually

#### Estimated costs for July 1, 2008 – June 30, 2009:

Estimated man hours	174 x \$30.66 = \$5,334.84
Estimated Technician hours	12 x \$37.14 = \$ 445.68
Estimated hours Aerial Truck	81 x \$30.00 = \$2,430.00
Estimated hours Flatbed Truck	12 x \$5.00 = \$ 60.00

**Estimated Total for July 1, 2008 – June 30, 2009      \$ 8,270.52**

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

TITLE: Amendment to Professional Services Contract for W.O. 01-05 Lake Hills SD Project  
DEPARTMENT: Public Works/Engineering  
PRESENTED BY: David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** The Lake Hills Storm Drain project will provide a storm drain outfall from Lake Hills Subdivision to Five Mile Creek through a series of ponds located on the golf course. The professional services contract for Work Order 01-05 with Interstate Engineering was approved at the June 10, 2002, City Council Meeting. This project was first bid November 6, 2006, but all bids exceeded the engineers estimate and a redesign and additional funding sources were needed. Additional funds for this project became available last year and this amendment to the contract will provide for a slight redesign, as well as construction staking, project administration, and part time inspection.

**FINANCIAL IMPACT:** The professional services contract with Interstate Engineering will be paid for utilizing storm drain funds.

Original Contract Amount	\$	145,560.00
Amendment #1 (This Memo)	\$	67,685.00
Total Amount	\$	213,245.00

**RECOMMENDATION**

Staff recommends that Council approve Amendment #1 of the professional services contract for W.O. 01-05 with Interstate Engineering in the amount of \$67,685.00.

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

**ATTACHMENT**

- A. Amendment #1 to Professional Services Contract for W.O. 01-05

**AMENDMENT NUMBER ONE (1)  
TO THE  
AGREEMENT FOR SERVICES**

This is Amendment Number One (1) dated \_\_\_\_\_ to the Contract for Professional Services for Lake Hills Storm Drain Outfall Work Order 01-05, dated June 10, 2002, between Interstate Engineering, Inc. (ENGINEER) and the City of Billings (OWNER) to provide engineering services to the City of Billings, particularly the Lake Hills Stormwater Management Phase I project (PROJECT).

WHEREAS: OWNER desires the ENGINEER to provide additional services regarding additional design, plan and specifications update, construction administration, project staking and part time inspection of the PROJECT more specifically described as follows:

Additional Design and Plan/Specification Services: The ENGINEER will provide the following minimal services:

- Prepare construction plans for modifications to Pond #10, identified in the Lake Hills Storm Water Management Feasibility Study, to increase pond depth and provide irrigation and seeding to disturbed areas to the south of the pond. Additional field design survey will be performed to document existing conditions and prepare base mapping for pond modification design,
- Coordinate pond design through consultation with Carl Thuesen, Golf Course Architect and the Lake Hills Golf Club, and coordinate modifications to the BBWA Canal through Canal owner(s),
- Perform a thorough review/update of existing contract plans and specifications to prepare project for bidding. An updated engineer's estimate of probable construction cost will also be developed.

Bidding Assistance Services: The ENGINEER will provide the following minimal services:

- Printing plans and specifications for distribution to plan centers and prospective bidders,
- Answer prospective bidder questions and provide plan clarifications,
- Attend a pre-bid meeting and prepare minutes documenting meeting proceedings,
- Attend bid opening and prepare bid tabulation with recommendation of successful contractor.

Construction Administration Services: The ENGINEER will provide the following minimal services:

- Prepare Construction Contracts for distribution by the City for signatures,
- Prepare Construction Progress Estimates,
- Provide up to six (6) sets of the Project Manual and Construction Drawings to the Contractor,
- Provide as-constructed drawings in hard copy and electronic format at completion of the project based on as-constructed notations maintained by the contractor, the City, and the notes made by the Engineer during part-time inspection visits.

Construction Staking Services: The ENGINEER will provide construction staking for the following improvements:

- Reestablish project survey control,
- Initial Pond staking for improvements to ponds 4, 10, 13, 14, 15 and 16,
- One time slope staking for ponds 4, 13 and 14,
- Staking of the lift station at ponds 14 / 15,
- Force Main alignment staking including valve manholes, changes in alignment and 3 bench marks to be used during construction,
- Open channel meandering alignment and grade,
- Fence and sidewalk around ponds 15/16,
- Culvert Extension
- Miscellaneous call-out staking to a maximum of 24 hours.
- P.L.S. Review

Part Time Inspection Services: The ENGINEER will provide part time inspection services for the following major construction items. All other inspection will be provided by the City. Services to be provided by the ENGINEER under this Amendment are:

- Shop drawing review and approval,
- Part time inspection of the installation of the lift station hydraulic machinery and controls,
- On-call spot inspections for a maximum of 100 hours,
- Testing Oversight and Review
- Owner-Contractor-Lake Hills Golf Club Coordination;

and;

WHEREAS: Interstate Engineering, Inc. has the professional staff available to provide this service;

THEREFORE: the OWNER and ENGINEER agree to modify the original Agreement noted above to provide additional compensation to the ENGINEER for this service.

Section 5 – Payment for Services is increased to cover the services outlined above are summarized in the following table. Estimated hours are listed in Attachment 2.

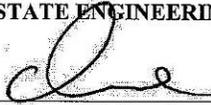
Category of Services	Compensation Method	Estimate of Compensation for Services
<ul style="list-style-type: none"> <li>○ <b>Additional Design and Plan / Specification Services</b> <ul style="list-style-type: none"> <li>▪ Conduct additional survey to support additional design services</li> <li>▪ Prepare design for modifications to Pond 10</li> <li>▪ Design coordination with Lake Hills Golf Club, Golf Course Architect, and BBWA Canal</li> <li>▪ Review / Update existing plans and specifications</li> <li>▪ Update Engineer's Estimate of Probable Construction Cost</li> </ul> </li> </ul>	<p>Standard Hourly Rates attached as Attachment 1 to this Amendment No. 1</p>	<p>\$14,844</p>
<ul style="list-style-type: none"> <li>○ <b>Bidding Assistance Services to Include:</b> <ul style="list-style-type: none"> <li>▪ Printing of plans and specifications</li> <li>▪ Answering questions from prospective bidders</li> <li>▪ Attending and documenting pre-bid meeting</li> <li>▪ Attend bid opening and prepare bid tabulation</li> </ul> </li> </ul>	<p>Standard Hourly Rates attached as Attachment 1 to this Amendment No. 1</p>	<p>\$1,112</p>
<ul style="list-style-type: none"> <li>○ <b>Construction Administration Services to Include:</b> <ul style="list-style-type: none"> <li>▪ Prepare Construction Contracts</li> <li>▪ Prepare Progress Estimates</li> <li>▪ Provide Construction Documents to Contractor For Construction</li> <li>▪ Provide as-constructed drawings</li> </ul> </li> </ul>	<p>Standard Hourly Rates attached as Attachment 1 to this Amendment No. 1</p>	<p>\$4,180</p>
<ul style="list-style-type: none"> <li>○ <b>Construction Staking to Include:</b> <ul style="list-style-type: none"> <li>▪ Initial Pond Staking</li> <li>▪ Pond Slope Staking</li> <li>▪ Lift Station Staking</li> <li>▪ Pipeline Staking</li> <li>▪ Channel Staking</li> <li>▪ Culvert Extension</li> <li>▪ Miscellaneous Call-out Staking</li> <li>▪ P.L.S. Review</li> </ul> </li> </ul>	<p>Standard Hourly Rates attached as Attachment 1 to this Amendment No. 1</p>	<p>\$20,234</p>

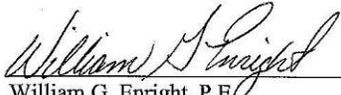
<ul style="list-style-type: none"> <li>○ <b>Part Time Inspection to Include:</b> <ul style="list-style-type: none"> <li>▪ Shop Drawing Review and Approval</li> <li>▪ Lift Station Installation</li> <li>▪ On-call Inspections</li> <li>▪ Testing Oversight &amp; Review</li> <li>▪ Owner – Contractor –LHGC Coordination</li> </ul> </li> </ul>	<p>Standard Hourly Rates attached as Attachment 1 to this Amendment No. 1</p>	<p>\$27,315</p>
	<p>Estimated Total Fee</p>	<p>\$67,685</p>

**CITY OF BILLINGS**

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

**INTERSTATE ENGINEERING, INC.**

  
\_\_\_\_\_  
Brian R. Milne, P.E., President

  
\_\_\_\_\_  
William G. Enright, P.E.  
Senior Project Engineer / Office Manager

**ATTACHMENT #1  
SCHEDULE OF RATES**

<b>1. <u>Engineers</u></b>		
(A)	Staff Engineer	\$ 75.00 per hour
(B)	Project Engineer	\$ 90.00 per hour
(C)	Senior Project Engineer	\$125.00 per hour
(D)	Senior Traffic Engineer	\$148.00 per hour
(E)	Principal Engineer	\$165.00 per hour
<b>2. <u>Surveyors</u></b>		
(A)	Senior Land Surveyor	\$115.00 per hour
(B)	Land Surveyor	\$ 85.00 per hour
(C)	GPS Surveyor	\$124.00 per hour
(D)	Party Chief	\$ 75.00 per hour
(E)	Field Assistant	\$ 39.00 per hour
(F)	Recordation Per Monument	\$ 25.00 per monument
(G)	Plat Certification	\$ 25.00 per certification
(H)	All Terrain Vehicle	\$ 50.00 per day
<b>3. <u>Technicians</u></b>		
(A)	Senior Technician	\$ 95.00 per hour
(B)	Technician	\$ 60.00 per hour
(C)	Field Assistant	\$ 39.00 per hour
<b>4. <u>Draftspersons - Clerical - Computer</u></b>		
(A)	Senior Draftsperson	\$ 70.00 per hour
(B)	Draftsperson	\$ 60.00 per hour
(C)	Computer Specialist	\$ 90.00 per hour
(D)	Clerical	\$ 40.00 per hour
<b>5. <u>Chargeable Expenses</u></b>		
(A)	Subsistence at actual cost	
	Automobiles	\$ 0.60 per mile
	2 Wheel Drive Survey Vehicles	\$ 0.65 per mile
	4 Wheel Drive Survey Vehicles	\$ 0.70 per mile
	Aircraft	Actual Cost
(B)	Long distance, telephone, telegraph and any but ordinary first-class postage at actual cost.	
(C)	Cost of surveying materials, filing fee, drafting materials and other materials required for the job at actual cost plus 25%.	
(D)	Printing	
	1. 8½" x 11"	\$ 0.15 per page B & W
		\$ 0.50 per page Color
	2. 11" x 17"	\$ 0.25 per page B & W
		\$ 0.50 per page Color
	3. Blueline (24" x 36")	\$ 2.50 per ½ sheet
		\$ 4.00 per full sheet
	4. Mylar (24" x 36")	Cost Plus 10% (\$3.00 ft <sup>2</sup> )
	5. Plotter (per square foot)	\$ 1.50 B & W
		\$ 2.00 Color
(E)	Equipment Rental Rates	

- |                              |                   |
|------------------------------|-------------------|
| 1. Total Station with Tripod | \$ 50.00 per day  |
| 2. Level with Tripod - Rod   | \$ 40.00 per day  |
| 3. GPS Base, One Rover       | \$ 50.00 per hour |
|                              | \$ 360.00 per day |
| 4. ATV                       | \$ 75.00 per day  |
| 5. ATV Trailer – Single      | \$ 25.00 per day  |
| 6. ATV Trailer – Double      | \$ 50.00 per day  |
- (F) Subconsultant Services at Actual  
Cost Plus 10%
- (G) Any and all sales and use tax, TERO or  
other special fees, which apply to this  
contract.



PROJECT: LAKE MILLS STORMWATER MANAGEMENT- CONSTRUCTION SERVICES  
 PREPARED BY: ERIN A. SUMMERS  
 DATE: 1-14-2008

Activity	Tasks	Total Hours	Principal Engineer	Senior Project Engineer	Staff Engineer	Senior Land Surveyor (PLS)	24-hr OPS Crew	Senior Tech	Tech	Chemical	Vehicle Miles	Mileage \$	Per diem	Phone, Copies & Supplies	Carl Thuesen	Geo Tech	Electrical	Subtotal
100	Project Administration	461																
101	Underpinning Piers & Spots	4																
102	BWVA Survey	3																
103	Udella Coat Estima	3																
104	Coard with BWVA	5																
105	Final Station Electrical	8																
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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

**TITLE:** Amendment One to Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc., DBA Alpine Air  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

**PROBLEM/ISSUE STATEMENT:** On July 23, 2007, Alpine Aviation, Inc., DBA Alpine Air, entered into a five (5) year Limited Commercial Aviation Building and Ground Lease with the City of Billings, on a parcel located at the east end of the Airport in the Airport Business Park referred to as Hangar IP-5. Alpine Air desires to add square footage to its leased premises in order to construct additional office space in the hangar. Currently, Alpine leases 10,403 square feet of hangar and office space in IP-5. Additional space is available for lease in this hangar. This Amendment adds 1,047 square feet of office and storage area on the east side of the hangar to the leasehold, providing the additional space desired for the new office space. The documentation for this item is available for viewing at the office of the City Clerk.

**FINANCIAL COMMENT:** The Amendment will add 1,047 square feet to the Alpine Air leasehold and increase its annual ground rental by \$1,738.08 for the first year. The new total square footage will increase to 11,450 square feet and will generate \$19,007.04 in rental income in the first year.

**RECOMMENDATION**

Staff recommends that Council approve Amendment One to the Alpine Aviation, Inc., DBA Alpine Air Limited Commercial Aviation Building and Ground Lease. This Amendment amends the legal description by adding 1,047 square feet to the leasehold to accommodate the construction of additional office space in Hangar IP-5.

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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

TITLE: Assignment and Transfer of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Coal Black Cattle Company, L.L.C.  
DEPARTMENT: Aviation and Transit  
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

**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 #2811, to Coal Black Cattle Company, L.L.C. This Assignment and Transfer will formally transfer the Ground Lease on Lot 13 from John M. and/or Marcia A. Nash to Coal Black Cattle Company, L.L.C. The Council approved the Assignment from the Nashes on the other one-half of this hangar to Hat Creek Hangar Co., LLC at its September 8, 2008 meeting.

**FINANCIAL IMPACT:** There is no financial impact from this action. 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 Coal Black Cattle Company, L.L.C.

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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

**TITLE:** Northwestern Energy Right-of-Way Easement to Relocate Electric Power Lines as Required for Airport Road Project.  
**DEPARTMENT:** Parks, Recreation and Public Lands (PRPL)  
**PRESENTED BY:** Michael Whitaker, Director of Parks, Recreation and Public Lands

**PROBLEM/ISSUE STATEMENT:** Northwestern Energy is requesting a Right-of-Way Easement to relocate existing power lines that provide service in and around the Airport. Existing power lines, as shown on the attached exhibit, will be removed and a new service line will be installed. This work will take place on park property east of the intersection of 27<sup>th</sup> Street and Airport Road and next to the existing parking lot located adjacent to the trail running east along the rims. This work is necessary as part of the construction associated with the Airport Road Project south of the Billings Logan International Airport. Northwestern Energy is responsible for all construction costs; however, since the lines will be located on PRPL property, we need to enter into this Right-of-Way Easement.

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

**RECOMMENDATION**  
Staff recommends that the City Council approve this Right-of-Way Easement with Northwestern Energy to relocate electric power lines.

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

**Attachments:** Attachment A – Easement and Exhibit

RETURN TO:  
NORTHWESTERN ENERGY  
LANDS and PERMITTING DEPARTMENT  
40 East Broadway  
Butte, MT 59701-9394

Form No. 1198 12/05 OL

**EASEMENT - ELECTRIC POWERLINE**

City of Billings  
Parks Department

of Billings, Zip \_\_\_\_\_, "Grantor", in consideration of \$1.00 and other good and valuable consideration, in hand paid, the receipt of which is acknowledged, does grant and convey to NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY, a Delaware Corporation, of 40 East Broadway, Butte, MT 59701-9394, "Grantee", and to its successors, assigns and appointees, an easement 10 feet in width upon which to construct, operate, maintain, replace, upgrade and remove an electric powerline, communications system, and necessary appurtenances, including any guy wires which may extend beyond the easement width over, under, along and across that certain real property located in Yellowstone County, Montana, and particularly described as follows:

TOWNSHIP 1 North, RANGE 26 East, P.M.M.

SECTION(S) 30: SW 1/4

Relocation of services due to Highway Project

TOGETHER with reasonable right of access to and from the easement area over lands of the Grantor using existing roads and trails where practicable; the right to use and keep the easement area free and clear of any and all obstructions or structures, except fences; and the right to clear and remove all timber, brush or vegetation from the easement area and to cut and remove such timber, brush and vegetation outside of the easement that may in the Grantee's opinion endanger the powerline, communications system, necessary appurtenances or guy wires.

THE GRANTOR covenants with the Grantee that the Grantor is lawfully seized and possessed of the real estate above-described, and that the Grantor has a good and lawful right to convey it, or any part thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 08.

City of Billings, Parks Department

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

STATE OF Mt )

)ss.

COUNTY OF Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 08, before me, personally appeared \_\_\_\_\_ being the \_\_\_\_\_ of \_\_\_\_\_ known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

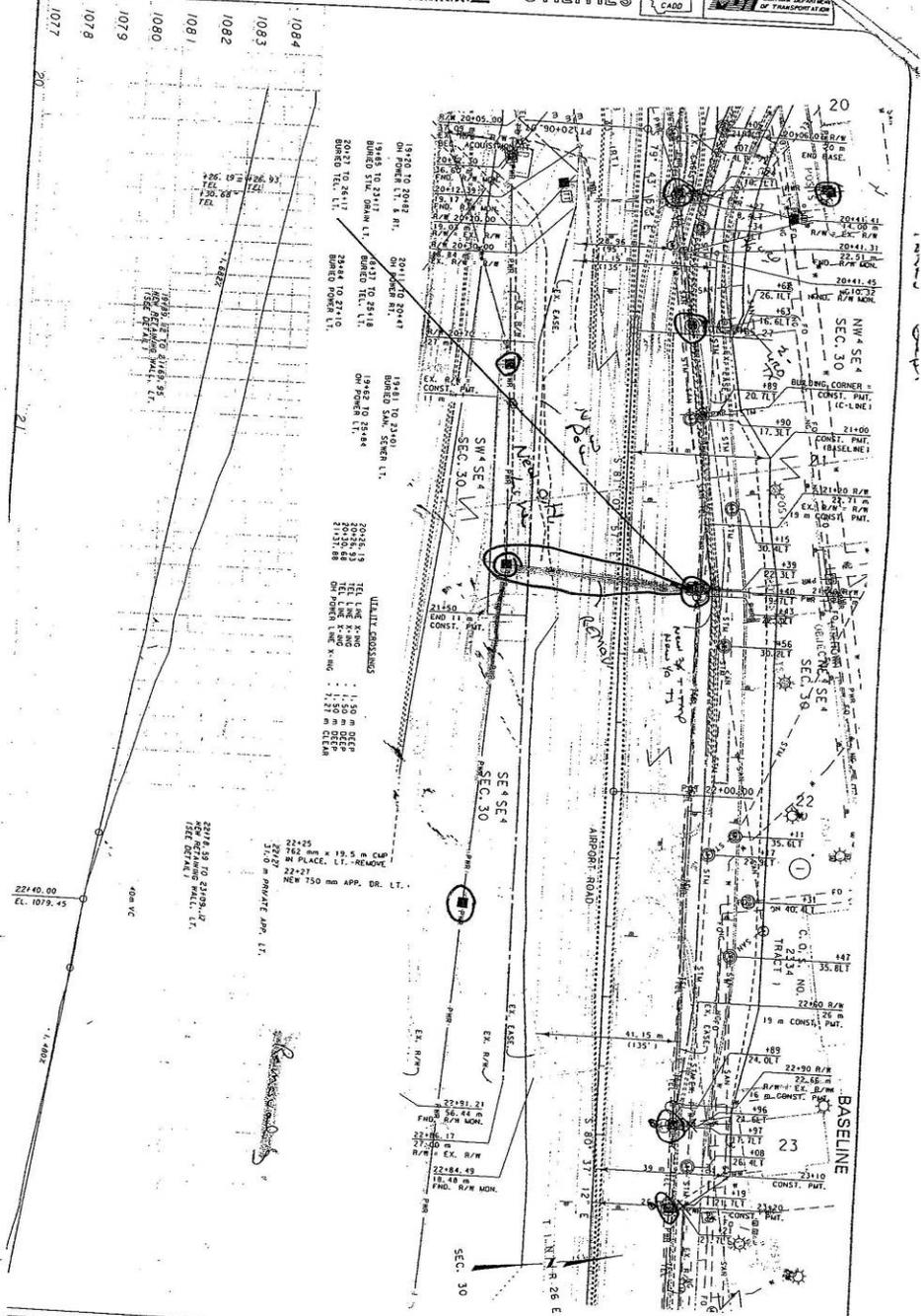


Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_, 20\_\_\_\_  
Project: \_\_\_\_\_  
Map No.: \_\_\_\_\_  
Order No.: \_\_\_\_\_  
Acquired by: Steve McFarland  
E No.: \_\_\_\_\_

11/17/2007  
 10:35:57 AM  
 12:12



UTILITIES



MONTANA DEPARTMENT OF TRANSPORTATION

UTILITY PLAN  
 YELLOWSTONE COUNTY  
 SCALE 1:500

BILLINGS AIRPORT ROAD  
 MP. 5011 (200)

SHEET NUMBER TOTAL SHEETS

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

**TITLE:** Yellowstone Pipe Line (YPL) Right-of-Way Easement to Relocate a 10” pipeline as Required for Airport Road Project.  
**DEPARTMENT:** Parks, Recreation and Public Lands (PRPL)  
**PRESENTED BY:** Michael Whitaker, Director of Parks, Recreation and Public Lands

**PROBLEM/ISSUE STATEMENT:** Yellowstone Pipe Line (YPL) has an existing pipeline located on the east end of Swords Park. As part of the Airport Road Project, it will be necessary for YPL to relocate an existing 10 inch pipeline to a route that is west of the current alignment. The existing and proposed pipelines are shown on the attached exhibit. This work is necessary as part of the construction associated with the Airport Road Project. YPL is responsible for all construction costs; however, since the lines will be located on PRPL property at the east end of Swords Park, we need to enter into this Right-of-Way Easement.

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

**RECOMMENDATION**  
Staff recommends that the City Council approve this Right-of-Way Easement with Yellowstone Pipe Line to relocate its pipelines.

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

**Attachments**  
Attachment A: Alignment Maps and Easements



RIGHT OF WAY

BOOK 475 PAGE 221

3

FOR AND IN CONSIDERATION of the sum of One Dollar and other good and valuable considerations to the Grantor paid, the receipt whereof is hereby acknowledged, THE CITY OF BILLINGS, a municipal corporation in Yellowstone County, Montana, herein called "Grantor", hereby grants unto YELLOWSTONE PIPE LINE COMPANY, a Delaware corporation whose address in Ponca City, Oklahoma, hereinafter called "Grantee", its successors and assigns, the right to lay, maintain, inspect, operate, protect, repair, replace and remove ~~the~~ pipe line for the transportation of liquids and/or gases on, over and through the following described land situate in Yellowstone County, Montana, to-wit:

A tract of land lying in the N 1/2 SW 1/4 of Section 27, Twp. 1 North, Rge. 26 East, M. P. M., which is more particularly described as follows:

Beginning at the west quarter corner of said Section 27, and running thence north  $89^{\circ} 57'$  E. along the north line of the SW 1/4 of said Section 1048 feet, thence south  $0^{\circ} 3'$  E. 666 feet to the south line of the existing County road, thence S.  $89^{\circ} 29'$  W. 674 feet along the south line of said County road, thence continuing along said south line S.  $81^{\circ} 56'$  W. 373 feet to the west line of said section 27, thence north  $0^{\circ} 19'$  W. 725 feet along the west line of said section to the point of beginning.

A tract of land situated in the Southwest Quarter (SW 1/4) of Section twenty-seven (27) in Township One (1) North of Range Twenty-six (26) East of the Montana Principal Meridian, which tract of land is more particularly described as follows to-wit:

Beginning at the Southwest corner of said Section twenty-seven (27) and running thence North along the West line of said Section Twenty-seven (27), one thousand nine hundred six (1906) feet, to the South line of the County road; thence North eighty-two degrees and twenty-nine minutes East ( $82^{\circ} 29'$  E.) three hundred sixty-eight (368) feet; thence North eighty-nine degrees and forty minutes East ( $89^{\circ} 40'$  E.) nine hundred ninety-five (995) feet to the West line of the County road; which runs Southerly: thence along the Westerly line of said County road, which line is parallel to and distant thirty (30) feet from the center line thereof, which center line runs as follows: South no degrees and five minutes ( $0^{\circ} 5'$  E.) nine hundred seventy (970) feet; thence South fifteen

RW--1953-0004-00

1037

MT-YE 7  
TRACT # 103  
MAP 51-1-2-1  
28043  
37

degrees and fifty-three minutes West (15° 53' W.) seven hundred eighty-one (781) feet; thence South forty-eight degrees and thirty-one minutes West (48° 31' W.) three hundred sixteen (316) feet; thence South Twenty-seven degrees and thirty-three minutes west (27° 33' W.) eighty-three and six tenths (83.6) feet to the South line of said Section Twenty-seven (27); thence leaving the Westerly line of said County road and running West along said South line eight hundred ninety (890) feet, more or less, to the point of beginning; said tract of land containing fifty-seven and five tenths (57.5) acres, more or less.

The width of said Right of Way across above described land shall be twenty feet (20') each side of said pipe line.

Together with the right of unimpaired access to said pipe line, and the right of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise of said Grantee of the right granted herein.

In addition to the above consideration, Grantee agrees to pay any damages which may arise to the land, fences, shrubbery and other improvements of Grantor thereon, by reason of Grantee's operation.

Any pipe line constructed by Grantee across Grantor's said land shall, at the time of the construction thereof, be buried to such depth of not less than a 22" covering, so that the same shall not interfere with any cultivation, landscaping or other use of the above described land.

Grantee shall have the right to change the size of its pipe, and damage, if any, in making such change, shall be paid by the said Grantee.

The terms, conditions and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be executed by its officials thereunto duly authorized, this 10 day of November, 1953.

THE CITY OF BILLINGS  
By Earle Knight  
Its Mayor

ATTEST:  
Wm. Frank  
Its City Clerk

STATE OF MONTANA, )  
 ) ss.  
County of Yellowstone. )

BOOK 475 PAGE 223

3 On this 10 day of November, 1953, before the undersigned Notary Public for the State of Montana, personally appeared EARLE KNIGHT, known to me to be the Mayor of the City of Billings, the municipal corporation which executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires \_\_\_\_\_  
  
NOTARY PUBLIC for the State of Montana  
Residing at Billings, Montana  
My Commission Expires August 27, 1956

Tract No. 46 11  
No. Rods 103  
Check No. 609  
Charge A.F.E. 1-JO-50-1-4

518937

The City of Billings

*John W. ...*  
*City Clerk*  
 Billings, Montana

STATE OF MONTANA, ss.  
County of Yellowstone }

I hereby certify that the within instrument was filed in my office for

record on this 22 day of February 1894

at 9:30 o'clock AM M. and is

fully recorded in Book 475 of

pages on page 231

Witness my hand and official seal

*John W. ...*  
County Recorder

STATE OF MONTANA, ss.  
County of Yellowstone }

I hereby certify that the within instrument was filed in my

office on this 22 day of February 1894

at 9:30 o'clock AM M. and is

fully recorded in Book 475 of

pages on page 231

Witness my hand and official seal

*John W. ...*  
County Recorder

(14)

RIGHT OF WAY

FOR AND IN CONSIDERATION OF THE SUM OF Five Hundred + No/100 DOLLARS,

to the Grantors paid, the receipt of which is hereby acknowledged, Dick Logan  
and Marjorie P. Logan

herein called Grantors, hereby grant unto YELLOWSTONE PIPE LINE COMPANY, a Delaware corporation, whose address is Ponca City, Oklahoma, hereafter called Grantee, its successors and assigns, the right to lay, maintain, inspect, operate, protect, repair, replace and remove a pipe line for the transportation of liquids and/or gases, and, ~~further, the right to construct, maintain, operate, repair and remove a communication system and equipment and apparatus therefor, if Grantee desires to do so, to be used in connection with any pipe line hereafter constructed by said Grantee on, over and through the following described land of which Grantors warrant they are the owners in fee simple,~~

situated in Yellowstone County, State of Montana to wit:  
Beginning at point SO<sup>031</sup>'E 738.83 ft. and S84<sup>026</sup>'E 1082.73 ft from the center of Sec. 28, Twp. 1N, Rge. 26E, running thence N38<sup>050</sup>'E a distance of 1042.90 ft. along the Northwesterly Right-of-way Boundary of E.E.W.A. Canal; thence N31<sup>031</sup>'W a distance of 781.22 ft.; thence SO<sup>031</sup>'E 698.55 ft.; thence S84<sup>026</sup>'E 112.73 ft. to point of beginning also described as tract #1. of Survey #34 and all being in the E<sup>1/2</sup> of Section 28, Twp. 1-N-Rge 26E M.P.M.

Beginning at a point 259.33 ft. NO<sup>031</sup>'W of the center of Sec. 28, Twp 1N, Rge 26E running thence S80<sup>031</sup>'E to a point on the East line of W<sup>1/2</sup>NE<sup>1/4</sup> of said Sec. 28; thence North along the East line of W<sup>1/2</sup>NE<sup>1/4</sup> Sec. 28 to the Northeast corner of said W<sup>1/2</sup>NE<sup>1/4</sup> Sec. 28; thence West along the North line of said Sec. 28 a distance of 1320 ft. more or less to the North <sup>1/2</sup> corner of said Sec. 28; thence SO<sup>031</sup>'E along the West line of W<sup>1/2</sup>NE<sup>1/4</sup> of said Sec. 28 to the point of beginning

together with the right of unimpaired access to said pipe line and the right of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise by said Grantee of the rights granted hereunder, hereby releasing and waiving all rights under and by virtue of the dower and homestead exemption laws, if any, of said state.

The said Grantors have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said Grantee. Grantors agree not to build, create or construct any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others.

In addition to the above consideration, Grantee agrees to pay any damages which may arise to crops, buildings, drain tile, fences and timber, by reason of Grantee's operations.

Any pipe line or lines constructed by Grantee across lands under cultivation shall, at the time of construction thereof, be buried to such depth as will not interfere with such cultivation, except that at option of Grantee it may be placed above the channel of any stream, ravine, ditch, or other watercourse.

As a part of the consideration hereinabove set forth, Grantors hereby grant unto said Grantee the right at any time or times to construct and operate an additional pipe line or pipe lines alongside of said first pipe line on, over and through said land, and Grantee agrees to pay Grantors for each additional pipe line so placed the sum of Five Hundred

00-1453-000700

and No/100 Dollars, on or before the time Grantee commences to construct such pipe line on the land hereinabove described; said additional line or lines to be subject to the same rights, privileges and conditions as the original line.

Grantee shall have the right to change the size of its pipes, the damages, if any, in making such change to be paid by the said Grantee.

It is agreed that any payment hereunder may be made direct to said Grantors or any one of them, or by depositing such payment to the credit of said Grantors or any one of them in

Midland National Bank of Billings, Montana and payment so made shall be deemed and considered as payment to each of said Grantors.

The rights herein granted may be assigned in whole or in part.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, we have hereto set our hands and seal

this 14<sup>th</sup> day of October, 1953.

Signed, sealed and delivered in the presence of

M. Hennis

Dick Logan  
Marjorie P. Logan

Tracts No. 9 14

No. of Rods 200

Check No. 626

Charge A.S.-1-20-501-4

CC Billings, CAC

MT-1E-9 NO. 500  
T.W. T.H. MAF ALN 51-22-2

cc: Billings CAC 5-1480  
Billings, MT 11/30

149 BOOK 472 PAGE 572

EASEMENT

FOR AND IN CONSIDERATION of the sum of Twenty Five ~~100~~ Dollars (\$25<sup>00</sup>), in hand paid, the receipt of which is hereby acknowledged, DICK LOGAN and MARJORIE LOGAN, his wife, of Billings, Montana, hereinafter referred to as Grantors (whether one or more), does hereby grant unto YELLOWSTONE PIPE LINE COMPANY, a Delaware corporation, hereinafter referred to as Grantee, its successors and assigns, the right to construct, maintain, operate, repair, rebuild, and remove at any time a gate valve or valves, and erect a fence if desired around said valves, and such other facilities and appurtenances as may from time to time be necessary to the proper installation, operation and maintenance of such system, together with the right of ingress and egress to and from the same, upon, under and across the following described land situated in Yellowstone County, Montana, to-wit:

RW-1953-0008-00

Beginning at a point S. 0°31' E. 738.83 feet. and S. 84°26' E. 1082.73 ft. from the center of Sec. 28, Twp. 1N, Rge. 26E, running thence N. 38°50' E. a distance of 1042.90 ft. along the northwesterly right-of-way boundary of B.B.W.A. Canal; thence N. 81°31' W. a distance of 781.22 ft.; thence S. 0°31' E. 698.55 ft.; thence S. 84°26' E. 112.73 ft. to point of beginning., also described as Tract #1 of Survey #34, and all being in the E½ Sec. 28, Twp. 1N, Rge. 26E, M.P.M.

Block Valve

Grantors are to have the right to fully use and enjoy the above described premises except as to the rights hereinbefore granted.

Grantee hereby agrees to pay all damages which may arise to crops, surface, fences and improvements of said Grantors from the exercise of the rights herein granted.

This agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Executed this 30<sup>th</sup> day of November, 1953.  
 TRACT YE 9 : RGDS  
 MAP 57

Gate Valve  
 P.L. Tract No. H-14-A  
 Check No. 610  
 Charge: A. T. S. 1-90-50-1-4

Dick Logan  
 Dick Logan  
Marjorie Logan  
 Marjorie Logan

Witness:  
M. Henne

cc: Billings, CO  
 9-9-77 77-27-77

28047  
 cc: Billings CPL-5-14-80 71

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**SUBJECT:** Sale of Surplus Property  
**DEPARTMENT:** Administration-Finance Division  
**PRESENTED BY:** Bruce McCandless, Assistant City Administrator  
Liz Kampa-Weatherwax, Purchasing Agent

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**PROBLEM/ISSUE STATEMENT:** The City of Billings will conduct an auction of surplus City items and police recovered property on Saturday, September 27, 2008, at the Billings Operations Center, located at 4848 Midland Road, Billings, MT 59101.

Attached is a list of those items departments would like sold at the City auction. The list has been circulated to all departments for their review. If other departments are interested in any of the items, they will not be auctioned.

The final list may change and will include only items no longer needed by the City of Billings.

**FINANCIAL IMPACT:**

The 2007 surplus auction proceeds after costs were \$52,281.03, which was returned to the participating City Departments and Divisions proportionately.

**RECOMMENDATION**

Staff recommends that City Council declare the attached list of items as surplus property and give staff authorization to sell them at the public auction.

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

**ATTACHMENT**

A. City of Billings Auction List

DRAFT

Category	Description	Quantity	Part Number	Year
Administration	Computer Items Keyboard snelf and wrist pad	1		
Administration	Computer Items HP LaserJet 4V - doesn't work	1	JFFF004096	
Administration/Finance	Computer Items Hewlett Packard LaserJet 4. Works.	1	USBB053978	1992
Administration/Finance	Computer Items Gateway 366c Tower.	1	0013496926	1999
Administration/Finance	Computer Items Tan Gateway Keyboard	1		
Administration/Finance	Computer Items Black Gateway Keyboard	1		
Administration/IT	Computer Items IBM 8MM Tape Drive	1		
Airport	Computer Items Gateway EV900T CRT Monitors	2		
Airport	Computer Items Gateway 145 watt power supply	2		
Airport	Computer Items Box of miscellaneous computer cables	2		
Airport	Computer Items Dell 1700 Laser Printer	1		
Airport	Computer Items Gateway EV700 CRT Monitors	2		
Airport	Computer Items DataFab dataport	1		
Airport	Computer Items Gateway VX110 CRT Monitors	2		
Airport	Computer Items HP LaserJet 1100 Printer	1		
Airport	Computer Items Gateway GP750 PC	1	0013795937	
Airport	Computer Items Acorn PC - System 9338	1		
Airport	Computer Items Gateway EV730 CRT Monitor	1		
Airport	Computer Items Multi-format DVD Recorder	1		
Airport	Computer Items 1 - HP-P1000 printer	1		
Airport	Computer Items Gateway computer keyboards - (not wireless)	11		
Airport	Computer Items Gateway VX700 CRT monitor	1		
Airport	Computer Items Gateway VX720 CRT monitors	2		
Airport	Computer Items Seagate tape drive	1		
Airport	Computer Items Gateway 200STM Laptop with Docking Station	1	D470EW100223	
Airport	Computer Items Gateway E4600 PC	1	0025478022	
Airport	Computer Items Read-only 8X CD drive	1		
Airport	Computer Items Computer speaker sets	5		
Airport	Computer Items UPS Power Supply	1		
Airport	Computer Items Belkin Omniview 4-port sharing switches	2		
Airport	Computer Items Omega Zip Drive	1		

DRAFT

Category	Description	Quantity	Part Number	Year
Computer Items	Beikin Omniview 2-port sharing switch	1		
Computer Items	Philips video control & recording system with VCR	1		
Computer Items	Gateway GP7-500 PC	1	0013795940	
Computer Items	Box miscellaneous computer cards	1		
Computer Items	HP Deskjet 930c Printer	1		
Computer Items	Zenith VCR players	2		
Computer Items	Compac ProReliant ML 370 Server	1	D035DKH1L039	2000
Computer Items	HP 9300 Series CD-Writers, 10X/4X/32X	2		1995
Computer Items	Torison CD-ROM Drive, Model CDR-SIG	1	1K5A024236	
Computer Items	Gateway FPD 1940 CRT Monitor	1		
Computer Items	Panasonic 3.5" floppy drive	1	JU-256A216PF6005	
Computer Items	Mitsum CD-ROM Drive, Model CRMC-FX4010M	1	EYC725655	1999
Computer Items	Javelin BWM15 CRT Monitor	1		
Computer Items	Dell E773C CRT Monitor	1		
Computer Items	Gateway GP7650 PC	1	0018484699	
Computer Items	HP Deskjet 960c Printer	1		
Computer Items	Extra long desktop keyboard shelf	1		
Computer Items	Under desk keyboard shelf	1		
Computer Items	Misc computer mouse - no wireless	5		
Computer Items	Dell E773S CRT monitors	5		
Computer Items	Gateway Computer tower LP Mini TB3 GP7-650	1	0019332898	2002
Computer Items	Gateway G6-350, Computer, Mini-Tower	1	0010699783	1998
Computer Items	Gateway, NLX, Mid-tower E3400	1	0024565024	2001
Computer Items	Gateway LP mini-tower G6-350	1	0010699784	1998
Computer Items	Gateway, LP mini-tower TB3 GP7-450	1	0015718319	1999
Computer Items	Gateway Tower, Model BATC	1	0006395662	1997
Computer Items	Hewlett Packard, Desk Jet 1000C Printer	1	SG74C130W1	
Computer Items	Gateway LP mini-tower	1	0015567956	1999
Computer Items	Gateway LP mini-tower TB3 GP7-550	1	0016053221	1999
Computer Items	Graphics Series, G-771, View Sonic, Monitor	1	JL72535493	1997
Computer Items	Gateway, P5-133	1	0066888111	

DRAFT

Agency	Description	Quantity	Lot Number	Year
Fire	Computer Items misc keyboards	6		
Fire	Computer Items Gateway, EV700 Monitor	1	HDEZK6020951	
Fire	Computer Items Gateway EV700A, Monitor	1	17014D373696	2000
Fire	Computer Items digital monitor	1	1K7Z142648	1997
Fire	Computer Items Gateway tower	1	MIE290169	1999
Fire	Computer Items Gateway #YX-720, Monitor	1	P006073148B	2000
Fire	Computer Items Gateway #CS1572FS, Monitor	1	MH1535120407	1993
Fire	Computer Items HP Printer, Model #c39990A, 6L	1	JPHR02993	1998
Fire	Computer Items HP Printer, C3941A, 5L	1	YSBB291186	1995
Fire	Computer Items Labtec Computer Speakers - LOS 1050, a pair	1	0700TJZ-0113N	1999
Fire	Computer Items HP 5L Printer, Model #C3941A	1	USB8201225	2006
IT	Computer Items Gateway Pro 933M	1	0022096524	
IT	Computer Items Gateway GP7-700	1	0016374165	
IT	Computer Items Gateway Pro M866	1	0021036556	
IT	Computer Items Gateway E3600	1	0026640262	
IT	Computer Items Gateway GP7-933	1	0019527293	
IT	Computer Items Linksys 24-port Gigaswitch	2		
Library	Computer Items Workrite ergonomic CRT monitor stand	1		
Library	Computer Items CRT computer monitors - various	9		
Police	Computer Items Furniture Desktop Organizer - one gray - one brown	2		
Police	Computer Items Brother P-Touch TX Cassett TX-2511 1" Blk/White	1		
Police	Computer Items HP Laserjet 6 - works but has issues	1	USB5218560	
Police	Computer Items HP Laserjet 220D	1	USBGJ05207	
Police	Computer Items Computer Monitor - Micronpc.com	1		
Police	Computer Items Computer Monitor - Gateway	1		
Police	Computer Items keyboard tray	2		
Police	Computer Items HP Deskjet 720C Printer	1	SG8781X05J	
Police	Computer Items Computer Speakers - 2 generic, 1 dell	3		
Police	Computer Items Misc Computer Cords, Computer Mice	1		
Police	Computer Items Printer - HP LaserJet 6P	1	USBC013844	
Police	Computer Items Printer - HP LaserJet 6P	1	USCC096674	

DRAFT

Item No.	Description	Qty	Unit Price	Total Value	Year Acquired
PW Belknap	Computer Items HP 4570C Scanner	1			
PW Belknap	Computer Items Gateway GP7500 PC	1	0014646223		
PW Belknap	Computer Items Gateway E4650 PC	1	0026325183		
PW Belknap	Computer Items Gateway SP41500	1	0023436705		
PW Belknap	Computer Items Gateway E6000 PIV	1	0029561678		
PW Belknap	Computer Items Gateway PC	1	002652389		
PW Belknap	Computer Items Gateway PC	1	0025774340		
PW Belknap	Computer Items Gateway pc	1	0030079449		
PW Belknap	Computer Items Gateway e6100 pc	1	0032401332		
PW Belknap	Computer Items 19" CRT PC Monitors - white	4			
PW Belknap	Computer Items Gateway Eseries	1	0031872735		
Transit	Computer Items Gateway E Series Computer	1	002829922		2002
Transit	Computer Items Gaeay E Series Computer	1	0033928244		2004
Transit	Computer Items Gateway E Series Computer	1	0033928245		2004
Airport	Equipment Craffco 200 Asphalt Crack Router	1	1750		1979
Airport	Equipment Propane Burnisher	1			
Airport	Equipment 19" Samsung C9632C TV	1			
Airport	Equipment Small safe - combination lock	1			
Airport	Equipment Castex Carpet Sentry	1			
Airport	Equipment Eagle Carpet Extractor	1			
Airport	Equipment Fire extinguisher brackets	11			
Airport	Equipment MB Paint stripping skid - parts missing	1			1988
Airport	Equipment 300 Gallon holding tank - may leak	1			
Airport	Equipment 4000 Lbs. Hydraulic Lift Table	1			
Airport	Equipment Soil moisture tester/meter	1			
Airport	Equipment Large hose reel	1			
Airport	Equipment Satellite receiver box	1			
Airport	Equipment Flower bulb planter shovel	1			
Library	Equipment Welder - Presto Weld Mig 95	1			
Library	Equipment Selex 3580 Copy Machine	1	1c901518		1985
Library	Equipment 3'x3'x6' Network rack with removable locking doors	1			

DKnFT

Category	Description	Quantity	Lot Number	Year
Library	Equipment	1	3505R-515532	1990
Library	36" Mitsubishi TV w/stand	1		
Library	8-headphones & splitter in case - pre 1990	1		
Library	RCA VHS camcorder CLR 200 in case	1		
Library	Headphones - various connector types	9		
Library	Audio cassette players - various	6		
Library	Kodak 400 slide projector w/carousel	1		
Library	3M security desensitizers - magnetic	5		
Library	3M magnetic security gate	1		1992
Library	Misc audio/video broadcast equipment in rack	1		
Library	Superprint TDD/TTY device	1	130574	
Library	3M Self Check-Out station Model 6210	1	6210603	2000
Library	3M Self Check-Out station Model 6210	1	6210604	2000
Library	3M Model 995 Circulation Desk Check-In Unit	1	5113853157	1996
Parking	Tennant 255 Sweeper with Scrubber attachment.	1	1960 L02003 and 20453	1987 624
Parking	High pressure sodium light fixtures 100watt	18	e-17 style bulbs	
Parking	Federal APD G90 Auto Gate	2	F-35461 and F-14462	
PRPL	Ford 91" 3 point hitch flail mower	1	1654 N/A	2004
PRPL	Large PA System: Amplifier, speaker, cassette, mic	1		
PRPL	8' John Deere 3 point hitch flail mower model 25A	1	1634 P000643592	1997
PRPL	Asst. gas push mowers some running and some not.	5		
PRPL	Jacobsen Diesel Riding Mower. Cuts 16". 3 decks.	1	1678 1783	1991
PW Belknap	Peluse Air Pack Blower Model 1475B	2		
PW Belknap	Craftsman Lower Tool Box	1		
PW Belknap	3hp portable pump	1		
PW Belknap	Midland portable pump	1		
PW Belknap	single rotators	10		
PW Belknap	Baldon steamer motor and pump	1		
PW Belknap	Onan generator 45kw	1		
PW Belknap	trojan 3000 ptp uv system	1		
PW Belknap	magnetic flow meter	7		
PW Belknap	200hp motors	2		

DRAFT

Dept	Category	Description	QTY	Unit	Year	Cost
PW Belknap	Equipment	alpha laval back drive controllers	2			
PW Belknap	Equipment	drum oil rack	12			
PW Belknap	Equipment	225 amp ac buzz box welder	1			
PW Belknap	Equipment	wrist shaker	1			
PW Belknap	Equipment	250 gal carboy tanks	2			
PW Belknap	Equipment	400gal fiberglass tank	2			
PW Belknap	Equipment	200 gal fiberglass tank	2			
PW Belknap	Equipment	high pressure pump	1			
PW Belknap	Equipment	inline mixer	1			
PW Belknap	Equipment	mixer motor	2			
PW Belknap	Equipment	echo hedge trimmer	1			
PW Belknap	Equipment	echo weed eater	2			
PW Belknap	Equipment	pressure washer	1			
PW Belknap	Equipment	hoist	1			
PW Belknap	Equipment	tee 1 pump	1			
PW Belknap	Equipment	gr pump	1			
PW Belknap	Equipment	1 1/2 hp meyers jet pump	1			
PW Belknap	Equipment	welding cart	2			
PW Belknap	Equipment	hand cart	1			
PW Belknap	Equipment	wall rack	2			
PW Belknap	Equipment	clz scale	1			
PW Belknap	Equipment	husovama push mower	1		580rs-cs	
PW Belknap	Equipment	10" Table Saw Rockwell	1			
PW Belknap	Equipment	big ac unit - carrier	1			
PW Belknap	Equipment	Arrow Board	1			
PW Belknap	Equipment	Gas Weed Eater	1			
PW Belknap	Equipment	Set of Tire Chains	1			
PW Belknap	Equipment	Roll Poly Pipe 2"	2			
PWA	Equipment	Gorman Rupp Pumpm, 6" 600 gpm, Ford 300, 6cyl eng	1	7930	SE43784816C2F240	1969
Solid Waste Administration	Misc-Items	Air compressor tank and motor	1			
		Drawer-organizer	4			

DRAFT

Category	Description	Quantity	Lot #
Administration	Misc. Items	2	
Administration	3.5 Disc drawer	1	
Administration	Bunn coffeemaker and filters	1	
Administration	Magazine holders	1	
Administration	Postage scale	1	
Administration	Legal Magnifies - 2 boxes	2	
Administration	Canon EP-83 Toner Cartridge Yellow R94-4012-160	1	
Administration/IT	HP Jornada 547 Color Pocket PC 32MB	2	SG04772603 SG04773136
Administration/IT	Symbol PDT6800 Hand Held Scanner	1	A26D60P
Administration/IT	HP Laser Jet 4550 Transfer Kit	1	
Administration/IT	HP Laser Jet 4550 Drum Kit	2	
Administration/IT	HP Laser Jet 4550 Black Toner Cartridge C4191AR	1	
Administration/IT	HP Laser Jet 4550 Yellow Toner Cartridge C4194A	1	
Administration/IT	HP Laser Jet 4550 Cyan Toner Cartridge C4192AR	1	
Administration/IT	HP Laser Jet 4550 Magenta Toner Cartridge C4193A	1	
Administration/IT	IBM 4039 Toner Cartridges 1380950	2	
Administration/IT	Epson MXFX 100 LQ1070/1050 Printer Ribbons	20	
Administration/IT	Epson LQ 2170/2180 Printer Ribbons	9	
Administration/IT	Epson LQ 570/800 Printer Ribbons	3	
Administration/IT	Epson LQ 2500/EX 800 Printer Ribbons	7	
Administration/IT	IBM 4214 Printer Ribbons	14	
Administration/IT	IBM 4234 Printer Ribbons	24	
Administration/IT	IBM 4226 Printer Ribbons	12	
Administration/IT	IBM 5224 Printer Ribbons	12	
Administration/IT	IBM 6703 Printer Ribbons	13	
Administration/IT	IBM 5224 Print Shields	4	
Administration/IT	IBM 5225 Printer Shields	2	
Administration/IT	Epson 1100/1400 Toner Cartridge	2	
Administration/IT	IBM 4039/4049 Toner Cartridge	3	
Administration/IT	HP Laser Jet II, III, 95A Toner Cartridge	2	
Administration/IT	HP Laser Jet 4P Toner Cartridge	2	
Administration/IT	HP Laser Jet 5L Toner Cartridge	4	

DRAFT

Item ID	Category	Description	Qty	Unit	Lot #	Year	Notes
	Administration/IT	HP 2100 Toner Cartridge C4096A	4				
	Administration/IT	Canon EP-83 Magenta Toner Cartridge R94-4013-150	1				
	Administration/IT	Mouse Cleaner and Holder	11				
	Airport	Outside Trash Can	4				
	Airport	Outside Flood Light	4				
	Airport	Wood Door	1				
	Airport	Box of old hose adapters and fittings	1				
	Airport	Tote of stormwater sampling supplies/equipment	1				
	Fire	Sony Digital Camera Model #MVC-FD75 with Charger	1		1161463		
	Fire	Sony Digital Camera Model #MVC-FD75 with Charger	1		1112990		
	Fire	Sony Digital Camera Model #MVC-FD75 with charger	1		1173433		
	Fire	Sony Digital Camera Model #MVC-FD75 with charger	1		1282805		
	Library	Bathroom sink	1			1958	
	Library	Light box fixture	1				
	Library	Children's 4-pe-activity table	4				
	Motor Pool	Misc. Items	0				
	Motor Pool	Automotive injector test machine	1				
	Motor Pool	Snap-On R12 ACT 2000 A/C charging machine	1				
	Parking	Federal APD TD249 Garage Ticket Dispenser	1		F-12019		
	Parking	Mercury Vapor light fixtures -- cone shaped, black	5				
	Parking	Lighting controllers	2				
	Police	R.E. Multi Meter	1				
	PRPL	Kodak Slide Projector	1				
	PW Belknap	Spectra Electric Range	1				
	PW Belknap	Kenmore Dishwasher	1				
	PW Belknap	Carrier Heater/Air Conditioner 220 Volt one works	2		51ph615300		
	PW Belknap	Richoh Digital Camera	1				
	Administration	Miscellaneous baskets - letter and legal	11				
	Administration	Desk top organizers	4				
	Administration	CD holder	1				
	Administration	Heavy duty Swingline Stapler 113	1				

DKvFT

Location	Category	Description	Quantity	Lot #
Administration	Office Items	Workstation document holder	4	
Administration	Office Items	Apollo Concept portable overhead projector	1	517028A011006124
Administration/Finance	Office Items	Small table-style desk w/keyboard tray & shelf	1	
Administration/Finance	Office Items	Older style wood desk w/small shelf Hutch	1	
Administration/Finance	Office Items	Workstation w/shelf Hutch	2	
Administration/Finance	Office Items	Small printer shelf/stand	1	
Administration/Finance	Office Items	Keyboard Wrist Guards	3	
Airport	Office Items	IBM Actionwriter Typewriter	1	
Airport	Office Items	Pitney Bowes postage meter	1	
Airport	Office Items	Radio Shack Answering Machine with 25 tapes	1	
Airport	Office Items	Victor desktop calculators	3	
Airport	Office Items	6ft. Desk	1	
Airport	Office Items	1 bundle of miscellaneous computer mousepads	17	
Fire	Office Items	Texas Instruments, Electronic calculator	1	005515
Fire	Office Items	Microwave oven	1	1990
Fire	Office Items	FAX Machine, Model # USP 200	1	37196980
Fire	Office Items	NuKote BM203 Epson Lq800 printer ribbon	5	
Fire	Office Items	C-Line Poly C slide holders-holds 20 35MM slides	30	
Fire	Office Items	Typewriter correctable ribbons, T390 black	7	Olympia ES100, 101, 105&110
Fire	Office Items	Canon BJI-101 ink cartridge-black	6	
Fire	Office Items	Olympia printwheel SWOL 828	2	
Fire	Office Items	Typewriter Ribbon-unknown make & maode	2	
Fire	Office Items	SmithCorona lift-off correcting cassette	2	H21060 same as H63412
Legal	Office Items	6" Gorman Rupp Pump on Trailer	1	
Library	Office Items	17 task chairs of various sizes and colors	17	
Library	Office Items	Used Desks	4	
Library	Office Items	Brother GX-6750 Elec. Typewriter	1	
Parking	Office Items	Pedestal Office Chair without arms	1	
Parking	Office Items	Black managers chair with arms	1	
Planning	Office Items	Tan 5-drawer filing cabinet	1	
Planning	Office Items	Swing Arm Lamps	2	

DRAFT

Category	Description	Qty	Unit #/Serial #	Year
Planning	Office Items	1		
Police	Small Wall mount metal paper organizer	1		
Police	Canon Laser Class 2060 Fax Super G3	1	UKJ04497	
Police	Office Chair - Bugandy w/ Arms - Rough Shape	1		
Police	Bookcase - 4 - 4 shelves - brown = wood	1		
PRPL	two (2) four drawer file cabinets	2		
PRPL	Misc. computers and parts	3		
PW Belknap	Orange Chairs	3		
PW Belknap	desk	4		
PW Belknap	Office Items	4		
PW Belknap	Office Chair - Brown	2		
PW Belknap	side chairs - mauve	5		
PW Belknap	office chair - tan	1		
PW Belknap	office chair - blue	1		
PW Belknap	HP PSC 2355 Printer	1		
PW Belknap	IBM Info Print 1140 Laser Printer	1		
PW Belknap	HP Color Printer CP1700	1		
Transit	Office Items	1		
Transit	Canon FXZ2 Cartridge for Laser Class Canon	1		
Airport	Vehicle	1	1710 CCL449J150473	1979
Fire	Chevy Lumina 4 Dr Sedan	1	4097 2G1WL52MXV9228169	1997 94.627
Police	Vehicle	1	1401 2FAFP71W62X133180	2002 89.600
Police	Ford Crown Victoria Police Interceptor	1	1402 2FAFP71W82X133181	2002 103.456
Police	Ford Crown Victoria Police Interceptor	1	1403 2FAFP71WX2X133182	2002 118.889
Police	Ford Crown Victoria Police Interceptor	1	1407 2FAFP71W72X133186	2002 101.747
Police	Ford Crown Victoria Police Interceptor	1	1408 2FAFP71W92X133187	2002 121.117
Police	Ford Crown Victoria Police Interceptor	1	1409 2FAFP71W02X133188	2002 110.711
Police	Ford Crown Victoria Police Interceptor	1	1410 2FAFP71W22X133189	2002 97.310
Police	Ford Crown Victoria Police Interceptor	1	1414 2FAHP71W03X182241	2003 118.884
Police	Ford Crown Victoria Police Interceptor	1	1424 2FAHP71W53X182252	2003 101.054
Police	Ford Crown Victoria Police Interceptor	1	1425 2FAHP71W13X182250	2003 114.112
Police	Ford Crown Victoria Police Interceptor	1	1504 2G1WL52M0T1154112	1996 101.477
Police	Chevy Lumina 4 Dr Sedan	1	1567 2FAFP71W7YX136467	2000 122.325
Police	Ford Crown Victoria Police Interceptor (for parts)	1		

DMFT

Year	Make	Model	Quantity	Lot #	Vehicle ID	Year	Price
Police	Vehicle	Ford Crown Victoria Police Interceptor	1	1581	2FAFP71W81X147385	2001	127,089
Police	Vehicle	Ford Crown Victoria Police Interceptor	1	1582	2FAFP71W81X147384	2001	100,524
Police	Vehicle	Ford 1ton 4x4 dually with service body	1	1597	2FDKF38G6NGCA64761	1992	77,000
Transit	Vehicle	Numerous used bus wheels	1				

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

TITLE: Ballpark Construction and Maintenance Fund Donations  
DEPARTMENT: Finance Division  
PRESENTED BY: Patrick M. Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** Various donors have made contributions for the Ballpark Construction Fund and the Ballpark Maintenance Fund. Administrative Order #103 requires that all donations of more than \$500 be accepted by the City Council.

The donated funds for the construction fund totaling \$57,308 will be used to offset the construction costs of the Ballpark that exceeded anticipated costs. The donations to the maintenance fund totaling \$13,400 will be applied to the Capital Maintenance Fund and will be used for future Capital Maintenance repairs on the Ballpark.

**ALTERNATIVES ANALYZED:**

- Accept the donation
- Do not accept the donation

**FINANCIAL IMPACT:** The funds will be used to offset construction costs and capital maintenance costs for the new Ballpark.

**RECOMMENDATION**

Staff recommends that Council accept these donations.

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

ATTACHMENTS: Attachment A – Donor List

## Construction Fund Donations

Contributor	Donation Amount
Billings American Legion Baseball	10,000.00
Billings Mustang Boosters Association	4,242.00
MDU Resources Foundation	25,000.00
Montana District #1 LL Baseball	2,000.00
The Rotary Club of Billings 999	3,000.00
Dan Dimich, Jr.	1,000.00
Jim & Misse Iverson	1,000.00
Tom McKinney	1,000.00
Steve Michael	1,000.00
Greg Pekovich	2,000.00
Greg & Becky Pekovich	748.00
Delores Propp	500.00
Bill & Melissa Rains	5,818.00
Total Donations	\$57,308.00

## Maintenance Fund Donations

Contributor	Donation Amount
Billings Mustangs Fan Club	1,000.00
Stockman Bank	1,400.00
Otto & Laverne Jensen	10,000.00
Dennis Kaercher	1,000.00
Total Donations	\$13,400.00

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**TITLE:** Donations to provide materials and construct a picnic shelter at Francis’s Park  
**DEPARTMENT:** Park, Recreation, and Public Lands  
**PRESENTED BY:** Michael Whitaker, PRPL Department

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**PROBLEM/ISSUE STATEMENT:**

The City of Billings Park, Recreation, and Public Lands was approached by Kenneth Hollar who has requested a picnic shelter be constructed at Francis’s Park off of Burning Tree Drive in the Lake Hills Subdivision. Mr. Hollar would like to build and donate the structure to the City. He is working closely with staff to select the materials and location for the shelter. The estimated cost for the picnic shelter is \$15,000.00. Currently the Billings Heights is underserved with only three public picnic shelters available. This additional shelter would be a welcome addition to the area. PRPL is grateful to Mr. Hollar for his past and most recent generosity to park development in the Billings Heights.

**ALTERNATIVES ANALYZED:**

- Accept the donation of a picnic shelter at Francis’s Park
- Decline the donation.

**FINANCIAL IMPACT:**

There will be no financial impact to the City.

**K. RECOMMENDATION**

Staff recommends Council accept this generous donation from Mr. Hollar of a picnic shelter at Francis’s Park.

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




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**TITLE:** Creation of SILMD 305 to provide street lights on King Avenue West from S. 31<sup>st</sup> Street West to Shiloh Road, and repeal SILMD 303

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** At the October 9, 2007 City Council meeting, Council created Special Improvement Lighting Maintenance District (SILMD) 303, which provided for street lights on King Avenue West from S. 31<sup>st</sup> Street West to Shiloh Road. It has been discovered that some of the assessed properties within the district were not properly notified of their assessments and were not given the opportunity to protest the creation of the district, therefore exposing the district to legal objections. The City Attorney’s Office has indicated that the existing SILMD 303 must be repealed and a new district created. This Resolution of Intent will simultaneously set a public hearing date for the creation of SILMD 305 and repeal SILMD 303. Passage of the Resolution will trigger the mailing of legal notices to the affected property owners and set a public hearing for the creation of the district at the October 14, 2008, City Council meeting.

**ALTERNATIVES ANALYZED:**

1. Pass the Resolution of Intent, which will repeal SILMD 303, and establish a public hearing for the creation of SILMD 305 on October 14<sup>th</sup>.
2. Do not pass the Resolution nor set a public hearing.

**FINANCIAL IMPACT:** All maintenance and energy costs for this proposed light district would be paid for by assessments against properties within the district. As the creation of SILMD 305 will be based on actual energy costs and actual number of lights installed instead of the typical estimation, Staff was able to better estimate annual assessments. Average property assessments went up about 7% from last year. Included in the district are 5 parks. Assessments to the Parks Department is estimated to be \$1,076.25 or about 6.0% of the overall SILMD assessment.

**RECOMMENDATION**

Staff recommends that Council pass this Resolution of Intent to create SILMD 305,

simultaneously repeal SILMD 303, and set a public hearing date for October 14, 2008, where action will be taken for the creation of SILMD 305.

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

**ATTACHMENTS**

- A. District Boundary Map SILMD 305
- B. Resolution of Intent to Create SILMD 305

## **INTRODUCTION**

At the October 9, 2007 City Council meeting, Council created Special Improvement Lighting Maintenance District (SILMD) 303, which provided for street lights on King Avenue West from S. 31<sup>st</sup> Street West to Shiloh Road. It has been discovered that some of the assessed properties within the district were not properly notified of their assessments and were not given the opportunity to protest the creation of the district, therefore exposing the district to legal objections. The City Attorney's Office has indicated that the existing SILMD 303 must be repealed and a new district created. This Resolution of Intent will simultaneously set a public hearing date for the creation of SILMD 305 and repeal SILMD 303. Passage of the Resolution will trigger the mailing of legal notices to the affected property owners and set a public hearing for the creation of the district at the October 14, 2008, City Council meeting.

## **PROCEDURAL HISTORY BACKGROUND**

- October 9, 2007, SILDM 303 created
- September 22<sup>nd</sup> (this meeting), approve Resolution of Intent to create SILMD 305 and repeal SILMD 303

### Future Steps in the SILMD Process

- September 25<sup>th</sup>, legal notices mailed to all affected property owners, 15-day protest period begins
- September 25<sup>th</sup> and October 2<sup>nd</sup>, legal notices published in the *Billings Times*
- October 10<sup>th</sup>, 15-day protest period ends
- October 14<sup>th</sup> Council meeting, Public hearing and creation of SILMD 305
- November 2009, initial assessments appear on tax statements

## **BACKGROUND**

In discussions with the City Attorney's Office, it was determined that SILMD 303 must be repealed and a new district be created because of Montana case law which says that failure to mail out notices is a fatal defect in creating a special improvement district. As such, the City Engineer's Office is proceeding with repealing SILMD 303 and creating SILMD 305.

All of the street lights in these proposed district are City owned lights and were installed with the King Avenue widening project (SID 1379). Therefore the SILMD assessments pay only the cost of energy and maintenance. The monthly energy fees associated with street lighting are established by the Montana Public Service Commission and are subject to change in the future. The first year assessment for each of these districts will be higher than the annual estimates given below because the assessments collected on the first year's taxes have to cover a period of time longer than 12 months. The first year assessment has to cover energy & maintenance for the period from November 2008 to November 2009.

When SILMD 303 was created last October, the City Clerk did not receive any protest either before or at the public hearing, therefore, the previous SILMD passed by 100%. The street lights on King Avenue have been on since July and as no formal district has been created, all energy and

maintenance costs associated with this district are currently being paid for from Street and Traffic finds.

The estimated annual assessments in this district will range from \$12.36 assessed to individual condo owners to \$4,633.83 assessed to large commercial properties. These amounts are up about 7% from last year. Increased energy costs and improper area calculation for SILMD 303 are the cause of this. It should be noted that of the 113 parcels being assessed, 109 have signed waivers against the formation a street light district. As SILMD 305 is spread on an area calculation, these 109 parcels account for 81% of the total assessment area.

### **ALTERNATIVES ANALYSIS**

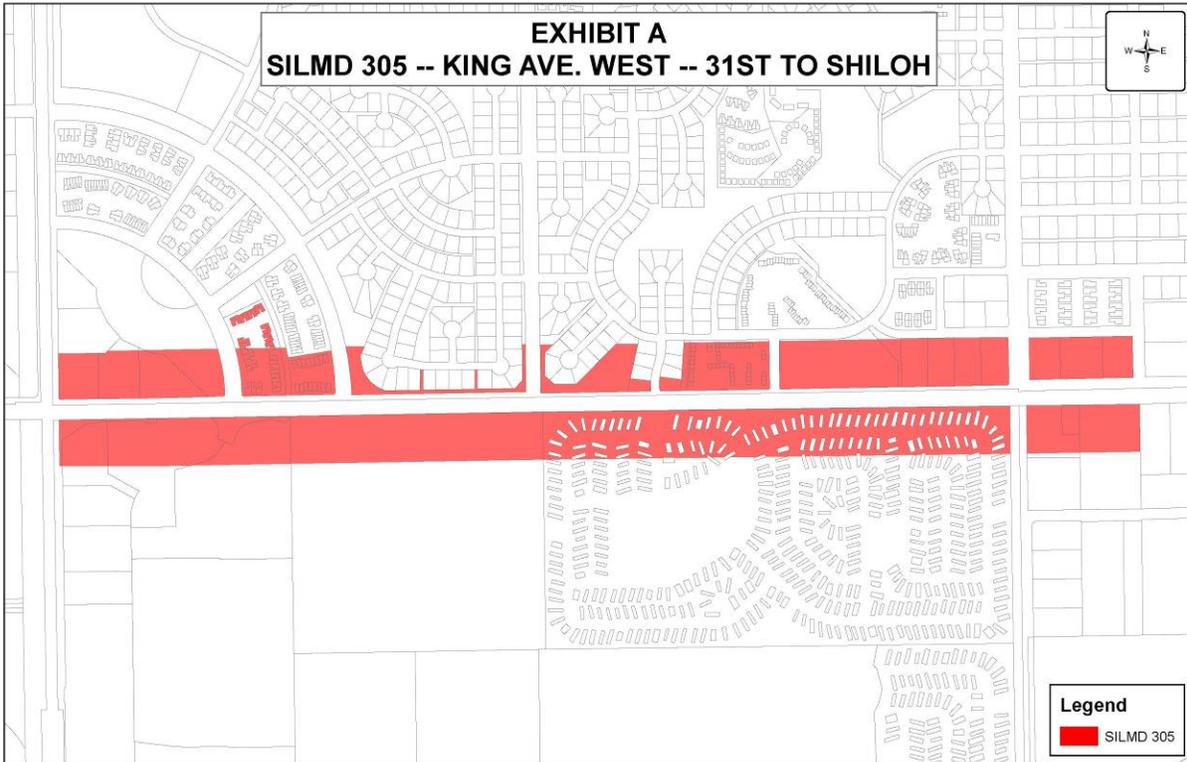
1. Create the SILMD's to provide a source of funding for operation & maintenance of the streetlights. This is the standard method of paying the cost of energy & maintenance for all street lighting in Billings.
2. Do not create an SILMD. In the case of King Avenue West, a potential safety hazard would be created if the lights were not to remain functional because of the raised median and the roundabout.

### **RECOMMENDATION**

Staff recommends that Council pass this Resolutions of Intent to create SILMD 305, simultaneously repeal SILMD 303, and set a public hearing date for October 14, 2008, where action will be taken for the creation of SILMD 305.

### **ATTACHMENTS**

- A. District Boundary Map SILMD 305
- B. Resolution of Intent to Create SILMD 305



## SILMD 305

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

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 305 OF THE CITY OF BILLINGS, MONTANA, AND REPEAL SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 303, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

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

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

SECTION 1:

That it is the intention to create Special Improvement Lighting Maintenance District (SILMD) 305 and simultaneously repeal SILMD 303; which is a district for this same area created by Council on October 9, 2007. Protest and assessment information for SILMD 303 was not properly mailed out to the proper tax codes, and resultantly, the district must be recreated. That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new street lights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 305" hereinafter called the District, and the boundaries of the District are hereby declared to include: All lots, parcels and pieces of land abutting King Avenue West from South 31<sup>st</sup> Street West to Shiloh Road, as shown on the map designated as Exhibit "A" attached hereto, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto.

SECTION 3:

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

**SECTION 4:**

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of sixty-eight (68) 250-watt high-pressure sodium fixtures mounted on steel, mast arm style poles and served by underground wiring. The City of Billings shall own and install the streetlights and all associated appurtenant structures and materials.

**SECTION 5:**

The City of Billings intends to establish the contract rate for supplying electrical energy in accordance with the rate schedule approved by the Montana Public Service Commission. Said rate is currently estimated at \$10.27 per unit, per month, and that NorthWestern Energy Company shall provide energy to the lighting fixtures. That the City of Billings shall provide normal maintenance to lighting fixtures, poles, cables and other incidental equipment, and shall at all times own said lighting fixtures, poles, cables and other incidental equipment.

**SECTION 6:**

The estimate of the cost of the District per year, including City administrative costs, is the sum of \$17,856.76; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which it's assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys and public places. The estimated cost of the District per year for property owners is on the basis of approximately \$0.00685772 per square foot of assessable area. Due to the difference in the time the lighting service started and the time assessments can be levied, the first assessment will cover a period of operation of the District greater than one year and is estimated to total \$20,575.12 or approximately \$0.00790167 per square foot.

#### SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt this resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 305 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefore.

#### SECTION 8:

That on the 14th day of October, 2008, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 305 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in "The Billings Times", a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 305. Said notice is to be published and mailed on the same date.

PASSED by the City Council and APPROVED this 22nd day of September 2008.

CITY OF BILLINGS

By \_\_\_\_\_  
Ron Tussing Mayor

ATTEST:

By \_\_\_\_\_  
Cari Martin City Clerk

CONSENT AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday September 22, 2008**

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TITLE: Transfer of Three RSIDs From Yellowstone County to City  
DEPARTMENT: Public Works/City Attorney  
PRESENTED BY: Dave Mumford, Public Works Director/ Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** For approximately 40 years the Yellowstone Club Estates subdivision and Yellowstone Country Club were provided water and wastewater treatment services through three Rural Special Improvement Districts (RSIDs) created by Yellowstone County. These Districts were funded by assessments on each property owner within the Districts and managed by Yellowstone County. The Yellowstone County Commission has requested the City to accept and agree to the transfer of the RSID assets due to annexation and completion of the provision of services to this subdivision as summarized below.

In 2003, the City of Billings annexed Yellowstone Club Estates Subdivision. As part of the annexation process, the City began implementation of a plan to provide City services to this area as statutorily required upon annexation. Part of this process included connection of subdivision sewer lines to the City’s sewer service lines and dismantling/decommissioning a sewage treatment plant which served the subdivision for several years. Maintenance of the old plant was provided by RSID 581M, one of the three RSIDs proposed be transferred to the City. Connection of this subdivision to the City’s sewer system has now been completed and the old sewage treatment plant has been dismantled and no longer exists.

It is proposed that this specific RSID be transferred to the City in 2013 in order to fund any remaining costs related to the sewage treatment plant and infrastructure that arose prior to connection to the City’s system.

Other parts of the plan to provide services after annexation of this area include assumption of two other RSIDs which were created for the maintenance of water lines serving the subdivision (RSID 531M) and water lines adjacent to and running parallel to Rimrock Road which also provided water to the subdivision (RSID 451M). The City has always provided water to the subdivision through these two RSIDs but assessments and maintenance costs were handled by

the County. Annexation has now rendered these two RSIDs unnecessary and the residents will be assessed for water and sewer services as all other residents within the City.

MCA Section 7-12-2126 provides that RSIDs may be transferred from a county to a city upon mutual agreement of the respective governing bodies. The three proposed agreements attached briefly describe what is to be transferred and when. The transfer of these three RSIDs is appropriate now since the sewer line project and dismantling of the old sewage treatment plant serving the subdivision was completed earlier this summer.

**ALTERNATIVES ANALYZED:** Continued operation of these three RSIDs by the County was considered however the City's statutory responsibility to provide services to this area upon annexation requires assumption of the responsibilities previously performed by the County under these RSIDs. The terms of the RSID transfers are negotiable and discretionary but the duty to provide the services is not. If these transfer agreements are approved by the City Council and the Yellowstone County Commission, assets including any funds and real property interests will be transferred from the County to the City. Thereafter, the County will formally dissolve the RSIDs 531M and 451M immediately and then dissolve RSID 581 on or before June 30, 2013.

**FINANCIAL IMPACT:**

There are no funds remaining in these RSIDs and there is no financial obligation imposed upon the City for accepting these transfers.

**RECOMMENDATION**

Staff recommends that Council approve the three attached RSID Transfer Agreements.

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

**ATTACHMENTS**

**Attachment A:** RSID 581M Transfer Agreement (four pages)

**Attachment B:** RSID 531M Transfer Agreement (two pages)

**Attachment C:** RSID 451M Transfer Agreement (two pages)

## RSID # 581M Transfer Agreement

Parties. The parties to this Transfer Agreement are the City of Billings (the City), an incorporated municipality located in the State of Montana, and Yellowstone County (the County), a political subdivision of the State of Montana.

Purpose and Subject Matter. The purpose of this agreement is to provide for the transfer of assets from the County to the City that are currently held by the County pursuant to Rural Special Improvement District # 581 M (the District), which was created for the purpose of operating a sewage treatment plant, servicing lines and lift stations located within the boundaries of the District. The various easements on which the treatment plant, sewer lines and lift stations are located are more fully described in the easement documents and maps attached as Exhibit "A". The City has now annexed the District properties. The City has been maintaining the sewer lines since annexing the land in 2003, decommissioned/dismantled the sewage treatment plant in May, 2008, and began treating the Yellowstone Club Estates sewage at that time. However, the District is still shown as a County responsibility.

Statutory Authority Allowing Transfer of Assets. The statutory authority allowing the transfer of District assets from the County to the City is found in MCA Section 7-12-2126(1), which provides for the transfer of the "operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon".

Terms of the Transfer of the Assets and Effective Date. The terms of the transfer are as follows:

- 1) Yellowstone Club Estates Sewage Treatment Plant. The District within the boundaries of the Yellowstone Club Estates Subdivision (Yellowstone Country Club) was

previously operating a sewer treatment plant located on the grounds of the Yellowstone Country Club. Continued operation of the plant by the District is unnecessary because the various properties located within the District are now connected to the City's sewer system. The County has previously granted permission to the City to dismantle the plant at the City's sole expense. The City agrees to indemnify and defend the County for the acts or omissions of City employees, agents and contractors in the sewage plant demolition process. Upon execution of this Transfer Agreement, the County agrees to extinguish its property interest in the plant, including but not limited to an easement on which the plant sits; and will prepare, execute and record any necessary documents to accomplish the extinguishment of its property interest.

- 2) Continued Existence of District for 5 years. As part of this agreement, the County agrees to continue the existence of the District for five (5) years from the date of this agreement and the District will be statutorily dissolved by the County on or before June 30, 2013. The purpose of the continued existence of the District is to provide a mechanism to fund liabilities that may have been incurred as a result of operations related to the District's treatment plant and infrastructure prior to the date of this agreement. It is, however, expressly understood that the County and District shall not be responsible for the District's normal infrastructure deterioration or failure—this is expressly the duty and responsibility of the City. Further the City and the County expressly state that as of the date of this agreement, both parties are aware of some infrastructure failures and that such are not unusual with improvements of this type and age. Therefore, the District shall be responsible only for those liabilities that were incurred prior to the date of this agreement excepting the infrastructure failures and

plant demolition otherwise provided for in this agreement. The City shall be responsible for all operations and maintenance from the date of this agreement into the future. Accordingly, all assets held by the District and transferred to the City upon execution of this agreement are expressly transferred “as is” with no warranties either express or implied.

- 3) Transfer of Existing Assets. Upon execution of this agreement all assets held by the District, including but not limited to all lines, lift stations, and property interests, shall be transferred to the City for the City’s exclusive use and ownership.
- 4) Deficits Contained in District Account. The parties understand that as of the date of the execution of this agreement, a deficit in the District financial account exists. The County covenants that it shall be responsible for assessing sufficient amounts to balance the District’s financial account. The County further covenants that in the five years following the execution of this agreement, the County shall assess, as needed, any and all amounts necessary to pay its liabilities, if any, that are provided for in this agreement. Cash and tax receivable balances that may or may not be held by the District will not be transferred to the City but will be used to pay for pre-existing operational costs incurred by the District.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

City of Billings:

\_\_\_\_\_  
Tina Volek, City Administrator

\_\_\_\_\_

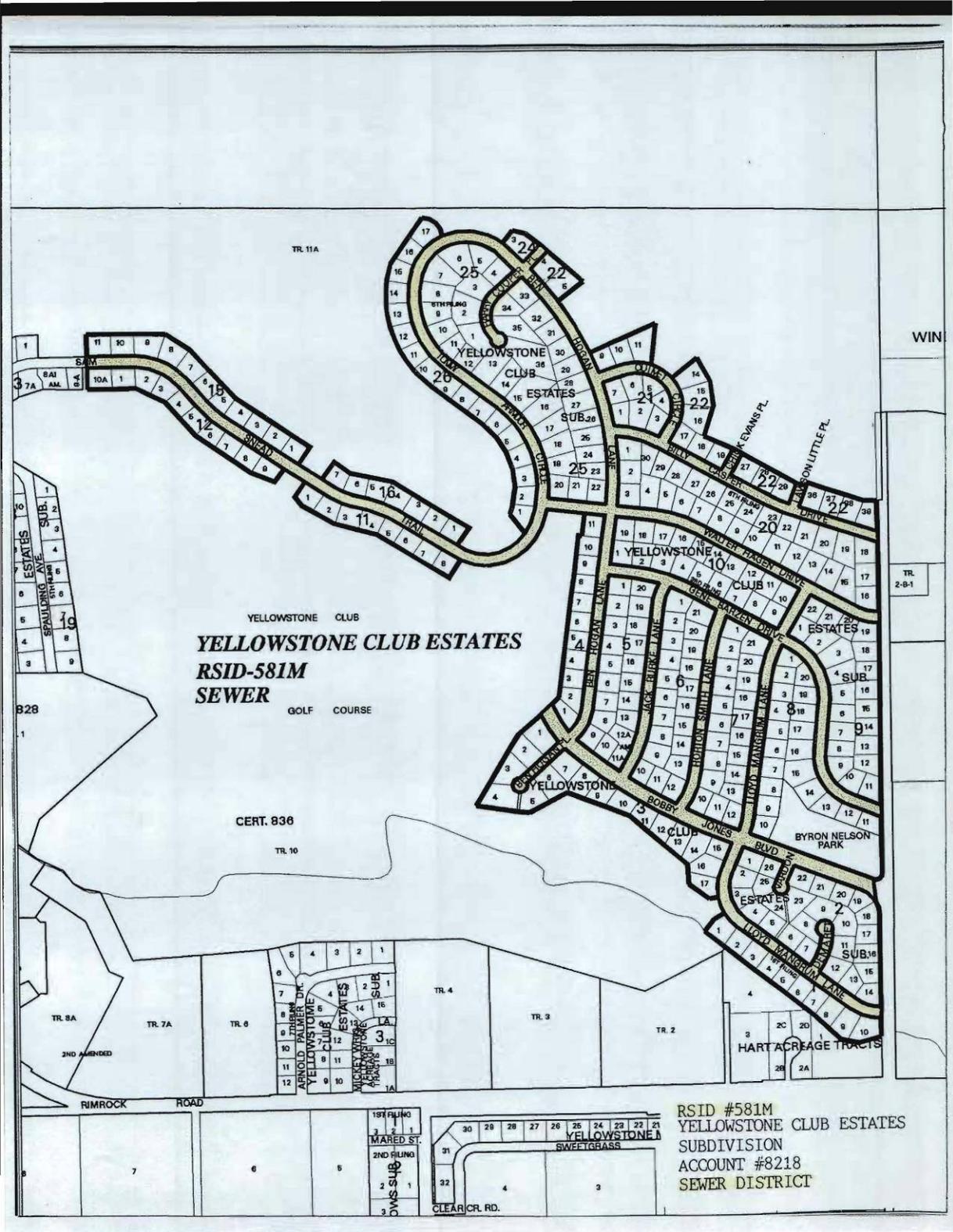
Ron Tussing, Mayor

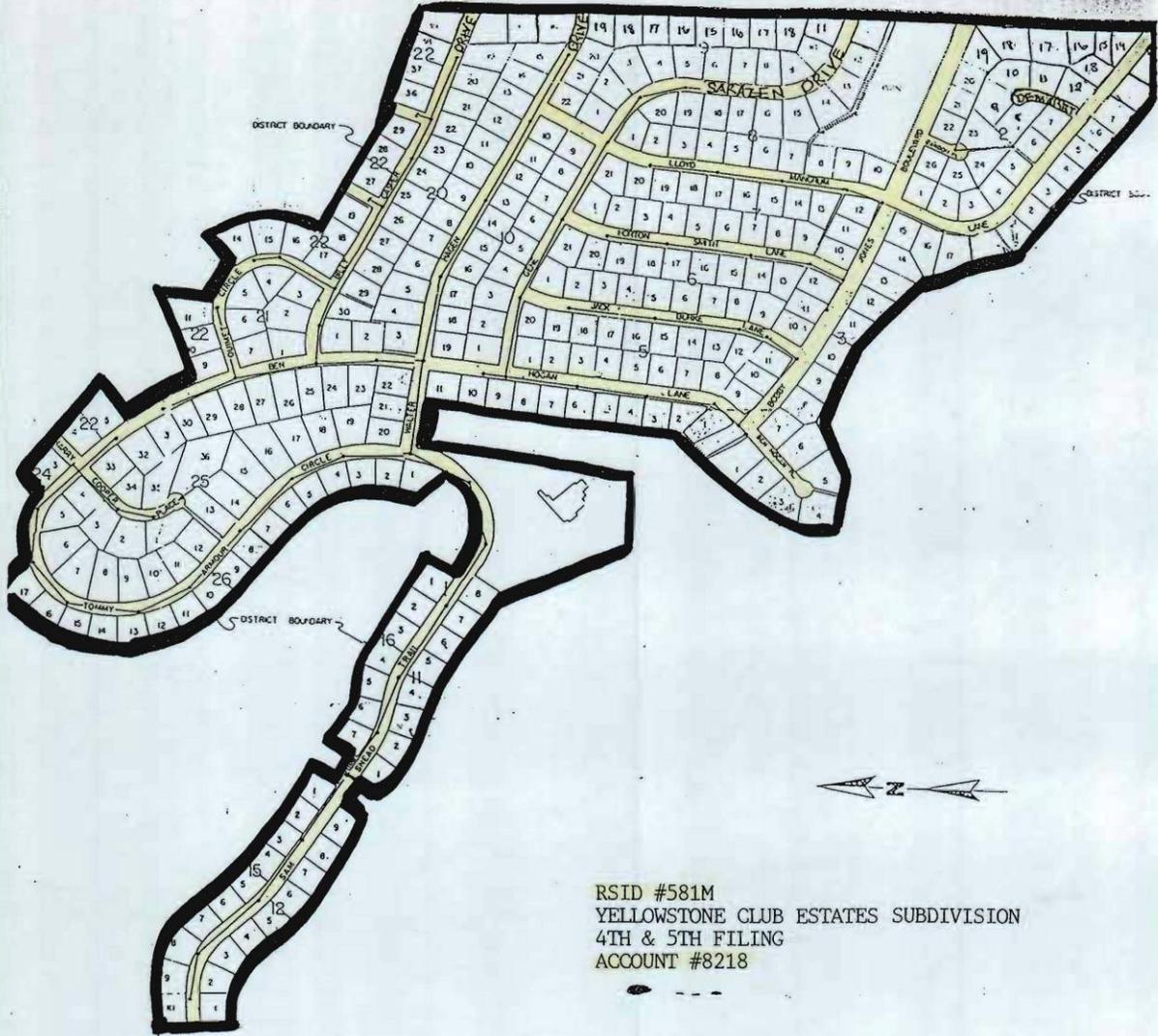
Attest: \_\_\_\_\_  
Cari Martin, City Clerk

Yellowstone County:

\_\_\_\_\_  
James E. Reno, Chairperson

Attest: \_\_\_\_\_  
Tony Nave, Clerk & Recorder





RSID #581M  
 YELLOWSTONE CLUB ESTATES SUBDIVISION  
 4TH & 5TH FILING  
 ACCOUNT #8218

## RSID #531M Transfer Agreement

Parties. The parties to this agreement are the City of Billings (the City), an incorporated municipality located in the State of Montana, and Yellowstone County (the County), a political subdivision of the State of Montana.

Purpose and Subject Matter. The purpose of this agreement is to provide for the terms of the transfer of assets from the County to the City that are currently held by the County pursuant to Rural Special Improvement District # 531 M (the District), which was created for the maintenance of water lines generally located in Yellowstone Club Estates Subdivision. The location of the water lines is further described on the attached map (Exhibit “A”) showing the boundaries of the District. The District has now been annexed into the boundaries of the City and the City is now exclusively servicing the lines. However, the District is still technically shown as a County responsibility.

Authority Allowing Transfer of Assets. The authority allowing the transfer of District assets from the County to the City is in MCA Section 7-12-2126(1), which provides for the transfer of the “operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon”.

Terms of Transfer of the Assets of the District—Effective Date. Upon the execution of this agreement, the County shall transfer all District assets including all real property interests of the District to the City. The County will prepare, execute and record all necessary documents to accomplish such. The County will then begin the process of dissolving the District in accordance with Montana law. Upon execution of this agreement, the City shall assume full responsibility for the maintenance and operation of the water lines located within the District.

Assets of the District to be Delivered to the City “AS IS WITH NO WARRANTIES”. The parties agree that all assets of the District are to be delivered to the City “as is with no warranties”. The City agrees that it has traditionally maintained the water lines since annexation of the properties into the City and that it is aware of all current defects of the assets, including deterioration, if any, of the water lines or any other asset connected with them.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

City of Billings:

\_\_\_\_\_  
Tina Volek, City Administrator

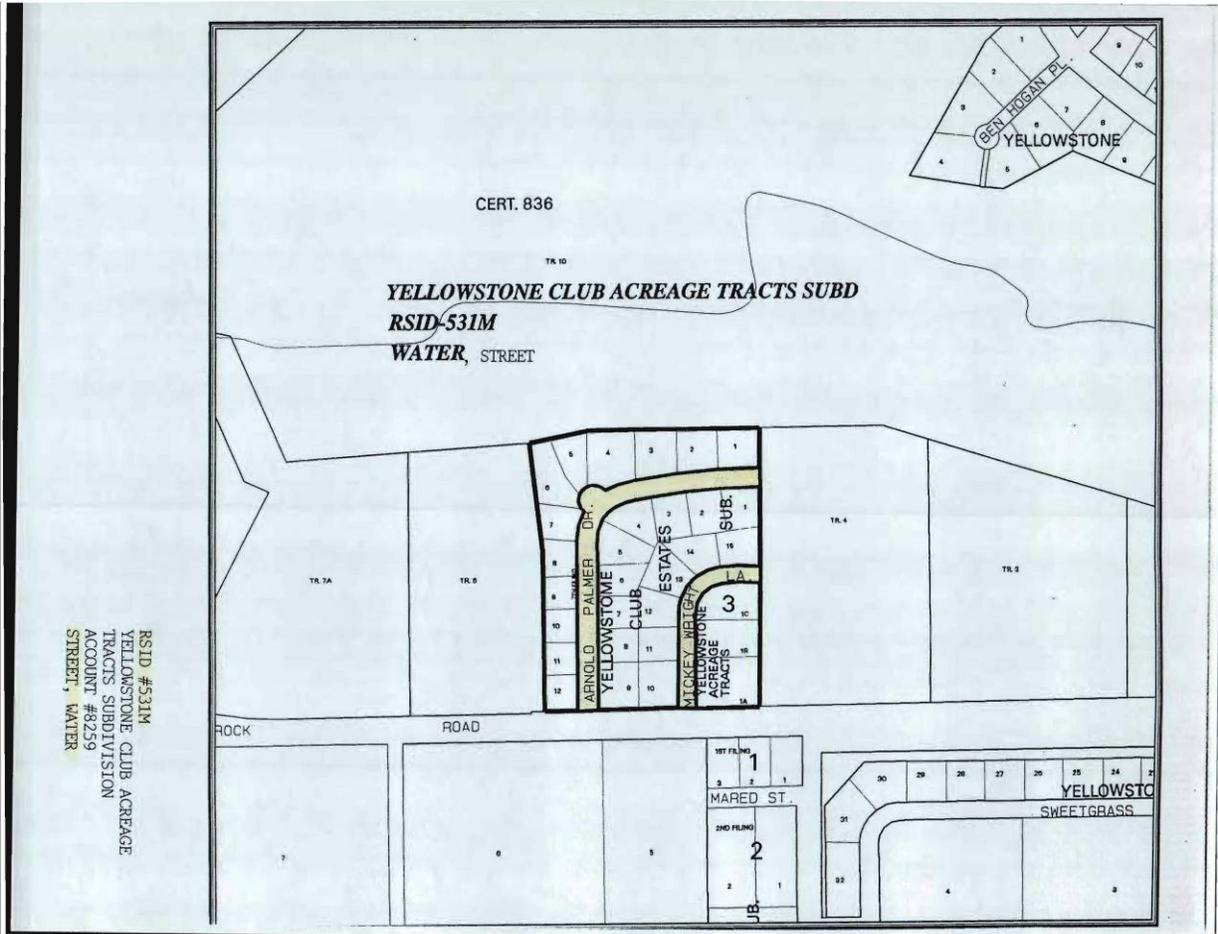
\_\_\_\_\_  
Ron Tussing, Mayor

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

Yellowstone County:

\_\_\_\_\_  
James E. Reno, Chairperson

Attest: \_\_\_\_\_  
Tony Nave, Clerk & Recorder



## RSID # 451M Transfer Agreement

Parties. The parties to this agreement are the City of Billings (the City), an incorporated municipality located in the State of Montana, and Yellowstone County (the County), a political subdivision of the State of Montana.

Purpose and Subject Matter. The purpose of this agreement is to provide for the terms of the transfer of assets from the County to the City that are currently held by the County pursuant to Rural Special Improvement District # 451 M (the District), which was created for the maintenance of water lines located generally along and contiguous to Rimrock Road. The location of the water lines is further described on the attached map (Exhibit “A”) showing the boundaries of the District. The District has now been annexed into the boundaries of the City and the City is now exclusively servicing the lines. However, the District is still technically shown as a County responsibility.

Statutory Authority Allowing Transfer of Assets. The statutory authority allowing the transfer of District assets from the County to the City is in MCA Section 7-12-2126(1), which provides for the transfer of the “operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon”.

Terms of Transfer of the Assets of the District—Effective Date. Upon the execution of this agreement, the County shall transfer all District assets including all real property interests of the District to the City and shall prepare, execute and record any documents necessary to accomplish such. The County will then begin the process of dissolving the District in accordance with Montana law. Upon execution of this agreement, the City shall assume full responsibility for the maintenance and operation of the water lines located within the District.

Assets of the District to be Delivered to the City “AS IS WITH NO WARRANTIES”. The parties agree that all assets of the District are to be delivered to the City “as is with no warranties”. The City agrees that it has traditionally maintained the water lines since annexation of the properties into the City and that it is aware of all current defects of the assets, including deterioration, if any, of the water lines or any other asset connected with them.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

City of Billings:

\_\_\_\_\_  
Tina Volek, City Administrator

\_\_\_\_\_  
Ron Tussing, Mayor

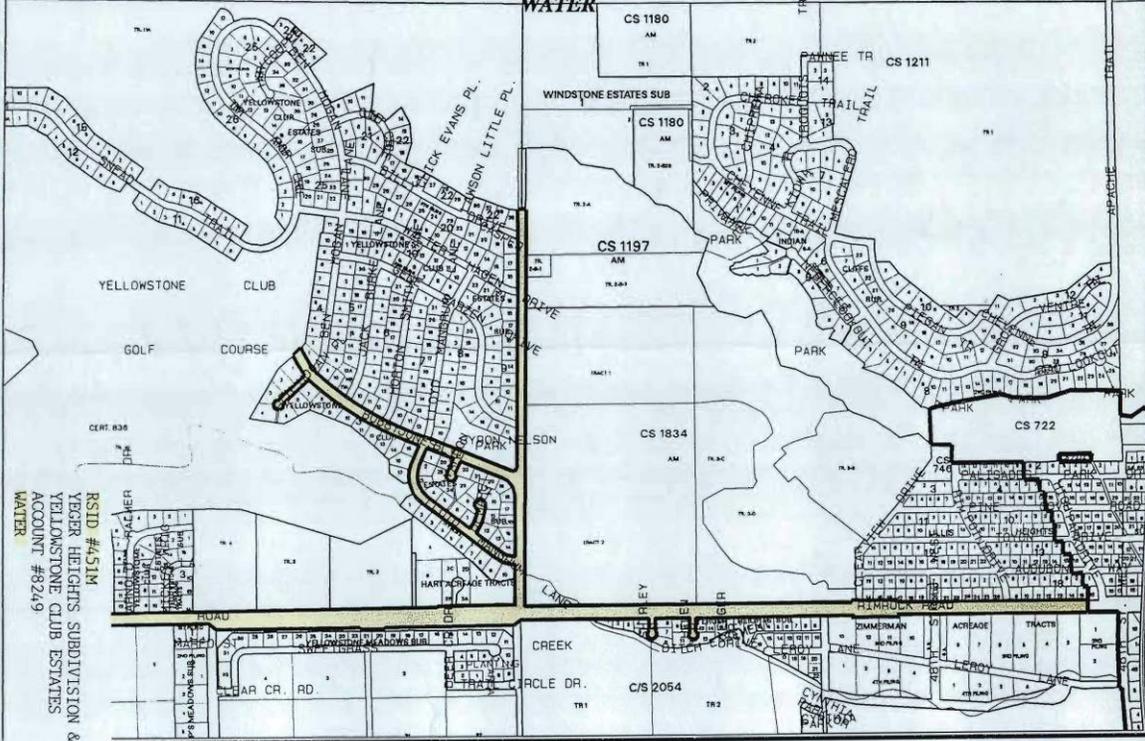
Attest: \_\_\_\_\_  
Cari Martin, City Clerk

Yellowstone County:

\_\_\_\_\_  
James E. Reno, Chairperson

Attest: \_\_\_\_\_  
Tony Nave, Clerk & Recorder

YEGER HEIGHTS SUBD  
YELLOWSTONE CLUB ESTATES SUBD  
RSID-451M  
WATER



RSID #451M  
YEGER HEIGHTS SUBDIVISION &  
YELLOWSTONE CLUB ESTATES  
ACCOUNT #8249  
WATER

AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: City Administrator Evaluation  
 DEPARTMENT: City Attorney  
 PRESENTED BY: City Council Member Jani McCall and Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** The Mayor and City Council have set October 20, 2008, as the time for an annual performance evaluation of City Administrator Tina Volek. Councilmember Jani McCall has chaired the City Council subcommittee in charge of organizing the annual evaluation process and has previously distributed the current employment contract with Ms. Volek to the Mayor and City Council. A copy of that contract is attached to this memo as Attachment A. The Mayor and Council must conduct the evaluation using criteria provided in pages 9-11 of the contract. As part of the evaluation process, the Mayor and Council have determined it is appropriate to formally advise the public of the evaluation criteria and receive verbal or written input from the public based upon the criteria on or before September 30, 2008. Input from the public should be directed to Council members in the ward in which the resident resides.

**ALTERNATIVES ANALYZED:** The Mayor and City Council may decline to formally invite public input as part of the City Administrator evaluation. There is no legal requirement to invite comment under the current employment contract with Ms. Volek.

**FINANCIAL IMPACT:**  
 There is no financial impact to the Mayor and City Council in either formally seeking or declining to seek public input on the City Administrator’s annual evaluation.

**RECOMMENDATION**

Staff recommends that the Mayor and Council consider and approve the Administrator Evaluation subcommittee’s recommendation of formally requesting public input prior to Council evaluation of the City Administrator.

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

**ATTACHMENTS**

Attachment A: Employment Contract of 2006-2008 with City Administrator Tina Volek

# Employment Agreement

## Introduction

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

## Section 1: Term

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

## Section 2: Duties and Authority

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

## Section 3: Compensation

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

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

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

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

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

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

#### Section 5: Vacation and Sick Leave

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

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

#### Section 6: Automobile

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

#### Section 7: Retirement

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

B. In addition to Employer's payment to MPERS as referenced above, Employer agrees to execute

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

#### Section 8: General Business Expenses

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

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

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

#### Section 9: Termination

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

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

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

**L. Section 10: Severance Compensation**

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

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

C. The Employee shall also be compensated for all accrued vacation leave and ¼ of accrued sick leave. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

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

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

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

**Section 11: Resignation**

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

**Section 12: Performance Evaluation**

Employer shall annually review the performance of the Employee in September, subject to a review form shown as Attachment A or to another process for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to:

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

### Section 13: Hours of Work

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

### Section 14: Residency

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

### Section 15: Indemnification

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

1. It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
2. In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to *42 U.S.C. 1983*, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.
3. Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on

behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

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

provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

#### Section 16: Bonding

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

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

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

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

#### Section 18: Notices

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

#### Section 19: General Provisions

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

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

C. Effective Date. This Agreement shall become effective on \_\_\_\_\_, \_\_\_\_\_.

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

Approved as to Form:

\_\_\_\_\_  
Brent Brooks, City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2006,

The City of Billings

By:

\_\_\_\_\_  
Ron Tussing, Mayor

Attest:

\_\_\_\_\_  
Marita Herold, CMC/AEE, City Clerk

\_\_\_\_\_  
Christina F. Volek, Employee

CITY OF BILLINGS  
CITY ADMINISTRATOR  
PERFORMANCE EVALUATION

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This form shall be completed by each member of the Council to evaluate the City Administrator's performance in each of the areas noted below. Performance levels can be noted, based on the following scale:

- 1 = Poor (rarely meets expectations).
- 2 = Below average (usually does not meet expectations).
- 3 = Satisfactory (meets performance expectations).
- 4 = Above average (generally exceeds performance expectations).
- 5 = Excellent (almost always exceeds expectations and performs at very high standard).

Each member of the Board should sign the form and forward it to the Mayor, who will be responsible for compiling the comments.

EVALUATION PERIOD: \_\_\_\_\_ TO: \_\_\_\_\_

1. PERSONAL

- \_\_\_\_\_ Invests sufficient effort toward being diligent and thorough in the discharge of duties.
- \_\_\_\_\_ Composure, appearance, and attitude fitting for an individual in his executive position.

2. PROFESSIONAL SKILLS AND STATUS

- \_\_\_\_\_ Knowledgeable of current developments affecting the management field and affecting city governments.
- \_\_\_\_\_ Respected in management profession.
- \_\_\_\_\_ Has a capacity for and encourages innovation.
- \_\_\_\_\_ Anticipates problems and develops effective approaches for solving them.
- \_\_\_\_\_ Willing to try new ideas proposed by Council Members or staff.

3. RELATIONS WITH MAYOR/CITY COUNCIL

- \_\_\_\_\_ Carries out directives of the Council as a whole rather than those of any one Council member.
- \_\_\_\_\_ Assists the Council in resolving problems at the administrative level to avoid unnecessary Board action.
- \_\_\_\_\_ Assists the Council in establishing policy, while acknowledging the ultimate authority of the Council.
- \_\_\_\_\_ Responds to requests for information or assistance by the Council.
- \_\_\_\_\_ Informs the Council of administrative developments.
- \_\_\_\_\_ Receptive to constructive criticism and advice.

4. POLICY EXECUTION

- \_\_\_\_\_ Implements Council action in accordance with the intent of the Board.
- \_\_\_\_\_ Supports the actions of the Council after a decision has been reached.
- \_\_\_\_\_ Enforces City policies.
- \_\_\_\_\_ Understands City's laws and ordinances.
- \_\_\_\_\_ Reviews enforcement procedures periodically to improve effectiveness.
- \_\_\_\_\_ Offers workable alternatives to the Council for changes in the law when an ordinance or policy proves impractical in actual administration.

5. REPORTING

- \_\_\_\_\_ Provides the Council with reports concerning matters of importance to the City.
- \_\_\_\_\_ Reports are accurate and comprehensive.
- \_\_\_\_\_ Reports are generally produced through own initiative rather than when requested by the Council.
- \_\_\_\_\_ Prepares a sound agenda which prevents trivial administrative matters from being reviewed by the Council.

6. CITIZEN RELATIONS

- \_\_\_\_\_ Responsive to complaints from citizens.
- \_\_\_\_\_ Dedicated to the community and its citizens.
- \_\_\_\_\_ Skillful with the news media, avoiding political positions and partisanship.
- \_\_\_\_\_ Has the capacity to listen to others and to recognize their interests--works well with others.
- \_\_\_\_\_ Willing to meet with members of the community to discuss their real concerns.
- \_\_\_\_\_ Cooperates with neighboring communities.
- \_\_\_\_\_ Cooperates with the County, State, and Federal governments.
- \_\_\_\_\_ Cooperates with other organizations within the City, such as Chamber, School Districts, and BSEDA.

7. STAFFING

- \_\_\_\_\_ Recruits and retains competent personnel for City positions.
- \_\_\_\_\_ Aware of staff weaknesses and works to improve their performance.
- \_\_\_\_\_ Accurately informed and concerned about employee relations.
- \_\_\_\_\_ Professionally administers the merit system.

8. SUPERVISION

- \_\_\_\_\_ Encourages Department Heads to make decisions within their own jurisdictions without City Administrator approval, yet maintains general control of administrative operations.
- \_\_\_\_\_ Instills confidence and initiative in subordinates and emphasizes support rather than restrictive controls for their programs.
- \_\_\_\_\_ Has developed a friendly and informal relationship with the work force as a whole, yet maintains the prestige and dignity of the City Administrator's office.
- \_\_\_\_\_ Evaluates personnel periodically, and points out management weaknesses and strengths.

9. FISCAL MANAGEMENT

- \_\_\_\_\_ Prepares a balanced budget to provide services at a level directed by the Council.
- \_\_\_\_\_ Makes the best possible use of available funds, conscious of the need to operate the City efficiently and effectively.
- \_\_\_\_\_ Prepared budget is in an intelligent but readable format.
- \_\_\_\_\_ Possesses awareness of the importance of financial planning and control.

10. What would you identify as the results achieved during the evaluation period as representative of the strengths of the City Administrator?

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11. What performance areas would you identify as needing improvement? Why? What constructive, positive ideas can you offer the City Administrator to improve these areas?

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12. Other comments?

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_



AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

TITLE: Second/Final 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)

**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

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

TITLE: Second/Final Reading – Storm Sewer Ordinance Amendment  
DEPARTMENT: Public Works Department  
PRESENTED BY: David D. Mumford, P.E., Public Works Director

**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)

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 manger** 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 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 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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Second/Final Reading - Arterial Construction Fee Ordinance Amendment

DEPARTMENT: Public Works Department

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

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**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)

## **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 the parcel is owner-occupied as a single family residence.
- At their September 8, 2008, meeting, the City Council conducted a public hearing and approved on first reading an ordinance amendment that:

- clarified that arterial construction fee assessment rates would be set annually by resolution, and
- allowed Residential Manufactured Home-zoned property owners to petition for a reduction of their arterial construction fee assessments if the 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:**

<del>Zoning</del>	<del>Proposed Rate</del>	-
<del>P</del>	<del>0.00212</del>	-
<del>R-96</del>	<del>0.00371</del>	-
<del>R-80</del>	<del>0.00404</del>	-

<del>R-70</del>	<del>0.00425</del>	<del>-</del>
<del>RMH</del>	<del>0.00477</del>	<del>-</del>
<del>R-50</del>	<del>0.00512</del>	<del>-</del>
<del>PD</del>	<del>0.00585</del>	<del>-</del>
<del>R-60</del>	<del>0.00638</del>	<del>-</del>
<del>RP</del>	<del>0.00692</del>	<del>-</del>
<del>RMF R</del>	<del>0.00721</del>	<del>-</del>
<del>RMF</del>	<del>0.00748</del>	<del>-</del>
<del>NCL</del>	<del>0.00769</del>	<del>-</del>
<del>NC</del>	<del>0.00824</del>	<del>-</del>
<del>ELC</del>	<del>0.00824</del>	<del>-</del>
<del>MCPZD</del>	<del>0.00850</del>	<del>-</del>
<del>CC</del>	<del>0.00879</del>	<del>-</del>
<del>ELG</del>	<del>0.00902</del>	<del>-</del>
<del>PZD</del>	<del>0.00892</del>	<del>-</del>
<del>HC</del>	<del>0.00902</del>	<del>-</del>
<del>CI</del>	<del>0.00960</del>	<del>-</del>
<del>HI</del>	<del>0.01068</del>	<del>-</del>
<del>CBD</del>	<del>0.01279</del>	<del>-</del>
<del>ELI</del>	<del>0.00902</del>	<del>-</del>
<del>-</del>	<del>-</del>	<del>-</del>
<del>Undeveloped Any zoning</del>	<del>0.00125</del>	<del>Cap \$988.00</del>

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

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, September 22, 2008**

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**TITLE:** Preliminary Subsequent Minor Plat of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</sup> Filing

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On August 15, 2008, the preliminary subsequent minor plat application of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</sup> Filing, was submitted to the Planning Division. The proposed plat would create two lots on approximately 3.83 acres of land. The subject property is zoned Controlled Industrial (CI) and is located on the southeast corner of the intersection of Daniels Street and Industrial Avenue, addressed as 227 Daniels Street. The property owners are Monad Daniels LLC, Dennis Witmore and Roland Grunstead, and the representing agent is Engineering 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 October 3, 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 an existing building on it, with the rest of the property paved and used as a large parking lot. Lot 1A of the proposed subdivision is for future commercial development which could increase tax revenue for the City.

**RECOMMENDATION**

Staff recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</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**

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

**INTRODUCTION**

On August 15, 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 3.83 acres of land. The subject property is zoned CI and is located on the southeast corner of the intersection of Daniels Street and Industrial Avenue. The subject property contains one existing building with the rest of the site being paved for use by semi trucks for parking. East of the subject property is property owned by School District #2. The rest of the surrounding properties are commercial uses and warehousing companies.

**PROCEDURAL HISTORY**

- The preliminary plat application for this subdivision was submitted to the Planning Division on August 15, 2008.
- The City Council will consider the preliminary plat application on September 22, 2008.

**BACKGROUND**

General location:	227 Daniels Street
Legal Description:	Amended Lot 1, Block 1, Burlington Northern Subdivision, 17 <sup>th</sup> Filing
Subdivider/Owner:	Monad Daniels LLC, Dennis Witmore and Roland Grunstead
Engineer and Surveyor:	Engineering Incorporated
Existing Zoning:	CI
Existing land use:	Commercial/Industrial
Proposed land use:	Same
Gross area:	3.83 acres
Net area:	3.83 acres
Proposed number of lots:	2
Lot size:	max. 2.68 acres min. 1.15 acres
Parkland requirements:	A parkland dedication is not required, as this is a commercial 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 staff develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

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

### **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 subsequent minor plat of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</sup> Filing, 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

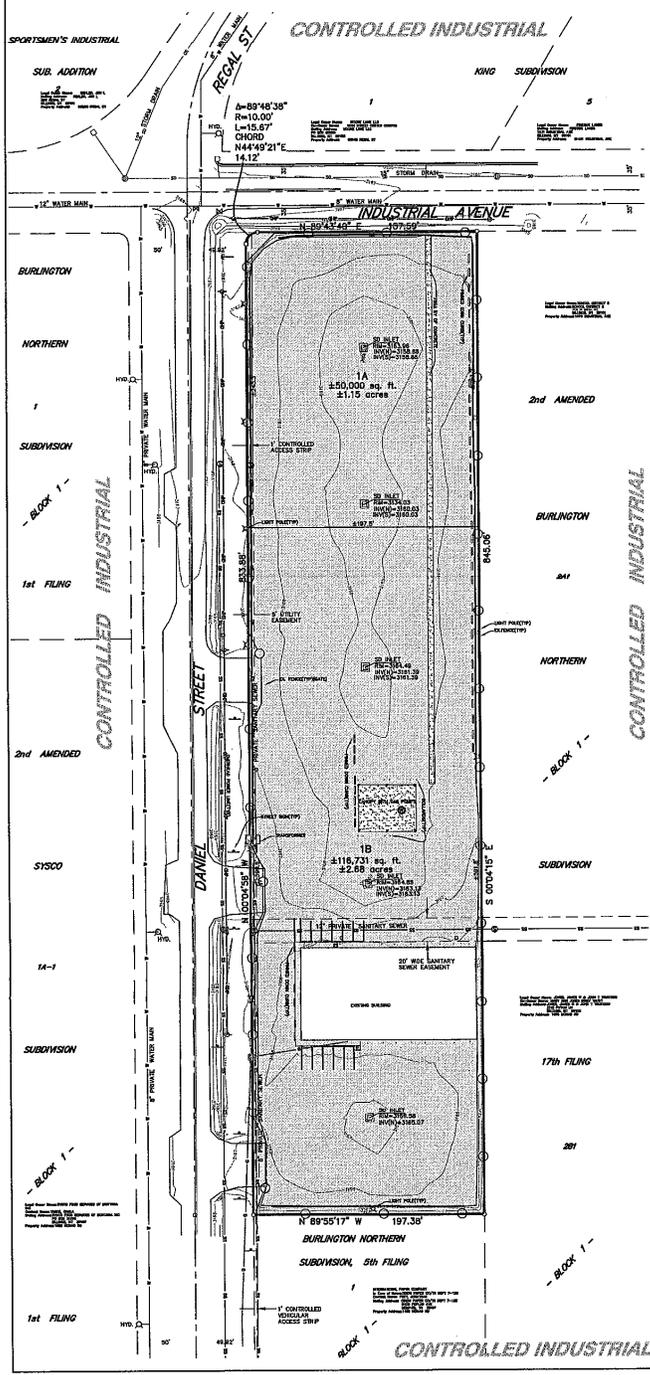
# ATTACHMENT A

## Preliminary Plat

### PRELIMINARY PLAT OF AMENDED PLAT OF LOT 1, BLOCK 1 OF BURLINGTON NORTHERN SUBDIVISION, 17th FILING SITUATED IN THE NW1/4 OF SECTION 8, T. 1 S., R. 26 E., P.M.M. IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : DENNIS WHITMORE  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1"=40'

JUNE, 2008  
BILLINGS, MONTANA



VICINITY MAP  
NOT TO SCALE

#### PLAT DATA

GROSS AREA	=	3.83 AC
NET AREA	=	3.83 AC
NUMBER OF LOTS	=	2
MINIMUM LOT SIZE	=	±1.15 AC
MAXIMUM LOT SIZE	=	±2.68 AC
LINEAL FEET OF STREETS	=	NA
PARKLAND REQUIREMENT	=	NA
EXISTING ZONING	=	CONTROLLED INDUSTRIAL
SURROUNDING ZONING:		
NORTH	=	CONTROLLED INDUSTRIAL
SOUTH	=	CONTROLLED INDUSTRIAL
EAST	=	CONTROLLED INDUSTRIAL
WEST	=	CONTROLLED INDUSTRIAL
EXISTING LAND USE	=	WAREHOUSE & SHOP
PROPOSED LAND USE	=	LOT 1A - FUTURE COMMERCIAL / INDUSTRIAL
	=	LOT 1B - NO CHANGE

080322-DWS 080322-DW 06/02/08 wds/hms

**ATTACHMENT B**  
Findings of Fact

Staff is forwarding the recommended Findings of Fact for Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</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**

- a. **Utilities** – Water and sanitary sewer mains are currently in place in the public rights-of-way, Daniels Street and Industrial Avenue. Lines have been extended to the existing building on site. New water and sanitary sewer services will have to be installed for the additional lot when it is developed.
- b. **Stormwater** – Storm drainage improvements have been constructed. There are on-site storm drainage systems that include surface flow to curbs, gutters, valley gutters, inlets, pipe and subsurface discharge. Other detentions methods can be installed to meet stormwater management requirements for the City of Billings when the lot is developed further.
- 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 Daniels Street. Daniels Street is a paved street but 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 604 South 24<sup>th</sup> Street West (Station #5). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. Since this is a commercial subdivision there will be no effect on school populations.
- g. **Parks and Recreation** – A parkland dedication is not required for this commercial 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**

As this is a developed area within the city and is commercial and industrial in nature 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: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 5).**

*The proposed subdivision will provide the opportunity for infill development in a commercial/industrial area within this portion of the city and is compatible with the surrounding developed commercial/industrial 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 commercial/industrial surrounding uses would make additional uses similar in nature compatible with the character of the surrounding businesses.*

- 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 is good infill development.*

- d. **Goal: Coordinated economic development efforts that target business recruitment, retention, and expansion. (p. 6).**

*The subject property will provide an additional lot in an existing commercial/industrial area and allow either recruitment of a new business, retention of an existing business or expansion of an existing business in the area.*

**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.

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

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

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

The subject property is located within Controlled Industrial zoning and shall comply with the standards set forth in Section 27-309, 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 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 has 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 from individual driveways onto Daniels Street and Industrial Avenue.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</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 22, 2008

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Ron Tussing, Mayor

**ATTACHMENT C**  
Mayor's Approval Letter

September 23, 2008

Monad Daniels LLC,  
Dennis Witmore,  
Roland Grunstead  
P.O. Box 30335  
Billings, MT 59107

Dear Applicant:

On September 22, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 1, Block 1, Burlington Northern Subdivision, 17<sup>th</sup> Filing, subject to the following conditions of approval:

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

Should you have questions please contact 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 22, 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 \$4,023,921.36 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 22, 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:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

---

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

---

**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,088,021.62 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 29, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, SEPT. 22, 2008**

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**SUBJECT:** Animal Shelter Privatization  
**DEPARTMENT:** City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council has created an initiative to investigate privatizing the Billings Animal Shelter. Several alternatives were examined, including a cooperative effort among local animal care groups, but were found to be unfeasible. A Request for Proposals (RFP) for privatization was issued in late 2008, and a single organization, the Yellowstone Valley Animal Shelter, Inc. (YVAS), responded. After lengthy negotiations, a proposed 2-year contract with YVAS is being presented for Council action.

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

- Approve the contract as presented.
- Modify the contract.
- Reissue the RFP.
- Continue the current Animal Shelter operation.

**FINANCIAL IMPACT:** The Fiscal Year (FY) 2009 budget for both the Animal Control and Animal Shelter budget is \$861,058. In addition, the Animal Shelter brings in \$159,335 of annual revenue in licensing, testing and vaccination fees, bringing the true department operating costs to \$ 701,723.

YVAS proposed a first-year contract in which the City would pay it \$235,532; the second year cost to the City would be \$240,673. The contract calls for three, 1-year extensions, with costs of those contracts to be negotiated as the renewals occur. The City of Billings would need to continue its Animal Control function, which provides public safety by managing stray and injured animals, and by other functions such as investigating bite and abuse complaints. Anticipated cost of that program is \$145,945 for operations and maintenance and \$334,963 for staff, for a total of \$480,908. In addition, if the contract is approved, the City would lay off two shelter employees, at an estimated cost of \$13,728. Finally, the City would lose half of the

licensing fees and all of the remaining fees. Total cost of the first year of a privatized program to the City is expected to be \$701,218, or less than the current operation costs.

**RECOMMENDATION**

Staff recommends that City Council approve the agreement with Yellowstone Valley Animal Shelter, Inc., for a 2-year contract for private operation of the Billings Animal Shelter.

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

**ATTACHMENTS:**

A:     Animal Shelter Agreement with YVAS

## **INTRODUCTION**

The City Council has created an initiative to investigate privatizing the Billings Animal Shelter. Several alternatives were examined, including a cooperative effort among local animal care groups, but were found to be unfeasible. A Request for Proposals (RFP) for privatization was issued in late 2008, and a single organization, the Yellowstone Valley Animal Shelter, Inc. (YVAS), responded. After lengthy negotiations, a proposed contract with YVAS is being presented for Council approval.

## **PROCEDURAL HISTORY**

Dec. 12, 2005: City Council approves initiative to investigate privatizing animal control.

April 16, 2006: Animal Shelter Report proposes an animal care co-op to provide a low-kill facility.

December 2007: "Save a Life" program instituted to attempt to place animals that otherwise would be euthanized with private animal groups.

Jan. 29, 2008: Animal Shelter Operations RFP Issued.

Feb. 29, 2008: One response to RFP of 150 pages received from Yellowstone Valley Animal Shelter, Inc. (YVAS).

May 27 and June 23, 2008: Council postpones action on item to allow creation of contract and negotiations with YVAS.

Aug. 21, 2008: Negotiations begin with revitalized YVAS Board.

Sept. 22, 2008: Contract presented to Council.

## **BACKGROUND**

The City of Billings has operated a traditional Animal Shelter, with a focus on public health and safety through the acceptance of small animals from the public, capture of stray and injured animals, investigation of bites and cruelty cases, and adoption and/or euthanization of animals. A total of 2,885 animals were handled by the Animal Shelter staff in 2007, of which 125 were dead when found and 529 were adopted.

Nationally, private animal care groups have begun advocating a low-kill philosophy for shelters that emphasizes retaining animals until adoption. The Animal Shelter staff has attempted to incorporate this philosophy to the extent possible by working with animal care groups in Yellowstone County. An Animal Care Leadership Team was formed to try to privatize the shelter, but it was determined that already overwhelmed existing groups did not have the staff or financial resources to address the issue. With a supervisor, office manager and three kennel attendants, the Animal Shelter itself simply does not have the staff to undertake outreach efforts and run the shelter operation.

## **ALTERNATIVES ANALYSIS**

YVAS is a newly formed group seeking a non-profit, 501c status. The group's board of directors includes a veterinarian, two accountants, an attorney and several other individuals

with business backgrounds. A copy of the YVAS's response to the Animal Shelter Privatization RFP is on file in the City Clerk's Office.

According to the response, YVAS intends to hire an executive director and a staff of three to operate the shelter. YVAS would rely on as many as 40 volunteers to increase the shelter's open hours and its range of adoption programs. The group also would do extensive fundraising to support shelter efforts in addition to payments received by the City.

#### Other Communities

Nationally, cities and counties have struggled with the provision of animal shelter services. There are some communities where private/public partnerships exist successfully. There are also instances where the costs or efforts of operating a shelter has been too much for private groups; in July 2007, the City of Great Falls Commission voted to at least temporarily resume control of its shelter after complaints about the quality of care being offered by a private group.

#### Proposed Contract

To alleviate financial concerns, the City originally requested a performance bond in the amount of \$500,000 in the RFP. The State Purchasing Office later recommended that the performance bond be reduced to the equivalent of the annual contract, which would be \$235,532 in the first year. YVAS representatives acknowledged during negotiations that they had difficulty in obtaining a performance bond because of YVAS' status as a new agency. The proposed contract would substitute a letter of credit equivalent to one year of operations, to which the YVAS board members have pledged their personal resources. This would provide revenues for staffing, repairs, etc., in the event the City had to reassume responsibility for the Animal Shelter on an emergency basis.

The contract would give YVAS 180 days from contract adoption to prove to the City that it has hired sufficient staff and recruited sufficient volunteers to operate the Animal Shelter before it takes over the facility. In addition, YVAS must provide evidence that it has a reserve equivalent to one-quarter of its operating expenses in the bank before it takes over the shelter. The City would pay YVAS in 12 equal, monthly payments. YVAS would make quarterly reports to the City on the costs and operations of the Animal Shelter. YVAS also will present an annual work plan and financial audit to the City. The City may, at its own expense, have a financial audit performed. An annual inspection of the facility will be conducted annually by the Humane Society of the United States or a local veterinarian and a City representative.

Animal Control would continue to be located at the Animal Shelter. The City and YVAS would split licensing fees and negotiate shared use of the existing Animal Shelter and the Animal Records Management System database. YVAS would perform day-to-day cleaning, but the City will do major maintenance at the facility. The City Animal Control officers would continue to perform euthanizations, being paid by YVAS if their services are used.

#### **STAKEHOLDERS**

The City Council has received comments both from groups and individuals who are opposed to, or are in support of, privatization of the animal shelter. Members of both those groups are

likely to be present to comment on the contract. The negotiating committee with YVAS included representatives of the Animal Control Board and the Police Department.

**RECOMMENDATION**

Staff recommends that City Council approve the agreement with Yellowstone Valley Animal Shelter, Inc., for a 2-year contract for private operation of the Billings Animal Shelter.

**ATTACHMENTS**

A: Animal Shelter Agreement with YVAS



## OPERATION OF BILLINGS ANIMAL SHELTER AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “**City**,” and **YELLOWSTONE VALLEY ANIMAL SHELTER, INC. (“YVAS”)** of 2619 Woody Drive, Billings, Montana 59102, hereinafter referred to as “**Contractor**.”

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

**1. Purpose:** City agrees to hire Contractor as an independent contractor to provide operations of the Billings Animal Shelter, located at 1735 Monad Road, and for placement of animals from the Shelter. These operations are more fully described in the response to the City’s RFP and in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof. The City issued a Request for Proposals on February 21, 2008, and the Contractor is willing and prepared to deliver the services described herein.

**2. Effective Date:** This Agreement shall become effective, and Contractor shall take over and assume the day to day operations of the Animal Shelter, within 180 days after approval of this Agreement by the Billings City Council, for a period of two (2) years with three (3) 1-year options to renew by mutual agreement of both parties. The City of Billings will retain ownership of the Animal Shelter during the initial five (5) years of the contract, but will consider allowing a proposer to purchase the facility at its appraised value upon renewal.

Thirty (30) days prior to the effective date of this Agreement, Contractor shall provide the City with proof that Contractor has secured a director and employees to staff the shelter, and is able to fully assume control of the Animal Shelter pursuant to the terms of this Agreement. Contractor shall also provide documentation thirty (30) days prior to the effective date of this Agreement, showing Contractor has cash on hand, or alternatively a line of credit, in the amount of 25% of the annual contract price for start up and operating capital. Failure of Contractor to secure adequate staffing or operating capital and sufficiently demonstrate proof of all by thirty (30) days prior to the effective date of this Agreement shall subject this Agreement to immediate cancellation by City.

Prior to the effective date of this Agreement, City Animal Control and Contractor shall arrange cooperative occupation of the current Animal Shelter.

Contractor shall provide to City one hundred twenty (120) days advance notice of Contractor's intent to negotiate a renewal of this Agreement and include the terms and amount of any proposed renewal, and the City shall respond within sixty (60) days.

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

**4. Abbreviations and Definitions:** For the purposes of this Agreement:

ACLT – Animal Care Leadership Team  
ACO – Animal Control Officer  
BAS – Billings Animal Shelter  
BPD – Billings Police Department  
HSUS – Humane Society of the United States  
Contractor – Yellowstone Valley Animal Shelter, Inc.

“City” means the City of Billings;

“domestic animal” means any domesticated or tamed animal that is typically kept as a pet, including without limitation, cats, dogs, rabbits, birds, ferrets, gerbils, hamsters and weasels;

“domestic farm animal” means farm animals typically kept for farm purposes, including without limitation, cows, horses, sheep, goats, chickens, pigs and llamas, but does not include domestic animals; and,

Undefined terms in this Agreement shall be interpreted consistently with the City of Billings’ Charter, the City’s Animal Control Regulations, and the City’s Animal Licensing Ordinance, and any amendments thereto.

**5. Payment:** City agrees to pay Contractor for the work described in the Scope of Services at the following rates, to be billed to City and payable in 12 equal monthly installments:

Year 1: Two Hundred Thirty Five Thousand, Five Hundred Thirty Two Dollars (\$235,532.00)

Year 2: Two Hundred Forty Thousand, Six Hundred Seventy Three Dollars (\$240,673).

Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

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

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

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

**7. Indemnity and Insurance.** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all claims, losses, damages, judgments, expenses and litigation costs and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees Contractor, agents, employees, or volunteers, which result in personal injury or real or personal property damages or financial losses or damages to any person or entity including the City. For this purpose, Contractor shall provide City with proof of Commercial General Liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. Said insurance policy shall provide that it may not be cancelled with less than thirty (30) days prior written notice to Contractor and City. Contractor, upon request, shall furnish City a certificate of such insurance. The insurance must be in a form suitable to the City.

**8. Performance Letter of Credit or Escrow Fund:** Contractor agrees to provide City with an irrevocable letter of credit issued by a bank or other financial institution, to be renewed on an annual basis; or alternatively to establish an escrow fund, in the amount of the annual payment made to Contractor by City with City being a beneficiary to the letter of credit or the escrow fund in the event of default by Contractor. Prior to taking over operations at the Animal Shelter, Contractor shall furnish City with documentation of the letter of credit or the fully funded escrow account. Failure to provide a letter of credit or, alternatively to adequately fund and maintain the escrow account, for the entirety of the Agreement shall be viewed as default by Contractor and shall be grounds to terminate this Agreement. The letter of credit shall be subject to the approval of the City.

In the event of default by Contractor, the City shall have the right to recover from and execute on the letter of credit or alternatively the escrow account, all quantifiable expenses associated with resuming control and operation of the Animal Shelter, including reasonable expenses in staffing the Animal Shelter on a temporary basis, hiring permanent full-time staff, and any other expenses whether anticipated or unanticipated which the City is forced to incur as a result of and incidental to resuming control and operation of the Animal Shelter, in addition to any other remedies available to the City under Paragraph 11.

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

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

**11. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within thirty (30) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**12. Liaison:** City's designated liaison with Contractor is \_\_\_\_\_ and Contractor's designated liaison with City is the Animal Control Supervisor.

**13. Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

**14. Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

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

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

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

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
**CONTRACTOR (Print Name Above)**

By \_\_\_\_\_  
**RON TUSSING, MAYOR**

By \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Print Title** \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, CITY ATTORNEY**



## EXHIBIT "A" Scope of Work

- A. **Contractor duties and responsibilities:** The Contractor shall be responsible, at its own expense, for the following:
1. attain and provide proof of 501(c)(3) status prior entering into this agreement;
  2. operate and staff a fully-equipped animal shelter at 1735 Monad Road in Billings, for animals located within the City that have strayed, been abandoned, or otherwise delivered to the Contractor;
  3. create and maintain a separate website for the Animal Shelter with a link to the City's website (the City website shall also contain a link to Contractor's);
  4. make the Animal Shelter available to the public between the hours of 12:00 noon and 7:00 pm, Monday, Tuesday, Thursday and Friday; between 10:00 am and 6:00 pm on Saturdays; and between 12:00 pm and 6:00 pm on Sundays, except on statutory holidays;
  5. provide and maintain adequate fencing to prevent the escape of any animal;
  6. cages containing cats will contain a litter box for each cat;
  7. provide and maintain suitable enclosures with adequate space for each animal;
  8. provide enclosures, cleaning and feeding methods as approved by the Humane Society of the United States – this requires adequate space for animals, as well as continuous cleaning and sanitizing;
  9. provide fresh water to animals at all times;
  10. make every reasonable effort to locate the owners of all animals in the facility;
  11. Contractor shall not offer for adoption any cat or dog that has not been redeemed by the owner unless (1) the animal has been spayed or neutered; or  
(2) the person to whom the animal is released agrees in writing to have the animal spayed or neutered and a deposit for spaying or neutering the animal has been paid. The deposit must be in an amount determined by Contractor to be comparable to the lowest fee for spaying or neutering that is charged by veterinarians in Billings. Upon payment of the deposit, the person who is adopting the animal must receive a certificate for spaying or neutering, to be presented to a licensed veterinarian, who shall complete the certificate when the spaying or neutering is done. Upon receipt of the completed certificate verifying that the animal has been spayed or neutered, Contractor shall forward the deposit to the veterinarian who performed the procedure.  
The deposit must be forfeited if the spaying or neutering is not done:
    - (a) within 30 days if the cat or dog is more than 6 months old at the time of adoption; or
    - (b) by the time the animal reaches the age of 6 months if the animal is less than 6 months old at the time of adoption, or within 30 days of the adoption, whichever is longer.Contractor shall provide notice to the person to whom an animal is released that failure to fulfill the terms of an agreement to spay or neuter could result in the filing of a misdemeanor charge.

The only exceptions to Contractor's spay/neuter policy are if a licensed veterinarian verifies in writing that spaying or neutering would be injurious to the animal's health.

Contractor shall be in default of Agreement if greater than five (5)% of all animals adopted out of the Animal Shelter in any Agreement year are not spayed or neutered.

12. attempt to place every adoptable animal into a loving home while generally practicing euthanasia on animals that have behavioral issues which cannot be corrected or injuries/ illnesses which are not treatable;

13. Contractor shall accept and kennel all impounded strays, bite quarantines, owner releases, and other domestic and exotic animals presented by any citizen of Billings and by Billings Police Department personnel acting in their official capacity;

14. Contractor shall allow access to animal drop-off kennels and DOA drop-off containers 24 hours per day for use by the Billings Police Department personnel acting in their official capacity;

15. Fees for service shall not be charged for regular services provided to the City of Billings by the Contractor; however, Contractor shall charge fees for any extraordinary services provided to the City of Billings outside of this Agreement. For purposes of this Agreement, "extraordinary" services shall be defined as services that necessarily go beyond the current capacity of the Animal Shelter involving City of Billings' animals; go beyond the capacity of veterinarian services currently contracted for; or are performed upon written request of the City over and above the scope of this Agreement. City will charge for Animal Control Services as provided to Contractor at the rate of \$19.83 per hour, and upon request for transportation at the prevailing state mileage rate;

16. Contractor shall contract with a Certified Euthanasia Technician or Veterinarian in the event it is necessary to perform euthanasia on any shelter animal when City Animal Control is not available;

17. Contractor shall maintain accurate records of the tracking and disposition of all animals taken in, released, submitted for rabies testing, and disposed of by the contractor;

18. Contractor and Animal Control shall maintain joint access to the Animal Records Management System (ARMS) database and each shall be responsible for updates. ARMS data is designated "For Official Use Only," and shall not be used for marketing purposes. Annual maintenance fees for the ARMS software shall be shared equally by each using agency (Current annual fee is approximately \$1250). Repair and replacement cost of the ARMS server and supporting hardware shall be shared equally by the users. However, Contractor may not have access to certain areas of the ARMS database, such as saved criminal information. The ARMS database programmer/vendor will work with the Contractor to ensure compliance;

19. Contractor shall keep the facility and grounds located at 1735 Monad Road, Billings, Montana in a clean and orderly condition as prescribed by the City Facilities Manager and applicable City and State Code. Contractor shall assume responsibility for all cleaning, janitorial, and day to day upkeep of the facility and grounds, excluding the areas of the facility occupied by City Animal Control;

20. Contractor shall reimburse the City of Billings for the fair market value of all of the non-fixed assets that remain with the facility, if utilized;

21. Contractor shall maintain, repair and replace all surgical room equipment, cages, hoses, and other miscellaneous equipment that remains at the facility; and,

22. Contractor shall comply with all federal, state, and local laws in effect immediately upon assumption of the contracted service, and shall be subject to inspection by Animal Control and other duly authorized federal, state, and local authorities to insure compliance.

23. Contractor shall be responsible for payment of a pro rata share of the utilities at the facility, based upon square footage occupied by Contractor.

B. **City duties and responsibilities:** The City shall be responsible, at its own expense, for the following:

1. The City shall provide and maintain the facility located at 1735 Monad Road, Billings, Montana in current status, for use jointly by City Animal Control and Contractor during the term of this Agreement;
2. City Animal Control may remain in the current facility;
3. City Animal Control will not house any animal and will make every reasonable effort to locate the animal's owner before transporting to the shelter;
4. City Animal Control shall perform any necessary euthanasia and disposal of animals released to the facility by City Animal Control or by the public;
5. The City shall be responsible for maintenance and repair of the physical facility.

6. The City shall be responsible for payment of a pro rata share of the utilities at the facility, based upon square footage occupied by Contractor.

7. The City shall be responsible for maintaining property insurance on the facility during the term of this Agreement, and shall charge Contractor a pro rata share of the premium and a pro rata share of any deductible paid based upon square footage occupied by Contractor, during the Agreement term.

8. The City shall be responsible for establishing an application process for interested groups to access the remaining balances of donation accounts of the Billings Animal Shelter.

C. **Applicable Laws and Guidelines:** Contractor agrees to operate the shelter in accordance with local, state and federal laws, ordinances, rules, and regulations, and in accordance with the humane guidelines of the Humane Society of the United States. These guidelines shall be posted at all times within the Shelter facility.

D. **Jurisdiction:** Contractor will accept animals originating within the City of Billings, whether brought in by Animal Control or the public. Additionally, Contractor will accept animals from other jurisdictions, including the City of Laurel and Yellowstone County, provided those jurisdictions participate under a contract agreement. Animals from non-participatory locations will be taken in on an "as space is available basis." City Council shall have final approval of any contracts entered into by Contractor with other parties that adds to the animal population of the shelter.

E. **Annual Inspection:** An annual inspection of the Shelter shall be conducted by Dave Pauli, Regional Director of the Humane Society of the United States or a local

veterinarian. Additionally, the City's Facility Manager or a City Building Inspector shall accompany Mr. Pauli or the local veterinarian on the inspection.

- F. **Financial Reporting and Budget:** The following documents and reports shall be presented to the City:

Annual Reports: Contractor shall present to the City:

1. a proposed work plan and budget, including a list of fees, by April 1 of each year; and,
2. an annual report and audited financial statement by September 1 of each year.

The Contractor's Board of Directors shall contract with an independent accounting firm to perform an annual audit and prepare federal form 990 (Return of Organization Exempt from Income Tax).

The City reserves the right, at its own expense, to have a financial audit completed of the Animal Shelter operations and may inspect and take copies of any and all of Contractor's books and records.

Quarterly Reports: On a quarterly basis, the Contractor shall present to the City:

1. a report with the actual operating costs/revenues covered under this Agreement; and
2. a quarterly report (the first year of operation by Contractor, this report shall be monthly) which shall, at minimum, include:
  - a. A description of each animal acquired, including but not limited to, breed or breed type, color, gender, appearance and behavior;
  - b. The manner and date of its acquisition;
  - c. The manner and date of its disposition;
  - d. The manner and date of impoundment;
  - e. An impoundment number for the animal;
  - f. Number of adoptions;
  - g. Number of spay/neuters performed;
  - h. Animals euthanized;
  - i. Animals quarantined, and the reason for quarantine;
  - j. Animals rescued;
  - k. Animals inoculated; and,
  - l. Licenses issued.

- G. **Licensing:** Contractor shall be required to maintain licensing data. The revenue from licensing shall be split equally between Contractor and the City.

- H. **Accounting Activity:** Contractor shall utilize a reconciliation process to compare activity for sales, claims, etc. from the inventory system to the general ledger system. On a periodic basis, costs of certain supplies shall be analyzed to inventory volumes to test for reasonableness (e.g. the cost of food to animal census figures, the cost of

surgical supplies to inventory treated surgically or medically, the cost of euthanasia supplies to inventory euthanized).

- I. **Other Restrictions:** The Contractor agrees not to hire, employ, allow on the premises, allow to volunteer, adopt any animal to, or place any animal with any person who is known to have been charged with or convicted of cruelty to animals, aggravated animal cruelty, animal neglect, or any other violation of federal, state, or local laws, regulations, or ordinances alleging cruel, inhumane, or neglectful treatment of any animal. "Charged or convicted" includes the formal filing of felony or misdemeanor charges, entering into deferred prosecution or deferred imposition of sentence agreements, or being cited or summoned into any court to answer to such charges. The YVAS further agrees to conduct reasonably thorough background investigations as to all employees and volunteers to enforce compliance with this provision, and to make reasonable investigation as to any potential adopting party to enforce compliance with this provision.
  
- J. **Citations:** Contractor shall require any person picking up an animal from the shelter to sign an affidavit of ownership. Ownership information shall then be transferred to the Animal Control Office for issuance of any applicable citations.

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Rehberg Ranch Wastewater Facilities Transfer  
DEPARTMENT: Public Works  
PRESENTED BY: David D. Mumford, Public Works Director

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**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 (currently not available)**

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

Note: Attachments are currently not available.

## **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 22, 2008**

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**TITLE:** Resolution Relating to Special Improvement District Bonds 1385;  
Awarding the Sale and Approving the Form and Detail of the Bonds

**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 Special Improvement District 1385. This resolution recommends award of the sale of bonds totaling \$5,360,000 for the financing of construction for Miller Crossing. The resolution also approves the form and detail of the bonds.

**BACKGROUND:** Bids on \$5,360,000 for bonds will be received September 22, 2008, and a report will be made at the Council meeting.

**RECOMMENDATION**

Staff recommends that City Council approve the attached resolution.

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

**ATTACHMENT**

A - Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTES

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 \$5,360,000 SPECIAL IMPROVEMENT DISTRICT NO. 1385 BONDS; AWARDING THE SALE; 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 regular meeting on September 22, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

\_\_\_\_\_

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

\_\_\_\_\_; or were absent: \_\_\_\_\_.

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

(SEAL)

\_\_\_\_\_

City Clerk

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

RESOLUTION RELATING TO \$5,360,000 SPECIAL  
IMPROVEMENT DISTRICT NO. 1385 BONDS; AWARDING  
THE SALE; FIXING THE FORM AND DETAILS AND  
PROVIDING FOR THE EXECUTION AND DELIVERY  
THEREOF AND SECURITY THEREFOR

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. Receipt of Petition. This Council received a petition, dated August 11, 2008 (the "Petition") to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Part 41, as amended (the "Act"), a special improvement district for the purpose of financing certain local improvements to benefit certain property located in the City and included within the proposed special improvement district. The Petition was signed by all owners of the property in the proposed special improvement district and the owners expressly consented in the Petition to the creation of the proposed special improvement district on the terms and conditions hereinafter specified.

1.02. Creation of District. Based on the Petition and Sections 7-12-4102(3), 7-12-4110(2) and 7-12-4114(1)(d) of the Act and by Resolution No. 08-18742, duly adopted by the Council on August 11, 2008, this Council created Special Improvement District No. 1385 (the "District"), for the purpose of financing costs of certain public improvements of special benefit to the properties within the District and designating the number of the District, the boundaries thereof, whether the District was an extended district and the general character of the improvements to be made (collectively, the "Improvements") and an approximate estimate of the costs thereof, in accordance with the provisions of the Act. By Resolution No. 08-18742, this Council also declared its intention to cause the cost and expense of making the Improvements specially benefiting a District to be assessed against the properties included within the boundaries thereof in accordance with one or more methods of assessment authorized in Montana Code Annotated, Sections 7-12-4161 to 7-12-4165 and as set forth in Resolution No. 08-18742.

In Resolution No. 08-18742, this Council further found that it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"), on the basis of factors required to be considered under Section 7-12-4225 of the Act. Those findings are hereby ratified and confirmed.

In Resolution No. 08-18742, the Council 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.

1.03. Construction Contracts. The City will cause or has caused to be constructed certain Improvements as described in Resolution No. 08-18742. Plans, specifications, maps, profiles and surveys for construction of the Improvements to be constructed to benefit the District were prepared by the engineers acting for the City or by City engineers, and were thereupon examined and approved by this Council. Advertisements for bids for construction of the Improvements were published in the official newspaper of the City in accordance with the provisions of Montana Code Annotated, Section 7-12-4141, after which the bids theretofore received were opened and examined. After referring the bids to the engineers for the City it was determined that the lowest regular proposals for the furnishing of all work and materials required for constructing the Improvements in accordance with the approved plans and specifications were the following:

SID No. 1385:

<u>Work</u>	<u>Bidder</u>	<u>Contract Price</u>
Street improvements on King Avenue East, South Billings Boulevard, Newman Lane, Calhoun Lane and Orchard Lane, as well as water, storm drain and sanitary sewer facilities, and city/county drain crossings	Knife River Construction	\$3,068,058.00

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 Montana Code Annotated, Section 7-12-4147, which election the property owners failed to make, whereupon the City and the successful bidders entered into written contracts for construction of the Improvements upon the bidders having executed and filed bonds satisfactory to this Council and in the form and manner provided by Montana Code Annotated, Title 18, Chapter 2, Part 2, as amended.

1.04. Costs. It is currently estimated that the costs and expenses connected with and incidental to the formation of the District to the City to be assessed against properties in the District, 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 contracts and all other costs and expenses, including the deposit of proceeds in the Revolving Fund of \$268,000, are \$5,360,000. Such amounts will be levied and assessed upon the assessable real property within the District on the basis described in Resolution No. 08-18742. This Council has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the special improvement district funds created for the District, which funds are to be maintained on the official books and records of the City separate from all other City funds, within the Special Improvement District No. 1385 Fund (the "District Fund") for the payment of principal and interest when due on the bonds herein authorized.

1.05. 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 within each

District as provided in Resolution No. 08-18742, this Council, pursuant to Resolution No. 08-18743, adopted August 11, 2008, called for the public sale of \$5,360,000 Special Improvement District No. 1385 Bonds (the "Bonds") to finance the costs of certain local improvements to be undertaken in or for the benefit of Special Improvement District No. 1385. Notice of the sale has been duly published in accordance with Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. Pursuant to the notice of sale, \_\_\_\_\_ (\_\_\_\_) bids transmitted through Parity™ and sealed bids for the purchase of the Bonds were received at or before the time specified for receipt of bids. The bids have been opened or accessed and publicly read and considered, and the purchase price, interest rates and net interest cost under the terms of each bid have been determined.

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

The Mayor and City Financial Services Manager are hereby authorized and directed to execute on behalf of the City a contract for the sale of the Bonds with the Purchaser.

The Official Statement relating to the Bonds, dated September 8, 2008, and the Addendum to the Official Statement, dated September 22, 2008, are hereby approved. The officers of the City are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement and to deliver to the Purchaser within seven business days after the date of adoption of this resolution copies of the Official Statement in accordance with the Notice of Sale, supplemented so as to contain the terms of the Bonds as set forth in this resolution and the reoffering and other information provided by the Purchaser for inclusion in the Official Statement.

This Council authorized the City to enter into a contract with Purchaser, as the lowest responsible bidder pursuant to which the Purchaser agreed to purchase from the City the Bonds at a purchase price of \$ \_\_\_\_\_, at the rates of interest set forth in Section 2.01 hereof and upon the further terms set forth in this resolution resulting in a net effective interest rate of \_\_\_\_\_% per annum and a true interest cost of \$ \_\_\_\_\_.

1.06. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, and the home rule charter of the City, 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. 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 deliver to the Purchaser the Bonds payable solely from the District Fund and denominated “Special Improvement District No. 1385 Bonds.” The Bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities. The Bonds shall mature on July 1 in the years and amounts listed below, and the Bonds maturing in such years and amounts shall bear interest from date of original issue until paid or duly called for redemption at the rates shown opposite such years and amounts, as follows:

Year	Principal Amount	Interest Rate	Year	Principal Amount	Interest Rate
2011	\$205,000	%	2020	\$290,000	%
2012	210,000		2021	305,000	
2013	220,000		2022	320,000	
2014	225,000		2023	335,000	
2015	235,000		2024	355,000	
2016	245,000		2025	375,000	
2017	255,000		2026	390,000	
2018	265,000		2027	415,000	
2019	280,000		2028	435,000	

[Term bond language, if necessary]

Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

2.02. Interest Payment Dates. Interest on the Bonds shall be payable on each January 1 and July 1, commencing July 1, 2009, to the owners of record thereof as such appear on the bond register at the close of business on the fifteenth 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 principal office 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 shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent for the Bonds (the “Registrar”). This Section 2.04 shall establish a system of registration for the Bonds as defined in the Model Public Obligations Registration Act of Montana.

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 Bonds and the registration of transfers and exchanges of the Bonds entitled to be registered, transferred or exchanged.

(b) Transfer. Upon surrender to the Registrar 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 any transfer of any Bond or portion thereof 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 2.06.

(c) Exchange. 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, interest rate 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 of the City 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 an exchange upon a partial redemption of a Bond), 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. Initial Registrar. The City hereby appoints U.S. Bank National Association, of Seattle, Washington, as the initial Registrar for the Bonds. The City reserves the right to appoint a successor Registrar, and the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. Upon merger or consolidation of a bank or trust company that is acting as the Registrar, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The City reserves the right to remove any Registrar upon 30 days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession as Registrar to the successor Registrar and shall deliver the bond register to the successor Registrar. On or before each principal or interest due date, without further order of this Council, the Financial Services Manager shall transmit to the Registrar, solely from money in the District Fund available therefor, moneys sufficient for the payment of all principal, premium, if any, and interest then due on the Bonds.

2.06. Redemption.

(a) Mandatory Redemption. If on any interest payment date there will be a balance in the District Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the District or from the transfer of surplus money from the Construction Accounts to the Principal Accounts as provided in Section 3.02 or otherwise, the Financial Services Manager shall call for redemption on the interest payment date outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the District Fund on that date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

(b) Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described in Subsection (a) of this Section 2.06 on any interest payment date on July 1, 2015, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

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

(d) Notice and Effect of Redemption. The date of redemption and the principal amount of the Bonds shall be fixed by the Financial Services Manager, 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.

(e) Notification to the Paying Agent: Upon request by the City under the above sections 2.05(a) and 2.05(b), the Registrar shall give notice of redemption as directed provided that the City has given the Registrar such request at least 45 days prior to the redemption date.

2.07. [Term Bond Language, if necessary]

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

2.09. Execution, Registration and Delivery. The Bonds 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, Financial Services Manager and the City Clerk and sealed with the official seal of the City; provided that the signatures and the corporate seal 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 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 on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates 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 Bonds shall be registered in order of their serial numbers by the Registrar, as of October 1, 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. The Purchaser shall not be obligated to see to the application of the purchase price, but from the net proceeds of the Bonds the Financial Services Manager shall credit forthwith

\$268,000 to the Revolving Fund, as required by Section 7-12-4169(2) of the Act, any accrued interest to the Interest Account in the District Fund, and the balance of such proceeds to the Construction Account in the District Account, in proportion to the principal amounts of the Bonds allocable to the District, as set forth in Section 1.05, to be used solely for the purposes described in Section 3.02.

2.10. Securities Depository for the Bonds.

**(a) For purposes of this Section 2.10, 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, attached to this resolution as Exhibit C, which is hereby incorporated by reference and made a part hereof.

(b) 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) 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) 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) 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. District Fund; Assessments.

3.01. District Fund. There is hereby created and established the District Fund designated as the "2008 Special Improvement District Fund," which shall be maintained by the Financial Services Manager on the books and records of the City separate and apart from all other funds of the City. Within the District Fund there shall be maintained a separate account for SID No. 1385, designated accordingly (the "District Account"). Within the District Account there shall be maintained three separate accounts, designated as the "Construction Account," "Principal Account" and "Interest Account," respectively.

3.02. Construction Account. There shall be credited to the Construction Account certain proceeds of the sale of the Bonds as provided in Section 1.05. Any earnings on investment of money in the Construction Account 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 Account in accordance with the provisions of applicable law, and money in the Construction Account 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 money remaining in said Construction Account shall be transferred to said Principal Account in the District Account and used to redeem Bonds as provided in Section 3.03.

3.03. Principal Account and Interest Account. Money in the Principal Account and the Interest Account shall be used only for payment of the principal of and interest on the Bonds as such payments become due or to redeem Bonds. From the proceeds of the Bonds, there shall be deposited in the Interest Account any interest on the Bonds accrued to the date of their delivery. Interest income on funds in the Principal and Interest Accounts shall be retained therein and used as any other funds therein.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each fiscal year on the special assessments to be levied with respect to the Improvements in the District, the Financial Services Manager shall credit to the Interest Account so much of said special assessments as is collected as interest payment and the balance thereof to the Principal Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the next succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the District Account. All money in the Interest Account and the Principal Account 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 2.06; provided that any money transferred to a Principal Account from the Construction Account pursuant to Section 3.02 shall be applied to redeem Bonds to the extent possible on the next interest payment date for which notice of redemption may properly be given pursuant to Section 2.06. Redemption of Bonds shall be as provided in Section 2.06, 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 Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to the District Account in an amount sufficient to make good any deficiency then existing in the Interest Account, and shall issue an order authorizing a loan or advance from the Revolving Fund to the District Account in an amount sufficient to make good any deficiency then existing in the Principal Account, in such order and in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in a Principal Account or an Interest Account if the money on deposit therein on any December 15 or June 15 (excluding amounts in the Principal Account 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 interest payment date.

Pursuant to Ordinance No. 1096, the City has undertaken and agreed to provide funds for the Revolving Fund by annually levying such tax or making such loan from the general fund of the City 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 or warrants of the City is not sufficient to make good all deficiencies then existing in the special improvement district funds for which the City covenants 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 and to the extent of amounts available in the Revolving Fund. 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 district funds for payment and redemption of bonds to the extent the special improvement district 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 or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

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 District 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 District 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 1.06.

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 1.04 and to ensure the completion of the Improvements for the benefit of the District 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 District Account 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 District 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 \$5,360,000 for

the District. Such special assessments shall be levied on the basis or bases prescribed in Resolution No. 08-18742, and shall be payable in substantially equal semiannual installments of principal and interest over a period of 15 years, at an annual rate equal to the sum of: (i) the average annual interest rate borne by the then-outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The assessments to be levied will be payable on the 30th day of November in each of the years 2009 through 2027, and on the 31st day of May in the years 2010 through 2028, 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 July 1, 2009. 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 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 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 Montana Code Annotated, Section 7-12-4186. 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 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 of the District is decreased or increased, the City will reduce or increase, respectively, the assessments levied in the respective District 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 reassess 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. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened questioning the validity or regularity of the creation of the District, 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, or 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.

4.06. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent assessments levied on property in the District 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 Internal Revenue Code of 1986, as amended (the “Code”).

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 (the “Regulations”), and 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 Regulations.

5.03. Arbitrage Certification. The Mayor, the Financial Services Manager, and the City Clerk, 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 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 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.

5.04. Arbitrage Rebate. The City acknowledges that the Bonds are 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 Bonds from gross income for federal income tax purposes, unless the Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Bonds (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, the Financial Services Manager, and the City Clerk 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.

5.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than February 15, 2009, a statement concerning the Bonds 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 Purchaser and to bond counsel certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be 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 also discharge its obligations with respect to any Bonds called for redemption on any date when they are prepayable according to their terms, 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 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 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 Bonds in respect of which such deposits have been made.

Section 8. Continuing Disclosure.

(a) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the "Rule"), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. The City is the only "obligated person" in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made. The City has complied in all material respects with any undertaking previously entered into by it under the Rule.

If the City fails to comply with any provisions of this Section 8, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 8, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 8 constitute a default under the Bonds or under any other provision of this Resolution.

As used in this Section 8, "Owner" or "Bondowner" means, in respect of a Bond, the Holder thereof, and any other person who provides to the Registrar evidence in form and substance reasonably satisfactory to the Registrar that such person (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 270 days after the end of each fiscal year of the City, commencing with the fiscal year ending June 30, 2009, the following financial information and operating data in respect of the City (the "Disclosure Information"):

(A) the audited financial statements for such fiscal year, accompanied by the audit report and opinion of the accountant or government auditor relating thereto, as permitted or required by the laws of the State of Montana, containing balance sheets as of the end of such

fiscal year and a statement of operations, changes in fund balances and cash flows for the fiscal year then ended, showing in comparative form such figures for the preceding fiscal year of the City, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the City Clerk; and

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information of the type set forth below, which information may be unaudited, but is to be certified as to accuracy and completeness in all material respects by the City Clerk to the best of his or her knowledge, which certification may be based on the reliability of information obtained from third party sources:

(1) updated figures for the then current fiscal year to include general obligation bonds outstanding, market valuation, taxable valuation, trends in property valuation, estimated City population, and debt capacity;

(2) a description of any additional borrowing or future financing of the City;

(3) tax levy figures for the then current fiscal year in format similar to the table in the section captioned "Tax Levies" in the Official Statement, dated as of September 8, 2008 and the Addendum to the Official Statement, dated as of September 22, 2008 (the "Official Statement");

(4) tax collection figures for the then most recent completed fiscal year in format similar to the table in the section captioned "Tax Collections" in the Official Statement;

(5) a list of the major taxpayers of the City for the then current fiscal year in format similar to the table in the section captioned "Major Taxpayers" in the Official Statement; and

(6) updated operating results for the then most recent completed fiscal year similar to the format shown in Appendix A to the Official Statement (if not included in the most recent Audit).

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the City shall provide on or before such date unaudited financial statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (c) or the SEC. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be a Material Fact (as defined in paragraph (2) hereof), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 8 is amended as permitted by this paragraph (b)(1) or subsection (d), then the City shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;

- (J) Release, substitution, or sale of property securing repayment of the securities; and
- (K) Rating changes.

As used herein, a “Material Fact” is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a “Material Fact” is also an event that would be deemed “material” for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

(A) the failure of the City to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;

(B) the amendment or supplementing of this Section 8 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under subsection (d)(2);

(C) the termination of the obligations of the City under this Section 8 pursuant to subsection (d);

(D) any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information or the audited financial statements, if any, furnished pursuant to subsection (b)(2) or (3) are prepared; and

(E) any change in the fiscal year of the City.

(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Montana as contemplated by the Rule (the “State Depository”), if any;

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any; and

(3) the information described in subsection (b), to any rating agency then maintaining a rating of the Bonds and, at the expense of such Bondowner, to any Bondowner who requests in writing such information, at the time of transmission under paragraphs (1) or (2) of this subsection (c), as the case may be, or, if such information is transmitted with a subsequent time of release, at the time such information is to be released.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 8 shall remain in effect so long as any Bonds are Outstanding. Notwithstanding the preceding sentence, however, the obligations of the City under this Section 8 shall terminate and be without further effect as of any date on which the City delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the City to comply with the requirements of this Section 8 will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successory thereto or amendatory thereof.

(2) This Section 8 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (c)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of this Board filed in the office of the City Clerk accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City or the type of operations conducted by the City, or (b) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule; (ii) this Section 8 as so amended or supplemented would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondowners under the Rule.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 8 is entered into to comply with the continuing disclosure provisions of the Rule and should be construed so as to satisfy the requirements of paragraph (b)(5) of the Rule.

Section 9. Repeals and Effective Date.

9.01. 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.

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

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 22nd day of September, 2008.

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Mayor

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

(SEAL)

EXHIBIT A

[Copy of Signed Winning Bid]

EXHIBIT B

UNITED STATES OF AMERICA  
STATE OF MONTANA  
YELLOWSTONE COUNTY

**CITY OF BILLINGS**

SPECIAL IMPROVEMENT DISTRICT NO. 1385 BONDS

Interest at the rate per annum specified below,  
payable on the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of July  
in each year, commencing July 1, 2009.

No. _____				\$ _____ .00
	<u>Rate</u>	<u>Maturity</u>	<u>Date of</u> <u>Original Issue</u>	<u>CUSIP</u>
	%	July 1,	October 1, 2008	

REGISTERED OWNER: CEDE & CO.

**PRINCIPAL AMOUNT: AND NO/100 DOLLARS**

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana, 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. \_\_\_\_\_, adopted September 22, 2008 (the "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 Financial Services Manager. Interest on this Bond is payable semiannually, commencing July 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 the bond registrar and paying agent hereinafter named, the principal of this Bond are payable by check or draft of U.S. Bank National Association, as Bond Registrar, Transfer Agent and Paying Agent, at its operations center in St. Paul, Minnesota, or its successor designated under the Resolution (the "Registrar"). 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, or in the name of any other nominee of The Depository Trust Company 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 The Depository Trust Company or other securities depository as agreed to by the City.

This Bond is one of an issue in the aggregate principal amount of \$5,360,000 (the “Bonds”), all of like date of original issue and tenor, except as to serial number, denomination, date, interest rate, maturity date, and redemption rights. 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”), and ordinances and resolutions duly adopted by the governing body of the City, including the Resolution, to finance the costs of certain local improvements (the “Improvements”) for the special benefit of property located in the following Special Improvement District of the City: Special Improvement District Nos. 1385 (the “District”). The Bonds are issuable only as fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

This Bond is payable from the collection of a special tax or assessment levied upon all assessable real property within the boundaries of the District, in an aggregate principal amount of not less than \$5,360,000, except as such amounts may be reduced or increased in accordance with provisions of Montana law. Such assessments constitute a lien against the assessable real estate within the District, District and are to be deposited into the Special Improvement District No. 1385 Fund of the City (the “District Fund”). The Bonds are not general obligations 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, 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 the District Fund, in amounts sufficient to make good any deficiency in the District 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 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.

[Term Bond language.]

The Bonds are subject to mandatory redemption in order of stated maturities or sinking fund payment date and within a stated maturity in \$5,000 principal amounts selected by lot or other manner deemed fair by the Registrar, shall be redeemed before other Bonds of such stated maturity, on any interest payment date if, after paying all principal and interest then due on the Bonds, there are funds to the credit of the District Fund, from the prepayment of assessments

levied in the District 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. In addition, the Bonds are subject to redemption on any interest payment date on July 1, 2015, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. 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 and principal amount shall be fixed by the Financial Services Manager, 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 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 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 Resolution until the Certificate of Authentication herein shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Yellowstone County, Montana, by its City Council, has caused this Bond and the certificate on the reverse hereof to be executed by the facsimile signatures of the Mayor, the Financial Services Manager and the City Clerk, and by a printed facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile Signature)  
MAYOR

(Facsimile Seal) (Facsimile Signature)  
FINANCIAL SERVICES MANAGER

(Facsimile Signature)  
CITY CLERK

CERTIFICATE OF AUTHENTICATION

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

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

By \_\_\_\_\_  
Authorized Signature



EXHIBIT C

FORM OF DTC LETTER




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, SEPTEMBER 22, 2008**

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**SUBJECT:** Public Hearing and Approval of the Original Spread Resolution Special Improvement District 1378

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The following assessment resolution SID 1378 has been completed by the Finance Division and is ready to spread on the tax rolls. This project is for Street and Storm Improvements in the Kissee Subdivision. This project and bond sale has previously been approved by council.

**FINANCIAL IMPACT:** The costs associated with SID 1378 are assessed per lot. The net effective interest rate is 5.1 %. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 5.6 %. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

**RECOMMENDATION**

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 22, 2008.

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

**ATTACHMENTS**

A-Resolution & Lot & Block Description

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

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 1378, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as 1378 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 1378 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
A09625A SCHAEFER, MARILAN A KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 003, W39' L:3 E23' L:4 B 1 K	\$14,459.13		5.600 15
A09626 WOLLENBURG, GEORGE F & MARTHA L KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 004, W 37' L:4 & E 25' L:5 B	\$14,459.13		5.600 15
A09626A PAUL AND WANDA HARTMAN LIVING TRUST KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 005, W 35 FT OF LT 5 AND E	\$14,352.45		5.600 15

A09627	\$14,885.86	5.600	15
SOTO, GLORIA J TRUSTEE OF THE KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 006, W35' LT 6 & E35' LT 7 B			
A09627A	\$14,619.16	5.600	15
HUCK, SCOTT A & ANNA M KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 007, W25' L:7 E40' L:8 B:1 K			
A09628	\$14,352.45	5.600	15
BENDER, CECILIA M KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 008, W 20'L:8 & E 40' L:9 B:			
A09629	\$15,419.27	5.600	15
MINCHEW, ANDREW R & PATRICIA L KISSEE SUBD, S09, T01 S, R26 E, BLOCK 001, Lot 009, W20' L:9 ALL L:10 B:1 K			
A09630	\$14,432.46	5.600	15
O'BRIEN, TIMOTHY J KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 001			
A09631	\$14,352.45	5.600	15
HOFFMAN AIMEE K KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 002, LT 2 BLK 2 KISSEE SUB			
A09632	\$14,352.45	5.600	15
RODDA, FREDERICK & JULIE KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 003, LT 3 BLK 2 KISSEE SUB			
A09633	\$14,352.45	5.600	15
INGOLD, MATTHEW D KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 004, L:4 B:2 KISSEE SUB			
A09634	\$14,352.45	5.600	15
STEPHENS, DAVID W & GERTRUDE E KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 005			
A09635	\$17,552.90	5.600	15
DRUBE, JOSEPH E & DIANE I KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 006, LTS 6 AND 7			
A09636	\$14,352.45	5.600	15
ROBBINS, ROBYN KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 008, L:8 B:2 KISSEE SUB			
A09637	\$14,352.45	5.600	15
RIDL, JANICE A KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 009, LT 9 BLK 2 KISSEE SUB			
A09638	\$14,352.45	5.600	15
HUGHS, CECIL C & JEAN KISSEE SUBD, S09, T01 S, R26 E, BLOCK 002, Lot 010			

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, September 22, 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 22, 2008**

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**SUBJECT:** Public Hearing and Approval of the Original Spread Resolution Special Improvement District 1379

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The following assessment resolution SID 1379 has been completed by the Finance Division and is ready to spread on the tax rolls. This project is for Street and Utility Improvements in the Golden Meadows, Lampman, and Olympic Park Subdivisions. This project and bond sale has previously been approved by council.

**FINANCIAL IMPACT:** The costs associated with SID 1379 are assessed per lot. The net effective interest rate is 5.1 %. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 5.6 %. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

**RECOMMENDATION**

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 22, 2008.

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

**ATTACHMENTS**

A-Resolution & Lot & Block Description

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

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 1379, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as 1379 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 1379 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
A24452B MACDONALD, GREGORY C GOLDEN MEADOWS SUBD 3RD FILING, S14, T01 S, R25 E, BLOCK 001, Lot 004, LT 4	\$208,196.41		5.600 15
A29258 KONS SOOPER INC OLYMPIC PARK SUBD, S11, T01 S, R25 E, BLOCK 020, Lot 1B1, LT 1B-1 AMND BLK	\$16,702.40		5.600 15
A29259 KONS SOOPER INC OLYMPIC PARK SUBD, S11, T01 S, R25 E, BLOCK 020, Lot 1B2, LT 1B-2 AMND BLK	\$17,063.08		5.600 15
A29260 KONS SOOPER INC	\$28,659.98		5.600 15

OLYMPIC PARK SUBD, S11, T01 S, R25 E, BLOCK 020, Lot 1B3, LT 1B-3 AMND BLK			
C03637	\$16,346.10	5.600	15
MONTANA COMMERCE LLC STUDER ACREAGE TRACTS SUB, S13, T01 S, R25 E, Lot 1C2, 1479 TR 1C-2 & 1D CO			
C03637A	\$8,170.93	5.600	15
HARMON, RONALD & TODD E STUDER ACREAGE TRACTS SUB, S13, T01 S, R25 E, Lot 1C1, 1479 TR:1C-1 C/S 147			
C03639	\$23,462.08	5.600	15
ONSTAD, MARVIN T TRUSTEE (ETAL) STUDER ACREAGE TRACTS SUB, S13, T01 S, R25 E, Lot 002, LT 2 STUDER ACREAGE			
C07975	\$6,825.00	5.600	15
LUND, RONALD M LAMPMAN SUBD, S12, T01 S, R25 E, BLOCK 17A, Lot 01A, LT 1A BLK 17A AMND LAM			
C07975A	\$3,203.66	5.600	15
LUND, RONALD M LAMPMAN SUBD, S12, T01 S, R25 E, BLOCK 17A, Lot 01B, L:1B B:17A LAMPMAN SUB			
C07979	\$5,133.55	5.600	15
DAJ ENTERPRISES, LLC LT 2 BLK 17A AMND LAMPMAN SUBD AMND BLK 17 LOTS 5-8 (OLD CODE C-7978 THRU,C			
D00573A	\$108,236.81	5.600	15
MACDONALD, GREGORY C S14, T01 S, R25 E, 1349, PARCEL 05D, TR 5D COS 1349 AMND N2 SEC 14-1S-25E			

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, September 22, 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



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, SEPTEMBER 22, 2008**

**SUBJECT:** Public Hearing and Approval of the Original Spread Resolution Special Improvement District 1380  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** The following assessment resolution SID 1380 has been completed by the Finance Division and is ready to spread on the tax rolls. This project is for Landscaping and Irrigation Improvements in the Terra West Subdivision. This project and bond sale has previously been approved by council.

**FINANCIAL IMPACT:** The costs associated with SID 1380 are assessed per lot. The net effective interest rate is 5.1 %. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 5.6 %. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

**RECOMMENDATION**

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 22, 2008.

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

**ATTACHMENTS**

A- Resolution & Lot & Block Description

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

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 1380, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as 1380 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 1380 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
A28700 LORTZ, STEVEN L & JULIE A TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 002, LT 2 BLK	\$1,025.64		5.600 15
A28701 MILLER, DONALD D & AUDREY K TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 003, LT 3 BLK	\$1,025.64		5.600 15
A28702A HERMAN, KENNETH D & OLGIE TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 004, UNIT 306	\$1,025.64		5.600 15
A28702B SCHRUP, WILLIAM T	\$1,025.64		5.600 15

TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 004, UNIT 306			
A28703A	\$1,025.64	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNIT A T			
A28703B	\$1,025.64	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNIT B T			
A28704A	\$1,025.64	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNIT C T			
A28704B	\$1,025.64	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNID D T			
A28706	\$1,025.64	5.600	15
BRINKMAN, BRIAN			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 003, LT 3 BLK			
A28707	\$1,025.64	5.600	15
LOUDAN, TIMOTHY			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 004, LT 4 BLK			
A28708	\$1,025.64	5.600	15
KIRKPATRICK, DANIEL D			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 005, LT 5 BLK			
A28709	\$1,025.64	5.600	15
GARRAD, TIMOTHY			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 006, LT 6 BLK			
A28710	\$1,025.64	5.600	15
MATOVICH, MICHAEL R			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 007, LT 7 BLK			
A28711	\$1,025.64	5.600	15
SHERIDAN, PAUL T			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 008, LT 8 BLK			
A28712	\$1,025.64	5.600	15
MEYERS, GARY L & ANGIE L			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 009, LT 9 BLK			
A28713	\$1,025.64	5.600	15
MEGED, BEVERLY N			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 010, LT 10 BL			
A28714	\$1,025.64	5.600	15
ERVING, SHANE M			

TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 011, LT 11 BL			
A28715	\$1,025.64	5.600	15
JUROVICH, DANIEL D			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 012, LT 12 BL			
A28716	\$1,025.64	5.600	15
CITY OF BILLINGS			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, TERRA WEST SUBD 3RD FILING P			
A28717	\$1,025.64	5.600	15
MCGRAIL, WALTER E & VIRGINIA M			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 013, LT 13 BL			
A28718	\$1,025.64	5.600	15
GODFREY, BRETT W & VALERIE A			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 014, LT 14 BL			
A28719	\$1,025.64	5.600	15
HAFNER, PAUL T & SYLVIA R			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 015, LT 15 BL			
A28720	\$1,025.64	5.600	15
CITY OF BILLINGS			
TERRA WEST SUBD 1ST FILING, S12, T01 S, R25 E, BLOCK 003, Lot 001, TERRA WE			
A28721	\$1,025.64	5.600	15
BURROWES FAMILY 1995 LIVING TRUST			
UNIT 3120 VILLAS ON THE PARK CONDOS 20% INT IN COMMON ELEMENTS LTS 1,2,3,4			
A28722	\$1,025.64	5.600	15
ELLIS, RALPH F & GERMAINE			
UNIT 3116 VILLAS ON THE PARK CONDOS 20% INT IN COMMON ELEMENTS LTS 1,2,3,4			
A28722A	\$1,025.64	5.600	15
SWEENEY, PATRICK C & LOTTIE A			
UNIT 3112 VILLAS ON THE PARK 20% INT IN COMMON ELEMENTS TERRA WEST SUB 3RD			
A28723A	\$1,025.64	5.600	15
MCGINNIS, DENNIS C & BONNIE L			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 003, UNIT 310			
A28724A	\$1,025.64	5.600	15
SCHMIDT, CHARLES W & GAYLE R			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 004, UNIT 306			
A28725	\$1,025.64	5.600	15
COWAN, MARLA J			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 005, LT 5 BLK			
A28726	\$1,025.64	5.600	15
BOSCHEE, RUSSELL W & DIONE F			

TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 006, LT 6 BLK			
A28727	\$1,025.64	5.600	15
WILSON, MICHAEL P & NANCY L			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 007, LT 7 BLK			
A28728	\$1,025.64	5.600	15
ROADIFER, GREG A & TRACY L			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 008, LT 8 BLK			
A28729	\$1,025.64	5.600	15
DICKS, DERK M & TAMARA J			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 009, LT 9 BLK			
A28730	\$1,025.64	5.600	15
TINNES, RICHARD DEAN			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 010, LT 10 BL			
A28731A	\$1,025.64	5.600	15
SOCHA, JOHN D			
UNIT 1 DAYSTAR TOWNHOMES (04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A &			
A28731B	\$1,025.64	5.600	15
KRISTENSEN, M JOYCE			
UNIT 2 DAYSTAR TOWNHOMES (04) 1/4 INT COMMON ELEMMENTS LOCATED ON LTS 1A &			
A28733A	\$1,025.64	5.600	15
DRAKE, PERRY ANN			
UNIT 3 DAYSTAR TOWNHOMES (04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A &			
A28733B	\$1,025.64	5.600	15
FOLEY, DAVID NEILL & GAYLE M			
UNIT 4 DAYSTAR TOWNHOMES (04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A			
A29976	\$1,025.64	5.600	15
PIPER, BETH A			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 07A, LT 7A BL			
A29977	\$1,025.64	5.600	15
BAILEY, LA VONNE B			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 008, LT 8 BLK			
A29978	\$1,025.64	5.600	15
NEARY, PATRICK T			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 009, LT 9 BLK			
A29979	\$1,025.64	5.600	15
FRITZ, DERRY J & KELLY D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 010, LT 10 BL			
A29980	\$1,025.64	5.600	15
WILLIAMS, BROCK R & REBEKAH K			

TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 011, LT 11 BL			
A29981	\$1,025.64	5.600	15
GRAY, JEFF A & ERIN M			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 012, LT 12 BL			
A29982	\$1,025.64	5.600	15
EDWARDS, BRIAN			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 013, LT 13 BL			
A29983	\$1,025.64	5.600	15
BARKELL, RYAN J & PATTI J			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 014, LT 14 BL			
A29984	\$1,025.64	5.600	15
BLAZEK, JAMES B & THERESA M			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 015, LT 15 BL			
A29985	\$1,025.64	5.600	15
O'MALLEY, RHONDA S			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 016, LT 16 BL			
A29986	\$1,025.64	5.600	15
BREEN, SCOTT T & ERIN J			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 017, LT 17 BL			
A29987	\$1,025.64	5.600	15
HALLAND, DAVID S			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 018, LT 18 BL			
A29988	\$1,025.64	5.600	15
HODIK, KYLE & KATHLEEN			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 019, LT 19 BL			
A29989	\$1,025.64	5.600	15
FLEMING, JOHN P & CINDY A			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 020, LT 20 BL			
A29990	\$1,025.64	5.600	15
CHRISTENSON, ERIC & TREASA			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 021, LT 21 BL			
A29991	\$1,025.64	5.600	15
BOOTH, ELIZABETH D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 04A, LT 4A BL			
A29992	\$1,025.64	5.600	15
TILZEY, MICHAEL & AMBER MICHELE OTT			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 005, LT 5 BLK			
A29993	\$1,025.64	5.600	15
REDDING, JEFFREY A & ANNETTE L			

TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 006, LT 6 BLK			
A29994	\$1,025.64	5.600	15
REINTSMA, PHILLIP J & SARA J			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 007, LT 7 BLK			
A29995	\$1,025.64	5.600	15
BARRIE, JASON W & KRISTIN M			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 008, LT 8 BLK			
A29996	\$1,025.64	5.600	15
KIMMELL, MARLEE			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 009, LT 9 BLK			
A29997	\$1,025.64	5.600	15
KAPALKA, RONALD W & NANCY J			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 010, LT 10 BL			
A29998	\$1,025.64	5.600	15
JENSEN, GREG A & CONNIE			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 011, LT 11 BL			
A29999	\$1,025.64	5.600	15
PALMER, RICHARD L			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 012, LT 12 BL			
A30000	\$1,025.64	5.600	15
JOHNS, LARRY D & JANELLE C			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 013, LT 13 BL			
A30001	\$1,025.64	5.600	15
LUTTON, RICHARD E & DEBORAH L			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 014, LT 14 BL			
A30002	\$1,025.64	5.600	15
PICARD, SAM			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 015, LT 15 BL			
A30003	\$1,025.64	5.600	15
KILWEIN, THOMAS R & PATRICIA D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 016, LT 16 BL			
A30004	\$1,025.64	5.600	15
BETZOLD, ANTHONY ASHLEY			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 017, LT 17 BL			
A30005	\$1,025.64	5.600	15
JOHNSON, ROGER C & KATHLEEN A			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 018, LT 18 BL			
A30006	\$1,025.64	5.600	15
HOME BUILDERS ASSOCIATION OF			

TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 005, Lot 001, LT 1 BLK			
A30007	\$1,025.64	5.600	15
FOOTE, ROBERT D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 005, Lot 002, LT 2 BLK			
A30008	\$1,025.64	5.600	15
OKSENDAHL, HAROLD J & DIANNE			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 005, Lot 003, LT 3 BLK			
A30009	\$1,025.64	5.600	15
SEIBOLD, THOMAS J & CARISSA			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 005, Lot 004, LT 4 BLK			
A30010	\$1,025.64	5.600	15
FIVE HANGING H RANCH INC			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 005, Lot 005, LT 5 BLK			
A30011	\$1,025.64	5.600	15
HOME BUILDERS ASSOCIATION OF			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 001, LT 1 BLK			
A30012	\$1,025.64	5.600	15
BUTZ, MICHAEL R &			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 002, LT 2 BLK			
A30013	\$1,025.64	5.600	15
GOODMAN, KENNETH W & KATHLEEN A			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 003, LT 3 BLK			
A30014	\$1,025.64	5.600	15
WULFF, DENISE D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 004, LT 4 BLK			
A30015	\$1,025.64	5.600	15
FIVE HANGING H RANCH INC			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 005, LT 5 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, September 22, 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 22, 2008**

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**SUBJECT:** Public Hearing and Approval of the Original Spread Resolution Special Improvement District 1383

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The following assessment resolution SID 1383 has been completed by the Finance Division and is ready to spread on the tax rolls. This project is for Water, Sanitary Sewer, Storm Drain, and Street Improvements in the Lakehills Subdivision. This project and bond sale has previously been approved by council.

**FINANCIAL IMPACT:** The costs associated with SID 1383 are assessed per lot. The net effective interest rate is 5.1 %. Under the State statute 7-12-4189, the City is required to add ½ of 1% for a total rate of 5.6%. The ½ of 1% will be used as additional security on bond issues, as stated in the final bond resolution. Interest earnings and prior collections are subtracted from the final construction cost and spread to the appropriate properties. Any remaining fund balances are used to call bonds.

**RECOMMENDATION**

Staff recommends that a public hearing be held and Council passes the proposed resolution on September 22, 2008.

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

**ATTACHMENTS**

A-Resolution & Lot & Block Description

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

A RESOLUTION LEVYING A SPECIAL ASSESSMENT TAX UPON ALL BENEFITED PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT OR PROJECT KNOWN AS 1383, IN THE CITY OF BILLINGS, MONTANA.

WHEREAS, the City created a special improvement district or project known as 1383 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 1383 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
A22568 QUADE & FASBENDER LAKE HILLS SUBD 13TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 012, LT 12 B		\$26,500.00	5.600 15
A22569 MCKITTRICK, LEON R LAKE HILLS SUBD 13TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 013, LT 13 B		\$26,500.00	5.600 15
A22570 KAERCHER, JAMES L LAKE HILLS SUBD 13TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 014, LT 14 B		\$26,500.00	5.600 15
A22572 QUADE, GARTH		\$26,500.00	5.600 15

LAKE HILLS SUBD 13TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 016, LT 16 B			
A22575	\$26,500.00	5.600	15
KEELING, JIM			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 018, LT 18 B			
A22576	\$26,500.00	5.600	15
KAERCHER, JAMES L			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 019, LT 19 B			
A22577	\$26,500.00	5.600	15
SCHWEYEN, BRIAN & SHANON			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 020, LT 20 B			
A22579	\$26,500.00	5.600	15
KAERCHER, JAMES L			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 022, LT 22 B			
A22581	\$26,500.00	5.600	15
SCHNEITER ENTERPRISES			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 045, Lot 024, LT 24 B			
A22585	\$26,500.00	5.600	15
MURRAY, HARRY J & PATRICIA A			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 046, Lot 001, LT 1 BL			
A22587	\$26,500.00	5.600	15
MARGARETTA W KINMAN TRUST 1999			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 046, Lot 003, LT 3 BL			
A22590	\$26,500.00	5.600	15
JONES, MARY LOUISE			
LAKE HILLS SUBD 14TH FILING, S16, T01 N, R26 E, BLOCK 046, Lot 006, LT 6 BL			

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, September 22, 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:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Public Hearing and Resolution Relating to Petitions for Reduction of Arterial Construction Fee Assessments

DEPARTMENT: Public Works Department

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

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**PROBLEM / ISSUE STATEMENT:** The City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially-zoned properties being used solely as owner-occupied single family residences. The ordinance states *“The City Council may provide an exemption to commercially 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 City Council adopted Ordinance 08-\_\_\_\_\_ on September 22, 2008 that allows Residential Manufactured Home (RMH)-zoned property owners to also 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 relief in both of these situations may be in the form of capping the parcel square footage at 9,600 square feet and calculating the assessment based on the R-9600 zoning rate instead of commercial or RMH zoning rates.

Public Works Administration staff developed a form for property owners meeting the criteria specified in Ordinance 08-\_\_\_\_\_ to annually petition the City Council for a reduction of their arterial construction fee assessments. A copy of the form is available at the Public Works front counter, at the Finance Division front counter, at the City Administrator’s Office front counter, or by calling any of these offices. Property owners may also submit the form online through the City’s website at <http://ci.billings.mt.us>

As of August 31, 2008, the Public Works Department received seven (7) completed and signed petitions. Six (6) of the parcels meet the criteria specified in Ordinance 08-\_\_\_\_\_ and one (1) parcel does not meet the criteria.

**FINANCIAL IMPACT:** Reducing the arterial construction fee assessments on the six parcels meeting the criteria of Ordinance 08-\_\_\_\_\_ means the City will collect \$1,594.00 less than if the City Council denied the petitions. If the City Council approves the denial of the one parcel that

do not meet the criteria of Ordinance 08-\_\_\_\_, the City will collect \$28.22 more in arterial construction fees than if the reductions were approved.

**RECOMMENDATION**

Staff recommends that the City Council approve a Resolution reducing the arterial construction fee assessments for the five commercially-zoned parcels and one RMH-zoned parcel that meet the criteria of Ordinance 08-\_\_\_\_ by capping the parcel square footage at 9,600 square feet and calculating the assessments based on the R-9600 zoning rate instead of commercial or RMH zoning rates. We recommend no reduction to the arterial construction fee assessments for the one parcel that does not meet the criteria.

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

**ATTACHMENTS:**

A – List of 2008 Petitions for Reduction of Arterial Construction Fee Assessments

B – Copy of Petition for Reduction of Arterial Const. Fee Assessments Form

C – Resolution

D – Legal Meeting Notice

2008 PETITIONS FOR REDUCTION OF ARTERIAL CONSTRUCTION FEE ASSESSMENTS

Attachment A

DATE REC'D	TAX CODE	ZONE	LAST NAME	FIRST NAME	PARCEL ADDRESS	PHONE	Comments	Assessment if Petition is NOT approved	Assessment if Petition IS Approved	Difference	Recommendation
5/8/2008	C11431	PD/R60	Pearson	Bruce Martin & M Card	2965 Tartan Road	406-256-9571	This parcel is already capped at 9,600 square feet. Furthermore, the Ordinance only allows property owners of commercial or RMH-zoned parcels used solely as a single family residence to petition for a reduction of their arterial construction fee assessment.	\$67.39	\$39.17	(\$28.22)	Denial
8/7/2008	D05202	HC	Hatveldt	Art	2104 Bench Blvd	406-259-7090		\$566.42	\$39.17	(\$527.25)	Approval
8/13/2008	C01104	HC	Fisher	Lee E. & Patricia J.	704 Logan Lane	406-252-6033		\$309.89	\$39.17	(\$270.72)	Approval
8/13/2008	C01454A	RMH	Bauer	Dennis A. & Taya A.	437 Roxy Lane	406-245-7119	The parcel is zoned Residential Manufactured House (RMH). If Ordinance 08-_____ is approved by the City Council at their 9/22/08 meeting, it will meet the criteria for a reduction.	\$96.70	\$39.17	(\$59.53)	Approval
8/13/2008	D05200	HC	Moats	Melville E. & Vivian I.	2112 East Main Street	406-252-5049		\$519.52	\$39.17	(\$480.35)	Approval
8/13/2008	D05201	RMH	Moats	Melville E. & Vivian I.	2112 East Main Street	406-252-5049	The parcel is zoned Residential Manufactured House (RMH). If Ordinance 08-_____ is approved by the City Council at their 9/22/08 meeting, it will meet the criteria for a reduction.	\$258.42	\$39.17	(\$219.25)	Approval
8/19/2008	A11635	MCPZD	Nilson	Terry W.	922 North 30th Street	406-252-2500		\$65.45	\$28.56	(\$36.89)	Approval
								\$1,885.80	\$263.57	-\$1,622.23	

If the City Council approves the "approval" recommendations above, the City will receive **\$1,594.00** less in Arterial Construction Fee assessments for these six parcels.

If the City Council approves the one denial recommendation above, the City will receive **\$28.22** more for those parcels than if the reductions were approved.



# Petition for Reduction of Arterial Construction Fee Assessments

The City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially zoned properties being used as owner-occupied single family residences. The ordinance states *“The City Council may provide an exemption to commercially zoned properties that are currently owner-occupied solely 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 City Council adopted Ordinance 08-\_\_\_\_ on September 22, 2008, that also allows Residential Manufactured Home (RMH)-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 relief in both of these situations may be in the form of capping the parcel square footage at 9,600 square feet and calculating the assessment based on R-9600 zoning rates instead of commercial zoning rates. These ordinance changes are not retroactive.

If your property meets the criteria above, and you wish to petition the City Council for a reduction of your Arterial Construction Fee assessments, please complete this form and return it to the Public Works Department, 2224 Montana Avenue, Billings, MT 59101 **by August 31.**

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Date \_\_\_\_\_ Tax Code # \_\_\_\_\_ Taxable Year \_\_\_\_\_

Parcel street address \_\_\_\_\_

Parcel legal description \_\_\_\_\_

Parcel zoning classification \_\_\_\_\_

***By signing below, I certify that I own the parcel identified above, that it is my primary residence, that I use the parcel solely as a single-family residence, and that all information provided on this form is true and correct. I understand that if the information supplied on this form is found to be false, I agree to pay back to the City of Billings the amount of the reduction to the Arterial Construction Fees on this parcel as a result of the false information PLUS penalty and interest. I further understand that I must annually apply for a reduction to the arterial construction fee assessment by August 31 of each year. I agree to notify the Billings Public Works Department immediately should any information provided on this form change.***

Property Owner Signature \_\_\_\_\_ Date \_\_\_\_\_

Property Owner Name (print legibly) \_\_\_\_\_

Mailing address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Phone Number (optional) \_\_\_\_\_

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

**A RESOLUTION OF THE CITY OF BILLINGS RESPONDING TO  
SUBMITTED PETITIONS FOR REDUCTION OF ARTERIAL  
CONSTRUCTION FEE ASSESSMENTS THAT WOULD APPEAR ON  
THE OCTOBER 2008 PROPERTY TAX STATEMENTS**

WHEREAS, the City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially-zoned properties being used solely as owner-occupied single family residences, and

WHEREAS, Ordinance 05-5322 states, *“The City Council may provide an exemption to commercially 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.”*, and

WHEREAS, the City Council adopted Ordinance 08-\_\_\_\_\_ on September 8, 2008, in part to provide relief to Residential Manufactured Home (RMH)-zoned properties being used solely as owner-occupied single family residences, and

WHEREAS, the City Council may provide relief to property owners meeting the criteria of Ordinance 05-5322 and Ordinance 08-\_\_\_\_\_ by capping the parcel square footage at 9,600 square feet and calculating the assessment based on the R-9600 zoning rate instead of commercial or RMH zoning rates, and

WHEREAS, the Public Works Department received seven (7) completed and signed petitions by the August 31, 2008, deadline and

WHEREAS, the Public Works Department verified that six (6) of the seven (7) petitions involve parcels meeting the criteria of Ordinance 08-\_\_\_\_\_, and

WHEREAS, reducing the assessments on these six (6) parcels would affect the Arterial Construction Fee assessments appearing on the tax statements Yellowstone County will print and mail in October 2008, and

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

1. **REDUCTION OF ASSESSMENTS**: The Arterial Construction Fees assessments on the following six (6) parcels shall be adjusted by Public Works Department staff and placed upon the assessment rolls and collected in the same manner as other City of Billings assessments.

<b>TAX CODE #</b>	<b>ZONE</b>	<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>PARCEL ADDRESS</b>	<b>Adjusted Assessment</b>
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D05202	HC	Hatveldt	Art	2104 Bench Blvd	\$39.17
C01104	HC	Fisher	Lee E. & Patricia J.	704 Logan Lane	\$35.62
C01454A	RMH	Bauer	Dennis A. & Taya A.	437 Roxy Lane	\$39.17
D05200	HC	Moats	Melville E. & Vivian I.	2112 E Main Street	\$39.17
D05201	RMH	Moats	Melville E. & Vivian I.	2112 E Main Street	\$39.17
A11635	MCPZD	Nilson	Terry W.	922 N 30 <sup>th</sup> Street	\$28.56

2. **DENIAL OF ASSESSMENT REDUCTION:** There will be no reduction to the Arterial Construction Fee assessments on the following parcel.

<b>TAX CODE</b>	<b>ZONE</b>	<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>PARCEL ADDRESS</b>
C11431	PD/R60	Pearson	Bruce Martin & M Carol	2965 Tartan Road

3. **NOTICE OF HEARING:** On Monday, **September 22, 2008**, at 6:30 p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the final adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the ***Billings Times***.

4. **EFFECTIVE DATE:** This resolution shall be effective upon final adoption.

ADOPTED and APPROVED by the City Council this **22<sup>nd</sup>** day of **September 2008**.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

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

**NOTICE OF PUBLIC HEARING**

The Billings City Council intends to conduct the following Public Hearing:

**Date of Public Hearing:** Monday, September 22, 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:** Resolution Regarding Petitions for Reduction  
of Arterial Construction Fee Assessments

**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 28<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: 9/4/08 & 9/11/08

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**TITLE:** Public Hearing for the FY2007-2008 Draft Comprehensive Annual Performance Evaluation Report (CAPER) Community Development Block Grant (CDBG) and HOME Programs

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Brenda Beckett, Community Development Manager  
 Candi Beaudry, Planning and Community Services Director

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**PROBLEM/ISSUE STATEMENT:** Each year the City of Billings is required to report on the results of its federally funded CDBG and HOME programs and submit a report to HUD within 90 days of the end of the program year, June 30, 2008. As part of this report process, the City of Billings must make the report available for public comment for a 15-day period and hold a public hearing on this performance during this period. The public hearing will be undertaken in conjunction with the 15-day public review and comment period extending from September 8 through September 22, 2008. A notice of the availability of the draft report has been published and provided to community partners. No further action is required.

**ALTERNATIVES ANALYZED:** Alternatives to the public hearing, which is required for receipt of federal CDBG and HOME funds, have not been considered.

**FINANCIAL IMPACT:** The Annual Performance Report reports on the City's progress in achieving the goals of its Five Year Consolidated Plan. The period covered by this year's report represents progress under the City's Five Year Consolidated Plan for fiscal years 2005-2009. The City received \$726,175 in new federal CDBG funding and \$500,839 in new HOME funding for FY 2007-2008 activities.

**RECOMMENDATION**

Staff recommends that Council hold a public hearing on September 22, 2008 to receive input on the City's Draft Comprehensive Annual Performance Evaluation Report available for public comment beginning September 8 through September 22, 2008. No further action is required.

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

**ATTACHMENT**

A. Sections I & II of the FY 2007-2008 Comprehensive Annual Performance Evaluation Report are attached. The full drafted report is on file at the City Clerk's office.

*COMMUNITY DEVELOPMENT DIVISION*  
**COMPREHENSIVE ANNUAL PERFORMANCE EVALUATION REPORT**  
*FY 2007-2008*

**SECTION I – CONSOLIDATED PLANNING & REPORTING**

**Introduction**

Presented below is the City of Billings FY 2007-2008 Comprehensive Annual Performance and Evaluation Report (CAPER) for the City's federally funded Community Development Block Grant (CDBG) and Home Investment Partnership Programs (HOME). The FY 2007-2008 CAPER covers the period from July 1, 2007 to June 30, 2008 and reports on the City of Billings' progress in meeting the goals established in the FY 2005-2009 Consolidated Plan. The City's Consolidated Plan is a strategic planning document that identifies housing and community development needs and proposes strategies to address those needs with available resources.

The Consolidated Plan initiative of the U.S. Department of Housing & Urban Development (HUD) combines the planning, application and reporting requirements of the Community Development Block Grant and Home Investment Partnership Programs. The Consolidated Plan initiative also covers the Emergency Shelter Grant Program and Housing Opportunities for Persons with AIDS Program. The City of Billings, however, is not an Entitlement City or Participating Jurisdiction for these programs and, as such, strategies for these programs are not included in the City's Consolidated Plan. Consolidated Plans are also submitted by the cities of Great Falls and Missoula and by the State of Montana. The State's Plan covers areas of Montana, outside Billings, Great Falls, and Missoula.

The consolidation of the submission and reporting requirements for the CDBG and HOME Programs allows the City of Billings to report on its various housing and community development activities in an effective and coordinated manner. It also reduces the duplication of effort for planning and reporting for these programs and affords the opportunity for citizen participation on the CDBG and HOME Programs to take place in a comprehensive context. The CDBG, HOME, McKinney, and HOPWA programs covered by the Consolidated Plan must primarily benefit low and moderate-income persons and are intended nationally to provide decent housing, a suitable living environment, and expand economic opportunities for lower-income individuals.

The needs and strategies described in the City of Billings Consolidated Plan outline a specific course of action for the community's housing and community development activities. The City's Consolidated Plan sets forth goals and objectives that are used to measure progress in achieving the strategies described in the plan. The CAPER provides a report on the City's progress in meeting these goals and objectives.

The structure and content of the Consolidated Plan and this CAPER are based on specific requirements of HUD. Many terms used in this document are specific to the CAPER process and HUD Programs, and the reader should consult the City of Billings Community Development Office for assistance.

**Summary of FY 2005-2009 Consolidated Plan**

The Billings City Council approved the FY 2005-2009 Consolidated Plan on May 9, 2005. The

development process included the completion of the *Billings Housing Needs Assessment* completed by the Center for Applied Economic Research, Montana State University-Billings in January of 2005. The *Billings Housing Needs Assessment* highlighted: 1) the affordability of housing; 2) the condition of the housing stock; and 3) demographic trends related to elderly / disabled households. Study results of the needs assessment formed the basis for the development of the strategies for the Consolidated Plan. The Executive Summary for the City's FY 2005-2009 Consolidated Plan is attached in the Appendices.

The following five strategies are proposed by the City of Billings in its FY 2005-2009 Consolidated Plan to address the housing and community development needs in Billings:

***Strategy #1***

Promote the preservation of the existing supply of affordable housing in the community by:

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower-income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower-income households due to redevelopment activities.

***Strategy #2***

Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located by:

- Preserving the housing stock in older lower-income neighborhoods;
- Providing incentives to encourage development of vacant lots and redevelopment of substandard properties in lower-income neighborhoods;
- Supporting activities that provide amenities and address infrastructure needs of older lower-income neighborhoods; and,
- Supporting efforts of residents of lower-income neighborhoods to work together to address needs and respond to opportunities.

***Strategy #3***

Promote new affordable housing opportunities by:

- Encouraging the development of new affordable single, multi-family, and special needs housing in the community through private developers and non-profits; and,
- Promoting homeownership.

***Strategy #4***

Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs by:

- Encouraging housing and community development organizations to work together to build strong community structures to better address needs and to respond to opportunities; and,

- Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

#### **Strategy #5**

Improve the economic conditions of lower-income households in the community by:

- Supporting efforts of community organizations to address the human service needs of lower-income residents of the community in general and our lower-income neighborhoods in particular; and,
- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower-income households.

The complete FY 2005-2009 Consolidated Plan can be viewed online:

<http://www.ci.billings.mt.us/DocumentView.asp?DID=1098>

Specific actions for each of these strategies for Fiscal Years FY 2005 through FY 2009 are described in detail in Section II along with the City's progress in FY 2007-2008 in meeting the 5-year goals and objectives that were established.

The Billings Housing Needs Assessment is also available online:

<http://www.ci.billings.mt.us/index.asp?nid=500>

The Billings Housing Needs Assessment and the City's FY 2005-2009 Consolidated Plan are available by contacting the Community Development Division at the address below:

Community Development Division  
City of Billings  
P.O. Box 1178  
Billings, MT 59103  
Phone: 406-657-8281  
TTY Users: 1-800-253-4093

#### **Substandard Housing Definition**

For the purposes of this report, substandard condition of housing is defined by the City of Billings as properties requiring more than \$20,000 in funding to complete all required code related improvements to the property. Substandard condition but suitable for rehab would be those properties where \$20,000 invested would address all safety hazard conditions and related items associated with the house within primary systems ranging from electrical, plumbing, heating, roofing, and foundation repairs.

**SECTION II - FY 2007-2008 ACCOMPLISHMENTS**

The City of Billings' FY 2005-2009 Consolidated Plan consisted of five strategies to utilize CDBG and HOME resources to address Billings' housing and community development needs. These five strategies and the City's goals and objectives to undertake each strategy are identified below followed by the City of Billings' accomplishments and progress in FY 2007-2008 in meeting the goals and objectives that were established.

<b>FY 2007-2008 ANNUAL PLAN &amp; ACCOMPLISHMENTS</b>			
<b>Strategy #1 - Promote the preservation of the existing supply of affordable housing in the community.</b>			
<b>Objective</b>	<b>Implementation Plan</b>	<b>2007-2008 Goals</b>	<b>2007-2008 Accomplishments</b>
Provide affordable financing to lower-income homeowners to perform needed repairs.	Complete substantial rehabilitation work through the Housing Rehabilitation Loan Program.	12 homes	Substantial rehabilitation work was completed to 10 homes in the community with the CDBG Housing Rehabilitation Loan Program.
	Complete minor rehabilitation work through the Minor Home Repair Program.	12 homes	The City of Billings completed minor home repairs to 16 households during the program year with the City's Minor Home Repair Grant Program.
Provide affordable financing to lower-income homeowners to perform needed repairs.	Provide funding for single purpose rehabilitation projects targeted to elderly and special needs lower income homeowners. Providing funding to organizations increases the total leveraged funding available for repair programs.	Assist with repairs for the elderly and disabled by working with non-profit organizations such as: LIFTT (7 ramps), YCCOA (58 repairs), and Rebuilding Together (4 homes).	Funding was provided to LIFTT which resulted in the construction of 8 new ramps and home modifications for disabled homeowners.  YCCOA assisted 39 elderly households with repairs of up to \$500.  Rebuilding Together completed 4 projects this year for the elderly and disabled utilizing CDBG funding.
	Pursue grant and private funding to support activities that increase resources available for housing rehabilitation activities.	Staff support & coordination to Rebuilding Together and other organizations performing rehabilitation.	Billings continued to implement the new Low Interest Loan established in June 2002 through a partnership with Wells Fargo.  The City continues to pursue additional resources for affordable financing for home repairs.

<p>Provide affordable financing to rehabilitate rental units affordable to lower-income residents.</p>	<p>Complete substantial rehabilitation work to rental units for occupancy by lower-income, elderly and special needs households through the Rental Rehabilitation Program.</p>	<p>5 rental units</p>	<p>The revised Rental Rehab Program was adopted by the City in the fall of 2003 and funding remains available for use until December 31, 2008.</p> <p>The City researched the possibility of offering a line of credit utilizing Fannie Mae's American Community fund for future projects. The local Fannie Mae office has closed, and funding opportunities are limited through this program.</p>
<p>Reduce the loss of existing standard housing units affordable to lower-income households due to redevelopment activities.</p>	<p>Pursue private resources to support rental rehabilitation activities.</p>	<p>Utilize Fannie Mae's America's Community Fund for rental rehabilitation activities to complete 1 project.</p>	<p>The Affordable Housing Task Force met monthly this fiscal year and has worked on identifying regulatory barriers affecting affordable housing development in Billings.</p>
<p>Reduce the loss of existing standard housing units affordable to lower-income households due to redevelopment activities.</p>	<p>Continue to work with organizations involved with redevelopment activities to promote the preservation of the existing supply of affordable housing and to mitigate the effects of demolition or conversion when it does occur.</p>	<p>Continue working with the Housing Needs Analysis Subcommittee of the Affordable Housing Task Force to continue work on housing guidelines.</p>	<p>The Affordable Housing Task Force met monthly this fiscal year and has worked on identifying regulatory barriers affecting affordable housing development in Billings.</p>
<p><b>Strategy #2 - Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.</b></p>			
<p><b>Objective</b></p>	<p><b>Implementation Plan</b></p>	<p><b>2007-2008 Goals</b></p>	<p><b>2007-2008 Accomplishments</b></p>
<p>Preserve the housing stock in older lower-income neighborhoods</p>	<p>See implementation plan for Strategy #1. Support house painting program for lower-income homeowners. Support Tree Program to remove and replace diseased or dangerous trees for lower-income homeowners. Support activities that help preserve historic properties.</p>	<p>5 homes 12 trees through public service activity Support annual YHPB work plan.</p>	<p>The Paint Program was rejuvenated in 2004 after being suspended due to lack of volunteers and lead based paint program requirements. This program assisted 3 households this fiscal year. The City of Billings assisted 7 households with the removal of dangerous trees during the FY 2007-2008 program year. The historic preservation work plan has been updated and completed this fiscal year and is available at the City of Billings' Planning Division.</p>

1 Housing is being lost due to redevelopment activities separate from CDBG and HOME activities. This work group has been established to study housing needs including the loss of housing units due to demolition or redevelopment activities and to develop local housing guidelines acceptable to the community. This initiative will increase local awareness of the negative cumulative effect resulting in the loss of affordable housing units. Local guidelines will be developed which balance the expansion needs of our community with affordable housing.

<p>Provide incentives to encourage development of vacant lots and redevelopment of substandard properties in lower-income neighborhoods</p>	<p>See implementation plan for Strategy #3.</p> <p>Provide support for the Affordable Housing Task Force to make recommendations for a developer incentive program in conjunction with the Planning Department's Smart Growth initiative.</p> <p>Provide funding for Affordable Housing Volunteer Demolition program to eliminate blighted substandard properties in lower income neighborhoods and replace with new affordable housing.</p>	<p>The Barriers to Affordable Housing Subcommittee of the Affordable Housing Task Force will propose an incentive program for infill and affordable housing development for consideration by the City Council.</p> <p>1 property</p> <p>Implement City's FY2007-2008 CIP and projects funded through CDBG such as the Central Park Playground.</p> <p>30 homeowners</p>	<p>The Workforce Housing Committee has been established this fiscal year and is expected to propose affordable housing development strategies to the City Council in 2008.</p> <p>The Volunteer Demolition program continues to be available for interested applicants until December 31, 2008.</p> <p>The Billings Heights Milton Road Improvement Project began construction this fiscal year. Funds for this project were committed specifically for storm drain improvements in November 2005. Funding was provided for the Central Park Playground for playground equipment.</p> <p>Special Assessment Grants were provided to 1 low-income homeowner to pay for special assessments resulting from infrastructure improvements.</p> <p>The number of assisted homes varies from year to year as improvements are made within special improvement districts in low-income areas.</p>
<p>Support activities that provide amenities and address the infrastructure needs of older lower-income neighborhoods</p>	<p>Support planned neighborhood improvements included in City's Capital Improvement Plan (CIP).</p> <p>Provide Special Assessment Grants for lower-income households to help pay for Special Improvement Districts resulting from the City's public improvement projects.</p>		

	Encourage the redevelopment of the South 27 <sup>th</sup> Street Corridor.	Complete one new redevelopment project (800 block South 28 <sup>th</sup> , 500 & 700 blocks of South 27 <sup>th</sup> ).	<p>The City of Billings has facilitated several projects through land sales, swap, and donation for the redevelopment of the 27<sup>th</sup> Street Corridor including:</p> <ul style="list-style-type: none"> <li>- A new Northern Plains Resource Council building</li> <li>- A new MTS building</li> <li>- Expansion of the Deering Clinic Building</li> <li>- Donation of land for Montana Rescue Mission's new campus</li> <li>- Donation of land for Southern Lights, an affordable housing development</li> </ul>
Encourage the implementation of the Heritage Trail Bike Plan in lower income areas in conjunction with the Healthy Communities "Built Environment" initiative.	Plan and seek funding for needed improvements in task force neighborhoods.		<p>Neighborhood Plans were completed for the North Park and South Side Neighborhoods. Due to budget constraints, no further neighborhood planning projects will be undertaken in 2008 or 2009.</p> <p>The Community Development Division assists in grant writing opportunities in support of the Heritage Trail Bike Plan including a recent application for the Recreational Trails Program.</p>

<p>Support efforts of lower-income neighborhoods to work together to address needs and respond to opportunities</p>	<p>Promote historic preservation activities in a coordinated manner through historic preservation organizations.</p>	<p>Support annual YHPB work plan.</p>	<p>Historic preservation activities completed during the program year through the activities of the Yellowstone Historic Preservation Board include:</p> <ul style="list-style-type: none"> <li>- Assisting developers with new development within the historic district;</li> <li>- Continuing the development of an amendment to the existing Billings Historic Preservation Ordinance.</li> <li>- Continue implementation of a notification protocol on the demolition of historic buildings within the City in order to facilitate archival photography;</li> <li>- Identifying funding sources for the construction of a sign board "Billings Through the Decades";</li> <li>- Assist the North Elevation Task Force in the development of a Historic Residential District, provide technical assistance as needed;</li> <li>- Consideration of new and expanded historic district;</li> <li>- Continued presentations of an architecture and style study in the South Side neighborhood; and</li> <li>- Completion and distribution of a Historic Downtown Banner Brochure.</li> </ul>
	<p>Support neighborhood planning efforts and provide on-going support for monthly task force meetings.</p>	<p>Complete Neighborhood Plans in South Side, Southwest Corridor, and Garden Avenue neighborhoods.</p>	<p>Neighborhood Plans were completed for the North Park and South Side Neighborhoods. Due to budget constraints, no further neighborhood planning projects will be undertaken in 2008 or 2009.</p>

<p>The Billings City Council continued to provide \$10,000 in City General Funds to help support the activities of existing task forces.</p> <p>The City hired a Neighborhood Planner in the Fall of 2003 to develop and help implement neighborhood plans. Budget constraints have closed this position as of June 30, 2008.</p> <p>The City of Billings provided staff support for the Adjacent Neighborhood Committee. The committee meets bi-monthly to provide a forum for representatives of the City's neighborhood groups to identify and address problems and share concerns.</p> <p>The City provided staff support for the efforts of the Railroad Relocation Committee. A special federal appropriation of \$100,000 was secured for the project and the study was completed as of June 2004. This study describes various alternatives to address problems resulting from the location of the railroad tracks between downtown and the City's south side.</p>	<p>Staff support for newsletter monthly mailings.</p> <p>Facilitate task force initiatives.</p>	
<b>Strategy #3 - Promote new affordable housing opportunities.</b>		
	<b>2007-2008 Goals</b>	<b>2007-2008 Accomplishments</b>
<p><b>Objective</b></p> <p>Encourage the development of new affordable single family, and multi-family, and special needs housing in the community through private developers and non-profits</p>	<p><b>Implementation Plan</b></p> <p>Provide funding through the CDBG / HOME, and other affordable housing funds to encourage the development of new affordable housing in the community emphasizing new / converted:</p> <ul style="list-style-type: none"> <li>- Elderly and disabled housing</li> <li>- Special needs housing</li> <li>- Housing in lower-income neighborhoods (Strategy #2)</li> <li>- Housing for very low and extremely low-income renters</li> </ul>	<p>The City supported applications from Sage Towers and homeWORD for Southern Lights this fiscal year.</p> <p>The City of Billings completed Phase II of the King's Green development this fiscal year. Fourteen single-family homes were built and sold to low to moderate income families. Phase I created 10 single-family units for ownership by low - moderate income households.</p> <p>Phase III of the Kings Green Subdivision has begun with infrastructure development. This phase is expected to result in 14 new single- family homes.</p> <p>Funds were awarded to homeWORD (a CHDO) for the construction of Southern Lights, which resulted in the addition of 20 rental units targeted for 30-50% of the area</p>

<p>median income population.</p> <p>Irma House was awarded funds for construction of a transitional housing shelter for 6 men transitioning from substance abuse treatment into their former living environment. This project was completed in FY 2007-2008.</p> <p>The Volunteers of America – Magic City Terrace project was completed last fiscal year and consisted of 85 new units for the elderly.</p> <p>Habitat for Humanity has completed 8 single-family homes assisted with CDBG funding. HOME assistance was provided to subsidize 8 homes at Community Leadership Development's Chrysalis Acres. To date, 17 homes have been completed at Chrysalis Acres and 6 of the 17 homes are HOME-assisted units.</p>			
<p>Funds were awarded to homeWORD (a CHDO) for the construction of Southern Lights, which resulted in the addition of 20 rental units targeted for 30-50% of the area median income population.</p>	<p>10 units</p>	<p>Provide funding to Community Housing Development Organizations (CHDOs) to undertake activities to meet priority affordable housing needs.</p>	
<p>The City of Billings completed Phase II of the King's Green development this fiscal year. Fourteen single-family homes were built and sold to low to moderate income families. Phase I created 10 single-family units for ownership by low – moderate income households.</p> <p>Phase III of the Kings Green Subdivision has begun with infrastructure development. This phase is expected to result in 14 new single- family homes.</p>	<p>15 units</p> <p>Complete Phase II of Kings Green, utilize the Affordable Housing Task Force to make recommendations regarding infrastructure development post Phase II.</p>	<p>Complete Phase II and III of the Kings Green Affordable Housing Project.</p>	
<p>The Affordable Housing Task Force met monthly this fiscal year and has worked on identifying regulatory barriers affecting affordable housing development in Billings.</p>	<p>Establish work groups through the Affordable Housing Task Force to study &amp; make recommendations for housing options.</p>	<p>Work to address loss of mobile/manufactured housing affordable to lower-income households. Work with Affordable Housing Task Force to identify and address barriers to affordable housing and to encourage infill development.</p>	<p>Promote homeownership</p>

<p>The City is committed to supporting the implementation of their 5-Year plan. The Housing Authority is also represented on the Affordable Housing Task Force and other City committees.</p>	<p>The Mayor's Committee on Homelessness began meeting on June 15, 2006 to develop a 10-year strategic plan to end chronic homelessness. The Community Development Division is spearheading this initiative, which includes participation from organizations involved with the Continuum of Care on a local and state level.</p> <p>Funding was provided to Senior Helping Hands for in-home care for 25 elderly individuals.</p> <p>Family Services provided homeless prevention services with rent / mortgage assistance and utility assistance to 140 individuals.</p> <p>YWCA Gateway House provided emergency shelter care for 343 victims of domestic violence during this fiscal year.</p> <p>The Medication Assistance Program (operated the Yellowstone Health Partnership) provided medications to 859 new clients this fiscal year.</p>	<p>Support implementation of HAB's 5-Year Plan.</p>	<p>The City is committed to supporting the implementation of their 5-Year plan. The Housing Authority is also represented on the Affordable Housing Task Force and other City committees.</p>
<p>Support activities of the Housing Authority of Billings and other assisted housing providers to meet the needs of very low-income households.</p>	<p>Provide funding for support services to address the needs of the homeless, elderly, and special needs populations.</p>	<p>Provide staff support for the new Mayor's Committee on Homelessness.</p>	<p>The Mayor's Committee on Homelessness began meeting on June 15, 2006 to develop a 10-year strategic plan to end chronic homelessness. The Community Development Division is spearheading this initiative, which includes participation from organizations involved with the Continuum of Care on a local and state level.</p> <p>Funding was provided to Senior Helping Hands for in-home care for 25 elderly individuals.</p> <p>Family Services provided homeless prevention services with rent / mortgage assistance and utility assistance to 140 individuals.</p> <p>YWCA Gateway House provided emergency shelter care for 343 victims of domestic violence during this fiscal year.</p> <p>The Medication Assistance Program (operated the Yellowstone Health Partnership) provided medications to 859 new clients this fiscal year.</p>
<p>Assist lower income households achieve home ownership through the City's First Time Homebuyer program in partnership with Montana Board of Housing (MBOH).</p>	<p>Participate with Montana Homeownership Network to increase First Time Homebuyer opportunities in the City leveraging resources available through Fannie Mae, MBOH etc.</p>	<p>54 homebuyers &amp; \$4 million in set aside financing.</p>	<p>Assistance was provided to 59 low and moderate-income individuals to help them achieve home ownership during the program year through the City's First Time Homebuyer (HOME and CDBG funding) and the American Dream Down-payment Initiative programs. From July 1, 2007 through June 30, 2008, Montana Board of Housing provided \$3,900,482 in funds for 35 mortgage loans to programs in the Billings first-time homebuyer programs.</p>
<p>Participate with Montana Homeownership Network to increase First Time Homebuyer opportunities in the City leveraging resources available through Fannie Mae, MBOH etc.</p>	<p>20 homebuyers</p>	<p>The average household income of those receiving these loans was \$27,250.</p>	<p>The Montana Board of Housing has financed 438 loans for a total of \$32,380,244 in leveraged funding.</p>

<p>288 households have participated in homebuyer education programs this fiscal year through homeWORD. 220 persons received education through the Montana Homeownership Network and 52 attended Financial Fitness Education through homeWORD.</p> <p>HRDC7 was also a partner this year in the Montana Homeownership Network and provided one-on-one housing counseling in the following categories: pre-purchase 4; delinquency / foreclosure 26; HECM 5; and rental counseling to 25.</p>	<p>150 households</p>	<p>Support homebuyer education in partnership with Montana Homeownership Network.</p>	<p>288 households have participated in homebuyer education programs this fiscal year through homeWORD. 220 persons received education through the Montana Homeownership Network and 52 attended Financial Fitness Education through homeWORD.</p> <p>HRDC7 was also a partner this year in the Montana Homeownership Network and provided one-on-one housing counseling in the following categories: pre-purchase 4; delinquency / foreclosure 26; HECM 5; and rental counseling to 25.</p>
<p>The Billings Partners for American Indian Homeownership has continued its outreach activities to address American Indian Homeownership.</p> <p>On September 25, 2007, the Partners held a luncheon to celebrate an increase in American Indian home ownership from 22% to 35%. The Partners conducted a survey event at the Bureau of Indian Affairs to determine the needs of local American Indians. They also held educational dinners for two evenings on June 4<sup>th</sup> - 5<sup>th</sup>, 2007. Plans are in place for future Lunch and Learns and disbursement of educational materials.</p>	<p>Implementation of partnership goals to increase the homeownership rate for American Indians in Billings.</p>	<p>Support Billings Partners for American Indian Homeownership effort to increase homeownership rates for American Indians and other minorities in the community.</p>	<p>The Billings Partners for American Indian Homeownership has continued its outreach activities to address American Indian Homeownership.</p> <p>On September 25, 2007, the Partners held a luncheon to celebrate an increase in American Indian home ownership from 22% to 35%. The Partners conducted a survey event at the Bureau of Indian Affairs to determine the needs of local American Indians. They also held educational dinners for two evenings on June 4<sup>th</sup> - 5<sup>th</sup>, 2007. Plans are in place for future Lunch and Learns and disbursement of educational materials.</p>
<p>Staff support was offered for the Cinco de Mayo celebration held in May 2008.</p>	<p>Provide staff support to increase economic opportunities and homeownership for Hispanic Americans in Billings.</p>	<p>Support the Hispanic Development Outreach Initiative</p>	<p>Staff support was offered for the Cinco de Mayo celebration held in May 2008.</p>
<p><b>Strategy #4 - Work as an active partner with non-profits, neighborhood groups, and others to address housing and community development needs.</b></p>			
<p><b>Objective</b></p> <p>Encourage housing, community, and development organizations to work together to build strong community</p>	<p><b>2007-2008 Goals</b></p> <p>Complete work on the new strategic plan and implement the plan through subcommittees.</p>	<p><b>Implementation Plan</b></p> <p>Sponsor the Affordable Housing Task Force to continue to bring together organizations such as the Housing Authority of Billings, Habitat for Humanity, HRDC, Big Sky EDA, homeWORD, realtors and lenders to address affordable housing issues of common concern.</p>	<p><b>2007-2008 Accomplishments</b></p> <p>The Affordable Housing Task Force met monthly this fiscal year and has worked on identifying regulatory barriers affecting affordable housing development in Billings.</p>

<p>structures to better address needs and respond to opportunities</p>	<p>Sponsor the Adjacent Neighborhood Committee which brings together the City's neighborhood task forces and Downtown Partnership.</p>	<p>Host bi-monthly meetings and provide staff support for task force initiatives.</p>	<p>The Adjacent Neighborhood Committee meets regularly to discuss neighborhood and other city issues.</p>
<p>Support activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes</p>	<p>Support the activities of the Billings American Indian Homeownership Partnership which brings together approximately 20 organizations to increase the homeownership rate for American Indians.</p>	<p>Implementation of partnership goal to increase the homeownership rate for American Indians in Billings.</p>	<p>The City continues to support the Billings Partners for American Indian Homeownership (BPAIH). This partnership was renewed in August of 2003 after a period of inactivity and has become an active and successful advocate for housing for American Indians in the Billings area. The partnership offers Lunch and Learn sessions and other outreach efforts.</p> <p>According to HUD, the homeownership rate in Billings for American Indians has risen from 22% to 35% in recent years. A celebration of American Indian Homeownership was held in September 2007.</p>
<p>Support activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes</p>	<p>Support Neighborhood Task Forces to identify and address neighborhood needs.</p>	<p>Complete neighborhood plans &amp; support distribution of monthly newsletters.</p>	<p>Newsletter distribution for 7 neighborhood task forces is facilitated through the Community Development office and approximately 1,293 total newsletters were distributed monthly this fiscal year which resulted in 15,516 total newsletters.</p>
<p>Support activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes</p>	<p>Support the Hispanic Development Outreach Initiative</p>	<p>Offer staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings.</p>	<p>Staff support was offered for the Cinco de Mayo celebration held in May 2008.</p>
<p>Support activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes</p>	<p>Undertake fair housing activities in a coordinated manner.</p>	<p>Implement existing FY2003-2007 Fair Housing Plan through the FY 2007-2008 Fair Housing Action Plan.</p> <p>Apply for Fair Housing Initiatives Program (FHIP) funding through HUD in 2007 for calendar year 2008.</p>	<p>Fair housing activities were undertaken according to the 2007 and 2008 FHIP statements of work, included in the appendices.</p> <p>An application was submitted for the FHIP grant in July 2008. Funding notification is expected to occur in October 2008.</p>

<p>The City's Analysis of Impediments to Fair Housing Choice was completed in December 2007. The study was used to develop a 5-year Fair Housing Work Plan that was approved by the Billings City Council in May 2008 through the Consolidated Plan.</p> <p>The City received \$92,879 for calendar year 2006 following a successful grant application to HUD's Fair Housing Initiatives Program. Partnering organizations for this program include: Community Housing Resource Board, Billings Partners for American Indian Homeownership, and the Interfaith Hospitality Network.</p> <p>The City received \$99,987 for calendar year 2007 following a successful grant application to HUD's Fair Housing Initiatives Program. Partnering organizations for this year's program include: Community Housing Resource Board, Billings Partners for American Indian Homeownership, Yellowstone County Council on Aging, HRDC District 7, homeWORD and the Interfaith Hospitality Network.</p> <p>The City received \$99,923 for calendar year 2008 following a successful grant application to HUD's Fair Housing Initiatives Program. Partnering organizations include: Community Housing Resource Board, Billings Partners for American Indian Homeownership, Yellowstone County Council on Aging, homeWORD and the Interfaith Hospitality Network.</p>	<p>Develop new fair housing plan in 2007 based on results of the Analysis of Impediments to Fair Housing Choice.</p>	<p>Complete new Analysis of Impediments to Fair Housing Choice for the Billings Community in 2007 and develop a new Fair Housing Plan for FY2008-2012.</p>	<p>Support efforts of community organizations to address the human service needs of lower-income residents</p>
<p><b>Strategy #5 - Improve the economic conditions of lower-income households in the community.</b></p>			
<p><i>Objective</i></p>	<p><i>Implementation Plan</i></p>	<p><i>2007-2008 Goals</i></p>	<p><i>2007-2008 Accomplishments</i></p>
<p>Utilize up to 15% of CDBG funding for public service activities to improve the economic conditions of lower-income households.</p>	<p>Continue to implement performance measures to determine impact of assisted activities.</p>	<p>The City of Billings provided the full 15% available in CDBG funding to public service activities ranging from Family Service, Inc. to the YWCA shelter for victims of domestic abuse.</p>	<p>Performance measurements have been fully implemented as per HUD's new procedural requirements. Technical</p>

<p>of the community in general and lower-income neighborhoods in particular</p>			<p>assistance training has been provided to sub-recipients to assist with the implementation of performance measurements.</p>
<p>Support the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower-income households</p>	<p>Provide technical assistance to lower-income households interested in starting or expanding an existing business.</p>	<p>Provide technical assistance to 100 lower income households. Implement performance measures to determine impact of assisted activities.</p>	<p>The City provided funding to Big Sky Economic Development Authority to provide technical assistance to low and moderate-income persons to start or expand a business.</p> <p>Big Sky Economic Development Authority provided technical assistance to 135 individuals during the program year.</p> <p>Nine low- and moderate-income clients started / expanded a business.</p>
<p>Support the Hispanic Development Outreach Committee</p>	<p>Support the Hispanic Development Outreach Committee</p>	<p>Provide staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings.</p>	<p>Staff support was provided to the Hispanic Development Outreach Committee for the Cinco de Mayo event.</p>

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Public Hearing and Resolution for Annexation #08-08  
DEPARTMENT: Planning and Community Services Department  
PRESENTED BY: Juliet Spalding, AICP, Planner II

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**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 55.45-acre 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 major subdivision proposal. At its September 8, 2008, meeting, the Council acknowledged receipt of the petition and set a public hearing date for September 22, 2008. The Council will take action on the annexation request at this meeting.

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

**FINANCIAL IMPACT:** The City can provide municipal services to the subject property. If the proposed annexation is approved, the property could further develop with commercial and residential uses, thereby increasing the tax revenue for the City.

**RECOMMENDATION**

Staff recommends that the City Council approve the Resolution annexing Tracts 7-A, and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

**ATTACHMENT**

A. Resolution

## **INTRODUCTION**

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. 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 A-1 to PD is being considered for the property as well as a major subdivision proposal.

## **PROCEDURAL HISTORY**

- On July 1, 2008, the annexation petition was submitted to the Planning Division.
- On September 8, 2008, the City Council acknowledged receipt of the annexation petition and set a public hearing date for September 22, 2008.
- On September 22, 2008, the City Council will conduct the public hearing for the annexation and may take action on the request. The Council will also review and act on a zone change application, and a subdivision proposal for the subject property at that same meeting.
- On October 14, 2008, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to expand the Ward V City Council boundary will be conducted.
- On October 27, 2008, the City Council will conduct the second and final reading for the ordinance expanding the ward boundary.

## **BACKGROUND**

The 55.45-acre subject property is located at the south side of Grand Avenue, west of 30<sup>th</sup> St. W. to just beyond Zimmerman Trail. The annexation resolution also takes in all adjacent Grand Ave. right-of-way and all of Zimmerman Tr. right-of-way from Grand Ave. to Broadwater Ave. It is surrounded by properties within the City limits to the north, east and south, and is within the red boundary of the limits of annexation as specified by the Annexation Map adopted by the City Council on March 10, 2008. Annexing the property would allow it to be redeveloped most efficiently for a variety of uses and therefore increase the taxable value of the property. There is a concurrent zone change application in process at this time from A-1 to PD, and a concurrent 18-lot commercial subdivision.

## **ALTERNATIVES ANALYSIS**

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements will be required to meet City standards.

4. As part of the Development Agreement or SIA, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. The proposed land use may conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

**Departmental Response:** City and County Departments, and the West End Task Force were given the opportunity to comment on this annexation. All City departments responded favorably. Of the County Departments that were informed, only the County Emergency and General Services Director, Jim Kraft, responded, indicating that the property is not located within an established floodplain.

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

- **Water:** The City can provide needed water services to the subject property. There are existing water mains in Grand Avenue and 30<sup>th</sup> St. West that the developer can tie into. The developer will be responsible for construction of the interior mains within the property at the time of redevelopment and system development fees will be assessed based on meter size.
- **Sewer:** The City can provide sewer service to the property using the existing sanitary sewer mains located in Grand Avenue on the north side of this property, and an existing main that runs through the property, on the west side of the Will James School property. The developer will be responsible for construction of the interior mains within the property at the time of redevelopment and system development fees will be assessed based on meter size.
- **Stormwater:** All storm water improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Public Works Department. There are currently storm drain lines on Grand Ave., 30<sup>th</sup> St. W. and Zimmerman Tr. that the developer could tie into.
- **Transportation:** The subject property has frontage on Grand Ave., and Zimmerman Tr. which are both principal arterial streets, and on 30<sup>th</sup> St. W. which is a local street. Through the platting process, the appropriate right-of-way dedications will be made, and accesses off these streets will be reviewed and approved. Additional interior streets will be located and designed to best serve the property while mitigating potential impacts on the existing traffic conditions. All new street improvements will be completed in accordance with City standards.

The Street and Traffic Division expressed concerns over the ability to adequately service any additional areas due to budget cuts within the division for fiscal year 2008 and beyond. However, the subdivider is proposing to develop privately owned and maintained internal streets.

- **Fire Stations:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire stations are Station #7 located at 54<sup>th</sup> St. W. and Grand Ave. and Station #3 at 17<sup>th</sup> St. W. and Parkhill Dr. Both stations are approximately 2.5 miles from the subject property.
- **Parks:** Parkland dedication requirements will be reviewed for the property at the time of development.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. No trail corridors are identified on the plan within this subdivision. However, sidewalks will be required on both sides of the internal local streets when the subject property is further developed.

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

- **Transit:** MET transit system operators have no objections with the annexation request. There is a bus route providing service to the subject property along Grand Ave.
- **Fire:** The Fire Department currently provides fire protection to the County parcel as it is within the BUFSA. Upon annexation and redevelopment, the required services may be increased. The Department indicates that they are capable of serving this property in the future.
- **Police:** The Police Department states that the subject property is located in an established patrol area, however, continued annexation and development will adversely affect the department's ability to provide service without additional resources.
- **Public Utilities:** The Public Works-- Distribution and Collection Division had no objection with the annexation request.
- **Public Works -Street and Traffic Division:** The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget reductions.
- **Public Works-Solid Waste:** The Solid Waste Division notes that it can serve the property when developed but noted that if there currently is a private trash collection service to the one existing residential property they would be required to wait to serve the property for five years.

- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as the Legal and Finance Departments should not be negatively impacted by this annexation, however, no comments were received from them by the time this report was prepared.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

### **STAKEHOLDERS**

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on September 5, 2008, and published in the Billings Times on September 4, 2008. The Planning Division has received no public comments regarding the proposed annexation.

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

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

- Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns (Land Use Element Goal, page 5).
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Goal, page 6).
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, page 10).
- Coordinated economic development efforts that target business recruitment, retention, and expansion (Economic Development Goal, page 6).

### **RECOMMENDATION**

Staff recommends that the City Council approve the Resolution annexing Tracts 7-A, and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, subject to the following conditions of approval:

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

infrastructure improvements and provide guarantees for such infrastructure improvements.

**ATTACHMENT**

A. Resolution

**RESOLUTION NO. 08-**

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

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

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

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

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

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

Tracts of land situated in the SW1/4 of Section 34, T.1N., R.25E., the NW1/4 of Section 1, T.1S., R.25E., and the NE1/4 of Section 2, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 7-A, Certificate of Survey No 2314 Amended, Recorded December 30, 1987, under Document No. 1468780, Records of Yellowstone County;

Tract 6-A-1, Amended Tract 6-A of Certificate of Survey No 2314 Amended, Recorded May 30, 2008, under Document No. 3467337, Records of Yellowstone County;

Tract 1-A-1, Amended Tracts 1-A & 2 of Certificate of Survey No 2702, Recorded September 3, 2008, under Document No. 3478524, Records of Yellowstone County.

Including Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, described as follows:

Those portions of Grand Avenue County road easement and deeded right-of-way adjacent to Tract 1-A-1, of said Certificate of Survey 2702, Tract 6-A-1, of said Certificate of Survey No 2314 and Tract 7-A, of said Certificate of Survey No 2314.

Including all adjacent right-of-way of Zimmerman Trail and that portion of Zimmerman Trail right-of-way not adjacent but extending south to Broadwater Avenue , being Tracts 11-B, 12-B and 6-C of Amended Tracts 1, 6, 8, 11 and 12 of Certificate of Survey No. 2702, Recorded May 30, 2008, under Document No. 3467336, Records of Yellowstone County.

Containing 55.4518 gross acres and 46.0984 net acres.  
(# 08-08) See Exhibit "A" Attached

- 2. CONDITIONS. The annexation is approved, subject to the following conditions:
  - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
  - b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
  
- 3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 22<sup>nd</sup> day of September, 2008.

THE CITY OF BILLINGS:

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

Ron Tussing, MAYOR

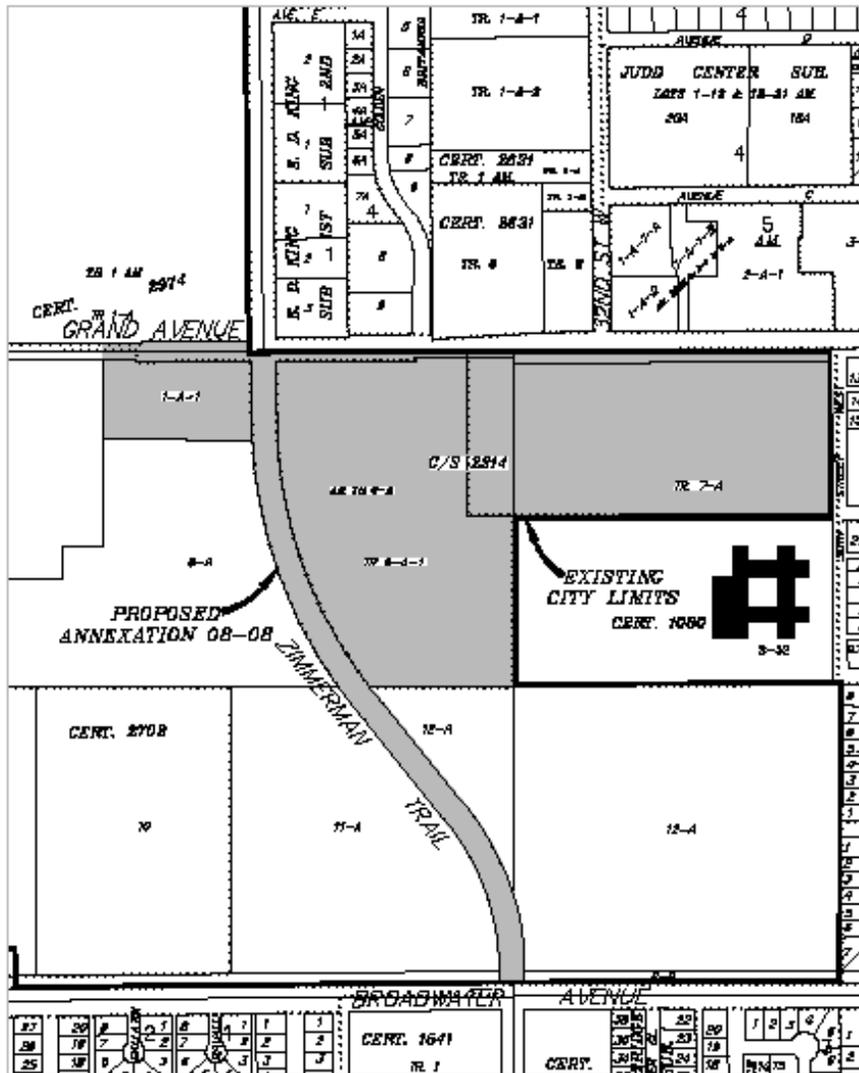
ATTEST:

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

CITY CLERK

(AN# 08-08)

# EXHIBIT A



AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**TITLE:** Zone Change #848 Public Hearing and 1<sup>st</sup> Reading of Ordinance, 3144 Grand Avenue

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Agriculture-Open Space (A-1), a county zoning district, to Planned Development with two underlying zoning districts – Community Commercial and Residential Multi-Family. The property is located at 3144 Grand Avenue and is a 46 acre parcel of land described as Tracts 6A & 7A of C/S 2314 and Tract 1A of C/S 2702. The property is owned by the Yegen Grand Avenue Farm, Inc. and Engineering, Inc. and Bill Cole of the Cole Law Firm are the agents. The applicant and agents conducted a pre-application neighborhood meeting on June 23, 2008. The Planning Division conducted a Preliminary Review meeting with the surrounding property owners, city staff and the applicant and agents on August 19, 2008. The Zoning Commission conducted a public hearing on September 2, 2008, and is forwarding a recommendation of approval on a 4-0 vote.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change, if approved, could increase the City's tax base if the property is developed. Denial of the proposed zone change should have no effect on the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #848 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

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

**ATTACHMENTS:**

- A:    Surrounding Zoning
- B:    Photographs of Subject Property
- C:    Pre-application Meeting Summary
- D:    Ordinance

## **INTRODUCTION**

This is a zone change request from A-1, a County zoning district, to Planned Development with two underlying zoning districts: Community Commercial (CC) and Residential Multi-Family (RMF). The property is three tracts in a certificate of survey totaling about 46 acres of land. The owners have also petitioned to be annexed into the city and have city services provided for the proposed development and have submitted a major preliminary subdivision plat application to the City for review and approval. Yegen Grand Avenue Farms has additional acreage west of the subject property that may be incorporated at a future date in to this proposed Planned Development.

## **PROCEDURAL HISTORY**

- On June 23, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at Will James Middle School.
- On July 7, 2008, a zone change application was submitted to the Planning Division.
- On August 21, 2008, the Planning Division conducted a Preliminary Review meeting with city staff and surrounding property owners.
- On September 2, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and voted 4-0 to forward a recommendation of approval and adoption of the 12 Zoning Commission Determinations.
- On September 22, 2008, the City Council will conduct a public hearing and first reading of the zone change.
- On October 14, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

## **BACKGROUND**

The proposed zoning district for CC allows a wide range of commercial & retail uses as well as residential uses by special review approval. Building heights are limited to 34 feet and building footprints are limited to 40,000 square feet maximum without special review approval. Several uses have been prohibited in the CC zone including automotive sales and repair, body alteration salons, lumber yards, manufacturing of any kind, pawn shops, title loan businesses and mini-storage facilities. All restaurants are proposed to be by special review approval only. Casinos, unless part of a restaurant approved by special review, are prohibited. Allowed uses in the CC zone are geared towards professional offices and neighborhood retail services. Regulations governing site development for landscaping, screening, setbacks and parking lots are also proposed in the Planned Development.

The proposed zoning district for RMF allows multi-family dwellings at the same density as the standard RMF zoning district but limits building height to 45 feet and does not allow single family residential uses. This zone is proposed for Lots 5 and 6 of Block 2 as shown on the preliminary plat and in Exhibit A attached to the draft Planned Development Agreement. The two lots total 6.76 acres. The RMF zoning district has no maximum development density per se, however the maximum building height of 45 feet, the maximum building footprint of 40,000 square feet and the maximum lot coverage of 55% reduce the maximum population density to approximately 22 dwelling units per acre.

The Planned Development zoning regulations state the primary purpose of allowing a flexible zoning such as the East 80 at Cardwell Ranch is to, “*encourage unique development or re-development through a flexible, timely and efficient process. Developments which utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks and building heights will be encouraged. In addition, this zone is intended to encourage the preservation and enhancement of the physical characteristics of the site.*” The Planned Development regulation also requires the City to consider each request to vary from a standard zoning district to be weighed against the additional benefits the development would provide. The proposal for the East 80 at Cardwell Ranch is to construct and landscape a pedestrian and bicycle underpass under Shiloh Road just south of the intersection of Grand Avenue. This underpass will be constructed on land Yegen Grand Avenue Farm currently owns and the underpass will be owned and maintained by the city after the Shiloh Road construction is complete. This underpass will provide an important connection for the Heritage Trail Plan and, along with planned pedestrian and greenway-type spaces and connections throughout the proposed development from the subject property all the way to Shiloh, is the amenity for this Planned Development. In addition, the preliminary plat will donate cash in lieu of a parkland dedication for the 6.76 acres of residential zoning.

The 2003 Growth Policy did envision allowing mixed uses and higher density residential uses along arterial streets between major intersections. The proposed East 80 at Cardwell Ranch Planned Development does achieve this goal and others contained in the 2003 Growth Policy. The Planned Development agreement is sensitive to the adjacent land uses and zoning. The maximum building heights, restriction of uses and available residential density is compatible with the adopted or proposed land uses in the area. The developer has balanced this request to vary from standard zoning district requirements with an amenity not otherwise required for other developments.

The Planning Division reviewed the proposed zone changes and recommended approval to the Zoning Commission based on the attached twelve (12) criteria for zone changes and Section 27-1303 Planned Development Guidelines. The applicant has prepared a zoning plan that does provide compatibility with surrounding properties and does not unduly concentrates population in a small area. Reductions in maximum building height and restrictions on commercial uses make it compatible with surrounding land uses. The proposed development is directly adjacent to city services, well developed arterial streets and can be served immediately.

The Zoning Commission conducted a public hearing on September 2, 2008 and is forwarding a recommendation of approval to the City Council on a 4-0 vote. The Zoning Commission’s recommendations are made and discussed in the 12 criteria for zone changes below.

### **ALTERNATIVES ANALYSIS**

1. *Is the new zoning designed in accordance with the Growth Policy?*  
The Growth Policy and the West Billings Neighborhood Plan support higher density residential and mixed uses along arterial streets between intersections. The proposed density could be supported at this location. The proposed CC zoning along Grand Avenue with the proposed height limitation of 45 feet, use restrictions, landscaping and sign regulations will fit with the existing uses north of Grand and the neighborhood to the east.

2. *Is the new zoning designed to lessen congestion in the streets?*  
The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts are under review for the preliminary plat. Restrictions on access locations will be imposed. If mitigation measures are required by a Traffic Accessibility the developer will implement those measures.  
  
Grand Avenue handles 16,000 vehicle trips per day in this area and the new section of Zimmerman Trail is handling about 7,000 vehicle trips per day. Both streets are classified as principal arterial streets and can handle the additional traffic generated from this development.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
The property has public street frontage on Grand Avenue and Zimmerman Trail as well as 30<sup>th</sup> Street West. One access is proposed north of Will James Middle School on 30<sup>th</sup> Street West, 2 accesses on Grand Avenue and 1 access on Zimmerman Trail. Limitations on building height, land uses and maximum lot coverage will secure safety in this development.
4. *Will the new zoning promote health and general welfare?*  
The new zoning contains restrictions on uses allowed. In general this list of allowed uses restricts the development of any type of manufacturing, automobile sales and services as well as uses associated with gaming. This should promote the health and general welfare.
5. *Will the new zoning provide adequate light and air?*  
The new zoning provides for sufficient setbacks in both the CC and RMF zones and lot coverage is 50% and 55% respectively. All buildings are limited to 34 feet in height. These restrictions provide for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. In the CC zone the maximum lot coverage is 50% and in the RMF zone the maximum is 55% of the lot area. The CC zone only allows residential uses by special review and the RMF zone comprise only 15% of the total development area. Planning Division staff has estimated the total dwelling density in the RMF zone for the subject property at 22 units per acre or 148 dwelling units.
7. *Will the new zoning avoid undue concentration of population?*  
The RMF zone only allows multi-family dwellings. The lot area requirements per dwelling unit are as required in the Unified Zoning Regulations. If the 6.76 acres were developed as 8-plexes, 148 dwelling units could exist in this RMF zone. This does not

unduly concentrate population. Residential uses in the CC zone are only allowed by special review.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
  - Transportation:* The new zoning will have an effect on the adjacent streets and traffic patterns. A traffic study will be completed with the preliminary plat.
  - Water and Sewerage:* The City will provide water and sewer service to the property and does have adequate capacity to serve this property.
  - Schools and Parks:* There will be an effect on parks and schools from this rezoning. The proposed development plan includes a new pedestrian underpass on Shiloh Road and pedestrian connections from this lot to other on and off street trails in the area. Will James Middle School is directly adjacent and will see a security benefit from the new development. The developers have discussed sharing off street parking for school events. All schools in SD #2 are over crowded with students. No comment was received from SD #2 regarding the zoning application. However, the applicant and SD #2 staff did meet to discuss the subdivision plans for the property and how it would interface with Will James Middle School.
  - Fire and Police:* The property is within the Billings Urban Fire Service area. It is currently active agriculture land with one existing dwelling. The Fire Department does not foresee any issues providing service to the new development.
9. *Does the new zoning give reasonable consideration to the character of the district?*

The primary zoning in this area is CC and RP to the north with several well established retail stores, banks, professional offices and a residential neighborhood north of these commercial properties. Property to the east is still in the county and used for agriculture and the Peter Yegen Jr. Golf Course. Property to the east is zoned CC along Grand Avenue and R-96 south of Grand Avenue. This is a well developed residential neighborhood with an LDS church and a private elementary school. The proposed CC & RMF zoning is in character with the district and compatible with the surrounding uses.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The existing single family home on the property will not be an allowed uses within the proposed CC zoning district. This use will be a special review use. The home can remain on the property as a legal nonconforming use, but may not be enlarged or moved

to another location on the property without a special review approval. Other buildings in the area will not be negatively affected by the proposed zoning.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The new zoning will encourage the most appropriate use of this land in the area for urban development.

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

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

### **STAKEHOLDERS**

Planning Division staff received one phone call regarding the proposed zone change application. The caller believes that no on-premise alcohol service or gaming should be allowed in any of the proposed CC zoning district due to the proximity and potential access to Will James Middle School and the neighborhood to the east. The Zoning Commission considered the request and determined that the proposed and existing separation requirements from churches, schools and parks for on-premise alcohol service will be adequate to protect those uses. The Zoning Commission conducted a public hearing on September 2, 2008, and is forwarding a recommendation of approval to the City Council on a 4-0 vote.

Rick Leuthold, P.E. of Engineering, Inc. testified as the agent for the applicant. Mr. Leuthold stated the applicant had recently met with the School District to discuss sharing parking facilities with the Will James Middle School for events at the school. Mr. Leuthold testified there would be no direct vehicle connection to the school but there would be pedestrian access. Mr. Leuthold stated the Yegen family has worked very hard on developing a master plan for all of their property on Grand Avenue and this planned development application is the first piece of that master plan. Mr. Leuthold stated this would be a great addition to the city and the planned development agreement provides tight controls on uses and design standards. Mr. Leuthold asked the Commission to support the proposal.

Charlie Yegen testified in favor of the proposed zone change. Mr. Yegen stated the property was originally acquired by his grandfather in 1889, before Montana was a state in the union. The name of the proposed development, Cardwell Ranch, is named after this grandfather. Mr. Yegen testified that as the city has grown it has been difficult to keep active farming on the land including keeping up with the repair of fences that cars from Grand Avenue seem to drive through on a regular basis. Mr. Yegen testified that his family is not casino people or neon sign people and that is why those uses are restricted in the proposed development. Mr. Yegen also stated his family is not fast-food people and that is why they propose to require special permission for every restaurant proposed in this development. Mr. Yegen stated that the Shiloh Road underpass project his family is spearheading will provide a safe and vital connection for pedestrians and bicyclists when the Shiloh Road project is completed. He stated his family will use the proceeds from the sale of right of way to the state as well as personal assets to construct the proposed under pass that will be an arched tunnel, 24 feet wide and 10 feet tall. Mr. Yegen stated this will be different than the existing Arrowhead School underpass north of Grand

Avenue that is a box-type culvert. Mr. Yegen stated the construction should begin next spring or summer and when it is completed will be gifted to the community. Commission Chairman Leonard Dailey, Jr. asked Mr. Yegen whether there would be any restrictions on motorized vehicles in the new underpass. Mr. Yegen stated this would depend on city regulations but some communities do allow small motorized vehicles such as golf carts to use trails and sidewalks.

Mr. Bill Cole testified as the agent for the applicant. He stated there were a few minor corrections to the planned development document and he presented those to the Zoning Commission for their consideration. Those changes include a clarification of where residential uses are allowed, prohibited or allowed only by special review, adjustment to the height limit to eliminate the need for a zoning variance, a regulation to allow a 6 foot maximum height for roof-top accessory structures, and the clarification of neon sign restrictions and required landscape material.

Chairman Leonard Dailey Jr., closed the public hearing. Commission member Michael Larson made a motion to recommend approval of the zone change with the proposed minor corrections to the agreement, and this motion was seconded by member Ed Workman. Mr. Larson stated the project is great news for West Billings. The commission voted 4-0 on the motion to recommend approval of the zone change.

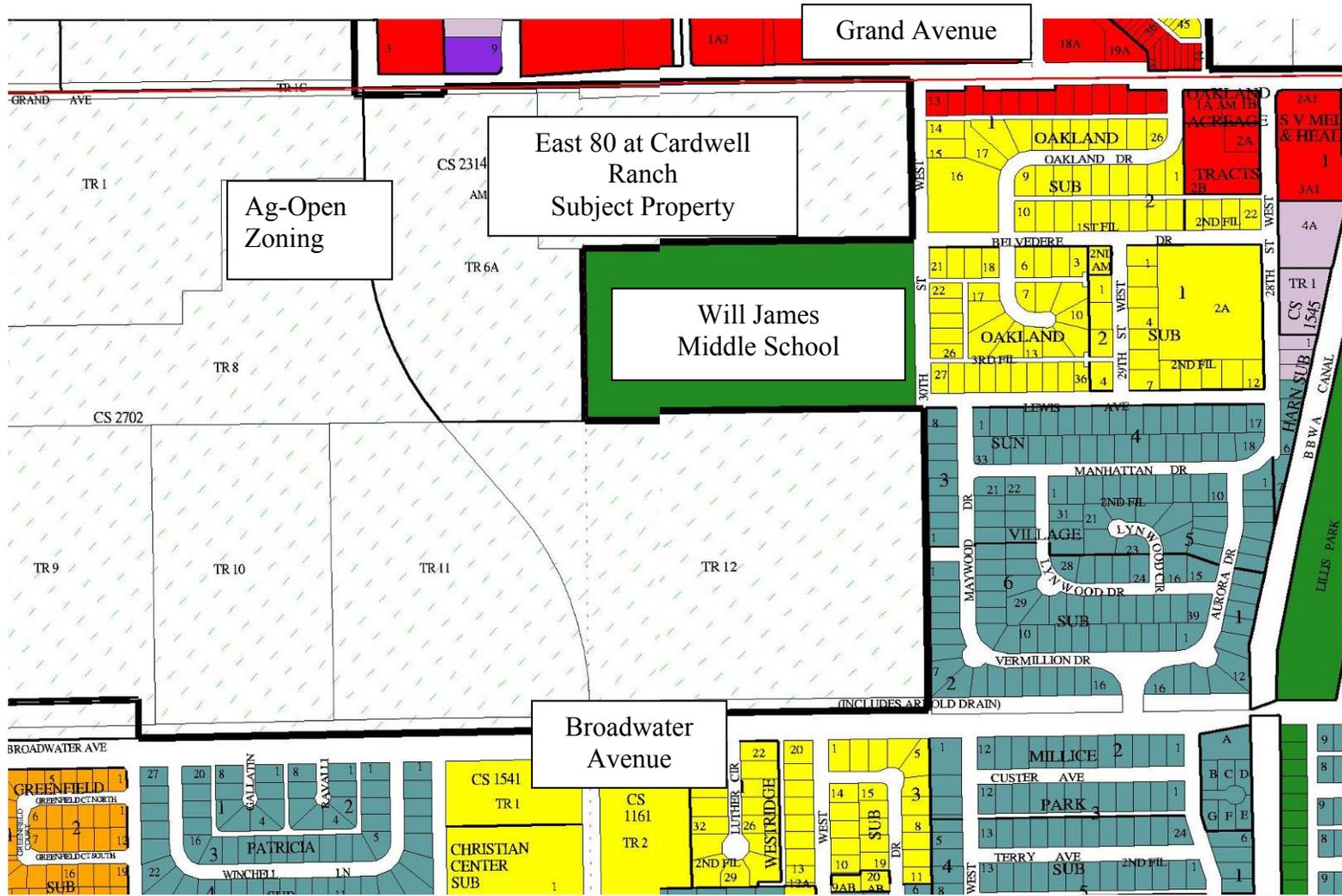
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #848 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

### **ATTACHMENTS:**

- A: Surrounding Zoning
- B: Photographs of Subject Property
- C: Pre-application Meeting Summary
- D: Ordinance

**Attachment A**  
Zone Change #848 – 3144 Grand Avenue



**Attachment B**  
Zone Change #848 Site Photographs



Subject Property view south from Grand Avenue



View north and west from Grand Avenue

### Attachment C

## Zone Change #848 Pre-application Meeting Summary

CARDWELL RANCH SUBDIVISION  
NEIGHBORHOOD MEETING  
JUNE 23, 2008  
7:00 P.M.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE NUMBER</u>
Les Bertsch	1718 Golden Blvd	652-75
Myra Lease	1630 " "	656-973
Skip King	1500 Zimmman Trail Rd	656-14
Ronald & Mary Suckgrass	1636 Golden Blvd	
Paul Lythard	1300 N. Transtech Way	869-33
Neal Patti Epston	2942 Belvidere Dr.	655-46
Bernie Rockwood	1516 Selden	652-59
Jan Thompson	1528 Golden	652-67
Ken & Sandy Hubel	3209 Grand	591-1234
Bill Harbrecht	1614 Golden	655-0
Juliet Spalding	9/C Planning	247-868
Brenna Yegen		
Chris G Yegen		
Anne Yegen		252-0163
Peter Yegen IV		
Mr RALPH	800 N. Transtech Way	656-5255

-A woman in the front also asked about traffic near the project, specifically on Golden Boulevard. Rick again referred to the traffic study being prepared for the property.

-A women in the front stated that traffic really was the biggest problem in the area and if speed limits could be reduced along Grand Avenue in this area.

-Skip King asked if the access south of Grand Avenue was going to be a full access for

Attachment E

**ORDINANCE NO. 08-**\_\_\_\_\_

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tracts 6A & 7A of C/S 2314, Tract 1A of C/S 2701, less deeded ROW along Zimmerman Trail an approximately 46.099 acre parcel of land.

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

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

2. DESCRIPTION. A tract of land known as Tracts 6A & 7A of C/S 2314, Tract 1A of C/S 2701, less deeded ROW along Zimmerman containing approximately 46.099 acres of land and is presently zoned Agriculture Open-Space and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Agriculture Open-Space** to **Planned Development as described in Exhibit A attached hereto** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Development as described in Exhibit A attached hereto** and as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading September 22, 2008.

PASSED, ADOPTED AND APPROVED on second reading October 14, 2008.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY:

Cari Martin, City Clerk

ZC #848 – East 80 at Cardwell Ranch Planned Development 3144 Grand Avenue

**EXHIBIT "A"**

Return to: William A. Cole  
Cole Law Firm, PLLC  
3860 Avenue B, Suite C West  
Billings, MT 59102-7550

**PLANNED DEVELOPMENT AGREEMENT FOR  
THE EAST 80 AT CARDWELL RANCH**

**BY AND BETWEEN:**

**EAST 80, LLC**

**AND**

**THE CITY OF BILLINGS, MONTANA**

## TABLE OF CONTENTS

	<u>Page</u>
Recitals	1
Agreement	2
Article I – Purposes	2
Article II – Definitions	3
A. Association	3
B. Cardwell Ranch	3
C. Design Review Committee	3
D. Lot	3
E. Manufacturing	3
F. Master Plan	4
G. Park Land and Open Space	4
H. Special Review approval	4
I. Tract(s)	4
Article III – Persons Bound by This Agreement	4
Article IV – Regulation of Uses According to Planning Area	4
A. Land Use Classifications	4
B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial)	5
C. Permitted Uses in Planning Area 3 (Residential Multi-family)	5
D. Special Review Procedure and Criteria	7
E. Prohibited Uses in All Areas	8
F. Analogous Uses	11
G. Procedure for Obtaining East 80, LLC Approval	11
Article V – Other Regulations Governing Use	12
A. Continued Farming Operations	12
B. Parking Limitations	12
C. Storage of Inoperable, Junk and Recreational Vehicles	12
D. Outside Storage	12
E. Maintenance of Lots	12
F. Utilities to be Buried	13
G. Home Occupations	13
Article VI – Site Development, Building, and Landscape Standards	14
A. Development Standards Generally	14
B. Site Development Standards	14
C. Building Design	17
D. Landscape Design Standards	18
Article VII – Park Land and Open Spaces	20
A. Park Land and Open Spaces Generally	20
B. Park Land and Open Space Maintenance	20
Article VIII – Signs	20
A. Signage	20
B. Purpose, Intent and Scope	21
C. Exempt Signs	21

D. Definitions	21
E. General Provisions	21
F. Exempt Signs	21
G. Prohibited Signs	22
H. Temporary Signs	22
I. Sign Location and Setback	22
J. Sign Area and Calculation	23
K. Maintenance of Signs	23
L. Nonconforming Signs	23
M. Landscaping for Monument Signs	24
N. Sign Illumination	24
O. Sign Approval	24
Article IX – Cross Easements for Vehicles and Pedestrians	24
Article X – Enforcement	24
A. Statement of Purpose	24
B. Right to Enforce by City	24
C. Right to Enforce by Property Owners and the Association	25
D. Right of Abatement and Suit	25
Article XI – Amendments and Variances	25
A. Amendments or Changes	25
B. Variance Procedures	26
C. Zone Change Procedures	26
Article XII – Arbitration	26
A. Agreement to Arbitrate	26
B. Other Remedies	26
C. Arbitration Procedure	27
Article XIII – General Provisions	27
A. Appointment of Agent	27
B. Assignment by East 80, LLC	27
C. Neutral Interpretation	27
D. Coordination with Other Regulations	27
E. Notices	28
F. Waiver	28
G. Governing Law	28
H. Limitation on Enforcement	28
I. Force Majeure	29
J. Attorneys’ Fees and Costs	29
K. Severability	29
L. No Partnership	29
M. Entire Agreement	29
N. Construction	29
O. Joint and Several Obligations	29
P. Recordation	29
Q. Run with the Land	30
R. Contact Person	30
<b><u>EXHIBITS</u></b>	
A. Master Plan of The East 80 at Cardwell Ranch	32

**PLANNED DEVELOPMENT AGREEMENT FOR**  
**THE EAST 80 AT CARDWELL RANCH**

This PLANNED DEVELOPMENT AGREEMENT (“Agreement” or “PDA”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between East 80, LLC, a Montana limited liability company, of P. O. Box 959, Billings, MT 59103 and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27<sup>th</sup> Street, Billings, MT 59101.

**RECITALS**

NOW WHEREAS:

A. East 80, LLC owns approximately 47 acres of real property in Billings, Montana, more particularly described as:

Tract 6A and 7A of C/S 2314, Amended; Tract 1A of C/S 2702, Amended, Less Deeded Right of Way Along Zimmerman Trail

The foregoing property shall be known as “The East 80 at Cardwell Ranch,” or a related name that may be assigned at a later date.

B. The East 80 at Cardwell Ranch may consist of a mixture of commercial, retail, office, professional, medical and related uses, and multi-family residential housing.

C. East 80, LLC desires to place certain building and use restrictions on the property, specify certain land use and design regulations, and create a pattern of development that promotes economy, convenience, and amenity in The East 80 at Cardwell Ranch.

D. East 80, LLC enters into this Agreement with the City to ensure that The East 80 at Cardwell Ranch will be developed and maintained as a first-class development consistent with the standards described in this Agreement.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for The East 80 at Cardwell Ranch as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

**AGREEMENT**

**ARTICLE I – PURPOSES**

A. This planned development is intended to create a multi-use, interactive neighborhood with its own recognizable identity that integrates well with the surrounding

community. Circulation patterns will encourage easy pedestrian access and limit vehicular congestion and pedestrian/vehicular conflicts. The development will encourage smart building development in terms of orientation, access, energy consumption and efficiency and create great places to live and work with many necessary services and businesses that are well-integrated and within easy walking distance of each other and adjacent residential areas.

B. This Agreement shall permit flexibility sufficient to meet the demands of commercial, professional and residential markets as they change over time. In accordance with that goal, this Agreement is intended to afford the future owner of each Lot within The East 80 at Cardwell Ranch latitude to design and construct in a way that meets the needs and desires of the time while still ensuring responsible and enduring development for the benefit of the remaining Lots, The East 80 at Cardwell Ranch, and Cardwell Ranch generally.

C. The parties understand, acknowledge and agree that the plan for The East 80 at Cardwell Ranch includes and promotes the following:

1. Creates a planned development zone that permits commercial, retail, office, professional, medical and related uses, and multi-family residential housing in proximity to one another, while protecting and respecting the character and quality of adjacent uses.
2. Encourages flexibility in design and use of commercial and residential zones to allow for economy, convenience, variety and amenity.
3. Enhances the aesthetics of the west Grand Avenue area.
4. Ensures adequate provision of public services such as water, sewer, public safety, open space, storm water control, and vehicular and pedestrian/bicycle circulation consistent with the 2004 Heritage Trail Plan, as updated.
5. Promotes traffic movement and circulation and as many pedestrian connections as possible.

D. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements found in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, bulk, height, parking, signage, traffic circulation, landscaping, or other land use conditions, the City has determined, in accordance with Sec. 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise required by law or regulation. Some of these that shall be incorporated into The East 80 at Cardwell Ranch and/or Cardwell Ranch include:

1. Construction and landscaping of a functional and attractive pedestrian and bicycle underpass under Shiloh Road to be located south of Grand Avenue and north of Broadwater Avenue that will promote the safe and convenient transportation of children and adults in west Billings while interfacing with the Heritage Trail and other

bicycle and pedestrian pathways.

2. Construction and maintenance of trails, landscaping, benches, lighting, signage and other pedestrian and bike pathways, including along the Heritage Park Trail System, at the expense of East 80, LLC or subsequent developers and without cost to local taxpayers; and

3. Developed Park Land and Open Space in excess of required minimums, constructed and maintained at the expense of East 80, LLC or subsequent developers in conjunction with the City of Billings.

## ARTICLE II – DEFINITIONS

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. The following definitions shall apply to this Agreement:

A. Association: “Association” means the association established to own, operate, and/or maintain the various Heritage Park Trail System segments, Park Land and Open Space, and other improvements.

B. Cardwell Ranch: “Cardwell Ranch” refers to a group of parcels located generally contiguous to The East 80 at Cardwell Ranch and including The East 80 at Cardwell Ranch that East 80, LLC believes will eventually be developed to create a single development area featuring the same or complementary zoning requirements, private covenants, and consistent design themes as well as substantial vehicular and pedestrian interconnectivity between the various parcels.

C. Design Review Committee: “Design Review Committee” means the person, entity, or committee appointed by the Association to exercise the rights, duties and responsibilities assigned to it by the Association.

D. Lot. “Lot” means a portion of The East 80 at Cardwell Ranch depicted as a separately identified parcel of land on a recorded subdivision plat or survey that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Park Land and Open Space, as defined below, or property dedicated to the public.

E. Manufacturing. “Manufacturing” means to produce something industrially or to make something into a finished product using raw materials, especially on a large industrial scale.

F. Master Plan: “Master Plan” means a concept plan and drawing showing existing Lots and zones as well as proposed streets, access points, and Park Land and Open Space and

other site improvements intended for The East 80 at Cardwell Ranch. The current Master Plan of The East 80 at Cardwell Ranch is attached to this Agreement and marked “Exhibit A.”

G. Park Land and Open Space: “Park Land and Open Space” means any property or facility that the Association owns or in which it holds possessory, use, or maintenance rights for the common use or benefit of property owners in The East 80 at Cardwell Ranch. Park Land and Open Spaces may include but are not limited to park areas, open spaces, common areas, water amenities, community gardens, athletic fields, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, community sign areas, and community centers.

H. Special Review approval: “Special Review approval” means approval by the City of Billings pursuant to the Special Review approval process established in the Unified Zoning Regulations and as modified by this Agreement, including the requirement that applicants for special review first obtain approval from East 80, LLC, which East 80, LLC may grant or deny in its discretion, before submitting an application for Special Review Approval to the City.

I. Tract(s). “Tract(s)” means one or more of Tracts 6-A and 7-A, Certificate of Survey No. 2314 Amended and Tract 1-A of Amended Tracts 1 and 2, Certificate of Survey No. 2702, less deeded right-of-way such property incorporating all property located within the exterior boundaries of the Master Plan. [**Confirm legal description**]

### **ARTICLE III – PERSONS BOUND BY THIS AGREEMENT**

The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within The East 80 at Cardwell Ranch shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land.

### **ARTICLE IV – REGULATION OF USES ACCORDING TO PLANNING AREA**

A. Land Use Classifications. Lots located within The East 80 at Cardwell Ranch shall be classified according to use. Uses shall be limited to the locations shown on the Master Plan. No use shall be permitted on any Lot outside the areas indicated on the Master Plan and as permitted by this Agreement. If the actual boundaries of any proposed Lot referenced in the Master Plan or in this Agreement changes upon final platting or thereafter for any reason, including, but not limited to, as a result of re-platting, road dedication, or boundary line adjustment, the zoning classification and other Lot-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area where the change occurred has the same zoning classification and restrictions as the successor Lot or Lots of which the area becomes a part. Nothing in this

paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with this Agreement to specifically address any issue created as a result of a change in the external boundaries of any Lot.

B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial). The uses listed below are permitted in Planning Area 1 of The East 80 at Cardwell Ranch. Planning Area 1 shall consist of proposed Lots 1 and 2 of Block 1, and proposed Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Block 2. These uses, which are generally commercial in nature, are also permitted in Planning Area 2. Planning Area 2 shall consist of proposed Lot 4 of Block 2. Multi-family uses are only allowed in Planning Area 2, and then only upon Special Review approval. No uses are permitted other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F. Uses followed by “SR” (Special Review) may only be permitted with consent of East 80, LLC and after Special Review approval as described in Article IV.D. Some uses may also be subject to a special level of review by East 80, LLC or the Association under private covenants or other agreements, including in particular, but not limited to, those designated with an asterisk (\*).

- Accessory detached structures associated with a permitted principal structure \*
- Adult foster family care homes (up to four aged or disabled adults) \*
- Animal boarding facilities (SR) \*
- Administrative and research facilities \*
- Animal groomers
- Art galleries
- Assisted living facilities (SR) \*
- Auto parts supply (SR) \*
- Bakeries
- Banks, credit unions, and savings and loan facilities
- Barber and beauty shops
- Bicycle sales, rental, and repair shops
- Boarding, lodging and bed and breakfast houses
- Bookstores
- Breweries associated with eating establishments (SR) \*
- Broadcast station offices (but all antennae and satellite dishes must comply with other provisions of this Agreement) \*
- Building supply stores and hardware stores (but no lumber yards) (SR)
- Bus stops
- Camera, hobby, toy, and gift stores
- Car wash, only if incidental to fuel sales (SR) \*
- Casinos and gambling activity, as defined in M.C.A. § 23-5-112, if incidental to another permitted use and with written consent of East 80, LLC \*
- Ceramics and pottery shops

- Charitable, educational or nonprofit institutions
- Child day care centers (up to 13 children)
- Churches, synagogues, and places of worship (SR) \*
- Clinics, medical, dental, and surgical for the care of human patients
- Clothing and apparel stores
- Community centers
- Convalescent, nursing, and retirement homes
- Convenience and specialty food stores (but no fuel sales except upon Special Review)
- Cultural, educational, and instructional facilities
- Denturists
- Department stores \*
- Drive-through facility (SR) \*
- Drug stores (SR) \*
- Eating establishments (alcohol served) (SR) \*
- Eating establishments (no alcohol served) (SR) \*
- Educational and instructional facilities including public and private elementary and secondary schools, colleges, universities, professional schools, and junior colleges (but not trade schools) (SR) \*
- Finance and loan companies
- Fire stations (SR) \*
- Florists
- Flower shops and nurseries (provided that there is no outside storage)
- Food and grocery stores
- Fuel stations – gas or diesel (but not to include truck stops as defined by Section 27-201 of the Unified Zoning Regulations and prohibited below) (SR) \*
- Furniture – retail only
- Greenhouses for on-site, retail sales if incidental to another permitted use
- Hardware and appliance – retail only
- Health clubs and fitness related businesses
- Hospitals \*
- Hotels and motels
- Jewelry stores
- Laundry and/or dry cleaning drop-off and pickup store without drive-through facility
- Laundry and/or dry cleaning drop-off and pickup store with drive-through facility (SR) \*
- Libraries, museums, and art galleries
- Liquor stores
- Medical clinics
- Membership organization offices
- Minor component assembly incidental to another permitted use
- Multi-family residential (Planning Area 2 only) (SR)

- Offices – all, including business professional, medical, and dental
- Office equipment stores – retail only
- Office supply and equipment, copying and mail services stores – retail only
- Open spaces, park areas, water amenities, community gardens, athletic fields, bike trails, playgrounds, and walking paths
- Park Land and Open Space
- Parking facilities, including above or below ground parking garages \*
- Pet stores
- Pharmacies
- Photo studios, shops, and processing – retail only
- Physical therapy facilities
- Police stations (SR) \*
- Postal service facilities without truck terminal facilities
- Public administration facilities, including government facilities, except correctional institutions
- Rehabilitation centers
- Rental car dealerships (SR) \*
- Retail stores
- Retirement homes \*
- Same-day medical care centers
- Sports medicine and rehabilitation facilities
- Surgery centers \*
- Theaters
- Veterinary clinics and hospitals \*
- Wine stores
- Any additional use permitted in a Community Commercial zoning district upon prior written consent of East 80, LLC if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not otherwise limited or prohibited herein. \*

C. Permitted Uses in Planning Area 3 (Residential Multi-family). Residential multi-family use is permitted in Planning Area 3 of The East 80 at Cardwell Ranch. Planning Area 3 shall consist of proposed Lots 5 and 6 of Block 2. This area is intended primarily to accommodate apartments, townhomes, condominiums, multi-plexes, and other multi-family complexes (but not detached single family homes) and uses permitted in the Residential Multi-Family district as defined in the Unified Zoning Regulations. Multi-family residential use may also be permitted in Planning Area 2 (proposed Lot 4 of Block 2) upon Special Review approval. No uses are permitted in these areas other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F.

- Accessory detached structures associated with a permitted principal structure
- Bus stops
- Community centers
- Home occupations
- Multi-family residential buildings

- Park Land and Open Space
- Any additional use permitted in a Residential Multi-Family district upon prior written consent of East 80, LLC if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not limited or prohibited herein.

D. Special Review Procedure and Criteria.

1. Procedure. The City of Billings may authorize the uses described in Article IV by granting Special Review approval if the proposed use conforms to the following standards and criteria. All applications for special review shall include the information required by the Unified Zoning Regulations. The procedure for reviewing the request shall conform to the Unified Zoning Regulations.

2. Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

a. East 80, LLC has given its written consent to the special review request.

b. The proposed use is consistent with the terms, intent and objectives of this Agreement.

c. The proposed use is compatible with surrounding uses or is otherwise sufficiently screened and separated from adjacent land in such a way that any adverse effects are adequately mitigated.

d. The proposed use will not attract large volumes of vehicular traffic that will create traffic congestion that cannot be safely and effectively managed and regulated with proper design and traffic control equipment.

e. The proposed use meets architectural design guidelines or will use an existing building for its purposes.

f. Minimum visual and functional conflict will be created between the proposed use and nearby uses.

g. Anticipated noise and congestion created by the use will be comparable to the levels created by other uses in the vicinity.

h. The use shall not require servicing or deliveries of materials, stocks, or supplies by trucks having more than three (3) axles.

i. The proposed use will not be materially detrimental to other properties.

E. Prohibited Uses in All Areas. The following operations and uses shall not be permitted on any property in The East 80 at Cardwell Ranch, regardless of where the property is located:

- Amusement park services or facilities
- Apparel fabrication and fabrication of products made from fabrics and similar materials
- Arcades, including but not limited to video arcades
- Auction houses or auction yards
- Auto body and collision repair
- Automotive sales, leasing, repair, service, salvage, or storage
- Beverage bottling plant or wholesaling operations
- Billboard signs
- Body alternation salons – any establishment engaged in body painting, body piercing, or tattooing
- Building fabrication except construction of buildings for use on-site
- Building subcontractor operations other than offices only
- Bus terminal and maintenance facilities
- Campground
- Casinos and gambling or gambling activity, as defined in M.C.A. § 23-5-112, unless incidental to another permitted use with written consent of East 80, LLC
- Cellular towers not included in building structures
- Crematoriums
- Dry cleaning or laundry plant or public Laundromat, (not applicable to facilities for pickup and delivery by the ultimate consumer)
- Drug paraphernalia – any business engaging in the sale of so-called drug paraphernalia
- Dumping of concrete, cement residue, refuse, dirt, garbage or fill materials without authority of property owner
- Electronic component manufacturing, unless light manufacturing and incidental to a permitted use
- Equipment rental shop
- Excavation – businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction
- Exotic dancing – any establishment permitting exotic dancing, including semi-nude and nude clubs
- Fire sale or bankruptcy sale
- Fireworks – fireworks manufacture and/or sales
- Flea markets
- Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations
- Foundries and plant operations

- Furniture fabrication
- Garbage – any dumping, disposing, incineration or reduction of garbage provided, however this prohibition shall not be applicable to garbage compactors located near the rear of any building
- Go-cart tracks
- Greenhouses for wholesale purposes
- Gun and archery range
- Guns and ammunition – the sale of firearms and ammunition, unless ancillary to a general retail store or sporting goods store
- Heavy equipment sales, service, and storage
- Ice manufacturing for resale of ice if not intended for use on-site
- Illegal drugs – the sale, manufacture, or possession of illegal drugs
- Industrial production or manufacturing facilities
- Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities
- Junk shops
- Labor or migrant worker camps
- Lumber yards
- Machine and welding shops
- Manufactured housing – the sale, maintenance, and repair and/or storage of manufactured housing, mobile homes, boats, trailers, or recreational vehicles
- Manufacturing
- Massage parlors (excluding therapeutic massage)
- Metal fabrication and manufacturing
- Mill work and cabinet shops
- Mineral extraction – any non-office sale, extraction, or storage of sand, gravel, or minerals
- Mini storage facilities
- Motorized sports vehicle repair, storage, and/or sales (including parts sales)
- Mining and related activities – mining, drilling for, or removing oil, gas, or other hydrocarbon substances
- Motocross tracks
- Motorcycle racing
- Obnoxious odors, etc. – any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in The East 80 at Cardwell Ranch
- Paper warehouses
- Pawn shops
- Power poles and overhead power lines – installing new power poles and overhead power and above-ground utility lines as well as upgrading any existing poles to larger structures; provided, however, this shall not prohibit any existing power poles and above-ground lines, and shall not prohibit adding new lines to any existing poles
- Propane sales unless incidental to a fueling station as permitted by special review, or as incidental to hardware sales

- Race tracks
- Recreational vehicles – the commercial sale, maintenance, rental or repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
- Recycling centers
- Repair shops, if the shop facilities include open or visible storage
- Roller skating rinks
- Roping and rodeo arenas
- Sanitary dumps
- Scrap or waste material processing
- Septic systems
- Sexually oriented businesses – sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations
- Stables – not to be construed to exclude existing farming operations or a continuation of existing farming operations
- Storage facilities other than garages associated with residential structures
- Super Stores – defined as any structure over 40,000 square feet in total useable area
- Surplus store
- Taxidermists
- Tire sales, except as incidental to the operation of a general retail store
- Title loan businesses
- Towers and dishes – freestanding communication towers and satellite dishes greater than 98 inches in diameter
- Trailer parks and campgrounds – mobile home parks, trailer parks, or recreational vehicle campgrounds or any commercial establishment that permits overnight parking of recreational vehicles
- Truck stop as defined by Section 27-201 of the Unified Zoning Regulations
- Truck terminals cartage operations, and similar uses
- Truck wash as defined by Section 27-201 of the Unified Zoning Regulations
- Trucks – sale, leasing, manufacture, and repair of trucks
- Trucking operation warehouses
- Utility sub-stations, utility maintenance facilities or buildings, and other utility installations other than utility lines, utility boxes, and other facilities used to serve an individual Lot
- Warehouses
- Wholesale lumber and building materials
- Wholesale distribution and sales

F. Analogous Uses. If a use is not specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and

approved by East 80, LLC.

G. Procedure for Obtaining East 80, LLC Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of East 80, LLC prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the developer first presents written evidence of East 80, LLC's approval. Neither East 80, LLC nor the City shall approve the developer's application unless the proposed development complies with the requirements of this Agreement.

## **ARTICLE V – OTHER REGULATIONS GOVERNING USE**

A. Continued Farming Operations. East 80, LLC may, in its sole and unreviewable discretion, permit farming operations and livestock grazing on undeveloped parcels. Permission shall be granted exclusively for the continuation of prior and existing livestock and farming operations, whether on ground leased or owned, and shall allow the use of stables, machinery, storage, and any other uses, infrastructure or equipment incidental to or necessary for operations associated with approved or existing farming operations.

B. Parking Limitations. No parking shall be permitted on any street or any place other than in paved and designated parking spots. Each owner of property within The East 80 at Cardwell Ranch shall be responsible for compliance with the foregoing by all tenants, customers, visitors and employees. Adequate parking sufficient to meet City requirements shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, and employees. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscaping and screening elements as provided in this Agreement.

C. Storage of Inoperable, Junk and Recreational Vehicles. Owners and residents of The East 80 at Cardwell Ranch shall comply with Section 27-601 of the Unified Zoning Regulations and all other laws or regulations governing vehicle storage. In addition, no inoperable or junk vehicle shall be permitted to park on any property within The East 80 at Cardwell Ranch outside an enclosed structure for a period of more than two days, and after this period it shall be deemed abandoned. No snowmobiles, all-terrain vehicles, off-road motorcycles, trailers (utility, horse, boat, snowmobile, etc.), boats, campers, motorhomes, recreational vehicles, or other equipment generally associated with recreation and leisure time activity shall be permitted to operate within the confines of The East 80 at Cardwell Ranch, except while being transported into and out of The East 80 at Cardwell Ranch, and all such vehicles shall only be stored within an enclosed structure and shall not be parked on the street or in any driveway, parking lot, or other area visible to neighboring properties for a period of more than two days.

D. Outside Storage. Outside storage of junk shall not be permitted on any Lot in The East 80 at Cardwell Ranch for any period of time. Outside storage of merchandise on any

non-residential property shall comply with Section 27-601(b) of the Unified Zoning Regulations governing storage and display of merchandise in certain commercial districts.

E. Maintenance of Lots.

1. Maintenance of Property Generally. The owner of any property within The East 80 at Cardwell Ranch shall at all times keep and maintain the owner's property and buildings, improvements, and appurtenances thereon in a good, safe, clean, and attractive condition and comply in all respects, at the property owners' sole expense, with this Agreement, and all applicable governmental, health, fire, and safety laws, ordinances, regulations, requirements, and directives. The property owner shall at regular and frequent intervals remove, at the property owner's sole expense, any garbage or rubbish that may accumulate upon such property.

2. Maintenance of Buildings. It shall be the sole responsibility of the owner of any property within The East 80 at Cardwell Ranch to maintain all buildings and structures, improvements, and appurtenances located thereon in a good and clean state of repair and condition and in accordance with this Agreement, and all applicable laws, ordinances, regulations, requirements and directives applicable to the property.

3. Maintenance of Unimproved Sites. Property that is not improved or built upon shall be maintained in a good, safe, clean, and attractive condition by the property owner. Weeds, brush, trash, and rubbish must be removed at least every three months. Nothing in this paragraph shall prevent East 80, LLC or its agents from carrying on existing or approved agricultural activities consistent with this Agreement.

F. Utilities to be Buried. All utilities, including but not limited to electrical distribution and transmission lines, shall be buried. Any above-ground junction boxes or other surface elements that cannot be buried shall be screened by structural or landscaping elements. Any existing overhead power lines shall be permitted to remain in their present location. Additional lines may be added to any existing power poles so long as the poles remain in substantially the same location. However, if such power poles or power lines are ever moved or their size is changed, or if substantial repairs or replacement is undertaken, the owners of the property and the owner(s) of the power lines shall bury all lines, including the lines being moved, repaired or replaced.

G. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by subsequent developers or covenants, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations. A Home Occupation is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

1. The Home Occupation should not generate, on average, more than one (1) vehicle trip during any hour measured between 7:30 A.M. and 6:00 P.M.;

2. The activity must constitute use permitted outright in Planning Area 1 or

Planning Area 2 established in this Agreement; and

3. Residents and property owners are advised that carrying on certain Home Occupations may require compliance with special code requirements applicable to commercial establishments. All residents and property owners are advised to consult with local building officials before establishing a Home Occupation. Residents and property owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

## **ARTICLE VI - SITE DEVELOPMENT, BUILDING & LANDSCAPE STANDARDS**

A. Development Standards Generally. These standards are provided to establish minimum guidelines for the development of facilities in The East 80 at Cardwell Ranch, including site work, buildings and accessory structures, landscaping, and signage. These guidelines will not define specific styles of architectural character for the various uses possible in The East 80 at Cardwell Ranch. They are intended to establish a minimum level of quality for the physical settings within The East 80 at Cardwell Ranch and for the basic architectural design of the structures while allowing flexibility to adjust and evolve with changes in technology and architectural standards. These guidelines will specifically control the treatment of the public areas, streetscape, pedestrian areas, landscaping and signage to create a setting in which a wide variety of individual buildings of high quality can exist in harmony. They will provide developers with a guide that will define the aesthetic quality of The East 80 at Cardwell Ranch's architecture yet allow latitude for unique, individual expressions of the architectural requirements and image of each building development. Subsequent developers and property owners are advised that covenants and other private agreements may also control development in The East 80 at Cardwell Ranch and that it may be necessary to obtain written consent from East 80, LLC and/or the Association prior to application for land use approvals and construction.

### **B. Site Development Standards.**

1. Street Types and Standards. In the absence of a contrary agreement with the City of Billings, all streets shall be developed to the standards of the City of Billings for width, curb, gutter, sidewalk, cross-section, and surface treatment. All streets shall be developed as required to accommodate the traffic loads contributed by development within The East 80 at Cardwell Ranch and adjacent properties.

2. Access. Shared driveway accesses between adjacent non-residential Lots are encouraged. If a traffic accessibility study is required for a proposed use on a Lot, the study shall include traffic from an adjacent Lot if the driveway is proposed to be shared.

3. Lot Coverage. The total combined lot coverage for all structures on any non-residential Lot shall not exceed fifty (50) percent of the total square footage of the Lot. The total combined lot coverage for all structures on any residential multi-family

Lot shall not exceed fifty-five (55) percent of the total square footage of the Lot.

4. Setbacks.

a. Community Commercial area. The minimum building “front yard” setback from the property line for all non-residential development shall be 25 feet, providing, however, that the clear vision triangle is maintained as required by the Unified Zoning Regulations. The “front yard” shall be determined by the Association’s Design Review Committee based on the specific use and site plan for each Lot. Side and rear yard setbacks shall be at least 20 feet from the property line where a residential use abuts a commercial use. There shall be a minimum 10 feet wide side and rear yard setback for all other non-residential Lots. All arterial setbacks as outlined in the Unified Zoning Regulations must also be maintained, but the minimum front setback along Grand Avenue and Zimmerman Trail shall be at least 80 feet (measured from center-line).

b. Residential Multi-family area. Setbacks for multi-family residential Lots must comply with the Unified Zoning Regulations. Setback areas must be landscaped except for driveways and parking areas, which may not exceed 20% of any setback area. All developments are required to landscape adjacent to and along the length of all public rights-of-way, excluding driveways. A lot owner may request a variance from these setback requirements after obtaining the written consent of East 80, LLC by following the variance procedures established by the Unified Zoning Regulations.

5. Zone Boundaries. It is recommended that the transitional areas between different use classifications be designed to complement the adjacent land uses. Use of buffering landscaping elements and building mass that approximates that of the adjacent zone in these areas is encouraged to help achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

6. Parking. Adequate parking shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, employees and residents. All parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein. Minimum parking requirements shall meet the standards of the City of Billings for each use proposed for a Lot but shall not exceed 110% of the City's minimums. Joint parking and reciprocal access agreements are encouraged.

7. Loading, Storage and Service Areas. No loading, storage or service area shall be permitted in the front portion of any Lot within The East 80 at Cardwell Ranch. All loading and service areas shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with

all applicable building setbacks.

8. Garbage Collection. Lots used for commercial purposes and multi-family housing that includes more than two (2) dwelling units shall store garbage only in an approved garbage collection area. Lots used for other residential purposes may place a garbage container on the sidewalk or driveway on the designated pickup day. At all other times, all residential garbage containers shall be stored in an enclosed garage or in an approved garbage collection area. Garbage collection areas shall adhere to the following standards:

a. All outdoor garbage containers and collection areas shall be screened visually with at least a six foot (6') enclosure so that they are not visible from adjacent properties, streets, or Park Land or Open Space.

b. No garbage containers or collection areas shall be located between a street and the front of a building.

c. Deposited garbage shall not be visible from outside the garbage container or collection area.

d. Garbage containers and collection areas shall be designed with durable structural materials, finishes and colors that coordinate with the overall architectural scheme of the adjacent buildings.

e. Garbage collection areas and containers shall regularly be cleaned, repaired and painted to prevent the accumulation of garbage, grime, grease, and other unsightly or unpleasant conditions.

9. Pedestrian Walkways and Bikeways. All property development shall provide for pedestrian access along or through each Lot to create a system of pedestrian paths and walkways. Pedestrian paths shall be a minimum of five feet (5') wide, constructed of hard surface materials such as concrete or asphalt meeting the requirements of the City of Billings. The location, layout and construction features of bike paths shall conform to the Heritage Trail Plan of the City of Billings and may be extended through The East 80 at Cardwell Ranch to connect to other development at the perimeter of The East 80 at Cardwell Ranch. Bike paths shall be constructed according to the design standards established by The Heritage Trail Plan and shall be located as determined by the developer with the consent of East 80, LLC. All pedestrian and bikeway access along roads shall be separated from the paved road surface by a landscaped boulevard at least five (5) feet wide.

10. Bicycle Parking. Each non-residential and multi-family residential Lot accommodating more than three (3) Dwelling Units shall provide at least one bike parking space equipped with bicycle racks permanently anchored in marked areas.

11. Accessory Structures, Fences, and Walls. Construction of accessory

structures, fences, and walks shall follow these standards:

- a. All fences shall comply with the City of Billings, Montana clear vision standards.
- b. No chain link fencing shall be installed without the express written approval of East 80, LLC.
- c. No fence or wall shall exceed a height of six feet (6'), except in garbage collection areas.
- d. Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings, shall coordinate with the overall architectural scheme of the adjacent buildings, and shall be integrated into the landscaping of the Lot.

12. Snow Storage. Parking lots or areas adjacent to parking lots shall provide for on-site snow storage. Snow storage areas shall not be adjacent to streets. Common storage areas between adjacent Lots are encouraged. Landscaping shall be maintained if the storage is not done in a paved parking area. Parking spaces needed to satisfy minimum parking requirements shall not be used for snow storage.

13. Site Lighting Standards.

- a. All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.
- b. All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

14. Exterior Mechanical and Electrical Equipment and Transformers. All exterior mechanical and electrical equipment and transformers used to service a building or group of buildings shall be screened or enclosed within the structure of a building or otherwise screened from view. Screening may consist of year-round plantings, shrubbery, or durable enclosures of such height and density as may be deemed sufficient by the zoning coordinator and East 80, LLC.

C. Building Design. The following standards shall govern building design for all property within The East 80 at Cardwell Ranch.

1. Temporary Structures. Temporary structures are not allowed, except temporary structures may be used for construction only during the period of construction and shall be removed from The East 80 at Cardwell Ranch immediately following substantial completion of the permanent structure in accordance with the

CCRs.

2. Impact on Other Structures. No building shall be built in a manner that will adversely affect the structural integrity of another building.

3. Building Height Limits. Structures in The East 80 at Cardwell Ranch shall not exceed a height limit of forty-five (45) feet from ground level. This height limitation applies to the uppermost, enclosed portion of the structure. Antennae, satellite receivers, mechanical equipment and other non-enclosed portions of a structure that otherwise comply with this Agreement shall be appropriately screened and may extend no more than six (6) feet above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

4. Building Size Limits. The enclosed portion of any structure in The East 80 at Cardwell Ranch shall not exceed 40,000 square feet (footprint). Buildings over 40,000 square feet (footprint) may be permitted upon Special Review approval. The enclosed portion of a structure is the portion that is contained on all sides and overhead and does not include decks, patios, walkways, driveways, etc.

5. Roof-mounted Mechanical Equipment. Mechanical equipment placed on a roof shall be screened to a height at least the height of the mechanical equipment. All roof-mounted equipment, including, but not limited to, HVAC units, exhaust vents, exhaust vent stacks, and miscellaneous penetrations must be integrated into the overall roof design. Equipment shall be enclosed or screened from view with materials and forms designed into the shape and character of the building's design.

6. Communication Towers, Antennae, and Satellite Receivers. No free-standing communication towers, antennae, or satellite receivers are allowed. No structure-mounted antennae with visible components greater than 60 inches in height or satellite receivers greater than 24 inches in diameter are allowed unless they are screened from the view of adjacent streets and properties by structural components or year-round landscaping elements. No satellite receivers more than 96 inches in diameter are allowed. Satellite receivers more than 24 inches but less than 96 inches are subject to special review under Article IV.B.

7. Metal Buildings. Pre-engineered metal buildings or prefabricated metal buildings are not permitted on any property within The East 80 at Cardwell Ranch.

8. Sloped Roof Elements. Any building with sloped roof elements shall provide protection to pedestrians and other properties from the effects of sliding snow.

D. Landscape Design Standards. The following standards shall govern landscaping for all property within The East 80 at Cardwell Ranch.

1. Minimum Requirements. All landscaping shall, at a minimum, comply

with the requirements of the City of Billings and be completed within thirty (30) days after the substantial completion of the building(s) constructed on the property; provided, however, that if weather conditions do not permit such landscaping to be completed within thirty (30) days then such landscaping shall be completed as soon thereafter as weather conditions permit. Bonds shall be required if landscape completion is delayed.

2. Right-of-Way and Setback Areas. The area between any street to the property line and from the property line to the minimum setback line shall be landscaped with a combination of trees, shrubbery, foliage, and grass or ground cover. These areas shall be maintained by the adjacent property owner unless responsibility for maintaining the same has been assumed by the Association.

3. Irrigation. All landscaping must be irrigated with an underground sprinkler system, which must be maintained so as to provide sufficient water for landscaping growth, or by use of a joint or community irrigation plan.

4. Parking Lot Landscaping – Perimeter. The perimeter of all parking areas shall be landscaped with plants that provide intermittent screening but allow some visual penetration into these areas when viewed from adjacent streets, service areas, major building entrances, and significant outdoor spaces. Such screens shall consist of deciduous and evergreen plant material at least two feet (2') in height.

5. Parking Lot Landscaping – Interior. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space. Two (2) canopy or evergreen trees and five (5) shrubs shall be required for every eight (8) parking spaces. All landscaped areas shall contain ground cover such as sod, shrubs, flower beds, or living plant material. No more than twenty-five (25) percent of the total landscaped area measured by square footage shall consist of fountains, rock, bark chips, stepping stones, or similar non-living material. Each parking lot landscaped area shall include at least one dimension (width or length) that is at least eight (8) feet. Internal parking lot landscaping shall be proportionately disbursed at the developer's discretion in order to define aisles and limit the length of unbroken rows of parking. The maximum width or length of any unbroken length of paved parking area shall be one hundred (100) feet. Landscaped areas shall be on a scale proportionate to the parking lot. The parking lot landscaping shall, at a minimum, meet all landscaping requirements of the City of Billings. All landscaped areas shall be irrigated, maintained, and kept free of weeds, debris, and litter. Dead or dying materials shall be replaced immediately. Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt, or other approved, permanent barriers. Evergreen trees are discouraged for internal parking areas if they will limit sight lines at full maturity.

6. Non-Parking Lot Landscaping. All areas not covered by structures, parking, circulation surfaces, pedestrian or bicycle paths shall be landscaped. At least seventy-five percent (75%) of this landscaped area should be living plant material. The remaining portion may include: stone, rock, bark ground cover; decorative structures;

water features; benches and other landscape features appropriately dispersed and coordinated throughout the live vegetation. The use of native, drought-tolerant plant materials is strongly encouraged and may be required under applicable covenants, conditions, or restrictions. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

7. Landscaping Loading and Service Areas. Loading and service areas shall be enclosed either with solid screen walls not to exceed six feet (6'), or landscaping elements planted in such a manner to create a visually opaque screen when mature. The plant material screen must develop its maturity within three (3) years from the time of planting.

- Canopy Tree. A canopy tree is a species of tree that normally bears crown foliage no lower than six feet (6') above ground level upon maturity. The minimum size of canopy trees shall be two and one-half inches (2 1/2") in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.
- Evergreen. An evergreen tree or shrub is a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be six feet (6') in height at the time of installation.
- Shrubs. The minimum size of a shrub shall be at least 2 gallons but preferably 5 gallons.

## **ARTICLE VII – PARK LAND AND OPEN SPACES**

A. Park Land and Open Spaces Generally. The statutory park dedication requirement for The East 80 at Cardwell Ranch shall be satisfied either by making a donation of cash in lieu of land or the City will waive the park dedication requirement for this planned development if the land permanently set aside for park and recreational use by the residents meets the requirements of M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009. The Park Land and Open Spaces available to residents and users of The East 80 at Cardwell Ranch shall include privately or publicly owned or accessible open space, potentially including parks, plazas, gardens, trails, and/or bikeways. Such Park Land and Open Spaces may be located within The East 80 at Cardwell Ranch or outside The East 80 at Cardwell Ranch in accordance with M.C.A. § 76-3-621(6)(d)(i). All Park Land and Open Spaces shall be maintained to meet or exceed any then-existing City maintenance standards. All Park Land and Open Spaces shall be built and maintained in order to fulfill the purposes set forth in Article I of this Agreement. Park Land and Open Spaces will be developed and constructed at the cost and expense of the property owners.

B. Park Land and Open Space Maintenance. The maintenance of Park Land and Open Spaces will be funded by the Association with possible participation by individual property owners or the City through a park maintenance district for any park land dedicated to

the public.

## ARTICLE VIII – SIGNS

A. Signage. The following standards shall govern signage for all property within The East 80 at Cardwell Ranch and shall apply to all ground-mounted, pole-mounted, and building-mounted signs.

B. Purpose, Intent and Scope. The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial areas.

C. Exempt Signs. This section of the Agreement shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lot; merchandise displays; national flags; legal notices required by law; or historic site monuments/plaques;

D. Definitions. The definitions used in this Agreement may be found below or in the Unified Zoning Regulations.

Individual Business. One business on one parcel, provided that the parcel is not part of a multiple business complex; and also provided the parcel is not part of a group of multiple contiguous parcels under the same ownership.

Monument Sign. A sign and supporting structure constructed as a solid structure, or one that gives the appearance of a continuous, non-hollow, unbroken mass.

Multiple Businesses. Multiple businesses include businesses that may be located in a single building or in multiple buildings on a single site.

Support Structure(s). Posts or columns and their anchors and bolts that structurally support the sign attached to it.

E. General Provisions.

1. City Ordinances. All signage shall comply with the Unified Zoning Regulations unless further limited herein, or as addressed in the CCRs.

2.

3. Types of Signs. The following standards shall govern the types of signs permitted within The East 80 at Cardwell Ranch:

a. Collective Signage. Adjacent property owners in The East 80 at Cardwell Ranch are encouraged, when appropriate, to utilize collective signage which contains the names of more than a single owner, business, tenant, or store;

b. **Wall Signage.** Wall signs are limited to no more than one (1) per façade facing a street and two (2) signs per building. All wall signs shall be placed parallel and attached firmly to the building's façade.

F. **Exempt Signs.** The following shall not require approval, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this Agreement or any other law or ordinance, including the Uniform Zoning Regulations.

1. The changing of the advertising copy or message on a lawfully erected sign that is currently in compliance with this Agreement, reader board, or similar sign specifically designed for replaceable copy;

2. Painting, repainting, or normal maintenance, unless a structural, electrical, aesthetic, or color change is made;

G. **Prohibited Signs.** The following signs are prohibited in all zones unless otherwise specifically permitted:

1. Flashing, blinking, moving, exposed light, iridescent colors, outdoor signs with visible neon or gas tubing, fluorescent materials, animated or audible signs, streamers, balloons and searchlights;

2. Bench signs;

3. Signs which by coloring, shape, working resemble or conflict with traffic control signs or devices;

4. Signs that create a safety hazard for pedestrian or vehicular traffic;

5. All electronic signs, video boards;

6. Portable signs, trailer signs and signs attached to structures with one or more wheels;

7. Rooftop signs;

8. Billboard or off-premises signs;

9. Pole signs;

10. Banner signs unless specifically permitted as addressed in the CCRs.

H. **Temporary Signs:**

a. Temporary signs can be used for development, construction,

design team, sale or leasing information on a temporary basis. Typically such signs are freestanding, ground-mounted signs though banner signs may be approved as specified in the CCRs. Such signs will be unlit and limited in size to 32 square feet and 8 feet in height above grade for commercial uses and five square feet and five feet above grade for residential and agricultural uses.

I. Sign Location and Setback.

b. Freestanding identity signs shall be setback a minimum of 8 feet from the face of curb or edge of pavement of a public street, and shall not be placed within the right-of-way.

J. Sign Area and Calculation.

1. Sign area for wall signs is equal to the message area of a sign, including graphics, letters, figures, symbols, trademarks or written copy per the standards established by the City of Billings for sign area calculation;

2. The sign area of a monument sign consisting of one sign shall be calculated the same as for wall signs;

3. The sign area of a freestanding sign consisting of more than one sign shall be computed by adding together the total area(s) of all signs. Any portion of the sign not necessary for structural support of the sign or any structural support greater than two (2) feet in width shall be considered in the determination of the square footage of the sign. Area calculation does not include decorative rocks or landscaping adjacent to a monument sign;

4. The sign area for multiple-sided signs shall be calculated as follows:

a. The total sign area for a two-sided sign shall be calculated using one face, therefore allowing both faces to be of equal size (for example a two-sided sign has two faces with 18 square feet per side, therefore the sign area is 18 square feet);

b. The sign area for a three-sided sign shall be equal to the total amount of sign area a one-sided or two-sided sign is allowed. (For example, in item 4A above, a two-sided sign is allowed 18 square feet of sign area per side, which equals 36 total square feet. If a three-sided sign is used instead of a one-sided or two-sided sign, the three-sided sign may allocate the 36 square feet among three sides, therefore allowing three sides with 12 square feet per face for a total of 36 square feet of sign area.);

K. Maintenance of Signs.

1. Any sign that has been approved or that has been issued a permit shall be

maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and this Agreement;

2. Any damaged sign, including signs with burned out lights, shall be repaired or replaced within ten (10) business days;

3. Any signage which has been damaged to such extent that it may pose a hazard to passersby shall be repaired or removed immediately;

L. Nonconforming Signs. Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to the sign standards in this Agreement are nonconforming and shall be removed or changed to conform to these standards. Any sign not removed within ten (10) business days of notice of nonconformance will be removed by the East 80, LLC or its assigns, and the costs for removal plus a handling fee to be assessed by the East 80, LLC or its assigns shall be the responsibility of the owner of the sign.

M. Landscaping for Monument Signs. All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

N. Sign Illumination. Externally illuminated signs shall have low intensity lighting, confined to the sign, and positioned and shielded to minimize impacts to the surrounding area(s). Internally illuminated signs shall have low intensity lighting.

O. Sign Approval. All signage in The East 80 at Cardwell Ranch shall first be approved by East 80, LLC as a condition of any zoning approval issued by the City of Billings.

## **ARTICLE IX - CROSS EASEMENTS FOR VEHICLES AND PEDESTRIANS**

At the time each Lot is developed, or at such earlier time as may be determined by East 80, LLC or the developer of the Lot, East 80, LLC or the developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all property owners in The East 80 at Cardwell Ranch and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the part of any Park Land, Open Space, or Lot devoted to pedestrian walkways, bike paths, and private roadways intended for common use. At the time each Lot is developed, or at such earlier time as may be determined by East 80, LLC or the developer of the Lot, East 80, LLC or the developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all developers and property owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of The East 80 at Cardwell Ranch intended for common use.

## ARTICLE X – ENFORCEMENT

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, East 80, LLC, property owners, the Association, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

B. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided for in the Unified Zoning Regulations.

C. Right to Enforce by Property Owners and the Association. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within The East 80 at Cardwell Ranch and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as future property owners within The East 80 at Cardwell Ranch. The parties further agree that the Association shall have standing to enforce the terms of this Agreement relative to the City or any property owner or other property owners' association regardless of whether the Association owns property in The East 80 at Cardwell Ranch. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

D. Right of Abatement and Suit. If at any time East 80, LLC, the City, or the Association objects ("the objecting party") to any property owner's or other party's breach of its obligations under this Agreement ("the defaulting party"), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party's breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of its objection. If within thirty (30) days of receipt of such notice the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a reasonable period, the objecting party may perform whatever reasonable maintenance, repair, operation, or other curative action is needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation, or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party's obligations under this Agreement. The objecting party may also prosecute a proceeding at law or in equity against the defaulting party to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied, or to recover damages for said violation.

## ARTICLE XI – AMENDMENTS AND VARIANCES

A. Amendments or Changes. This Agreement may not be amended, modified, or terminated, in whole or in part, except with the unanimous written consent of East 80, LLC (or its assignee) and the City. The consent of landowners who purchase property within The East 80 at Cardwell Ranch shall not be required to amend, modify, or terminate this Agreement. Any modifications requested by East 80, LLC shall be processed using the same procedures as for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent;
3. Change additional allowed uses;
4. Reduce open space greater than two (2) percent; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations. Upon receiving written consent of East 80, LLC, property owners may apply for a variance from the following required special building features:

1. Increase in the maximum allowed height under Article VI.C.3 of any structure in any planning area from 34 feet to 45 feet.
2. In accordance with Article VI.C.6, increase in the maximum diameter of satellite dishes from 24 inches up to 96 inches.

Covenants or private agreements may also require that an applicant obtain the written consent of East 80, LLC for other variances.

C. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

## **ARTICLE XII - ARBITRATION**

A. Agreement to Arbitrate. Except as otherwise provided in this Agreement and subject to the provisions of the next paragraph below, all property owners and the City agree, upon receipt of written request by any party to the dispute, to submit to binding arbitration any and all claims, disputes, and controversies between or among

them (and their respective employees, officers, directors, attorneys, and other agents) whether in tort, contract, or otherwise arising out of or relating to in any way this Agreement. East 80, LLC may, in its sole and exclusive discretion, elect not to participate in arbitration requested by another party, in which case the dispute shall be resolved by means not involving arbitration.

B. Other Remedies. Nothing in the preceding paragraph, nor the exercise of any right to arbitrate thereunder, shall limit the right of any party hereto to: (1) exercise abatement or other self-help remedies, (2) obtain provisional or ancillary judicial remedies such as injunctive relief, or (3) impose fines as permitted by law before, during, or after the pendency of any arbitration proceeding. The authority of the City to levy and impose fines shall not be limited by this arbitration agreement. The institution and maintenance of any action for such judicial relief, the pursuit of provisional or ancillary remedies, or the exercise of self-help remedies shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration, including those claims or disputes arising from or related to those addressed as part of the exercise of any such judicial relief, pursuit of provisional or ancillary remedies, or exercise of self-help remedies.

C. Arbitration Procedure. Any arbitration proceeding shall proceed in Billings, Montana, and shall be governed by the Montana Uniform Arbitration Act and all applicable Montana statutes of limitation, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding shall be before a single arbitrator selected according to the Commercial Arbitration Rules of the AAA. The arbitrator shall decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions that are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication. Discovery shall be permitted, but shall be subject to scheduling by the arbitrator, and any discovery disputes shall be subject to final determination by the arbitrator. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with this Agreement. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction.

### **ARTICLE XIII - GENERAL PROVISIONS**

A. Appointment of Agent. East 80, LLC may, in its sole and exclusive discretion, hire, appoint, or designate an individual or entity to act as its agent to fulfill the duties and obligations of East 80, LLC hereunder. Although not required to be effective, notice of such appointment may be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the appointment. Notice of appointment shall also be provided to the City at the address specified herein. East 80, LLC may, in its sole and exclusive discretion, revoke an agent's appointment or make an additional appointment at any time.

B. Assignment by East 80, LLC. East 80, LLC may, in its sole and exclusive

discretion, assign its rights and delegate its duties arising under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, East 80, LLC shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all property owners shall look exclusively to the appointed person or entity.

C. Neutral Interpretation. East 80, LLC and the City hereby stipulate and agree that this Agreement has been prepared and negotiated by both parties and shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party based on authorship.

D. Coordination with Other Regulations. In the event that there is any conflict between this Agreement and other zoning regulations or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of The East 80 at Cardwell Ranch either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently amended, the amended version of such regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement.

E. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore. All notices or demands to East 80, LLC or the City shall be given at the following addresses or such other addresses as East 80, LLC or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to East 80, LLC: Charles Yegen  
P. O. Box 959  
Billings, MT 59101

With copies to: William A. Cole  
Cole Law Firm, PLLC  
3860 Avenue B, Suite C West  
Billings, MT 59102-7550

If to the City: City of Billings  
Attn: City Clerk

P.O. Box 1178  
Billings, Montana 59103

With Copies to:

City-County Planning Department  
510 N. Broadway, 4<sup>th</sup> Floor Parnly Library  
Billings, MT 59101

City Attorney's Office  
P.O. Box 1178  
Billings, MT 59103-1178

F. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

H. Limitation on Enforcement. This Agreement is for the benefit of East 80, LLC, the City, the property owners within The East 80 at Cardwell Ranch, the Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce restrictions contained herein, judicially or otherwise.

I. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

J. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity or in arbitration, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court or arbitration costs, if any, from the other party.

K. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

L. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or

any other similar relationship between the parties.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

P. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

#### **NOTICE**

**THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.**

Q. Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon East 80, LLC, the City, the property owners, and their heirs, successors, and assigns.

R. Contact Person. East 80, LLC hereby designates a contact person whom may be contacted with respect to any questions, comments, or concerns. The contact person shall be Charles Yegen, P. O. Box 959, Billings, Montana 59101.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

**EAST 80, LLC:**

EAST 80, LLC

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

Its: \_\_\_\_\_

**CITY:**

CITY OF BILLINGS

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

Ron Tussing

Its: Mayor

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

Cari Martin

Its: City Clerk

STATE OF \_\_\_\_\_ )

)ss.

County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_ known to me to be \_\_\_\_\_ of East 80, LLC.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]

Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA )

)ss.

County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Ron Tussing, known by me to be the Mayor of the City of Billings.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA                    )  
  )ss.  
County of Yellowstone            )

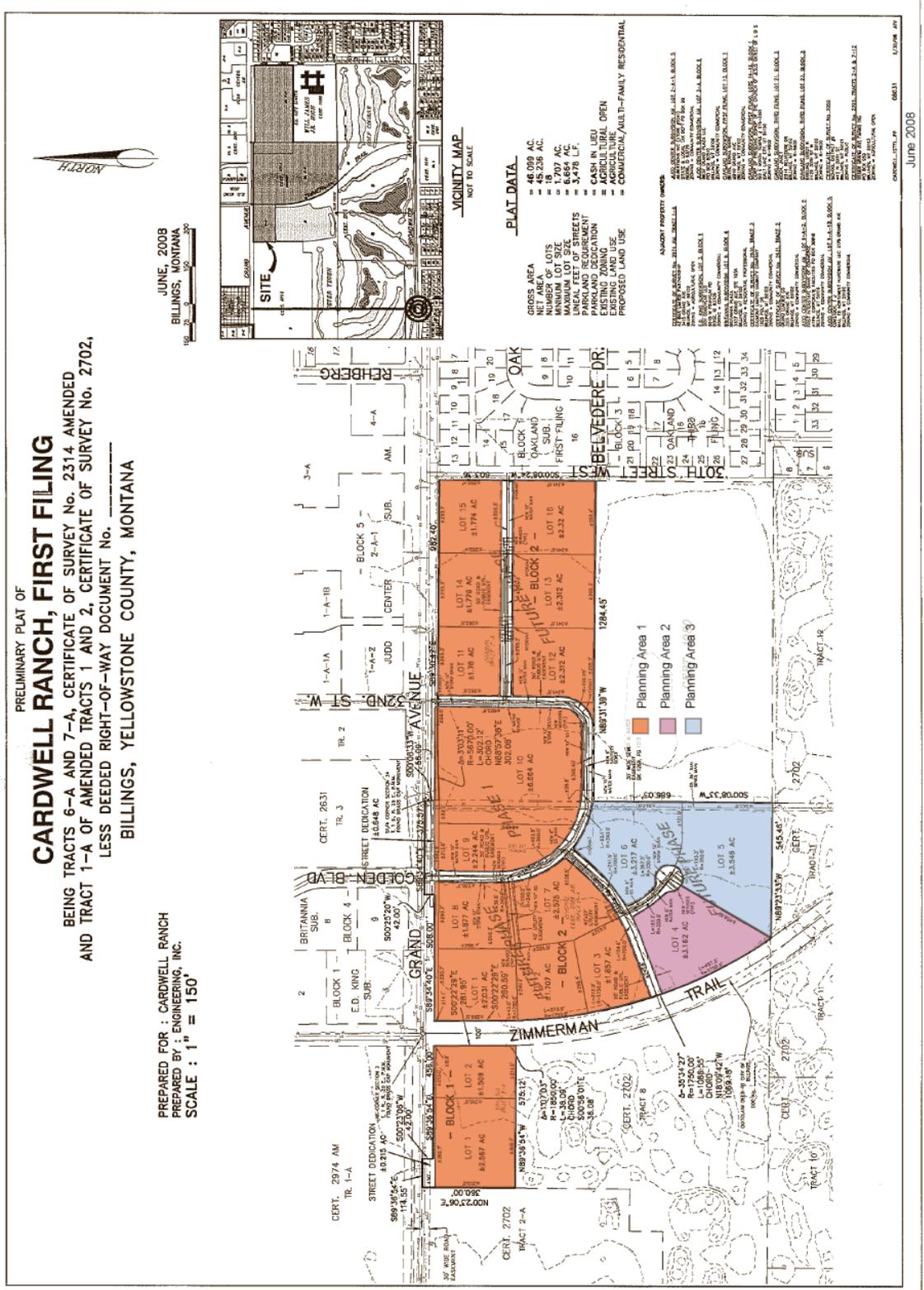
This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by  
Cari Martin, known by me to be the City Clerk of the City of Billings.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_

# EXHIBIT A

## MASTER PLAN OF THE EAST 80 AT CARDWELL RANCH



AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, September 22, 2008**

TITLE: Preliminary Plat of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Juliet Spalding, AICP, Planner II

**PROBLEM/ISSUE STATEMENT:** On July 1, 2008, the subdividers, Yegen Grand Avenue Farms, applied for preliminary major plat approval for Cardwell Ranch Subdivision, 1<sup>st</sup> Filing. The proposed subdivision creates 18 lots for commercial and multi-family residential uses out of a 46-acre parcel located on the south side of Grand Avenue, between 30<sup>th</sup> Street West and Zimmerman Trail. Development of the property is proposed in phases, with the first phase located just west of 32<sup>nd</sup> Street West. The property is currently in the County and is a portion of the original Yegen/Cardwell farmstead. A concurrent annexation and zone change to ‘Planned Development’ zoning is being proposed. The Yellowstone County Board of Planning reviewed the plat and conducted a public hearing on August 26, 2008. The City Council will review the preliminary plat and approve, conditionally approve, or deny the proposed subdivision at the September 22, 2008, meeting. The representing agent is Engineering, Inc.

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

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

**RECOMMENDATION**

The Planning Board on an 8-0 vote recommends conditional approval of the preliminary plat of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

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

## **INTRODUCTION**

On July 1, 2008, the subdivider, Yegen Grand Avenue Farms, applied for preliminary major plat approval for Cardwell Ranch Subdivision, 1<sup>st</sup> Filing. The proposed subdivision creates 18 lots for commercial and multi-family residential uses out of a 46-acre parcel located on the south side of Grand Avenue, between 30<sup>th</sup> Street West and Zimmerman Trail.

## **PROCEDURAL HISTORY**

- A pre-application meeting was held on May 8, 2008 to discuss the proposal.
- The preliminary plat application was submitted to the Planning Division on July 1, 2008.
- A departmental review meeting was conducted on July 17, 2008.
- The preliminary plat was resubmitted with revisions based on department reviews on July 24, 2008.
- The Planning Board reviewed the plat on August 12, 2008.
- The Planning Board conducted a public hearing on August 26, 2008, and forwarded a recommendation to the City Council.
- The City Council will consider the preliminary plat on September 22, 2008.

## **BACKGROUND**

On July 1, 2008, the subdivider applied for preliminary major plat approval for Cardwell Ranch Subdivision, 1<sup>st</sup> Filing in order to create 18 lots for commercial and multi-family uses. The subject property is bordered on the north by Grand Avenue and commercial and residential uses, on the south and west by the Yegen Golf Course, on the east by 30<sup>th</sup> Street West, Will James Middle School and the LDS church.

General location:	South of Grand Avenue, from 30 <sup>th</sup> St. West to just beyond Zimmerman Trail.
Legal Description:	Tracts 6-A and 7-A, C/S 2314 Amended, and Tract 1-A of C/S 2702 Amended
Subdivider:	East 80, LLC
Owner:	Yegen Grand Avenue Farms
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Agricultural-Open Space (A-1)
Existing land use:	Agricultural land
Proposed land use:	Commercial and Multi-family residential
Gross and Net area:	46.09 acres/ 45.24 acres
Proposed number of lots:	18

Lot size: Max: 6.7 acres  
Min.: 1.7 acres

Parkland requirements: 0.74 acres of parkland dedication is required for the 2 proposed multi-family use lots.

### **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potentially negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on departmental comments. 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:

2. In order to mitigate impacts on local services, Section VI. of the Subdivision Improvements Agreement (SIA) shall be updated to delete references to construction fees for water and wastewater connections as recommended by Public Works—Distribution and Collection Division.
3. In order to mitigate impacts on local services, a note shall be added to Section III.E. of the SIA stating: Street 'A' may be constructed as a "full service" access with the initial phase of the subdivision. Further development of Block 2 beyond Lots 9 and 10 shall not be allowed unless either the existing median opening located approximately 250 feet east of 32<sup>nd</sup> Street West is closed, or the Cardwell Ranch Subdivision access designated as "Street A" is restricted to right in-right out traffic.
4. In order to mitigate impacts on local services, a note shall be added to Section III.D. of the SIA stating: "A signal may be constructed at 32<sup>nd</sup> Street West and Grand Avenue in the future if the intersection is found to meet signal warrants and funding is available to construct a signal. Any warrant study justifying a signal must be approved by the City Engineer's Office before City funding can be made available. Signalization of 32<sup>nd</sup> St. W. and Grand Ave. must be accompanied by closure of the Judd Center median opening just east of 32<sup>nd</sup> St. W. The Cardwell Ranch contribution toward intersection improvements will be determined by the City Engineer's office at the time of future phases. If the subdividers wish to fund installation of a traffic signal prior to City funding being approved in the Capital Improvement Plan, they may do so, but the City makes no guarantee, expressed or implied, that any reimbursement will be available to the subdivider for any of the costs incurred by the subdivider."

5. In order to mitigate impacts on local services, a note shall be added to the SIA advising future lot owners that the intersection of 30<sup>th</sup> St. W. and Grand Ave. may not be signalized in the future, and that median modifications to restrict some turning movements at 30<sup>th</sup> St. W. could be implemented.
6. In order to mitigate impacts on local services, Section III.A.2 of the SIA shall be amended to include construction of raised median and installation of street lighting along Grand Ave. Also item XI. shall note that improvements to Grand Ave. shall be completed in both Phase I and Future Phases.
7. In order to mitigate impacts on local services, Section III.E. of the SIA shall be amended to read “The design of these accesses shall be subject to review and approval by the City Engineering office.”
8. In order to mitigate impacts on local services, a one-foot no-access strip shall be shown on the final plat along Street ‘A’ and Street ‘C’ a minimum of 150 feet back from Grand Ave. and Zimmerman Tr., or to the back of the projected vehicle queue, whichever is longer.
9. In order to mitigate impacts on public health and safety, a note shall be added to Sections II. and VIII. of the SIA stating that additional site specific direction from the Geotechnical Engineer who completed the 4/7/08 Preliminary Geotechnical Report, or a separate geotechnical report for each lot, will be required as part of the building permit submittal process.
10. 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.
11. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

#### **VARIANCES REQUESTED**

None.

#### **STAKEHOLDERS**

At its August 26, 2008 meeting, the Planning Board held a public hearing to gather public input on the proposal. Certified letters were sent to adjacent property owners regarding the hearing and a legal notice also advertised the public hearing. There was no public testimony in favor or against the proposal.

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

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

### **RECOMMENDATION**

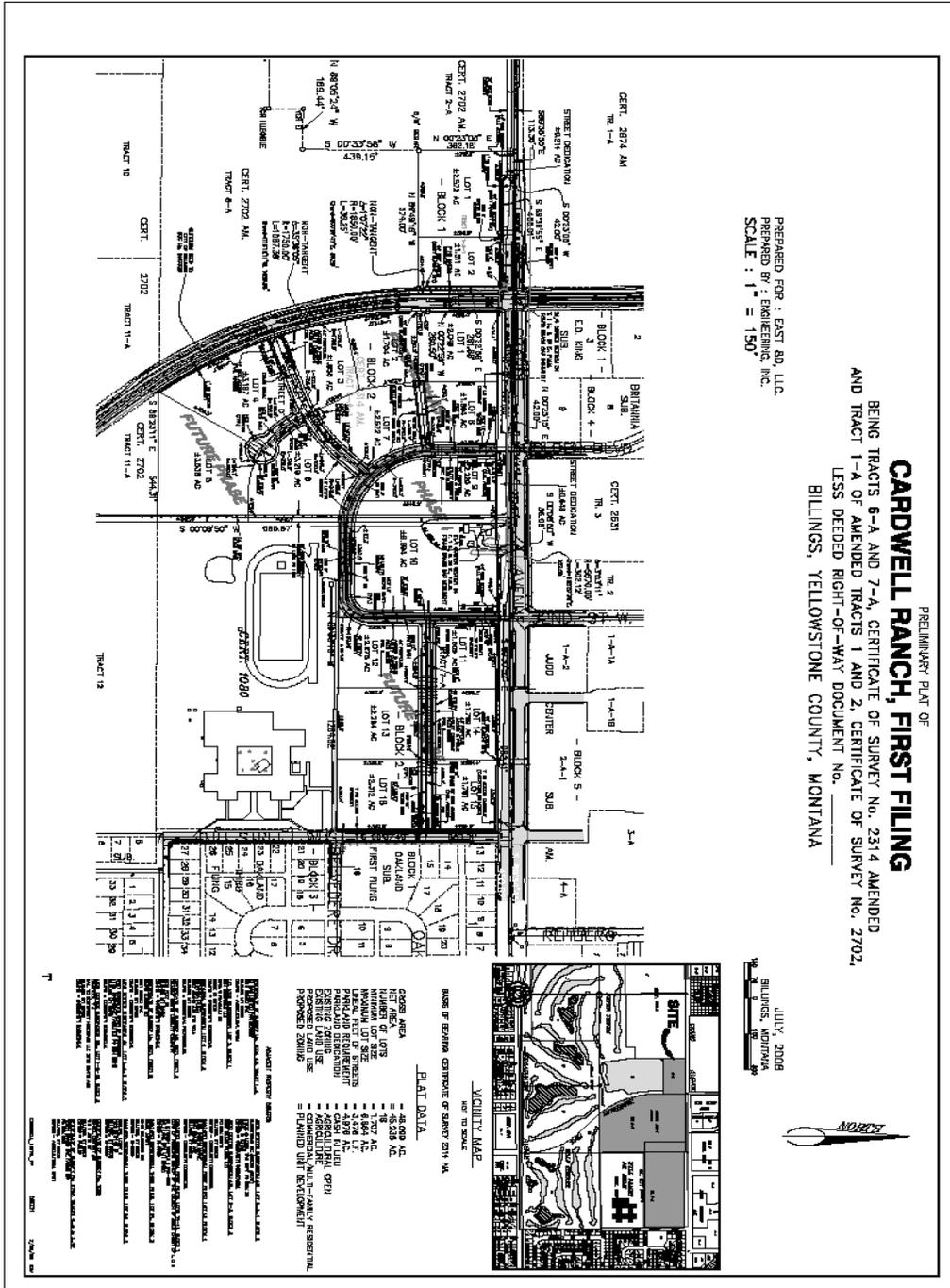
The Planning Board on an 8-0 vote recommends conditional approval of the preliminary plat of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

### **ATTACHMENTS**

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

# ATTACHMENT A

## Preliminary Plat of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing



**ATTACHMENT B**  
Site Photographs



**ATTACHMENT C**  
Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for the preliminary plat of Cardwell Ranch Subdivision, 1<sup>st</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 (23-303(H)(2), BMCC).

**A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-304 (c) (1)]**

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

The subject property is adjacent to the City limits on the north and east and has become an isolated parcel of agricultural land since the Peter Yegen Golf Course was created in the early 1990's. The 46-acre property is currently used as an irrigated cow pasture and given its size and location, development of the property should not have a negative effect on the agricultural industry.

As noted above, the property is currently irrigated, and a statement in the Subdivision Improvement Agreement (SIA) reserves the right to continue irrigation activity, and the easements necessary to convey or drain water into the future for the benefit of the property or any nearby property. By law, any easements providing irrigation water to downstream users must be maintained until those users have severed their rights.

**2. Effect on local services**

- a. **Utilities** – Water and sanitary sewer services can be provided by the City. Construction of all local utility lines will be the responsibility of the subdivider. The subdivision service lines can tie into the existing 12-inch water mains found on Grand Ave. and 30<sup>th</sup> St. West. There is also an existing 36-inch sanitary sewer main extending north-south through the property that the subdivision will tie into. Due to the phased nature of the development, improvements will be subject to the review and approval of the City at the time of construction. As proposed, the City of Billings Public Works Distribution and Collection Division finds the proposed water and sewer extensions to be acceptable. However, they are requesting some language in the SIA to be updated, due to the recent changes in fee assessments. These requested changes are recommended as a condition of approval (**See Condition #1**).

MDU will provide natural gas services and NorthWestern Energy will provide electric services to the subdivision. Easements acceptable to these utility providers are shown on the face of the plat.

- b. **Storm water** – Storm drain systems exist in Grand Avenue and 30<sup>th</sup> St. West. The subdivider will install a storm drain system including curb and gutter, inlets, and storm drain piping in the internal streets to connect with the existing system. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater*

*Management Manual* and will be subject to review and approval by the Engineering Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** – The proposed subdivision fronts Grand Ave., and Zimmerman Trail, which are principal arterial streets, and 30<sup>th</sup> St. West, which is a local access street. The subdivider will be responsible for dedicating any remaining required right-of-way for Grand Ave., and completing improvements to its south half, including curb and gutter, 5-foot wide boulevard sidewalks, pavement, raised medians, and street lighting. These improvements and any necessary traffic control measures will take place on a phased basis (**See Condition #5**). Zimmerman Trail and 30<sup>th</sup> St. West are currently up to City standards, and will not require additional improvement with this subdivision.

Internal streets are proposed to be private commercial local streets, 44 feet in width, with curb, gutter and boulevard sidewalks. The improvements to the local streets will also be done in phases as the property develops. The first phase includes a loop road (Street “A” on the preliminary plat) that would connect from Grand Ave. at 32<sup>nd</sup> St. West to Golden Boulevard. To provide proper separation between the arterials and any internal access points, Engineering staff recommends that a “1-foot no-access” strip be shown on the final plat along Street “A” and Street “C” a minimum of 150 feet back from Grand Ave. and Zimmerman Trail, or to the back of the projected vehicle queue, whichever is longer (**See Condition #7**).

In regard to access, there are five access points proposed to service the subdivision off of Grand Ave., one off of 30<sup>th</sup> St. W. and one off of Zimmerman Trail. A Traffic Accessibility Study (TAS) was completed to determine future traffic impacts expected from the development and to proposed appropriate mitigation measures. City traffic engineering staff reviewed the study and had several comments. The proposal to provide a full access with a westbound left turn bay at 32<sup>nd</sup> St. W. and Grand Ave. poses considerable concern for City Engineering staff due to its proximity to the full access into the Albertson’s/First Interstate Bank shopping center approximately 250 feet to the east. After the City’s first review, additional traffic warrant and turn-lane loading analyses were provided by the applicant’s engineer. Based on these additional data, engineering staff recommends as a condition of approval that a note be added to the SIA stating: “Street 'A' may be constructed as a "full service" access with the initial phase of the subdivision. Further development of Block 2 beyond Lots 9 and 10 shall not be allowed unless either the existing median opening located approximately 250 feet east of 32<sup>nd</sup> Street West is closed, or the Cardwell Ranch Subdivision access designated as "Street A" is restricted to right in-right out traffic” (**See Condition #2**).

The TAS also proposed signalization of Grand Ave. at 32<sup>nd</sup> St. W. when traffic counts warrant. City engineering staff is not convinced that signalization will ever be warranted, and acknowledge that funding for a signal at this location is not in the City’s Capital Improvements Plan (CIP). In order to clarify the uncertainty of timing and

funding for this signal, City Engineering recommends as a condition of approval that a note be added to the SIA stating: “A signal may be constructed at 32<sup>nd</sup> Street West and Grand Avenue in the future if the intersection is found to meet signal warrants and funding is available to construct a signal. Any warrant study justifying a signal must be approved by the City Engineer's Office before City funding can be made available. Signalization of 32<sup>nd</sup> St. W. and Grand Ave. must be accompanied by closure of the Judd Center median opening just east of 32<sup>nd</sup> St. W. The Cardwell Ranch contribution toward intersection improvements will be determined by the City Engineer's office at the time of future phases. If the subdividers wish to fund installation of a traffic signal prior to City funding being approved in the CIP, they may do so, but the City makes no guarantee, expressed or implied, that any reimbursement will be available to the subdivider for any of the costs incurred by the subdivider” (**See Condition #3**).

The TAS also recommends signalization of 30<sup>th</sup> and Grand. Engineering staff notes that this intersection is much too close to the existing signal at Rehberg Lane and Grand Ave. and recommends alternatives to signalization be explored. Staff recommends as a condition of approval that language be added to the SIA advising future lot owners in Cardwell Ranch that the intersection of 30<sup>th</sup>/Grand may not be signalized in the future and that median modifications to restrict some turning movements at 30<sup>th</sup> could be implemented (**See Condition #4**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire stations are Station #7 located at 54<sup>th</sup> St. W. and Grand Ave. and Station #3 at 17<sup>th</sup> St. W. and Parkhill Dr. Both stations are approximately 2.5 miles from the subject property. The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** –School District #2 serves elementary through high school students. The subject property is directly adjacent to Will James Middle School, and any students within the subdivision will have easy walking access to the school. Elementary students would attend Central Heights and high school students would attend Senior. Responses from these school principals were not received at the time this report was written, however, the subdivider met with SD #2 administration to discuss how best to facilitate pedestrian access to the middle school. It was determined that a opening in the school fence line along the common boundary of Lot 10 could provide this access and also provide parking opportunities for evening school events at the commercial parking lots likely to be located on Lot 10.
- g. **Parks and Recreation** – A parkland dedication of 0.74 acres is required for Lots 5 and 6, Block 2, as they are proposed for multi-family uses and zoning. No parkland is proposed within the subdivision, and cash in lieu of land dedication is proposed for the .74 acres.
- h. **Mail Delivery** - The United States Postal Service has requested centralized delivery boxes. The centralized mail box locations and specifications shall be arranged by the subdivider and/or developer prior to delivery service.

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

The subject property was part of the original Cardwell Ranch (Yegen Holdings). It has slowly become surrounded by urban land uses, and is now considered an in-fill development. With its proximity to the City, and the nearby preservation of open space in golf course use, development of this property should have a minimal effect on the natural environment, and may relieve some development pressure further to the west, in more rural areas.

A geotechnical evaluation was done for the subject area in April of 2008, which evaluated the suitability of the soils for development. Due to the unknown future lot uses, building types and building locations, the report recommends further analysis and direction from the Geotechnical Engineer be completed prior to building permit approval. A note to this effect should be added to the SIA in the “Conditions that Run with the Land” and in Section VIII. **(See Condition #8).**

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

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

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

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

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

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

## **C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 200 Transportation Plan Update and the Heritage Trail Plan? [BMCC 23-304 (c) (3)]**

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

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

- b. **Goal: More housing and business choices within each neighborhood (p. 6).**  
*The proposed subdivision would provide for more commercial and residential development choices within this portion of the city.*
  
- e. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).**

*The proposed subdivision would facilitate the development of the property as a Planned Development with mixed land use and site design controls, making it compatible to the mixed uses in the area.*

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

*The subject property is an infill development within the City and it meshes well with the existing commercial and residential uses in the area, as well as the open space from the golf course and the middle school.*

- g. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (p. 10).**

*The proposed subdivision will help complete improvements to the south side of Grand Avenue at this location. Traffic mitigation measures identified in the TAS should create more efficient transportation connections and ease of traffic flow.*

## **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 hierarchy specified within the plan.

## **3. Heritage Trail Plan**

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

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

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

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

The subdivision will utilize the City's 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? [BMCC 23-304 (c) (6)]**

The subject property is undergoing a concurrent zone change to 'Planned Development' zoning and, if approved, it shall comply with the standards set forth in the final Planned Development Agreement.

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

The subdivider has provided utility easements as requested by MDU and NorthWestern Energy on the face of 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? [MCA 76-3-608 (3) (d) and BMCC 23-304 9 (c) (8)]**

Legal and physical access is provided to all of the proposed lots from Grand Avenue, Zimmerman Trail, 30<sup>th</sup> Street West, and internal streets 'A', 'B', 'C', and 'D'. These internal streets will be named and approved by County GIS and the City Fire Department prior to final plat approval.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Cardwell Ranch, 1<sup>st</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 22, 2008.

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Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

September 23, 2008

Yegen Grand Avenue Farm, Inc.  
P.O. Box 959  
Billings, MT 59103

Dear Applicant:

On September 22, 2008, the Billings City Council conditionally approved the preliminary plat of Cardwell Ranch Subdivision, 1<sup>st</sup> Filing. The conditions of approval are as follows:

1. Section VI. of the Subdivision Improvements Agreement (SIA) shall be updated to delete references to construction fees for water and wastewater connections as recommended by Public Works—Distribution and Collection Division.
2. A note shall be added to Section III.E. of the SIA stating: Street 'A' may be constructed as a "full service" access with the initial phase of the subdivision. Further development of Block 2 beyond Lots 9 and 10 shall not be allowed unless either the existing median opening located approximately 250 feet east of 32<sup>nd</sup> Street West is closed, or the Cardwell Ranch Subdivision access designated as "Street A" is restricted to right in-right out traffic.
3. A note shall be added to Section III.D. of the SIA stating: A signal may be constructed at 32<sup>nd</sup> Street West and Grand Avenue in the future if the intersection is found to meet signal warrants and funding is available to construct a signal. Any warrant study justifying a signal must be approved by the City Engineer's Office before City funding can be made available. Signalization of 32<sup>nd</sup> St. W. and Grand Ave. must be accompanied by closure of the Judd Center median opening just east of 32<sup>nd</sup> St. W. The Cardwell Ranch contribution toward intersection improvements will be determined by the City Engineer's office at the time of future phases. If the subdividers wish to fund installation of a traffic signal prior to City funding being approved in the CIP, they may do so, but the City makes no guarantee, expressed or implied, that any reimbursement will be available to the subdivider for any of the costs incurred by the subdivider.
4. A note shall be added to the SIA advising future lot owners that the intersection of 30<sup>th</sup> St. W. and Grand Ave. may not be signalized in the future, and that median modifications to restrict some turning movements at 30<sup>th</sup> St. W. could be implemented.
5. Section III.A.2 of the SIA shall be amended to include construction of raised median and installation of street lighting along Grand Ave. Also item XI. Shall note that improvements to Grand Ave. shall be completed in both Phase I and Future Phases.

6. Section III.E. of the SIA shall be amended to read “The design of these accesses shall be subject to review and approval by the City Engineering office.”
7. A one-foot no-access strip shall be shown on the final plat along Street ‘A’ and Street ‘C’ a minimum of 150 feet back from Grand Ave. and Zimmerman Tr., or to the back of the projected vehicle queue, whichever is longer.
8. A note shall be added to Sections II. and VIII. of the SIA stating that additional site specific direction from the Geotechnical Engineer who completed the 4/7/08 Preliminary Geotechnical Report, or a separate geotechnical report for each lot will be required as part of the building permit submittal process.
9. 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.
10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

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Ron Tussing, Mayor

Pc: Will Ralph, PE, Engineering, Inc.  
Rick Leuthold, PE, Engineering, Inc.  
East 80, LLC

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**TITLE:** Zone Change #847 Public Hearing and 1<sup>st</sup> Reading of Ordinance, 5816 Grand Avenue

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** This is a zone change request from Residential 9,600 (R-96) to Residential 6,000-Restricted (R-60R) on Tracts 1 & 2 of C/S 3139, Tract 1-B of C/S 2379 and an unplatted parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East located south of Grand Avenue and west of 56<sup>th</sup> Street West. The property is owned by Dorn-Wilson Development, Douglas & Deborah Frank, and Ronald Frank, and Engineering, Inc. is the agent. The owners and agent conducted a pre-application neighborhood meeting on June 24, 2008. The Zoning Commission conducted a public hearing on August 5, 2008, and granted a 30-day delay as requested by the applicant. On August 1, 2008, the Planning Division received a valid protest from the surrounding property owners. No one has requested to remove their signature from the valid protest petition. The applicant has modified the zone change request to exclude the eastern 150 feet of the parcel adjoining 56<sup>th</sup> Street West and the southern 105 feet adjoining Broadwater Avenue and C/S 3146 Tracts 1 & 3. The applicants conducted a neighborhood meeting on Tuesday, August 19, 2008, on the revised zone change request. The Zoning Commission conducted a 2<sup>nd</sup> public hearing on September 2, 2008, and is forwarding a recommendation of approval on a 4-0 vote.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change, if approved, could increase the City's tax base if the property is developed. Denial of the proposed zone change should have no effect on the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #847 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

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

**ATTACHMENTS:**

- A:    Surrounding Zoning
- B:    Valid Protest Petition
- C:    Photographs of Subject Property
- D:    Pre-application Meeting Summary and Concept Site Plans
- E:    Ordinance

## **INTRODUCTION**

The applicant is requesting to rezone a portion of 75.75 acres of land south of Grand Avenue and west of 56<sup>th</sup> Street West from R-96 to R-60R in order to construct a single family residential subdivision. The applicant has modified the original zone change request to exclude the eastern 150 feet of the parcel adjoining 56<sup>th</sup> Street West and the southern 105 feet adjoining Broadwater Avenue and C/S 3146 Tracts 1 & 3. This will require lots of at least 9,600 square feet on land adjoining the existing large-lot residential development south of Broadwater and east of 56<sup>th</sup> Street West.

## **PROCEDURAL HISTORY**

- On June 24, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at the home of Doug Frank at 708 56<sup>th</sup> Street West.
- On July 7, 2008, a zone change application was submitted to the Planning Division.
- On August 1, 2008, the Planning Division received a valid protest against the zone change.
- On August 5, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and granted the applicant a 30-day delay to review the valid protest and submit a revised zone change plan.
- On August 13, 2008, the revised zoning plan was submitted to the Planning Division that excludes the eastern 150 feet of the parcel adjoining 56<sup>th</sup> Street West and the southern 105 feet adjoining Broadwater Avenue and C/S 3146 Tracts 1 & 3.
- On August 19, 2008, the applicant conducted a 2<sup>nd</sup> neighborhood meeting at the Hope Evangelical Church at 5554 Grand Avenue.
- On September 2, 2008, the Zoning Commission conducted a 2<sup>nd</sup> public hearing and voted 4-0 to forward a recommendation of approval and adoption of the 12 Zoning Commission Determinations.
- On September 22, 2008, the City Council will conduct a public hearing and first reading of the zone change. A valid protest has been filed and a 2/3 majority vote will be required to approve the proposed zone change.
- On October 14, 2008, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

## **BACKGROUND**

The proposed R-60R zoning district is intended to primarily provide a single family residential environment on smaller lots at a medium density that are served by a public water and sewer service. The R-60R zoning district only allows single family dwellings on lots of 6,000 square feet or greater. The property was annexed in 2006 and placed in the R-96 zoning district. In 2005, the City Council rejected an earlier request to expand the Urban Planning Area to include this property. A subsequent amendment to the Limits of Annexation and acceptance of an updated Urban Planning Study for this property resulted in the 2006 annexation and R-96 zoning. The Urban Planning Study based its findings on a total development of 260 dwelling units. The applicants have submitted a concurrent major subdivision application. That subdivision application indicates 293 to 308 building lots. The applicant has delayed the finalization and processing of the subdivision until the zone change request has been resolved.

The property is surrounded on the east, south and west by county land that is zoned A-1 or A-S, two agricultural zoning districts that allow single family dwellings on lots from 1 acre to 10 acres. To the north across Grand Avenue is the Foxtail Subdivision that was annexed in 2004 and zoned for single family and two family dwellings. In addition, at the intersection of Grand Avenue and 54<sup>th</sup> Street West are several new city subdivisions that include commercial zoning at the intersection and R-70, RMF-R and R-50 zoning for higher density residential uses.

Grand Avenue and 56<sup>th</sup> Street West are both designated principal arterial streets. Grand Avenue current handles approximately 3,000 vehicle trips per day and 56<sup>th</sup> Street West south of Grand Avenue handles approximately 1,000 vehicle trips per day. Both of these principal arterial streets are part of the County road system with the exception of the right-of-ways adjacent to property within the city limits. Two-lane principal arterial streets are intended to carry up to 32,000 vehicle trips per day, depending on construction and maintenance of the roadways. Grand Avenue and 56<sup>th</sup> Street West could potentially handle all of the traffic from this proposed development. A Traffic Accessibility Study has been prepared as part of the subdivision application and is based on the proposed R-60R zoning.

The West Billings Neighborhood Plan, the 2003 Growth Policy and the Northwest Shiloh Area Plan have all considered the potential growth of this area of West Billings. The West Billings Neighborhood Plan, adopted in 2001, designated this area south of Grand Avenue and west of 52<sup>nd</sup> Street West as a “Rural Transition Area”. This is an area where residential development will likely happen both within the city limits and in the county. Where these two development densities meet, the zoning and subdivision process must provide for an efficient and orderly transition from rural to urban density. In the case of Foxtail Subdivision, north of the subject property, the City Council required the developer to retain the R-96 zoning on the north and west sides of the development to provide this transition from rural density to urban density. The West Billings Plan also adopted a policy to minimize leapfrog and indiscriminate development.

Planning staff forwarded a recommendation of denial to the Zoning Commission for this application. The Planning staff believes this zone change is not compatible with the surrounding zoning or neighborhood character. The adopted planning policies and approved studies for the annexation of this property did not anticipate or plan for this proposed development density. The Planning staff believes the proposed zone change does not fulfill the policy adopted in the West Billings Plan to minimize leapfrog development or provide for the efficient and orderly transition from rural to urban density. The Zoning Commission disagreed with the Planning staff recommendation based on the applicant’s revision of the zone change plan to retain the R-96 zoning on the south and east boundaries, the need to provide additional affordable housing within the city limits, the benefit of efficient use of existing city utility services and the similarity to existing city subdivisions, zoning and development densities in the immediate area.

The Zoning Commission conducted a public hearing on September 2, 2008 and is forwarding a recommendation of approval to the City Council on a 4-0 vote. The Zoning Commission’s recommendations are made and discussed in the 12 criteria for zone changes below.

## ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

### 1. *Is the new zoning designed in accordance with the Growth Policy?*

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

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

The proposed zoning is consistent and of a similar density to nearby city subdivisions including Foxtail Village (4.4 dwellings units/acre), Grand Peaks Subdivision (6 dwelling units/acre) and Cottonwood Grove Subdivision (4.4 dwelling units/acre). The proposed dwelling unit density for the subject property is 3.4 to 4 dwelling units/acre.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning is consistent with the surrounding character of the neighborhood. The R-96 zoning will be retained on the south and east boundaries of the property to provide a transition from the lower density rural dwellings to the proposed density on the subject property.

- *Land use within the Rural Transition Area should provide an efficient and orderly transition from agricultural to urban land use. (West Billings Neighborhood Plan, page 32)* The proposed zoning does provide an efficient and orderly transition from the agricultural uses to residential uses. Foxtail Subdivision to the north included a "buffer" area of R-96 zoning along the north and west property lines to transition from agricultural uses to residential uses. The subject property is also proposing a similar buffer area on the south and east boundary lines.

- *Affordable housing for all income levels dispersed throughout the City and County. (Land Use Element Goal, page 6)* The proposed zoning will allow the development of more affordable housing than could otherwise be development on larger lots in the R-96 zoning. The applicant states the homes will range from \$180,000 to \$210,000, depending on the infrastructure construction costs. Homes developed under the current zoning would likely cost \$320,000.

- *A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness. (Open Space and Recreation Element, page 9)* The applicant is proposing a multi-use trail along the existing Bierly Drain that borders the west property line. In addition, two or more pedestrian access points are proposed to the School District property to the northeast. The School District property may be developed in the future for a new middle school.

The proposed zone change is not consistent with the following goals of the Growth Policy:

- *Medium and high-density residential development should be located and within walking distance to commercial centers, parks and recreational amenities. (West Billings Neighborhood Plan, page 23)* The proposed medium density development is not within walking distance to any of these facilities and is not proposing a neighborhood park of at

least 5 acres as preferred by the Parks, Recreation and Public Lands Department. The closest existing commercial center is 2.25 miles east at Shiloh Road and Grand Avenue. The closest existing park or recreational area is Phipps Park 2.5 miles to the northwest off Molt Road or 2.5 miles to the northeast at Poly Vista Park off Shiloh Road. Cottonwood Park is an undeveloped regional city park approximately 1 mile north on the west side of 54<sup>th</sup> Street West. The commercial center at 54<sup>th</sup> Street West and Grand Avenue has not been developed.

2. *Is the new zoning designed to lessen congestion in the streets?*  
A single family dwelling generates approximately 10 vehicle trips per day including all traffic (deliveries, resident trips etc.) The current zoning could allow up to 260 dwelling units and generate up to 2,600 vehicle trips per day at full build out. This would increase traffic on both adjacent arterial streets and may pose conflicts particularly when traffic exits from the subdivision on to Grand Avenue or 56<sup>th</sup> Street West with higher posted speed limits. The proposed R-60R zoning will increase traffic as does the existing R-96 zoning. The Traffic Accessibility Study prepared for the subdivision will require mitigation of any traffic impacts from the proposed development.
3. *Will the new zoning secure safety from fire, panic and other dangers?*  
The subject property is currently serviced by City Fire and Police but is only developed with two single family homes. Any development will require a minimum width for access roads and provision of water for fire protection. A new city Fire Station has been constructed ¾ of a mile to the east of the property. Response times for fire protection will be acceptable. Police response times will depend on patrol unit proximity to the property at the time of the call and if the Police Department's Satellite Office in the new fire station is regularly staffed.
4. *Will the new zoning promote health and general welfare?*  
The proposed zoning would permit a minor density increase from the current R-96 zoning, allowing the platting of an additional 33 to 48 lots. The Unified Zoning Regulations do specify minimum setbacks and lot coverage requirements for the proposed zoning district in order to promote health and safety.
5. *Will the new zoning provide adequate light and air?*  
The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*  
The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-96 zone allows 30% lot coverage and the R-60R zone allows 40% lot coverage. The lot coverage should limit overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*  
The new zoning does avoid undue concentration of population. The R-96 zoning only allows single family homes on a minimum lot size of 9,600 square feet. The proposed

zoning also only allows single family homes on a minimum lot size of 6,000 square feet. The increase in dwelling density is minor over what is currently allowed in the R-96 zoning district.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The proposed zoning may impact the surrounding streets. Grand Avenue and 56<sup>th</sup> Street West, both County arterial streets, have much higher speed limits and traffic entering and exiting the subdivision will have to be well controlled.

Water and Sewer: The City will provide water and sewer to the property through existing lines on Grand Avenue. A low pressure sewer system will be required to service this development.

Schools and Parks: School District #2 will provide education to students within the development. There are no School District #2 facilities west of Shiloh Road. An adjacent 40 acre parcel to the east is owned by SD #2 but there are no plans or funding for development of a new school at this time. Students will attend Central Heights Elementary, Will James Middle School and West High School. All of these schools are beyond enrollment capacity.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. A new fire station has been completed approximately ¾ mile east. Police services will depend on patrol unit location at the time of the call and if the Police Department's Satellite Office in the new fire station is regularly staffed.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning is buffered by retention of the existing R-96 zoning along the south and east boundary lines. The adjacent low density rural development has been given reasonable consideration in the proposed zoning.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. The property has frontage along two arterial streets and is suitable for this type of zoning.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

There are two single family structures on the entire property and should not be affected by the new zoning. Low density single family homes on the east side of 56<sup>th</sup> Street West and along Broadwater Avenue to the south may be affected by the difference in housing density in the proposed development.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning is the most appropriate zoning for this location.

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

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

## **STAKEHOLDERS**

Planning Division staff received several phone calls regarding the proposed zone change application and a valid protest was received on August 1, 2008. The Zoning Commission conducted a public hearing on September 2, 2008, and is forwarding a recommendation of approval to the City Council on a 4-0 vote.

Rick Leuthold, P.E. of Engineering, Inc. testified as the agent for the applicant. Mr. Leuthold stated the applicant had met with the adjoining property owners and agreed to modify the zone change to exclude property adjacent to the south and east property boundaries. This would require all those lots to be at least 9,600 square feet and reduced the proposed plat from 308 lots to about 293 lots. The applicant is proposing a 15 foot landscaped buffer along the south property line to provide more screening for those county residents south of Broadwater on Heron Glenn Lane. Mr. Leuthold testified the applicant has addressed a number of concerns from the surrounding property owners and intends to dedicate over 5 acres for trails and private linear parks in the proposed subdivision. Mr. Leuthold stated there are agricultural uses in the area but this area had been annexed by the city and should develop at urban densities. He stated there is a commercial node at 54<sup>th</sup> Street West and Grand Avenue as well as urban density subdivisions to the north and east of the subject property. He stated the new fire station and police substation on 54<sup>th</sup> Street West, the school district land at 56<sup>th</sup> Street West and Grand as well as the proposed Cottonwood regional park all create the need for additional urban densities at this location. Mr. Leuthold stated he believed the mixture of the R-96, the R-60R and the dedicated trails and trail connections is compatible with surrounding area. He stated the applicants are continuing to work with the surrounding property owners to refine the subdivision application. Commission member Ed Workman asked Mr. Leuthold how many lots could be developed under the existing zoning of R-96. Mr. Leuthold stated that perhaps 260 lots could be platted. He stated the proposed plat will have 293 lots with the proposed R-60R zoning. Commission Chairman Leonard Dailey asked Mr. Leuthold to elaborate on the tenor of the August 19, 2008, neighborhood meeting. Mr. Leuthold stated the neighbors were concerned with the large number of lots and with proposed access roads on to Broadwater Avenue. Mr. Leuthold stated that some residents were satisfied with change to the zoning application and some were not.

Mr. Rod Wilson, a co-owner of the subject property, testified in favor of the application. He stated the owners continue to talk with the owners on Broadwater Avenue. Mr. Wilson stated that every lot in the proposed subdivision will be able to accommodate a 50 foot by 50 foot building envelope. He stated every home will have 1,300 to 1,500 square feet of living space with a 2-car garage. He stated that every lot will have adequate setbacks in the front and sides so it will not be crowded. Mr. Wilson stated the owners will take advantage of the Bierly Drain as an amenity for the subdivision and will develop a trail along the drain from Grand Avenue down to Broadwater Avenue. Mr. Wilson stated that the housing market is demanding smaller homes on smaller lots and the owner will need to build the same amount of infrastructure

regardless of the number of lots. He stated lots of 9,600 square feet or more are not in demand in this market. He stated the owners will work to preserve the view shed of the rims.

Fred Rogers, member of the Yellowstone County Board of Planning, testified in favor of the proposed zone change. Mr. Rogers stated he was in support because it makes sense for the area, the West Billings Plan and Growth Policy support greater density and the developers have accommodated the surrounding property owners.

Greg Smith of 909 56<sup>th</sup> Street West testified in opposition to the application. Mr. Smith stated that the proposed zoning is not supported by even one of the 12 criteria for zone changes. He stated the West Billings Plan showed this as a Rural Transition Area and the applicants have not provided any transition from urban to rural. Mr. Smith stated the applicants have said the agricultural land owner to the west is in favor of the zone change. Mr. Smith stated he believes that owner is in favor because he wants to develop his property too. Mr. Smith stated the zoning does not fit with the existing homes on 56<sup>th</sup> Street West or along Broadwater. Mr. Smith agreed that increased density is efficient and good but only to a certain point. Mr. Smith stated the proposed zoning would add at least 600 cars per day to 56<sup>th</sup> St West and Grand Avenue. Mr. Smith stated he was troubled by the presentation at the August 19<sup>th</sup> meeting that showed 5 streets accessing Broadwater Avenue. Mr. Smith stated the developers stated this would happen unless the neighbors on Broadwater agreed to privatize the street.

Barbara Woolsey of 723 56<sup>th</sup> Street West testified against the application. Mrs. Woolsey stated she did not believe the applicant's statement about providing affordable housing. She stated these homes are not in a good location for affordable housing in any case. She stated the subdivision is too far from existing services such as grocery shopping, schools, jobs and there is no public transportation available. Mrs. Woolsey stated the existing subdivisions surrounding this area have negatively affected their irrigation water and ground water supply. Mrs. Woolsey stated that farming will continue in this area of the county and the proposed subdivision will conflict with this farming activity. Mrs. Woolsey stated that saving the farm land in West Billings is important and should be a priority.

Ms. Bonnie Bickler of 839 56<sup>th</sup> Street West testified against the proposed zone change. Ms. Bickler stated she was involved with the West Billings Plan and supported it when it was adopted by the city and the county. She testified this proposal did not meet the goals and policies of the West Billings Plan. Ms. Bickler stated the main entrance and exit road from the proposed subdivision will be directly across from her house. She stated she is now in the position of mitigating this impact to her property. She stated this will devalue her property and it was like someone came in and took over her investment account.

Mr. Rick Leuthold provided rebuttal testimony to the Zoning Commission. Mr. Leuthold stated the proposed zoning is a good transition from agricultural and low density housing to R-96 to R-60R. The proposed density of 3.4 dwelling units/acre is not too great a density for this area of city. Mr. Leuthold stated that Josephine Crossing and Twin Oaks have both offered much greater density than proposed in this subdivision. Mr. Leuthold stated that off-site mitigation will be required for any traffic impacts from the subdivision including contributions for future traffic signals. Mr. Leuthold stated the applicant did not intend to concern the neighbors at the

August 19<sup>th</sup> meeting by presenting the road access alternative on to Broadwater Avenue. The concept drawing was to demonstrate what might be necessary if the city required Broadwater to be constructed instead of vacated and used for shared access by existing owners. Mr. Leuthold stated that affordable housing is not necessarily subsidized housing. He stated the homes will sell in the \$200,000 range and this price range is what the market is demanding. Mr. Leuthold stated the city only allows one access on principal arterial streets and the applicant has worked to locate these accesses in accordance with that policy. Mr. Leuthold stated the development was only 16 blocks from Grand Avenue and Shiloh Road, a major commercial area.

Mr. Rod Wilson also provided rebuttal testimony to the Zoning Commission. Mr. Wilson stated that 24<sup>th</sup> Street West used to be the center of commercial activity in West Billings. He stated that Shiloh Road, 16 blocks west of 24<sup>th</sup> Street West, is now the center of commercial activity. The proposed development is just 16 blocks west of Shiloh Road. Mr. Wilson stated the proposed zoning only allows a density of 3.9 dwelling units/acre. Mr. Wilson stated Foxtail Village across Grand Avenue is 4.4 dwelling units per acre and Grand Peaks at 52<sup>nd</sup> Street West and Grand Avenue has a density of 6 dwelling units/acre. Commission member Barbara Hawkins asked Mr. Wilson whether the school district property will have access to the arterial streets. Mr. Wilson stated that the school property will have access on both 56<sup>th</sup> Street West and Grand Avenue.

Chairman Leonard Dailey Jr., closed the public hearing. Commission member Ed Workman made a motion to recommend approval of the zone change, and this motion was seconded by member Barbara Hawkins. Mr. Workman stated that using simple “garage logic” demonstrates the facilities are in place or will be in place to support this development density. Those facilities include a new school, a new fire station, a new police substation, and commercial zoning within 2 blocks. Mr. Workman stated the proposed zone change will only result in an additional 33 lots and will spread the cost of development for the future home owners.

Commission member Hawkins stated that traffic from this subdivision should not be a concern. She stated that surrounding zoning within the city is denser than R-96 in this area. Commission member Hawkins stated that increasing affordable housing is an important goal even if the housing is not subsidized.

Commission member Michael Larson stated that he would vote in favor of the zone change. He stated that he appreciated the effort by the developer to work with the surrounding owners although it may not be enough to overcome all of their concerns. He stated it would be the burden of the developer to continue to work with those owners.

Commission Chairman Leonard Dailey stated he thought it was very helpful to have two public hearings on the project. Mr. Dailey stated the driving factor in this proposal was the School District’s decision to buy the land at 56<sup>th</sup> Street West and Grand Avenue. This location adjacent to a future school site made it an obvious location for a new subdivision.

The commission voted 4-0 on the motion to recommend approval of the zone change.

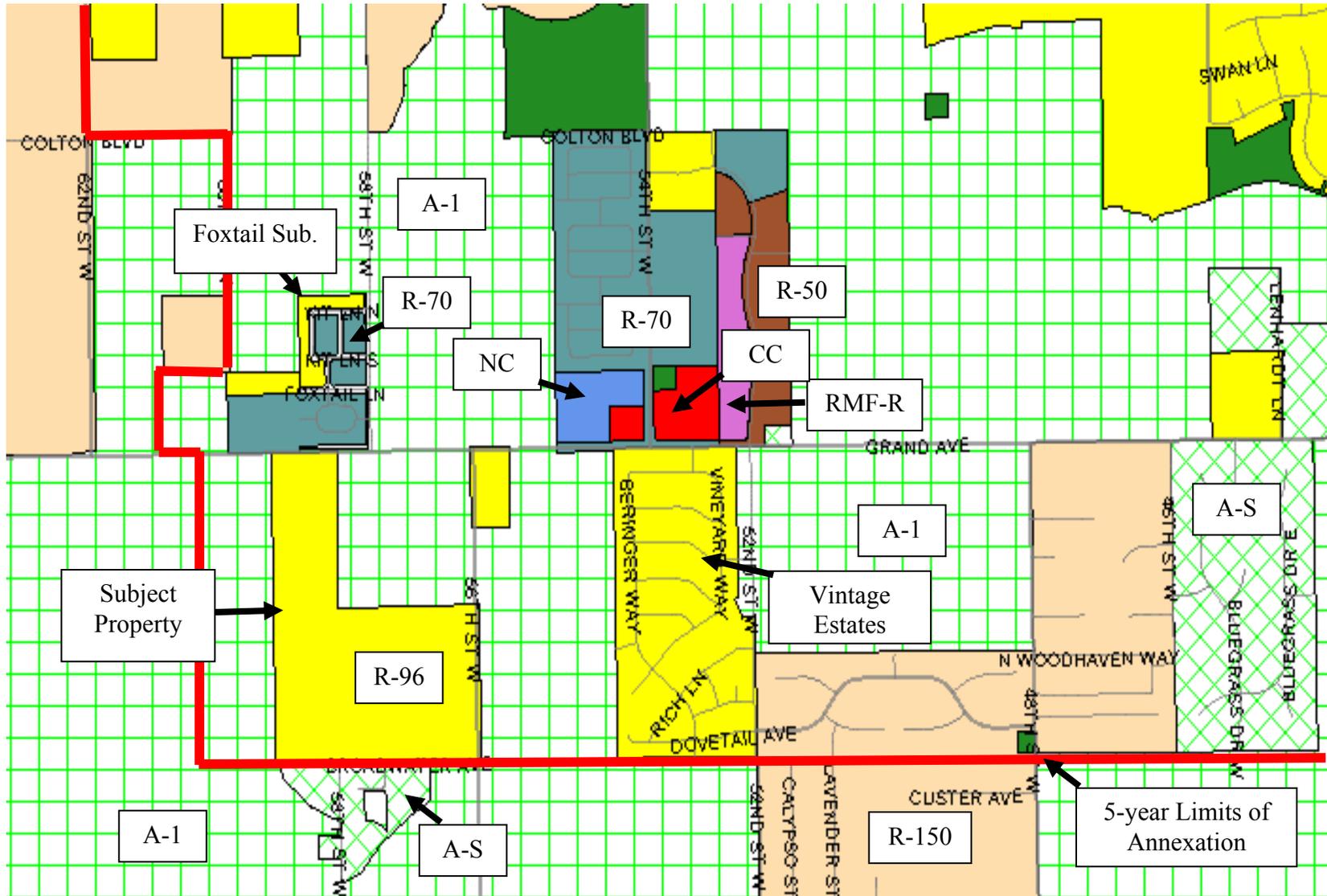
## **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #847 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

**ATTACHMENTS:**

- A: Surrounding Zoning
- B: Valid Protest Petition
- C: Photographs of Subject Property
- D: Pre-application Meeting Summary and Concept Site Plans
- E: Ordinance

**Attachment A**  
Zone Change #847 – 5816 Grand Avenue



**Attachment B**  
**Zone Change #847 – Valid Protest Petition**



The residents of 56<sup>th</sup> Street West and Broadwater Avenue formally protest ~~via petition~~ against the proposed city zoning change number 847 for project number 08-550. The undersigned persons object to a change from R9600 to R6000 with in 150 feet from the boundaries of our properties. We understand that development of West Billings is inevitable and in the interest of the city's greater good. However, our enduring concern, despite the assurances from Dorn Wilson Development et al., is that the land be developed in a tasteful and uncongested manner that does not adversely affect the property value and quality of living space in our area.

Received @ 12:07  
 by [Signature]

Janice E. Olson  
 715 56<sup>th</sup> Street

Alan R. Goodwin  
 1027 56<sup>th</sup> St W

Greg Saff	909 56 <sup>th</sup> St. W.
Jain Smeck	909 56 St. Kl.
Bonnie Bickler	839 56 <sup>th</sup> St. W
Chris [Signature]	644 56 <sup>th</sup> St. W.
Hilde Hoerns	644 56 <sup>th</sup> St W
Timothy G. Zent	675 Heron Glenn Rd.
Rebecca L Zent	675 Heron Glenn Rd
[Signature]	5745 HERON GLENN LN
Wendy Baker	5745 Heron Glenn Ln.
[Signature]	580 58 <sup>th</sup> St. W
Cheryll Amer	580 58 <sup>th</sup> St. W.
Pat Munnings	1011 56 <sup>th</sup> St. West
Barbara B. Hoalkey	723-56 <sup>th</sup> St. W.
Bill Woobey	723 56 <sup>th</sup> St W.
Jim Duggan	1165 56 <sup>th</sup> W.
Anna Sullivan	1165 56 <sup>th</sup> St. W.
Pat Murray	1011 56 <sup>th</sup> St West



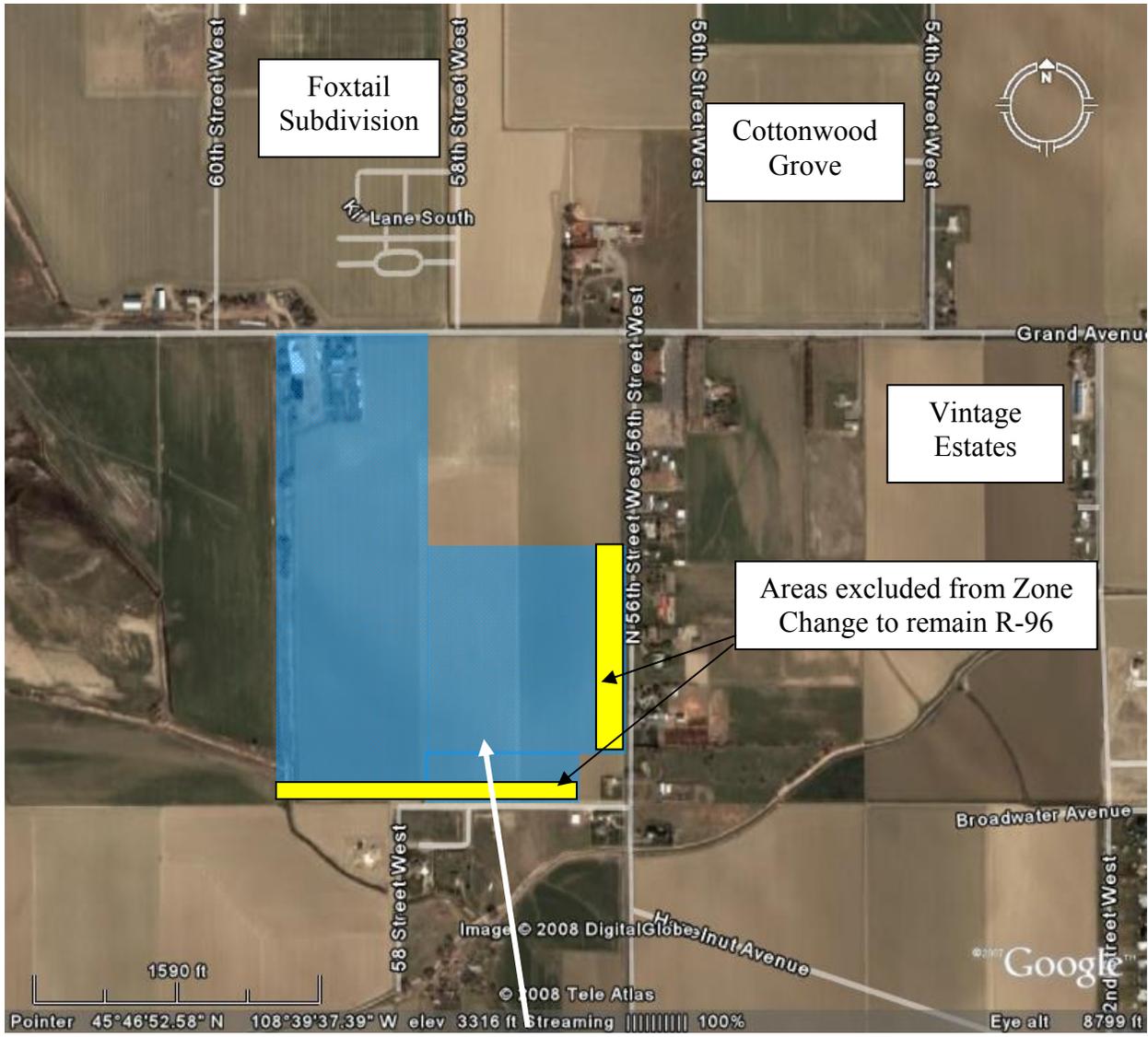
**Attachment C**  
Zone Change #847 Site Photographs



Subject Property view south from Grand Avenue



View southwest along Grand Avenue



Subject Parcel

**Attachment E**  
Zone Change #847 Pre-application Meeting Summary & Site Plans

**TRAILS WEST SUBDIVISION MEETING MINUTES**

DATE: June 24, 2008

TIME: 7:00 PM

LOCATION: 708 56<sup>th</sup> Street West; Home of Doug and Deborah Frank

-At approximately 7:00 PM, Rick Leuthold called the meeting to order. Rick gave a brief overview of the project, including project location, the potential zone change, density, and project owners.

-Rick introduced Rod Wilson, project developer, and Rod introduced himself and Rick Dorn, his partner on the project. Rod gave a brief overview of the history on the project, including the history of the ownership of the land, which was owned by several generations of the Frank's before Doug and Ronald bought the land.

-After Rod was finished, Rick continued with his presentation on the project. He discussed items such as water service, sanitary sewer service, storm drain service, street widths, access, and traffic.

-In his discussions about the technical aspects of the project, Rick discussed the Broadwater Avenue alignment. Rick stated that the developers were proposing to leave Broadwater Avenue alone and that they had proposed to move the collector north through the subdivision. He also said he had spoken with Mike Black earlier in the day and that Mike said there may be some way to privatize the lane.

Rick asked Will Ralph, Engineering Inc., to give a presentation on the schedule of the project. Will discussed the preliminary platting, annexation, and zone change schedules for the project. He also stated that utility and street construction would likely begin next spring.

-Rick opened the floor for questions and a gentleman in the middle asked about the width between the back fences along Broadwater Avenue. Rick stated that there would be a ten-foot park strip along Broadwater before the fences. The man said he was not happy about that situation and didn't want to look out at people's fences. He also stated he did not want to look at a development that was similar to Cottonwood.

-A woman in the front asked about the accesses on 56<sup>th</sup> Street Street West. She was concerned that the access would be directly across from her house.

-A women in the front asked if there was going to be any architectural regulations for the subdivision, because she thought was the most important thing to determining if the subdivision would be nice. Rod Wilson replied that CCR's would be in place to control the exterior of the buildings.

-A man asked about what would be done with the Birely Drain and if it would be placed in pipe. Rick replied that the Birely Drain would be left open and would not be altered.

-A gentlemen near the back said he thought there would be groundwater issues for the subdivision similar to Cottonwood. Rick Leuthold and Will Ralph stated that they were aware of the groundwater situation and discussed it extensively regarding this and other projects on the west end of Billings.

-A lady in the middle asked if would be possible to eliminate an access on 56<sup>th</sup> Street West for safety reasons. Rick Leuthold said we would take that under consideration.

-A lady in the middle stated she liked the small lots and that she worked in the industry and that trends were headed towards smaller lots. Rod Wilson also stated that the smaller lots provide less maintenance.

-A lady in the back asked if it would be possible to reduce the speed limit on 56<sup>th</sup> Street West. Another gentlemen in the back said he contacted Jim Reno and that he said there wasn't much he could do about the right now.

-A gentlemen in the back asked Rick if he thought the project would not negatively affect property values. Rick and George Jurovich both stated they thought it would not negatively effect property values.

-At approximately 8:25 the meeting was adjourned.

-Many of the attendees stuck around afterwards for a little bit to look at the exhibits and ask individual questions to Rick Leuthold, Will Ralph, and the owners.

Attachment E

**ORDINANCE NO. 08-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tracts 1 & 2 of C/S 3139, Tract 1-B of C/S 2379 and an unplatted parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East an approximately 75.75 acre parcel of land and excluding the eastern 150 feet of these parcels that adjoin 56<sup>th</sup> Street West and the southern 105 feet of these parcels that adjoin Broadwater Avenue and C/S 3146 Tracts 1 & 3

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

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

2. DESCRIPTION. A tract of land known as Tracts 1 & 2 of C/S 3139, Tract 1-B of C/S 2379 and an unplatted parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East but excluding the eastern 150 feet of these parcels that adjoin 56<sup>th</sup> Street West and the southern 105 feet of these parcels that adjoin Broadwater Avenue and C/S 3146 Tracts 1 & 3, containing approximately 75.75 acres of land and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9,600** to **Residential 6,000-Restricted and Residential 9,600** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6,000-Restricted and Residential 9,600** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading September 22, 2008.

PASSED, ADOPTED AND APPROVED on second reading October 14, 2008.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

BY:  
Cari Martin, City Clerk  
ZC #847 – 5816 Grand Avenue

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Public Hearing for Special Review #865 – 2323 Azalea Lane  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a special review request to allow Commercial Recreation for the rental of the existing grounds and building for special events on a 20,620 square foot parcel of land in a Residential 9,600 (R-96) zone, on Lots 7 & 8, Block 2 of Graham Subdivision. Jim and Debbie Eliason are the owners, and Daniel Horman, Don Lohrenz, Nicholas and Mary Okon are the agents. The property is addressed as 2323 Azalea Lane and is also known as the Fortin Mansion. The Zoning Commission held a public hearing on this request on September 2, 2008, and is forwarding a recommendation of denial to the City Council on a 4-0 vote.

On September 3, 2008, the applicant requested the City Council grant withdrawal of the application. The City Council public hearing was advertised prior to the submittal of the request for withdrawal and therefore the public hearing must be held.

**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, would not affect the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of denial of Special Review #865 on a 4-0 vote.

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

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

**INTRODUCTION**

This is a request for a special review to allow Commercial Recreation to hold special events such as weddings and parties with catering at 2323 Azalea Lane also known as the Fortin Mansion. The agents represent the potential purchasers as well as the current owners. The County has granted a similar special review for the DanWalt Gardens at 748 Washington Street. The DanWalt Gardens had available property to construct an off-street parking lot to handle any guest parking and is located close to the intersection of Washington Street and King Avenue East, a minor arterial street. The 2323 Azalea Lane location is within an established residential neighborhood and does not border any collector or arterial street. The subject property does not have more than 3 off-street parking spaces available. The applicant proposes to establish parking agreements with nearby schools and churches to serve as remote parking areas for guest parking and to shuttle guests to the location for events.

**PROCEDURAL HISTORY**

- A special review application to allow Commercial Recreation was received on August 4, 2008.
- The City Zoning Commission held a public hearing on September 2, 2008, and is forwarding a recommendation of denial on a 4-0 vote.
- On September 3, 2008, the Planning Division received a request from the applicants to withdraw the application.
- The City Council will conduct a public hearing and consider this application on September 22, 2008.

**BACKGROUND**

The proposed special review would allow the applicants to use the existing Fortin Mansion as a location for special events such as weddings, meetings, celebration parties and similar hosted activities. The applicants do not propose to make any changes to the structure or grounds to accommodate the proposed use. It is not likely there are more than 100 vehicle trips per day on this section of Azalea Lane. This estimate is based on the number of homes within the immediate area that would need to travel past the location. If the proposed use is successful, the traffic from shuttling guests as well as guests arriving individually and on street parking congestion would impose an undue burden on the surrounding residential property owners. The City Building Official also noted that building modifications would be required including the installation of a fire sprinkling system, accessibility improvements for ADA compliance, and other commercial building code regulations that may apply to this proposed use. The City Engineering Division was very concerned about the lack of on-site parking and the generation of shuttle traffic in this neighborhood since it is a designated walking route to the Highland School on Parkhill Drive.

The Planning Division has received 17 letters in opposition and a petition against the proposed special review that was signed by 139 surrounding property owners. The Planning Division also received 5 telephone calls from surrounding property owners expressing opposition to the proposal.

The Planning Division reviewed this application with other city departments and recommended denial. Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within a residential zoning district where Commercial Recreation might be allowed by special review approval. The form of the application is correct. However, the submitted site plan does not conform to site development standards for off-street parking and the building does not meet building codes for public uses.

The application does not conform to the second or third criteria. The zoning regulations adopted by the City Council have the purpose of promoting health, safety and general welfare. During the staff review of this project, Planning staff and other City staff expressed concern with the proposed mitigation for the lack of off-street parking, the generation of commercial traffic on a residential neighborhood street and the conflict between the existing residential uses and the proposed use of this property. There are no proposed measures that could adequately mitigate or screen this use from the adjacent single family residential uses.

### **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 BMCC and the Growth Policy.  
*This application is not consistent with the purposes of Chapter 27- Unified Zoning Regulations, the 2003 Growth Policy and the Highland Neighborhood Plan. The application is not appropriate in this particular district based on all the circumstances of the location. The application does not encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does not maintain the residential character of the Highland Neighborhood.*
3. **Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.**  
***The proposed special event use of the property is not consistent with the neighborhood and no conditions or mitigation measures can be implemented to minimize the probable impacts of the use.***

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 denial of Special Review #865 on a 4-0 vote.

### **STAKEHOLDERS**

A public hearing before the City Zoning Commission was held on September 2, 2008. Staff forwarded a recommendation of denial.

Mr. Joe Gerbase testified on behalf of agents Nicholas and Mary Okon. Mr. Gerbase stated the applicants have worked to ameliorate the neighbors concerns with the proposed use of the Fortin Mansion for special events. Mr. Gerbase stated the applicants have reviewed the petitions and understand the primary concerns are increases in traffic, on-street parking, danger to pedestrians, neon or bright lights, and use of the property for a restaurant or a bar. Mr. Gerbase testified the applicants had drafted a set of covenants and restrictions to address these concerns. Mr. Gerbase stated these covenants would be enforceable by any of the surrounding neighbors and that he provided the City of Billings an opportunity to also enforce the covenants.

Mary Okon testified in favor of the application. She stated she lives on Lot 9 in Graham Subdivision the home immediately north of the Fortin Mansion. She stated it was her and her husband's intention to purchase the Fortin Mansion as an investment and use it for special events. She stated the Fortin Mansion has been vacant for over a year and is not really suitable for a single family home. Ms. Okon stated the re-use of the property for special events would open it up to the public and help preserve its cultural and historical significance. She stated she encouraged her colleagues to look at purchasing the home but no one came forward. Ms. Okon stated the property taxes are about \$10,000 per year and utilities run about \$1,000 per month and the home is outdated by today's standards. Ms. Okon stated she spoke with Dave Williams of School District #2 about using the Highland Park School parking lot for off-site parking for events at the mansion. Mr. Williams said the school district might consider such an arrangement. Ms. Okon stated the 1<sup>st</sup> Presbyterian Church will allow them to use its parking lot for events. Ms. Okon stated she and her husband just held a Labor Day party at their home for 50 to 100 guests and no one in the neighborhood was concerned with their guests parking on the street, there also were no complaints about noise or trash.

Nicholas Okon testified in favor of the application. He stated the mansion sits on two lots of over 20,000 square feet and is not really built as a single family home. It is too large for one family. Mr. Okon testified that allowing special events here would present a great offering for public access to a private residence. Mr. Okon testified that although this location is not situated like the Moss Mansion it still lends itself to this use.

Daniel Horman, agent for applicants, testified in favor of the application. He stated he had a long discussion with Mr. & Mrs. Okon about the investment potential and how to balance their

propose use with the existing neighborhood. Mr. Horman stated the mansion has great cultural and historic potential and is in a neighborhood of historic homes. Mr. Horman stated the Okons realize they will need to address the existing covenants even if the use is approved by the city. Mr. Horman testified that even with the special events, the home will most likely sit as it does now – quietly in this neighborhood.

Don Lohrenz, agent for the current owners, testified in favor of the application. He stated that when Mary Okon contact Debbie Eliason, she was ecstatic the community would have access to the property through special events.

Tom Hinthorne of 122 Wyoming Avenue spoke in favor of the application. Mr. Hinthorne stated he and his wife run a catering business and specialize in events for 20 to 150 people. He testified he would love to have the opportunity to serve a meal in the Fortin Mansion. He stated the location is exquisite for an event venue. He stated that 99% of all functions would occur inside the home. He testified that he and his wife run their catering business out of a location on 4<sup>th</sup> Street West which also in a residential district and they do not let their suppliers deliver to that location. He stated they bring everything in themselves. He stated that Mary Alice Fortin left a treasure to the community with this house and the city should allow the community to enjoy the formality of this venue.

Richard Brown of 2207 North Place testified in favor of the application. He stated this may be a good opportunity to re-use the Fortin Mansion and the city should give the Okons a chance to prove whether it will work in the neighborhood.

Earl Hanson of 2301 Azalea Lane testified in opposition to the application. Mr. Hanson stated the home was built when he was still in high school and he used to make deliveries to the construction workers on the site. Mr. Hanson stated the covenants restrict uses in the Graham Subdivision to single family uses only so this type of business would not be allowed in any case. He stated a neighbor contacted him when the zoning request sign was put up on the property and asked about what might be happening. He stated this neighbor was elderly and lived in the neighborhood to be closer to her children and grand children. He stated his neighbor thought the use would create a giant parking lot on Azalea Lane and she would not enjoy living there anymore. He testified that he contacted the Highland PTA and it told him it would not support use of the school parking lot for special events at the mansion. Mr. Hanson stated that he has talked to over 100 people in this small area and no one supported the proposed use. Mr. Hanson stated it would be impossible to control the on street parking. He stated many petitions had been filed against the proposed use.

Susan Gilbert of 850 Delphinium testified in opposition to the application. Ms. Gilbert stated the neighborhood is filled with people walking, biking, skateboarding and kids playing stickball in the street every evening. The neighborhood is used to this pedestrian use in the streets because there are no sidewalks and traffic is calmer. She stated she was concerned with the increased traffic, noise, on-street parking and the proposed solution through private covenants is not viable. She stated that covenants are a civil responsibility and the city would not govern the enforcement. She stated that every realtor knows that it is harder to sell the most expensive home in a neighborhood.

Robert Rightmire of 839 Parkhill Drive testified in opposition to the application. He stated the proposal does not conform to the Highland Neighborhood Plan. The Plan was very carefully considered over a long period of time and adopted by the City Council. Mr. Rightmire stated there is very little off-street parking on the property and the guests would inevitably park on the street. This puts a lot of burden on the surrounding property owners. Mr. Rightmire stated most visitors to the Moss Mansion park on the adjacent residential streets since there is just a small parking lot at the home.

Alan Jarrett of 221 Azalea Lane testified in opposition to the application. He stated that he sold this home to the Eliasons several years ago and that it is not a valid argument to propose a commercial use because the home won't sell as a single family home. Mr. Jarrett stated the use would be a detriment to all the adjoining neighbors.

George Rosenfield of 2316 Azalea Lane testified in opposition to the application. Mr. Rosenfield stated the application is in violation of the existing covenants of the subdivision. Mr. Rosenfield stated the proposal appears to be an illegal spot zoning. He stated his neighbors, the Conners, wrote a letter of opposition and said they would never have bought their home in this neighborhood if they knew the Fortin Mansion would be used for wedding parties.

Jim Ekenhart of 1010 O'Malley Drive testified in opposition to the application. Mr. Ekenhart stated he was in the business of preparing, decorating and cleaning up after special events and it all looks fine on paper. He stated in reality the preparation and tearing down after one of these events is chaos and would be disruptive to the neighborhood on a regular basis. Mr. Ekenhart stated that people in Montana like to drive and are independent. There is no way to stop people from parking on the street because they want to be able to leave when ever they want and not wait for a shuttle to their car.

Jim VanOrnum of 2201 North Place testified in opposition to the application. He stated the applicant said one of the reasons for the application is to reduce the crime rate. He stated he is on the Crime Prevention Board for this area, and there is no greater amount of crime in this neighborhood compared to the rest of the area.

Commission Chairman Leonard Dailey, Jr. asked for those in the audience also in opposition who agreed with the previous speakers to stand and be counted by the Planning Clerk. The clerk counted 32 persons in the audience who stood in opposition to the application.

Tammy Ekenhart of 1010 O'Malley Drive testified in opposition to the application. She stated there are no street lights in the entire area and this would be hazardous to guests and drivers unfamiliar with the area, especially after an event where alcohol is consumed.

Barbara VanOrnum testified in opposition to the application. She stated the Okons would have 8 to 10 events per month and this would create too much activity in the neighborhood.

Mr. Joe Gerbase provide rebuttal testimony to the Commission. He stated the proposed covenants would allow any neighbor to enforce the restrictions and the Okons are posting a \$1,000,000 bond to assure their compliance with the restrictions. The proposed covenants have a "3 strike" provision that would allow the court to shut down the use if there are three

violations within a 6 month period. This would include any on street parking by guests. Mr. Gerbase acknowledged that the existing covenants would have to be amended to allow this use in the Graham Subdivision. He stated the proposed covenants would allow a non-profit group to use the mansion once every month on an at-cost basis.

Chairman Leonard Dailey, Jr. closed the public hearing. Commission member Barbara Hawkins made a motion to forward a recommendation of denial to the City Council, and the motion was seconded by Commission member Ed Workman. Member Barbara Hawkins stated that approval of a special review at this time would be futile because the current covenants would not allow the use. Ms. Hawkins also stated the proposal was obviously not supported by the neighborhood. Commission member Ed Workman stated the proposal threatens the private property rights of those in the area. Commission member Michael Larson stated there is a tremendous burden on the applicant to get the covenants changed and it would be a disservice to recommend approval at this time. Mr. Larson thought the application should be withdrawn so the applicant could resolve the neighborhood issues. The Zoning Commission voted 4-0 to forward a recommendation of denial.

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

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

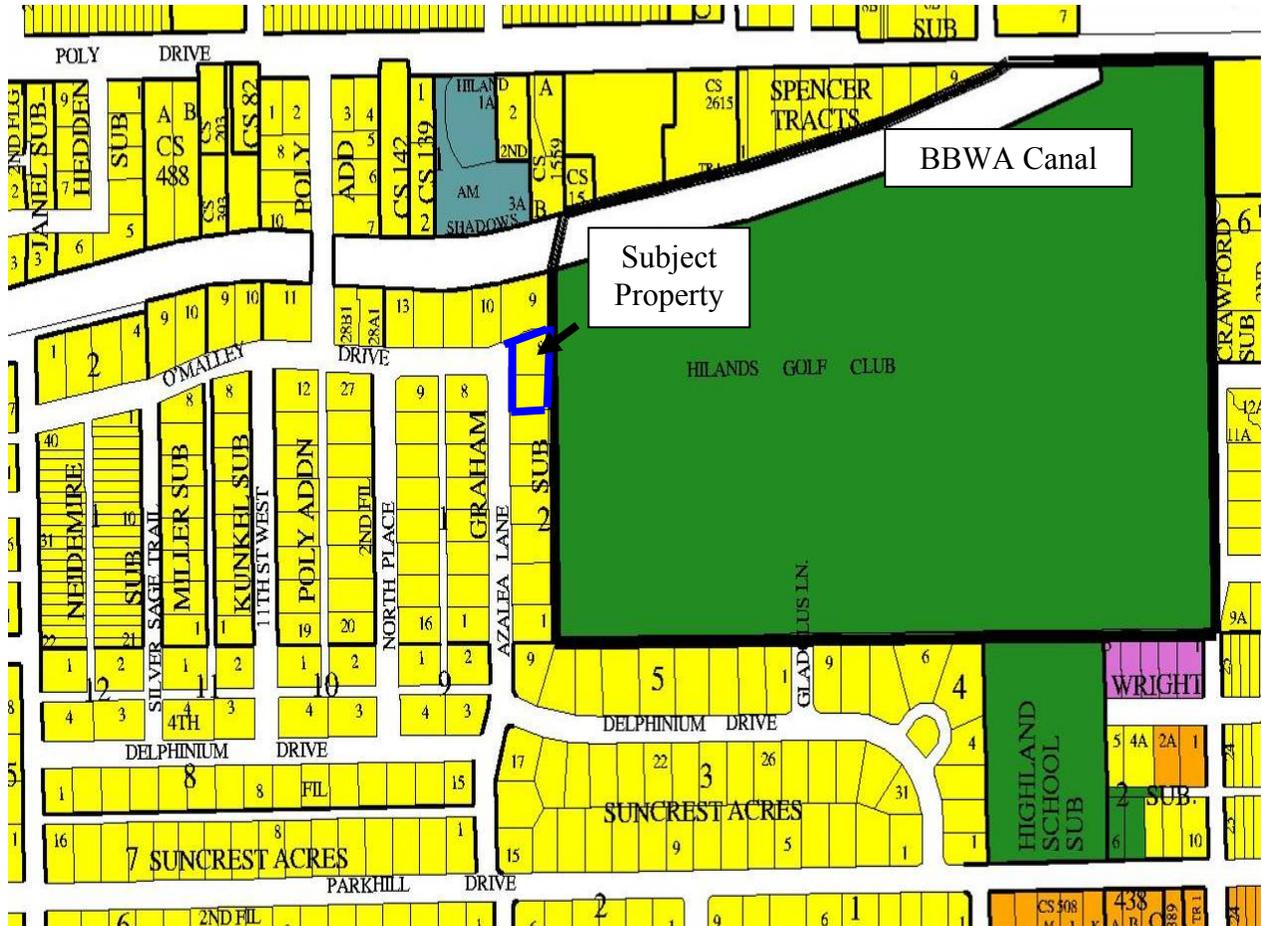
#### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of denial of Special Review #865 on a 4-0 vote.

#### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

**ATTACHMENT A**  
Zoning Map – Special Review #865



**ATTACHMENT B**  
Site photos –Special Review #865

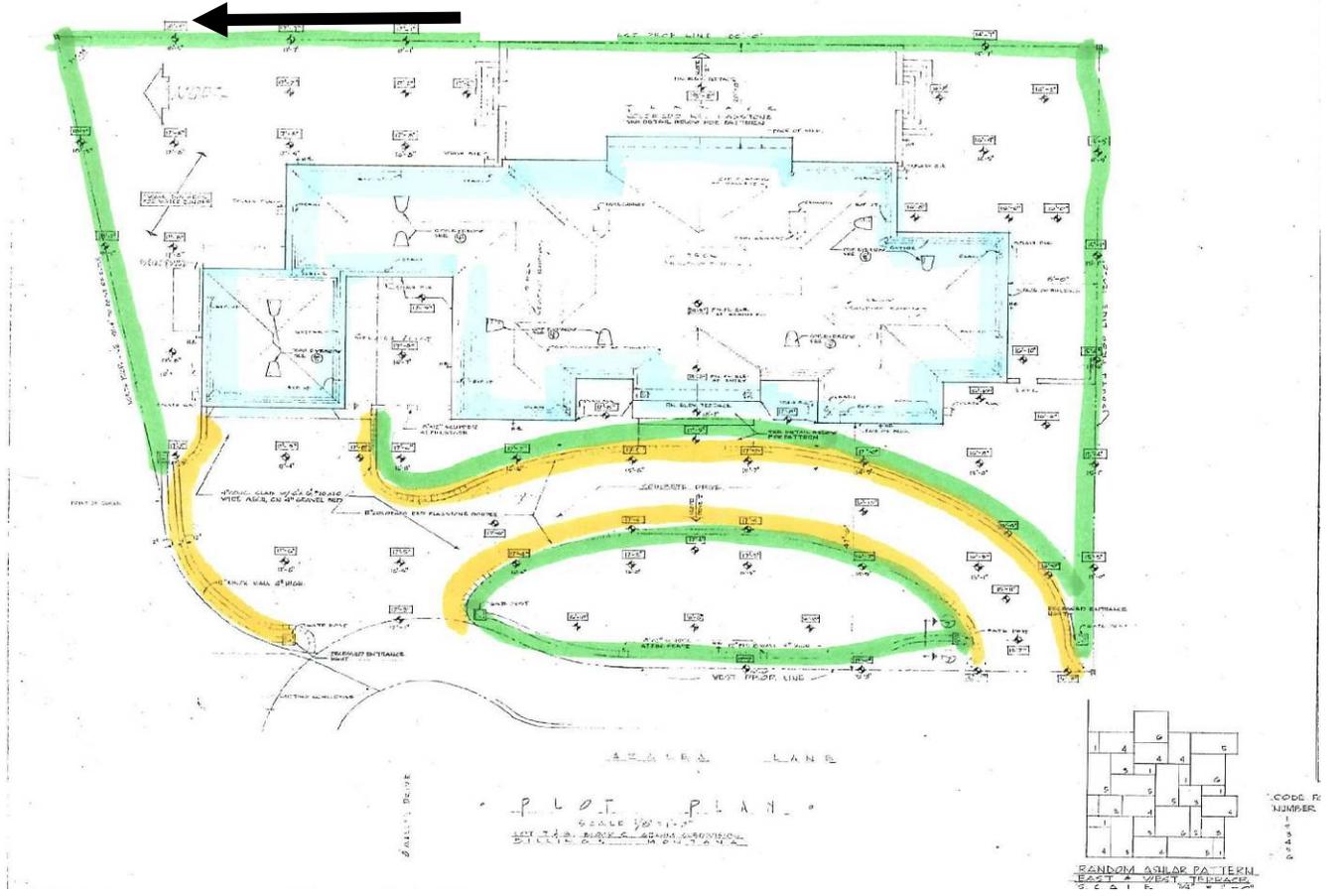


View of subject property north and east from Azalea Lane



View west from intersection of O'Malley Drive and Azalea Lane

**ATTACHMENT C**  
**Site Plan – Special Review #865**  
 North



AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

TITLE: Public Hearing for Special Review #866 – 1525 Broadwater Avenue  
 DEPARTMENT: Planning and Community Services  
 PRESENTED BY: Dave Green, Planner I

**PROBLEM/ISSUE STATEMENT:** This is a special review request to add an outdoor patio to the location of an existing all-beverage liquor license with gaming on a 25,650 square foot parcel of land in a Community Commercial (CC) zone. The property is legally described as Lot 3, Block 1, the South 150' of the East 52' and the South 150' of the West 96' of Lot 3, and the South 150' of the West 23' of Lot 4, Block 1, Van Ornum Subdivision. The property is addressed as 1525 Broadwater Avenue and is the location of the Squire Lounge. Roger and Thomas Hougen are the owners with A & E Architects as the agent. The Zoning Commission held a public hearing on this request on September 2, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

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

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

**FINANCIAL IMPACT:** The special review, if approved, will allow further development of the property which should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #866 on a 4-0 vote.

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

**ATTACHMENTS**

A: Zoning/Location Map.

B: Site Plan

## **INTRODUCTION**

This is a special review request to add an outdoor patio to the location of an existing all-beverage liquor license with gaming on a 25,650 square foot parcel of land in a Community Commercial (CC) zone. The property is legally described as Lot 3, Block 1, the South 150' of the East 52' and the South 150' of the West 96' of Lot 3, and the South 150' of the West 23' of Lot 4, Block 1, Van Ornum Subdivision. The property is addressed as 1525 Broadwater Avenue and is the location of the Squire Lounge.

## **PROCEDURAL HISTORY**

- A special review request to add an outdoor patio to the location of an existing all-beverage liquor license with gaming on a 25,650 square foot parcel of land in a Community Commercial (CC) zone was submitted on August 1, 2008.
- The City Zoning Commission held a public hearing on September 2, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on September 22, 2008.

## **BACKGROUND**

This is a special review request to add an outdoor patio to the location of an existing all-beverage liquor license with gaming on a 25,650 square foot parcel of land in a Community Commercial (CC) zone. The property is legally described as Lot 3, Block 1, the South 150' of the East 52' and the South 150' of the West 96' of Lot 3, and the South 150' of the West 23' of Lot 4, Block 1, Van Ornum Subdivision. The property is addressed as 1525 Broadwater Avenue and is the location of the Squire Lounge.

Surrounding development is commercial in nature with a mix of retail sales and eating establishments, and casinos. The applicant states in the application letter that this project will help to ultimately improve the neighborhood, enhance the building appearance, and increase the land values. Also, the addition of the outdoor patio will “enrich one’s personal experience of the area, whether just a passerby or a patron of the business”. The applicant also states that this area is in need of a level of outdoor activity and this addition will be a great benefit.

The site plan submitted by the applicant shows the property to the west as part of the parking for The Squire Lounge. The applicant, in anticipation of needing to meet parking requirements, states that he has purchased the adjoining lot for the additional parking needed for the business and the new patio.

## **ALTERNATIVES ANALYSIS**

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

4. Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations.*
5. 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 neighborhood.*

- 6. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.**  
***The zoning regulations adopted by the City Council require separation of uses and also include requirements for landscape and fencing to provide separation from non-compatible uses.***

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

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;
14. Usable open space;
15. Signs and lighting; and/or
16. 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 #866 on a 4-0 vote.

#### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lot 3, Block 1, the South 150' of the East 52' and the South 150' of the West 96' of Lot 3, and the South 150' of the West 23' of Lot 4, Block 1, Van Ornum Subdivision, located at 1525 Broadwater Avenue.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show the addition of outdoor patio areas, parking lot access or parking areas will require additional special review approval.
3. There shall be no background music or amplified announcement system outside the building.
4. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations and as shown on the site plan submitted with this application and shown in the staff report.
5. All new 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.
6. The patio area shall meet ADA accessibility requirements.
7. The patio shall have a minimum of a 4 foot tall fence enclosing the patio. Access to the patio shall be from the interior of the existing building. There shall be an emergency exit from the patio to the parking lot.
8. To comply with parking requirements for the use of the subject property, the applicant must verify the purchase of the property to the west, addressed as 1545 Broadwater, legally described as Lot 2, Block 1, Van Ornum Subdivision, for use as additional

parking, or execute a parking agreement with another property owner to meet the parking requirements. Proof of the purchase of the adjacent property or execution of a parking agreement must be submitted with the submittal for a building permit.

9. The applicant must provide drawings at the time of building permit submittal showing the property can meet the required parking for the existing business and new patio, and meet all requirements of site development and zoning.
10. 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.
11. 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 September 2, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The applicant's agent, Dusty Eaton from A&E Architects, was present at the Zoning Commission meeting. Mr. Eaton stated that the applicant felt this was a good addition to the neighborhood and that the planned patio with the planned landscaping will be an enhancement to the neighborhood. He also stated that this will be a thoughtful high quality development.

Zoning Commission member Leonard Daly asked if there was a planned time set for completion of the patio. Mr. Eaton responded that they were planning on having the patio completed by next spring. There was no further discussion from the zoning commission; a motion to forward a recommendation of conditional approval to the City Council was made and seconded, followed by a vote of 4-0 to approve.

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

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

- New Development that is 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 #866 on a 4-0 vote.

**ATTACHMENTS**

A: Zoning/Location Map.

B: Site Plan





## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: Public Hearing for Special Review #867 – 1423 Main Street  
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 locate an all alcoholic beverage license with gaming in an existing building on a 33,036 square foot parcel of land in a Highway Commercial (HC) zone, on Lot 9, Block 1, of Winemiller Subdivision. The property is addressed as 1423 Main Street in the Heights. The building has been used as a Taco Bell, Quiznos and most recently as a pawn shop. The property owner is HOBS, a Montana General Partnership, with Al Koelzer as the agent. The Zoning Commission held a public hearing on this request on September 2, 2008, and is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote.

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

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

**FINANCIAL IMPACT:** The special review, if approved, should allow redevelopment of the property which may increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #867 on a 4-0 vote.

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

**ATTACHMENTS**

A: Zoning/Location Map.

B: Site Plan

## **INTRODUCTION**

This is a special review request to locate an all alcoholic beverage license with gaming in an existing building on a 33,036 square foot parcel of land in a Highway Commercial (HC) zone, on Lot 9, Block 1, of Winemiller Subdivision. The property is addressed as 1423 Main Street in the Heights. The building has been used as a Taco Bell, Quiznos and most recently as a pawn shop.

## **PROCEDURAL HISTORY**

- A special review application to locate an all alcoholic beverage license with gaming in an existing building on a 33,036 square foot parcel of land in a Highway Commercial (HC) zone was submitted on August 1, 2008.
- The City Zoning Commission held a public hearing on September 2, 2008, and is forwarding a recommendation of conditional approval.
- The City Council will conduct a public hearing and consider this application on September 22, 2008.

## **BACKGROUND**

This is a request for a special review to locate an all alcoholic beverage license with gaming in an existing building on a 33,036 square foot parcel of land in a HC zone, on Lot 9, Block 1, of Winemiller Subdivision. The property is addressed as 1423 Main Street and is currently vacant. The building has been used as a Taco Bell, Quiznos and most recently as a pawn shop.

Surrounding development is commercial in nature with a mix of retail sales, eating establishments and casinos with the exception of the area to the east. The property to the east is developed as a senior housing apartment building and some single family homes. The applicant states in the application letter submitted with this special review request that this project fits in with the character of the existing neighborhood. It is surrounded by other commercial uses that include Pizza Hut, Conoco, Valley Credit Union, First National Pawn, Guadalajara Restaurant, Doc & Eddy's Casino and Buffalo Palace Casino. The applicant also states in the letter that this business will provide jobs and recreational facilities for the residents in the area and this project will strengthen the area economy and create living wage jobs in the area.

## **ALTERNATIVES ANALYSIS**

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

7. Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.*
8. 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 neighborhood.*

9. **Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.**  
***The zoning regulations adopted by the City Council require separation of uses and also include requirements for landscape and fencing to provide separation from non-compatible uses.***

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

17. Street and road capacity;
18. Ingress and egress to adjoining streets;
19. Off-street parking;
20. Fencing, screening and landscaping;
21. Building bulk and location;
22. Usable open space;
23. Signs and lighting; and/or
24. 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 #867 on a 4-0 vote.

#### **CONDITIONS OF APPROVAL**

12. The special review approval shall be limited to Lot 9, Block 1, of Winemiller Subdivision, located at 1423 Main Street.
13. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show additional square footage on the outdoor patio, parking lot access or parking areas will require additional special review approval.
14. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is amplified music not audible beyond the outdoor patio lounge. There shall be no amplified announcement system outside the building or on the outdoor patio shown on the site plan.
15. The solid waste storage area shall be enclosed on three (3) sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side. This enclosure shall be constructed of normal fencing materials. Chain link or wire fencing cannot be used for sight-obscuring enclosure.
16. The existing drive-up lane on the north side of the building must be blocked or removed. The drive-up window on the north side of the building must be removed.
17. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations and as shown on site plan submitted with this application and shown in the staff report.
18. The patio area shall meet ADA accessibility requirements.
19. The patio shall have a minimum of a 4 foot tall fence enclosing the patio with an emergency exit to the parking lot. Access to the patio shall be from the inside of the building.
20. All new 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.

21. 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.
22. 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 September 2, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The applicant, Scott Peterson from Missoula, was present at the Zoning Commission meeting. Mr. Peterson stated that this license is an existing license from the 4B's restaurant that was on the corner of 24<sup>th</sup> Street West and Grand Avenue. The license was being sold as part of a bankruptcy settlement that is taking place with that company. Mr. Peterson also stated that his company, HOBS from Missoula, is the owners of Hudson's on Grand Avenue. With this application, the HOBS company would have two businesses in Billings.

Commission Member Leonard Daly asked about the time frame for completion. Mr. Peterson stated that it is the company's intent to have the business open before the end of this year.

Kristin Omgig from Crowley Law Firm spoke in favor of the special review and also asked to modify Condition #3. She asked to modify condition #3 to allow background music but to still include the exclusion of an amplified announcement system.

Zoning commission member Michael Larson asked staff if there was a condition that has been used in the past that would address background music and give a definition of background music. Staff indicated that there is a condition that has been used to define background music that can be used if the commission determines to modify Condition #3.

A motion was made and seconded to conditionally approve Special Review #867 with a modification of Condition #3 to allow background music. The zoning commission voted to forward a recommendation of conditional approval to the City Council with a vote of 4-0 to approve.

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

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

- New Development that is 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 #867 on a 4-0 vote.

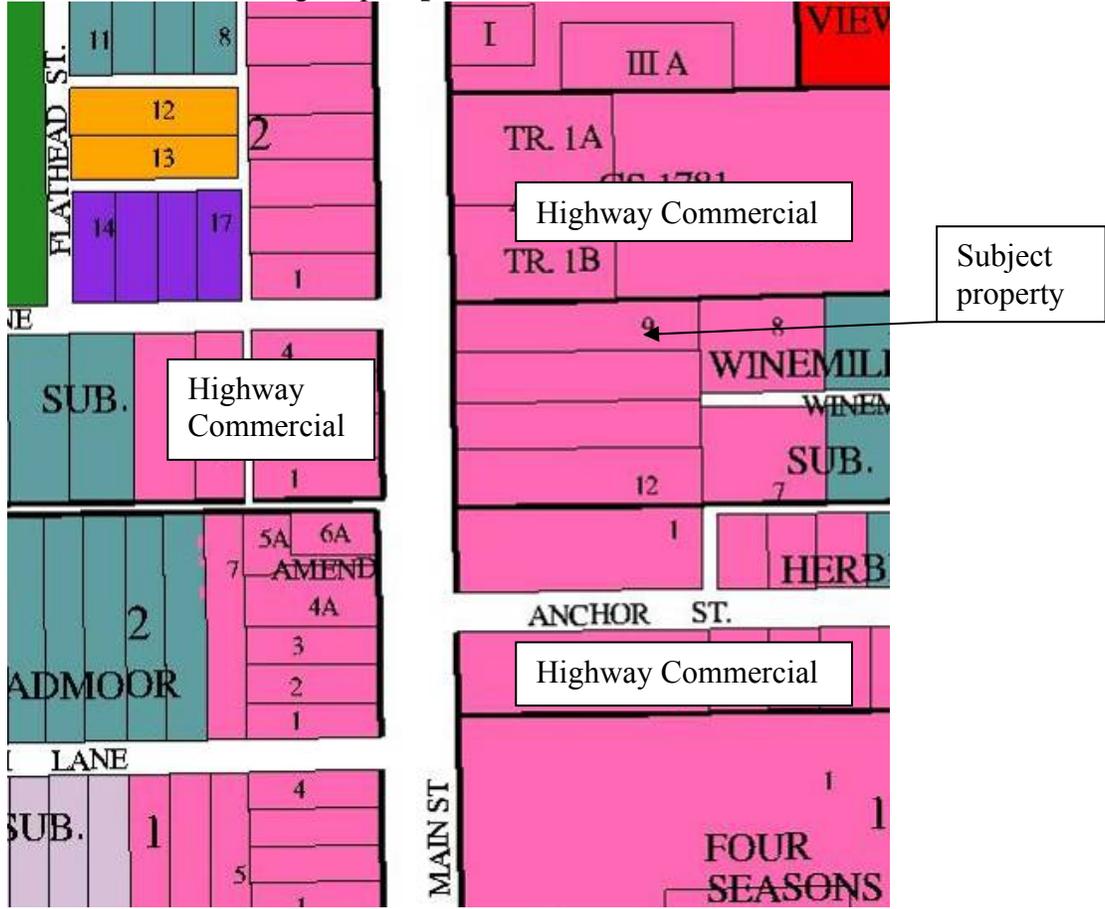
### **ATTACHMENTS**

A: Zoning/Location Map.

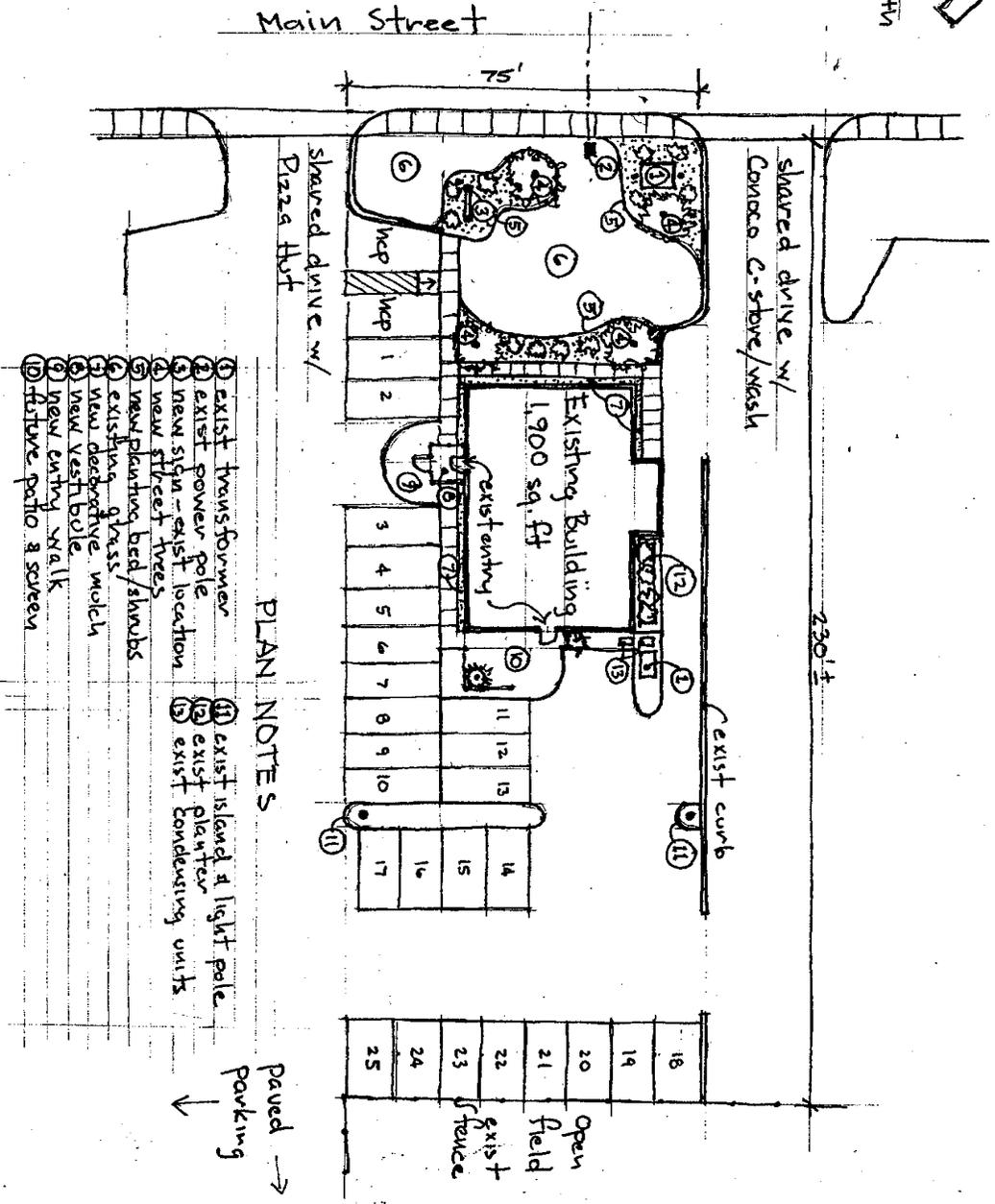
B: Site Plan

**ATTACHMENT A**

**Zoning Map - Special Review #867**



**ATTACHMENT B**  
**Site Plan Special Review #867**



**PLAN NOTES**

- ① exist transformer
- ② exist power pole
- ③ new sign - exist location
- ④ new street trees
- ⑤ new planting bed/shrubs
- ⑥ existing grass
- ⑦ new decorative mulch
- ⑧ new vestibule
- ⑨ new entry walk
- ⑩ future patio & screen
- ⑪ exist island & light pole
- ⑫ exist planter
- ⑬ exist condensing units

paved →  
 parking ↓

PROPOSED LUCKY DIAMOND CASINO - SITE IMPROVEMENTS 1" = 30'  
 1423 MAIN STREET BILLINGS, MT 7/29/08

AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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TITLE: 2009 Unified Planning Work Program  
DEPARTMENT: Planning & Community Services Department  
PRESENTED BY: Scott Walker, Transportation Planner

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**PROBLEM/ISSUE STATEMENT:** The Planning Division is presenting the Draft 2009 Unified Planning Work Program (UPWP) for the Billings Metropolitan Planning Organization for Council review and recommendation to the Billings Policy Coordinating Committee (PCC). The UPWP is primarily for the purpose of programming the federal dollars Billings receives from the Federal Highway Administration (FHWA) for transportation planning. These funds are passed through the Montana Department of Transportation (MDT). However, all planning activities are included in the UPWP so that it represents a comprehensive document of the urban transportation planning program. This UPWP proposes planning activities for Federal Fiscal Year 2009, which runs from October 1, 2008 through September 30, 2009. This UPWP corresponds directly with the Planning Divisions annual work plan. The significant changes in this year's program include updating the 2005 Transportation Plan to SAFETEA-LU compliance, adding a Transportation Planner to the Planning Division staff by conversion of an existing position, completing a neighborhood transportation study in Blue Creek, and consolidating some of the Work Elements in the UPWP at the request of FHWA. The document is consistent with past programs. A copy of the UPWP for each Council member is included with this memo and a copy is on file in the City Clerk's office for public review.

**ALTERNATIVES ANALYZED:** Accept the plan (recommended) and instruct the Mayor to give a positive recommendation to PCC; or reject the plan and instruct the Mayor to give a negative recommendation to PCC. The PCC meeting is scheduled for September 26<sup>th</sup>.

**FINANCIAL IMPACT:**

\$258,000	Planning Department Fee Revenue
\$296,500	Yellowstone County - Mill Levy
<u>\$1,219,279</u>	Federal Planning (PL) Allocation
\$1,773,779	Total Program (UPWP)

**RECOMMENDATION**

Staff recommends that Council approve the Draft 2009 UPWP at its meeting on September 22<sup>nd</sup> and authorize the Mayor to take this recommendation to the Policy Coordinating Committee meeting on September 26th.

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

**ATTACHMENT**

A. 2009 Unified Planning Work Program (UPWP) – 45 Pages. (available for viewing in the City Clerk’s Office)

## **INTRODUCTION**

The Unified Planning Work Program (UPWP) is developed each year by the Planning Division and includes a task-by-task discussion of projects that will be undertaken during the program year by the Division. The UPWP contains appropriate funding, budget and staffing information, and a schedule for each project proposed in the program.

## **BACKGROUND**

As federally mandated, the Billings Urban Area Transportation Planning Process is conducted in a cooperative, coordinated, and comprehensive manner. The Yellowstone County Board of Planning, as the designated Metropolitan Planning Organization (MPO), is charged with the responsibility of administering this planning process. Under federal regulation an MPO must be established for urban areas with populations greater than 50,000 in order to receive and spend federal funds for construction projects and transportation planning.

Ultimately, this UPWP requires approval of both the MDT and FHWA; however, our local PCC must first approve it. The PCC is the local approving body for documents such as this and includes the following members:

1. Mayor, City of Billings
2. Chair, Board of County Commissioners
3. President, Board of Planning
4. District Administrator, MDT-Billings
5. Division Administrator, FHWA

Members of PCC bring the recommendation of their organization to the meeting and a vote is taken.

The UPWP undergoes a comprehensive review at the local, state, and federal levels every year and once adopted, is in effect from October 1 to September 30.

## **RECOMMENDATION**

Staff recommends that Council approve the Draft 2009 UPWP at its meeting on September 22, 2008, and authorize the Mayor to take this recommendation to the Policy Coordinating Committee meeting on September 26<sup>th</sup>.

**ATTACHMENT**

A. 2009 Unified Planning Work Program (UPWP) – 45 Pages.

(available for viewing in the City Clerk's Office)



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, SEPT. 22, 2008**

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**SUBJECT:** Approval of Development Agreement for Babcock Building  
**DEPARTMENT:** City Administrator's Office/Legal  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council is being asked to enter into a Development Agreement with the Downtown Billings Partnership (DBP) and The Babcock, LLC, to use \$1.9 million of Tax Increment Financing District (TIFD) funds to acquire and complete Phase I improvements to the Babcock Building as the legacy development project qualified under the DBP Large Project Gap Funding Program. The funds for this project are to come from \$4,222,711 remaining after the 1976 downtown TIFD expired and all debt payments in the district had been made.

A buy-sell agreement on the Babcock Building between The Babcock LLC and Babcock Theater and Building Company, Inc., expires Sept. 25, 2008. Closing is to occur no later than Oct. 10, 2008. A Development Agreement for a Large Project Gap Funding Program has to be approved by the Council by Dec. 31, 2008, under the terms of a resolution approved in February 2008. Otherwise, the \$1.9 million and funds remaining after the completion of other projects would be moved to a downtown streetlight project.

**ALTERNATIVES ANALYZED:** The Council may:

- 1) Approve the Development Agreement; or
- 2) Amend the Development Agreement; or
- 3) Deny the Development Agreement.

**FINANCIAL IMPACT:** If approved, the Development Agreement would result in \$1.9 million of encumbered TIFD funds being spent to acquire and do major system renovations of the Babcock Building. The Babcock, LLC, which is the developer, will provide the City with a Deed of Trust that will be recorded to give the City the first priority lien position against the property in the event the developer withdraws or fails to complete the project.

**RECOMMENDATION**

Staff recommends that Council approve the Development Agreement with the Downtown Billings Partnership and The Babcock, LLC, to use \$1.9 million of Tax Increment Financing District (TIFD) funds to acquire and complete Phase I improvements to the Babcock Building as the legacy development project qualified under the DBP Large Project Gap Funding Program.

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

**ATTACHMENTS:**

A:     Development Agreement with Exhibits

## **INTRODUCTION**

The City Council is being asked to enter into a Development Agreement with the Downtown Billings Partnership (DBP) and The Babcock, LLC, to use \$1.9 million of Tax Increment Financing District (TIFD) funds to acquire and complete Phase I improvements to the Babcock Building as the legacy development project qualified under the DBP Large Project Gap Funding Program. The funds for this project are to come from \$4,222,711 remaining after the 1976 downtown TIFD expired and all debt payments in the district had been made.

## **PROCEDURAL HISTORY:**

- Nov. 13, 2007: Council approves a resolution conditions under which the 1976 Downtown TIFD would sunset and approved a development agreement with the DBP that specified how the final allocation of TIFD funds are to be expended.
- Feb. 25, 2008: Council approves a resolution amending the 2007 development agreement that includes authorizing DBP to manage legacy projects under the Large Project Gap Funding Program.
- Aug. 11, 2008: Council approves a resolution reallocating funds under the development agreement, including an additional \$200,000 to the Large Project Gap Funding Program, bringing the total for that project to \$1.9 million.
- Aug. 29, 2008: DBP approves The Babcock, LLC, application for a \$1.9 million allocation of TIFD funds to purchase and renovate the Babcock Building, and forwards the item to the City Council for approval.
- Sept. 22, 2008: Council is asked to approve allocating the Large Project Gap Funding Program money and development agreement for improvements at the Babcock Building.

## **BACKGROUND**

The Babcock Building, located at 2<sup>nd</sup> Avenue North and North Broadway, was completed in 1907. It covers ¼ of a City block, with the theater located adjacent to the alley, retail space on the ground floor along both 2<sup>nd</sup> Avenue and Broadway, and residential apartments on the second floor. The 750-seat theater has been used only periodically for the past 20 years. Because of roofing, electrical, plumbing and HVAC problems, only two of eight retail spaces and only nine of 18 residential units currently are occupied.

The Babcock, LLC, consists of Mike Mathew, Kay Foster and architects Kimberly A. and Donald J. Olsen (a third pair of partners has left the project). They have a buy-sell agreement to purchase the building that expires on Sept. 25, 2008.

Phase I of the proposed project would use \$675,000 of the \$1.9 million in legacy funds to help buy the property, with The Babcock, LLC, paying the balance if the \$900,000 purchase price. The remainder of the City-allocated funds would be used in Phase I to help install a new roof; façade improvements; main plumbing; electrical work and cleanup for the retail area; remediation of any environmental problems; HVAC for the retail area and theater; and a restored theater stage. DBP would release the TIFD funds no more than once a month, upon invoice. The owners would contribute additional funds and seek grants to pay for the balance

of the \$2.36 million Phase I costs. Construction is to be completed by Feb. 1, 2010. City funds would be served by a Deed of Trust that would be recorded to give the City the first priority lien position against the property. In the event the developer withdraws or fails to complete Phase I, the City can sell or obtain title to the entire property.

When the Phase I improvements are complete, The Babcock, LLC, would legally separate the Babcock Theater from the rest of the Babcock Building, with a requirement to transfer the theater to the City of Billings. The theater would be conveyed to the City with clear title no later than April 1, 2016, via Warranty Deed. It is anticipated the theater would be operated by a non-profit group, similar to the larger Alberta Bair Theater or the Moss Mansion, both of which are City-owned. Until the transfer, the developer would operate the theater through a management agreement, with any profits from operations going to help pay for Phase II and III improvements at the theater. Grant and donations for theater improvements also would be sought, with the funds being donated to the City and dedicated to the project. DBP and the City would determine how those funds would be spent. The developers would retain control of the residential and retail space, which either may be sold or leased.

By the time the Phase I developments are complete, The Babcock, LLC, developers either would commit in writing to complete Phases II and III of the project, or ask the City and DBP for a 1-year extension. The City and DBP are bound by the terms of the development agreement to agree to the extension until Feb. 1, 2011. If the developers fail to commit by that time, the City would enforce the attached Deed of Trust, which would allow it to foreclose on the property.

Phase II improvements of \$924,000 are to be paid for by developer investments and a bank loan. They would include partial apartment renovations, fire sprinkler installation, and installation of a lobby and 1<sup>st</sup>-floor restrooms. They would have to be completed by Jan. 1, 2013. The City would be required by the development agreement to subordinate its Deed of Trust to the mortgage or lien of a new lender on the retail and apartment spaces, but not on the theater.

Phase III improvements of \$628,320 are to be paid for by the bank loan and fundraising or grants. They would include renovation of the theater's existing restrooms, electrical system, ceiling, HVAC and fire sprinklers. The individual members would ensure the Phase III improvements through the attached Guaranty. The improvements are to be completed by April 1, 2016, at which time the DBP will issue to the developer a Certificate of Satisfaction, freeing the developer of all obligations under the development agreement except the transfer of the Babcock Theater to the City.

**ALTERNATIVES ANALYSIS:** The Council may:

- 1) Approve the Development Agreement; or
- 2) Amend the Development Agreement; or
- 3) Deny the Development Agreement.

Previous DBP projects have required an owner contribution of \$5 for every \$1 invested by the DBP. However, the DBP Board felt the Babcock Theater project was of sufficient importance

to the retention of the historic building and the development of a key corner of downtown to qualify it for the legacy funding of \$1.9 million of an estimated \$3.9 million project.

**STAKEHOLDERS:** The DBP Board has recommended approval of the development agreement to the City Council. DBP members and representatives of The Babcock, LLC, are scheduled to be present at the City Council meeting.

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

**RECOMMENDATION**

Staff recommends that Council approve the Development Agreement with the Downtown Billings Partnership and The Babcock, LLC, to use \$1.9 million of Tax Increment Financing District (TIFD) funds to acquire and complete Phase I improvements to the Babcock Building as the legacy development project qualified under the DBP Large Project Gap Funding Program.

**ATTACHMENTS**

A: Development Agreement with Exhibits

## **DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is entered into as of September \_\_, 2008 by and between the City of Billings, a municipality of the State of Montana ("City"), Downtown Billings Partnership, Inc., an I.R.C. §501(c)(4) Montana non-profit corporation, ("DBP") and The Babcock, LLC, a Montana limited liability company ("Developer").

**WHEREAS**, on November 13, 2007, the City by Resolution No. 07-18636 approved and allocated tax increment funds ("TIF Funds") for the urban renewal projects identified therein and in a development agreement between City and DBP dated November 26, 2007 ("City-DBP Development Agreement").

**WHEREAS**, on February 25, 2008, the City by Resolution No. 08-18680 amended Resolution No. 07-18636 and approved the allocation of TIF Funds to DBP to manage and fund qualified legacy development project(s) under DBP's Large Project Gap Financing Program and amended the City-DBP Development Agreement.

**WHEREAS**, on August 11, 2008, the City by Resolution No. 08-18744 amended Resolution No. 07-18636 and 08-18680 and approved a Second Amendment to the City-DBP Development Agreement to reflect that DBP had identified the Babcock Theater project as the remaining qualified legacy development project under DBP's Large Project Gap Financing Program.

**WHEREAS**, Developer and DBP entered into a Memorandum of Understanding dated August 12, 2008, to pay up to \$35,000 for specified Pre-Development Expenses including studies, feasibility and design work related to the Babcock Building. DBP has not advanced any funds pursuant to the Memorandum of Understanding. In the event of any advance, such amount shall be credited against the total funds available for advance or release by DBP and City for Phase 1 of the Project defined herein.

**WHEREAS**, on or about August 29, 2008, DBP approved Developer's application for use of TIF Funds for a legacy urban renewal project for the acquisition and renovation of the Babcock Building

**WHEREAS**, City, DBP and Developer wish to enter into this Agreement as contemplated by the City-DBP Development Agreement to set forth the terms and conditions for advance and release of TIF Funds to Developer to accomplish and complete the Project defined herein.

**NOW, THEREFORE**, City, DBP and Developer agree as follows:

### **SECTION 1: SUBJECT OF AGREEMENT**

1.1 Purpose of Agreement. The purpose of this Agreement is to set forth the terms

and conditions for use of TIF Funds for Developer to acquire, rehabilitate, renovate and redevelop certain real property (the "Property") comprised of a building known as the Babcock Building on the southwest corner of Broadway and 2<sup>nd</sup> Avenue North, Billings, Montana, the legal description for which is attached as Exhibit 1. The Property has the potential to become a feature mixed use property that will eliminate blight, accomplish restoration of historic property, improve the Central District of Downtown Billings, further the objectives of the Downtown Billings Framework Plan, attract a stable population within the urban renewal area, promote downtown retail and entertainment activities and housing, and generate additional tax revenues within the urban renewal area. The Property has consisted of a primarily vacant deteriorating building, with empty retail and house space and a historic theater. DBP anticipates that the Project described in this Agreement will transform this Property into a substantial catalyst for downtown redevelopment. The historic theater portion of the Property will be stabilized, improved and title shall ultimately be transferred to the City or its assignee.

## **SECTION 2: DEFINITIONS AND EXHIBITS**

2.1 Babcock Building. The term "Babcock Building" or "Property" shall mean the real property presently owned by Babcock Building Company, as more particularly described in the attached Exhibit 1.

2.2 Babcock Theater. The term "Babcock Theater" shall mean that portion of the Babcock Building that constitutes the theater space and improvements as more particularly described in Exhibit 2 to this Agreement. Babcock Theater includes the Restored Stage area and Upper Theater Lobby and Marque described on Exhibit 2 and common space described on the attached Exhibit 2.

2.3 City Deed of Trust. The term "City Deed of Trust" shall mean the Deed of Trust from Developer in favor of City securing Developer's performance of this Agreement in the form attached as Exhibit 3.

2.4 Definitive Documents. The term "Definitive Documents" shall mean this Agreement and the Exhibits hereto and the Funding Application.

2.5 Design Drawings. The term "Design Drawings" shall mean the design development drawings for the Developer's Improvements to be prepared and submitted by Developer. Schematic Plans and elevations for Developers Improvements are included in the attached Exhibit 2 and have been reviewed and approved by DBP and the City. Developer will submit final Design Drawings for the Developer's Improvements for review and approval by DBP prior to commencing renovation work.

2.6 Developer's Budget. The term "Developer's Budget" shall mean the budget prepared and submitted by Developer setting forth the estimated cost of construction of Developer's Improvements included in the Funding Application.

2.7 Developer's Improvements. The term "Developer's Improvements" shall mean the improvements required to be constructed by Developer on the Property pursuant to this

Agreement, including all construction and renovation work identified for Phase 1, Phase 2 and Phase 3 of the Project, as described in the attached Exhibit 4 and in Sections 3 and 4 of this Agreement.

2.8 Funding Application. The term "Funding Application" shall mean the Developer's Tax Increment Funding Application dated August 26, 2008. The parties acknowledge that portions of the Funding Application have been amended by this Agreement and the Exhibits including the schematic plans, Developer's Improvements, Performance Schedule, and sources of funding. In the event of any conflict between the Funding Application and this Agreement, this Agreement and Exhibits hereto shall prevail.

2.9 Member Guaranty. The term "Member Guaranty" shall mean the guaranty of all of Developer's individual limited liability company members of the Developer's Improvements in Phase 3 of the Project evidenced in the form attached as Exhibit 5.

2.9 Performance Schedule. The term "Performance Schedule" shall mean the schedule of performance of construction of Developer's Improvements set forth in the attached Exhibit 6.

2.10 Project. The term "Project" shall mean the Property as improved by the Developer's Improvements.

2.11 Exhibits. The term "Exhibits" shall mean all exhibits to this Agreement. All Exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

### **SECTION 3: PROPERTY ACQUISITION AND RENOVATION AND ADVANCE OF FUNDS**

3.1 Advance of Funds for Phase 1. City and DBP have approved the advance and release of funds up to a total amount of One Million Nine Hundred Thousand Dollars (\$1,900,000) for Phase 1 of the Project, subject to the terms and conditions of this Agreement. Advance and release of these funds shall be conditioned upon satisfaction of the Developer's obligations, covenants and warranties set forth in this Agreement and the Definitive Documents, and the terms and conditions of this Agreement. The funds shall be advanced and used as set forth in Sections 3 and 4 of this Agreement.

3.2 Acquisition of Property in Phase 1. Phase 1 of the Project involves the acquisition and evaluation of the Property and the initial stage of construction of Developer's Improvements. Developer is party to a binding Earnest Money Agreement with Babcock Theater and Building Company, Inc., whereby Developer has an enforceable right to purchase the Property with the closing to occur no later than October 10, 2008. City, DBP and Developer have reviewed the Earnest Money Agreement and acknowledge that it provides for a life estate in the Moss Apartment as defined therein.

3.3 Advance of Acquisition Funds. At closing, Babcock Theater and Building Company will transfer and convey the Property to Developer. At closing, DBP will authorize

and City will pay Six Hundred Seventy Five Thousand Dollars (\$675,000) of the purchase price for the Property. City's advance of funds for the purchase of the Property is subject to the following conditions: (1) Developer shall pay the balance of the total purchase price for the Property of Nine Hundred Thousand Dollars (\$900,000), together with closing costs, from Developer's separate funds at closing; (2) Developer shall execute and deliver for recording the City Deed of Trust which shall be recorded in a first priority lien position against the Property at closing; (3) DBP and City must approve all closing documents, which shall include a Lender's Title Insurance policy covering City and its interests in the amount of \$1,900,000; (4) no title exceptions shall be permitted against the Property except those identified on Exhibit 1; and (5) closing must occur no later than October 10, 2008. If the closing of the purchase of the Property does not occur on or before October 10, 2008, or by an extended closing date approved in writing by DBP and City, then this Agreement shall terminate and the parties shall have no further obligations under this Agreement.

3.4 Developer's Improvements in Phase 1 of Project. Developer shall complete Developer's Improvements in Phase 1 of the Project as set forth in Exhibit 4. City and DBP shall release the balance of the \$1,900,000 in TIF Funds allocated to Phase 1 of the Project, subject to the terms and conditions of this Agreement. Developer shall provide all additional funding and labor required for the completion of the Developer's Improvements in Phase 1. The cost of Developer's contribution to complete Phase 1 is presently estimated to be \$465,000 based on Developer's Budget. During Phase 1 of the Project, Developer may request release of funds up to one time each month. DBP, in its sole discretion, may release funds in amounts commensurate with Developer's costs of construction and renovation in Phase 1 of the Project. Developer shall document its construction expenses and proof of Partial Completion and lien releases for submission with each interim release request documenting the portion of completion and compliance with the Performance Schedule. City and DBP shall provide Developer with a Certificate of Completion of Phase 1 upon satisfactory completion of the Developer's Improvements in Phase 1 of the Project.

3.5 Unit Ownership Agreement. On or before completion of Phase 1 according to the Performance Schedule, Developer will prepare, execute and record a Unit Ownership Agreement, in a form satisfactory to City and DBP, whereby the Babcock Theater will be legally separated from the remainder of the Babcock Building. The Unit Ownership Agreement shall describe the Babcock Theater, including the common spaces consisting of the Ground Floor Common Space Lobby and Toilets, Mezzanine and Second Floor Common Space, and Basement Building Mechanical and Electrical Common Space, all as described on Exhibit 2.

3.6 Developer Commitment to Complete Phase 2 and Phase 3. Developer shall complete Phase 1 of the Developer's Improvements, to the satisfaction of DBP and City, by the Phase 1 completion date of February 1, 2010, set forth in the Performance Schedule. On or before February 1, 2010, representatives of City, DBP and Developer shall meet to discuss and determine Developer's intention to complete Phases 2 and 3 of the Project. At the meeting, Developer shall: (1) provide City and DBP with its written commitment to complete Phases 2 and 3 of the Project according to the terms of this Agreement; or, (2) request an extension of time from City and DBP of one year to allow Developer to further evaluate the feasibility of completing Phases 2 and 3. City and DBP shall grant Developer an extension of time of one

year to commit to completion of Phases 2 and 3. If Developer requests the one year extension of time, Developer shall have until February 1, 2011 to provide its written commitment to complete Phases 2 and 3. To be effective, Developer's written commitment must: (1) be absolute and without qualification; (2) include completion of both Phase 2 and Phase 3 of Developer's Improvements; and (3) be accompanied by the executed Member Guaranty. If Developer obtains financing to complete Phases 2 and 3, with terms for sufficient administration of funds by City and DBP, City and DBP will not require the Member Guaranty. If Developer does not provide its written commitment to complete Phases 2 and 3 on or before February 1, 2011, then Developer shall be deemed to have withdrawn from the Project and City may exercise its rights and remedies under Sections 8.1, 8.2 and 8.3 of this Agreement.

In the event City exercises its rights and remedies under Section 8.3 of this Agreement, based on Developer's deemed withdrawal from the Project pursuant to this Section 3.6:

- (a) Developer and its members shall have no obligation to complete Phases 2 and 3 of the Project; and
- (b) City shall not be entitled to recover a deficiency judgment against Developer or its members for the City Advance Amount (defined in Section 8.3).

3.7 Phase 2 of Project. If Developer provides the written commitment to complete Phases 2 and 3 pursuant to Section 3.6 above, then Developer shall complete Developer's Improvements in Phase 2 of the Project as set forth in Exhibit 4 by the Phase 2 completion date of January 1, 2013 set forth in the Performance Schedule. Developer shall complete the Phase 2 work at its sole expense; provided, that Developer or any other person or entity may seek grants or fundraise to pay for the Phase 2 work. In the event Developer obtains lender financing for the Phase 2 work, City shall subordinate the City Deed of Trust to the mortgage or lien of a new lender, in an amount not to exceed \$1,500,000, as to all of the Property except the Babcock Theater. Prior to any subordination, City and DBP must review and approve, in their discretion, the terms of any new financing for the Project and the amount of financing that will be subject to subordination. City shall not be required to subordinate the City Deed of Trust as to the Babcock Theater. City and DBP shall provide Developer with a Certificate of Completion of Phase 2 upon satisfactory completion of the Developer's Improvements in Phase 2 of the Project.

3.8 Phase 3 of Project. Developer shall complete Developer's Improvements in Phase 3 of the Project as set forth in Exhibit 4 by the Phase 3 completion date of April 1, 2016 set forth in the Performance Schedule. Developer shall complete the Phase 3 work at its sole expense; provided, that Developer or any other person or entity may seek grants or fundraise to pay for the Phase 3 work. In the event Developer obtains additional lender financing for the Phase 3 work, City shall subordinate the City Deed of Trust to the mortgage or lien of a new lender, as to all of the Property except the Babcock Theater. Prior to any subordination, City and DBP must review and approve, in their discretion, the terms of any new financing for the Project and the amount of financing that will be subject to subordination. City shall not be required to subordinate the City Deed of Trust as to the Babcock Theater. City and DBP shall provide Developer with a Certificate of Completion of Phase 3 upon satisfactory completion of the Developer's Improvements in Phase 3 of the Project.

3.9 Member Guaranty of Performance of Phase 3. The individual limited liability company members of Developer shall guarantee the performance of the Developer's Improvements in Phase 3 of the Project according to the terms and conditions of the Member Guaranty. The Member Guaranty shall be delivered by Developer to City and DBP together and contemporaneous with Developer's written commitment to complete Phases 2 and 3. The Member Guaranty shall not be effective if Developer's interest in the Property has been foreclosed upon and sold by a lender prior to April 1, 2016.

3.10 Conveyance of Babcock Theater to City. Developer shall convey the Babcock Theater to City or its assignee by Warranty Deed, free and clear of all liens and encumbrances, without charge or cost to City, on or before April 1, 2016. Developer shall convey the Babcock Theater to City or its assignee with all Phase 3 Developer Improvements completed to City's and DBP's satisfaction.

3.11 Release of City Deed of Trust. City will release the City Deed of Trust upon completion of the Project, determined as follows:

- (a) Developer has completed construction of Developer's Improvements in Phase 1, 2 and 3 of the Project, in accordance with this Agreement and the Performance Schedule.
- (b) Project costs have been paid and proof of payment shall be provided.
- (c) Developer has received a Certificate of Occupancy from the City of Billings for the Project.
- (d) Developer has received a Certificate of Satisfaction as defined in Section 4.8 below.
- (e) Developer has transferred and conveyed the Babcock Theater to City or its assignee pursuant to Section 3.10.

3.12 Use of TIF Funds. The TIF Funds that are the subject of this Agreement shall be used only for urban renewal activities, including the acquisition, rehabilitation and redevelopment of the Property, in accordance with the Urban Renewal Law of the State of Montana.

3.13 Availability of TIF Funds. City has committed TIF Funds to the Project subject to availability of funds. In the event TIF Funds are not available due to causes beyond control of City, this Agreement shall terminate, and upon such termination, no party shall have further obligations or liability to the others under this Agreement, however, Developer shall remain responsible for indemnifying DBP and the City in accordance with Section 4.12.

3.14 Extent of Commitment. DBP and City shall have no obligation for any costs associated with the Project that exceed the amount of the funds approved in accordance with this

Agreement.

#### **SECTION 4: DEVELOPER'S IMPROVEMENTS AND COVENANTS**

4.1 Construction of Developer's Improvements. Developer agrees to construct and develop the Developer Improvements, at its sole cost and expense, consistent with the Design Drawings and the Definitive Documents. The Project shall be designed with special consideration of the Downtown Billings Framework Plan and the Downtown Billings Urban Design Sketchbook. DBP and Developer agree that the façade design will reflect traditional downtown storefronts present in the City Center District. The Project shall be designed to enhance the historic character of the property and location of the Project and to further the goals of the City of Billings urban renewal plan. The Project will be developed for retail space on the first floor, residential rental or condominium units or office space on the second floor, and renovation and rehabilitation of the historic Babcock Theater.

4.2 Architects and Contractors. Developer will have the right to select its architects, contractor and other subcontractors and consultants at its sole discretion. Developer will require all architects, engineers, or other professional consultants to maintain professional liability insurance in an insurable amount not less than \$1 million combined single limit covering all professional activities performed by them in connection with the Developer's improvements. Further Developer shall require its contractor to maintain broad form commercial general liability insurance in an insurable amount of not less than \$1 million combined single limit, covering all work performed by contractor in connection with the Developer's Improvements. Developer shall demonstrate proof of coverage to City or DBP upon request by providing a Certificate of Insurance.

4.3 Insurance. Developer shall maintain property, fire and casualty insurance covering the Project and the Developer's Improvements in an amount commensurate with the replacement cost of the Project during development and construction of the Project and until issuance of the Certificate of Satisfaction. DBP and City of Billings shall be named as additional insureds on Developer's insurance policy. In the event the Property or the Project is damaged or destroyed prior to issuance of the Certificate of Satisfaction, City or DBP shall be entitled to recover proceeds of such insurance in the amount of all funds advanced or released for the Project. City and DBP may, in their sole discretion, recommit funds for reconstruction of the Project in the event Developer determines to reconstruct the Project. In addition, Developer shall maintain worker's compensation insurance in accordance with the required coverage under Montana worker's compensation requirements.

4.4 City and DBP Access. City and DBP and their representatives, agents and designees will have the right, at reasonable times and upon reasonable notice to Developer, to enter upon the Property, in connection with inspection of construction of Developer's Improvements. City and DBP shall have access to all records and contracts pertaining to the Project upon reasonable notice and request. Developer shall keep and maintain accounting records for the Project, and shall make the same available to City and DBP upon request, including but not limited to, all purchase orders, invoices, statements, payment documents and journals and ledgers related to the Project.

4.5 **Governmental Permits.** Before commencement of construction of Developer's Improvements, Developer shall obtain all necessary land use, building and other governmental permits. Developer shall maintain all necessary land use, building and other governmental permits during construction of the Project.

4.6 **Local, State and Federal Laws.** Developer shall carry out the construction of the Developer's Improvements in conformity with all applicable local, state and federal laws.

4.7 **Prohibition Against Transfer.** Prior to the issuance by DBP of the Certificate of Satisfaction, Developer shall not, except as permitted by this Agreement, without the prior approval of DBP transfer its ownership interest in the Property or the buildings or structures on the Property. Notwithstanding the foregoing, this prohibition shall not apply to:

- (a) The transfer of the Property after issuance of the Certificate of Satisfaction;
- (b) The leasing of space in the Developer's Improvements;
- (c) The transfer of the Babcock Theater to City;
- (d) The sale of the Property at foreclosure (or conveyance in lieu of foreclosure). Any transfer in foreclosure or in lieu thereof shall be subject to the restriction that the exterior of the Project not be materially modified from the design approved by DBP without DBP's approval, which shall not be unreasonably withheld or delayed.

4.8 **Certificate of Satisfaction.** Promptly after completion of Developer's Improvements (excluding any tenant build-out which is the responsibility of the tenants), DBP shall furnish Developer with a Certificate of Satisfaction of this Agreement upon written request therefore by the Developer. Upon issuance of the Certificate of Satisfaction, Developer and the Property shall be fully relieved of all obligations and restrictions under this Agreement including the obligations imposed by Section 4.7(a), (b) and (d), but excluding the obligation to indemnify DBP and City in accordance with Section 4.12 and excluding the obligation to convey title to the Babcock Theater to City. DBP shall not unreasonably withhold, condition or delay the Certificate of Satisfaction. DBP shall not withhold the Certificate of Satisfaction based on the condition of any Phase of the Project for which it has provided a Certificate of Completion. Such Certificate of Satisfaction shall be a conclusive determination of satisfactory completion of the construction required by this Agreement as to the Property and such Certificate shall so state. After recording of the Certificate of Satisfaction, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to the Property. After issuance of the Certificate of Satisfaction, neither City, DBP nor any other person shall have the rights, remedies or controls with respect to the Property that it would otherwise have or be entitled to exercise under this Agreement and such control shall cease. No Certificate of Satisfaction shall constitute certificate of occupancy or evidence thereof under the building permit or codes of the City of Billings.

4.9 No Speculation. Developer represents that its acquisition and its ownership of the Property is for redevelopment and not for speculation in land holding.

4.10 Environmental History. The Developer has obtained a Phase One environmental site assessment regarding the Property and has provided the report to City and DBP. The Phase One assessment identifies certain environmental concerns and recommends limited sampling, testing and potential remediation. Prior to completion of Phase 1 of Developer's Improvements, Developer shall complete the activities related to the Babcock Theater recommended by the Phase One environmental site assessment report, including remediation of all friable asbestos, and provide a report of its activities to City and DBP. Developer shall comply with all environmental laws regarding remediation and shall indemnify and hold City and DBP harmless from and against claims regarding Developer's remediation work.

4.11 Compliance with Definitive Documents. Developer has received, reviewed, and approved the Definitive Documents and shall be bound by the terms of the Definitive Documents.

4.12 Control/Indemnification. Developer shall have sole control and responsibility for construction of the Project. Developer will indemnify, defend and hold DBP, City of Billings, and their directors, officers, officials, employees and agents harmless for, from and against any and all claims, damages, costs, judgments and expenses, including attorneys fees, arising out of or resulting from this Agreement or the use, condition, construction or development of the Property, the Project or the Developer's Improvements, including without limitation any claims for personal injury, death, property damage, or for liability to any contractor or its subcontractors, agents or employees. The provisions of this Section 4.12 shall survive completion of the Project and termination of this Agreement and shall continue in full force and effect until 3 years following the issuance of the Certificate of Satisfaction under Section 4.8.

4.13 Taxes/Assessments. Developer shall pay all property taxes, special improvement district assessments, and other assessments on the Property and the Developer's Improvements when due.

## **SECTION 5: MAINTENANCE AND OPERATION OF THEATER**

5.1 Theater Maintenance and Operation. Prior to completion of the Phase 1, Phase 2 and Phase 3 work on the Babcock Theater, Developer shall have sole responsibility for the maintenance and operation of the Theater. Developer shall be responsible for payment of all expenses related to the Babcock Theater, including without limitation, property taxes, assessments, insurance, utilities, repairs, maintenance, and operational expenses. Any operating profits from the Babcock Theater, over and above expenses and management costs, shall be applied to further improvement of the Babcock Theater. Such operating profits may be applied by Developer to accomplish the work described in Phase 2 and 3 of the Developer's Improvements as related to the Babcock Theater. At time of conveyance of the Babcock Theater to City or its assignee, City or its assignee shall have the right to terminate any operating or management agreements related to the Babcock Theater.

5.2 Non-Profit Support. Developer has agreed to facilitate charitable giving to support and encourage ongoing restoration and preservation of the Babcock Theater. On City's approval, funds may be donated to the City of Billings for this effort and the City and DBP will have final approval on any expenditure of these funds; provided, that funds donated to the City for the Babcock Theater without designation shall be expended first to work included in Phase 3 of the Project. Developer has agreed to form a charitable entity to continue this effort at the time of the transfer of the Babcock Theater to the City.

## **SECTION 6: SCHEDULE OF PERFORMANCE**

6.1 General. Developer shall proceed expeditiously to complete construction of all Phases of the Project in accordance with the Performance Schedule. All construction and renovation work for each Phase of the Project shall be completed by the completion date for that Phase of the Developer's Improvements set forth in the Performance Schedule. Developer will be excused for delays resulting from the following circumstances: an act of God or public enemy; fire; storm; wind; flood; earthquake; epidemic; explosion; lightning; continuous loss of power of other utilities for more than thirty days; nuclear radiation; geological or archeological condition; quarantine restrictions; riot or public discord; act of terrorism; criminal damage; the suspension of the national or state banking system due to financial crises; a union strike; unanticipated pre-existing but undiscovered conditions; or appeal of governmental permits.

## **SECTION 7: WARRANTIES**

7.1 Developer Representations and Warranties. Developer warrants and represents that the information and documentation provided pursuant to the Funding Application are accurate and complete and that Developer will promptly notify DBP of any changes in such information and documentation. Developer warrants and represents that it will complete all Developer's Improvements in accordance with the Definitive Documents and the Performance Schedule.

7.2 Joint Representations and Warranties. The following representations and warranties are made by each party to the other as of the date hereof:

- (a) Authority. Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.
- (b) Actions. All requisite action has been taken by each party in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of this transaction. No further consent of any member, partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- (c) Due Execution. The individuals executing this Agreement and the instruments

referenced herein on behalf of each party and the members, partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of those documents.

## **SECTION 8: DEFAULTS AND REMEDIES**

8.1 **Default/General.** Subject to the extensions of time set forth in Section 6, and subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term, provision or obligation of this Agreement or the City Deed of Trust constitutes a default.

- (a) If a party's default is a monetary default (failure to pay a sum of money when due under the terms of this Agreement or the City Deed of Trust) or an actual or deemed withdrawal from the Project, the defaulting party shall have 10 days to cure the default or withdrawal after receipt of written notice, specifying the default or identifying the withdrawal. If the default or withdrawal is not cured within 10 days, the injured party may pursue any and all rights and remedies.
- (b) If a party's default is a non-monetary default, and the defaulting party commences to cure such default within 30 days after receipt of a notice specifying the default, and thereafter diligently prosecutes such cure to completion within an additional 60 days, then such party shall not be deemed to be in default. If the default is not completely cured within the permitted cure period, the injured party may pursue any and all right and remedies. The injured party may not institute proceedings under this Section 8.1(b), whether judicial or otherwise, against the party in default until 30 days after giving such notice.
- (c) Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8.2 **Rights and Remedies.** Subject to the provisions of Section 8.1 hereof, in addition to its other rights or remedies, if Developer fails to cure a default or withdraws or is deemed to have withdrawn from the Project for any reason, City and DBP shall have no obligation to advance or release funds to Developer. Either party may seek any legal or equitable remedy to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement, including specific performance of this Agreement.

8.3 **City Deed of Trust.** If Developer fails to cure a default as provided in Section 8.1, or withdraws or is deemed to have withdrawn from the Project for any reason, after funds have been advanced or released for the Project, City may exercise its rights and remedies provided in the City Deed of Trust. In the event City determines to exercise these rights and remedies, through power of sale or judicial foreclosure, the amount of indebtedness secured by

the City Deed of Trust shall be deemed to be: (1) the amount of funds advanced or released by City for Phase 1 of the Project up to the principal amount of \$1,900,000, together with interest at the rate of 10% per annum on said principal amount from the date of each advance or release of funds ("City Advance Amount"); and (2) all obligations under the Agreement and the Deed of Trust shall be quantified and shall be part of the indebtedness secured by the City Deed of Trust. In the event of a judicial foreclosure of the City Deed of Trust, City shall not be entitled to recover a deficiency judgment against Developer as to the City Advance Amount. In the event of a judicial foreclosure of the City Deed of Trust, City shall be entitled to recover a deficiency judgment against Developer for the other quantified obligations under the Agreement and City Deed of Trust.

8.4 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

8.5 Dispute Resolution. Prior to filing any legal action or foreclosing the City Deed of Trust, the parties shall first attempt to resolve the dispute informally in accordance with this section. In the event a dispute arises, the complaining party shall deliver notice of the matter in dispute to the other party at the address and in the manner provided for in Section 9.2 hereof. Each party shall thereafter promptly designate a representative to address the matter, which representatives shall attempt, in good faith, to resolve the disputed matter. In the event the designated representatives are unable, despite their good faith efforts, to resolve the disputed matter within fifteen days of the initial notice thereof, then, and in that event, either party may pursue any available remedies in accordance with the preceding sections.

#### **SECTION 9: GENERAL PROVISIONS**

9.1 Litigation. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, the prevailing party will be entitled to have the recovery of and from the other party all costs and expenses of the action or suit, actual attorneys' fees (including the allocated costs of in-house counsel), witness fees and any other professional fees resulting therefrom.

9.2 Notices. All notices or other communications required or permitted hereunder must be in writing, and must be personally delivered (including by a professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All notices sent by mail will be deemed received 2 (two) days after the date of mailing and all notices sent by other means permitted herein shall be deemed received on the date delivered. Notices will be sent as follows to:

Developer: The Babcock, LLC  
Attn: Michael S. Mathew  
115 North Broadway, #515  
Billings, MT 59101  
Telephone: (406) 860-5313  
Facsimile: (406) 256-5874

DBP: Downtown Billings Partnership, Inc.  
Attn: Executive Director  
2815 2<sup>nd</sup> Ave. N  
P. O. Box 2117  
Billings, MT 59103  
Telephone: (406) 294-5060  
Facsimile: (406) 294-5061

City: City of Billings  
Attn: Brent Brooks City Attorney  
210 North 27<sup>th</sup> Street  
Billings, MT 59101  
Telephone: (406) 657-8202

9.3 Nonliability of Officials and Employees. Except as otherwise provided herein, no director, officer, member, official, employee or agent of Developer, DBP or the City of Billings shall be personally liable to any party or any successor-in-interest thereto, in the event of any default or breach by any party or for any amount which may become due to any party or its successor, or any obligations under the terms of this Agreement.

9.4 Headings. Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.5 Time of Essence. Time is of the essence of this Agreement. All obligations of City, DBP and Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

9.6 Construction/Governing Law/Venue. DBP, City and Developer and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against either City, DBP or Developer. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated parties. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Montana. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained herein, shall be instituted and maintained only in Thirteenth Judicial District Court for Yellowstone County, Montana

9.7 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

9.8 No Partnership. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

9.9 Government Rights. Except as provided herein, by making this Agreement, DBP and the City of Billings are not obligating themselves or any other agency with respect to any discretionary action relating to the development of the Property or development, operation and use of the improvements to be constructed on the Property, including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required.

9.10 Non-Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

9.11 Entire Agreement/Counterparts. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. This Agreement may be signed in counterparts.

9.12 Successors. This Agreement shall be binding upon and inure the benefit of the parties, their successors and assigns.

City of Billings

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

Downtown Billings Partnership ("DBP")

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

"Developer"

The Babcock, LLC

By: \_\_\_\_\_  
Its Authorized Member/President

STATE OF MONTANA     )  
                                      :SS  
County of Yellowstone    )

This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of the City of Billings, Montana.

(SEAL)

Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_

STATE OF MONTANA     )  
                                      :SS  
County of Yellowstone    )

This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ as President of Downtown Billings Partnership, Inc.

(SEAL)

Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_

STATE OF MONTANA    )  
                                  :SS  
County of Yellowstone    )

          This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ as authorized Member/President of The Babcock, LLC.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_

List of Exhibits

- 1 — Legal Description of Property
- 2 — Drawings of Babcock Theater
- 3 — City Deed of Trust
- 4 — Developer's Improvements – Phases 1, 2 and 3
- 5 — Member Guaranty
- 6 — Performance Schedule

## PROPERTY DESCRIPTION

**Property situated in the County of Yellowstone, State of Montana, particularly described as follows:**

All of Lots 7, 8, 9, 10, 11 and 12 and that part of Lot 6 described as follows:

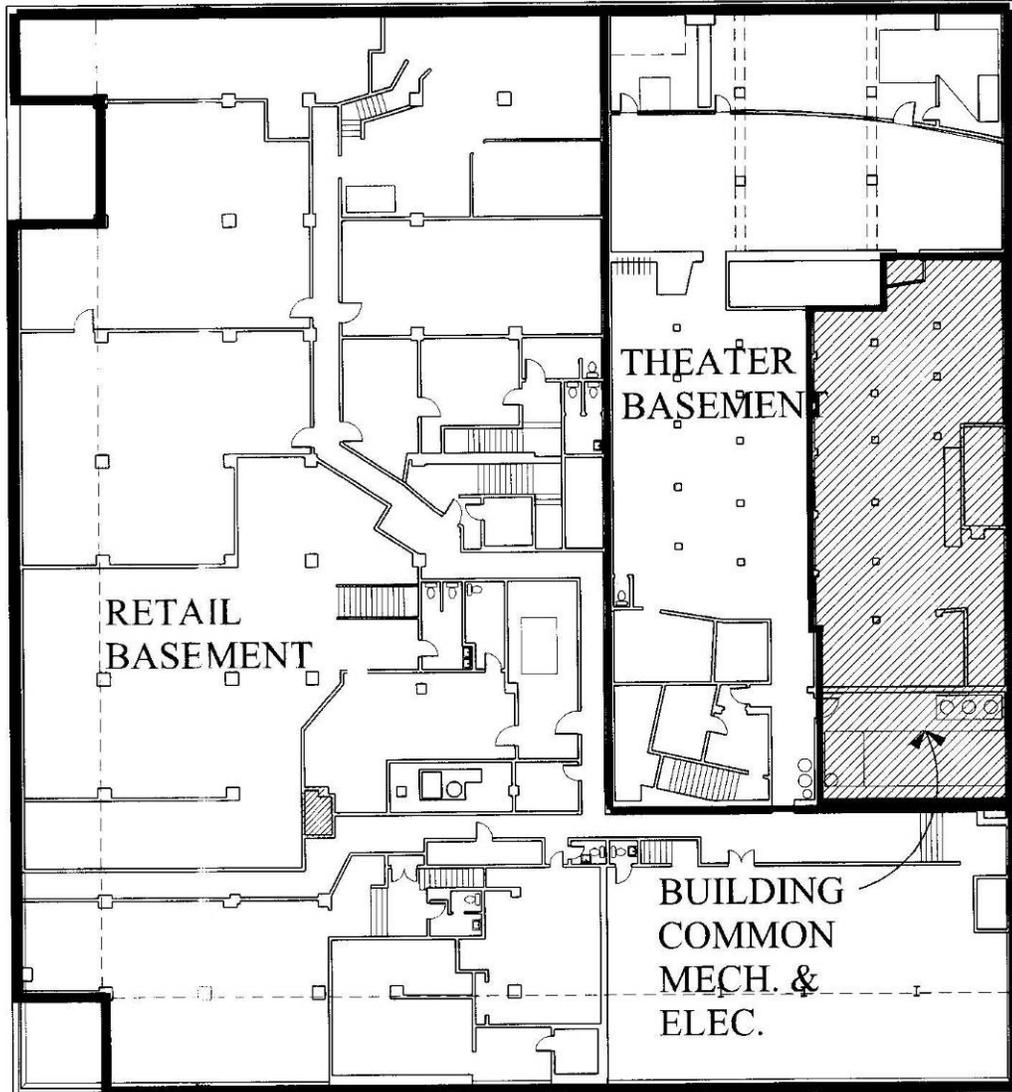
Commencing at the northwest corner of said Lot 6;  
Thence in a southerly direction along the west line of said Lot 6 0.22 feet;  
Thence in a northeasterly direction to the northeast corner of said Lot 6;  
Thence in a westerly direction along the north line of said Lot 6 to the point of beginning;

All in Block 93 of the Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #16312.

**Subject to permitted title exceptions as follows:**

1. Standard printed exceptions contained in the promulgated form of an Owner Policy of Title Insurance.
2. Special Improvement District No. 1346 for the Billings North Broadway Streetscape.
3. Life estate of Ruth Ann Moss for the Moss Apartment as defined and described in the Earnest Money Contract between Babcock Theatre & Building Company, Inc. and The Babcock, LLC dated June 12, 2008.
4. Lease with Rock Creek Coffee Company, LLC.
5. All reservations, restrictions, covenants, easements and rights-of-way in all instruments of record.
6. All applicable building, use, safety, zoning, sanitary and environmental rules, regulations and restrictions.
7. All prior conveyances, leases or transfers of any interest in minerals, including oil, gas and other hydrocarbons.

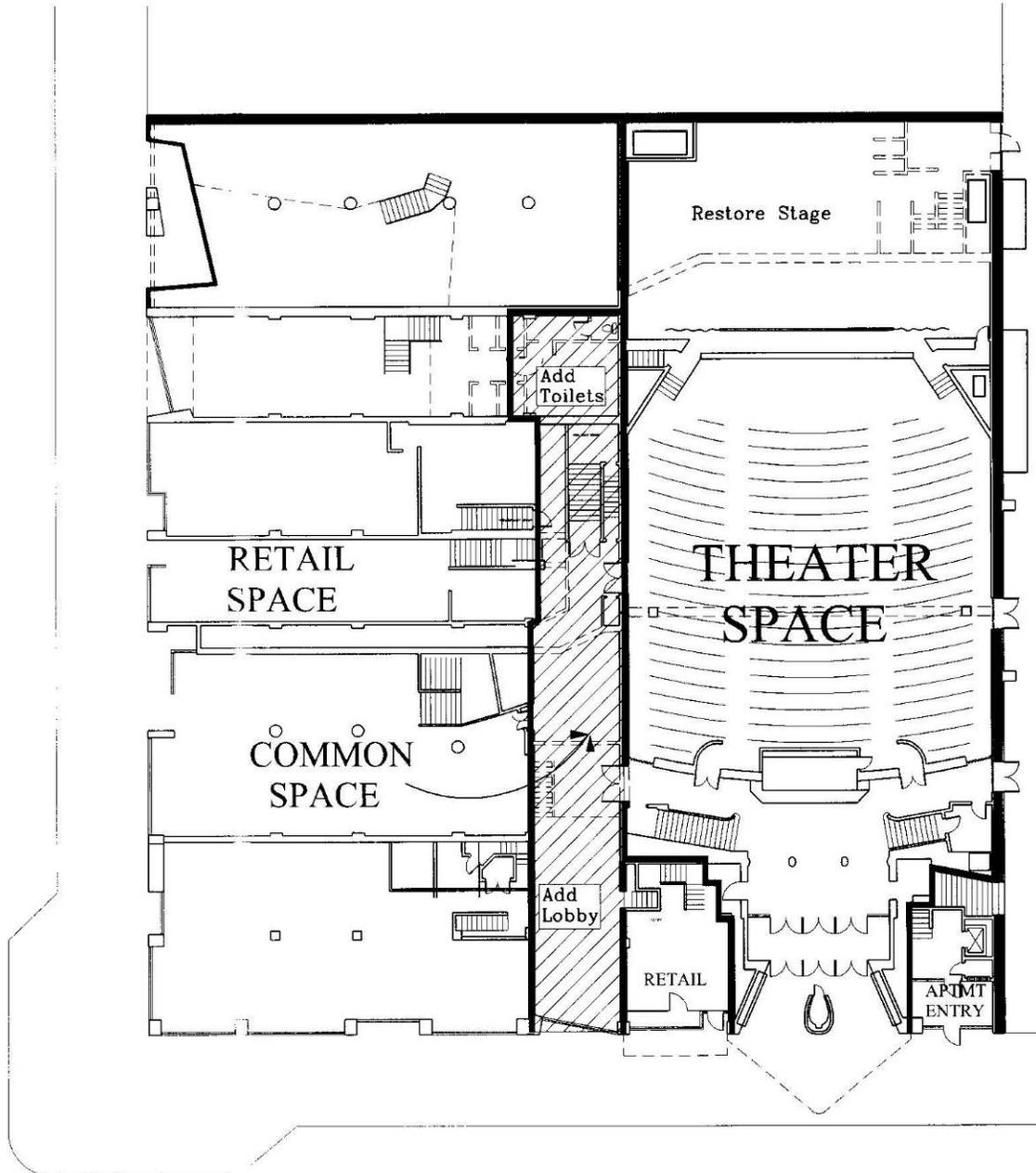
Exhibit 1



**O<sup>2</sup>A**  
 O2 ARCHITECTS  
 202 N. BROADWAY #350  
 BILLINGS, MONTANA 59101  
 FAX 406-256-7123  
 PHONE 406-259-7123

**BASEMENT FLOOR PLAN**  
 BABCOCK BUILDING RENOVATION PROJECT

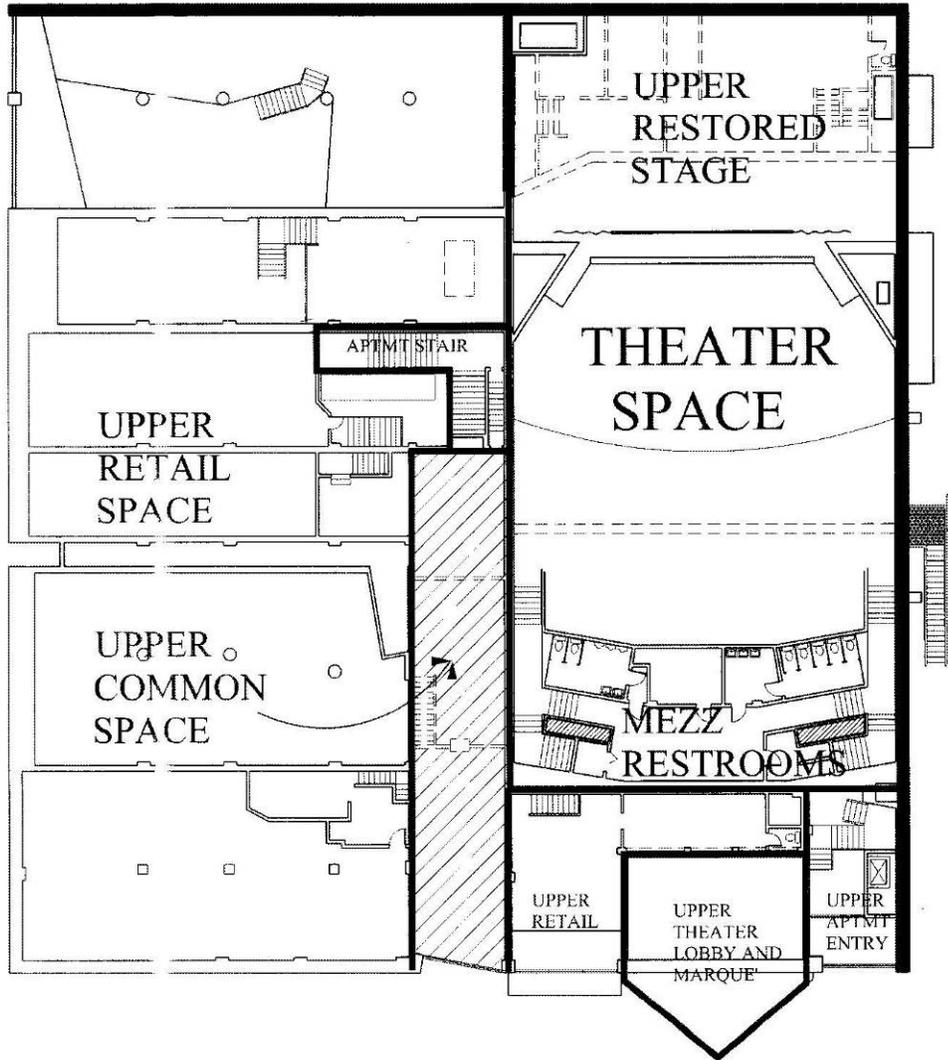
SEPT08  
 EXHIBIT 2  
 PAGE 1



**O2A**  
 O2 ARCHITECTS  
 208 N. BROADWAY #350  
 BILLINGS, MONTANA 59101  
 FAX 406-255-7123  
 PHONE 406-259-7123

**GROUND FLOOR PLAN**  
 BABCOCK BUILDING RENOVATION PROJECT

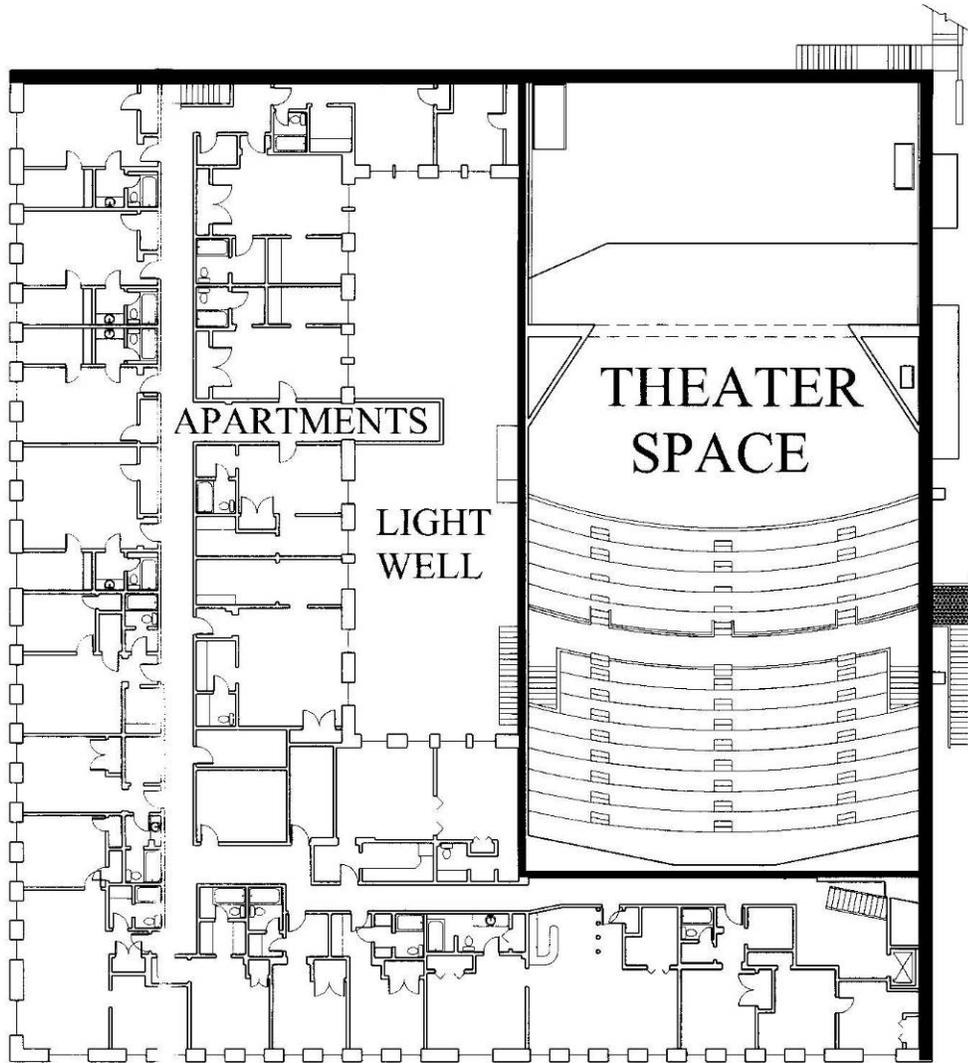
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 EXHIBIT 2  
 PAGE 2



**O<sup>2</sup>A**  
 O2 ARCHITECTS  
 208 N. BROADWAY #350  
 BILLINGS, MONTANA 59101  
 FAX 406-256-7123  
 PHONE 406-259-7123

**MEZZANINE FLOOR PLAN**  
 BABCOCK BUILDING RENOVATION PROJECT

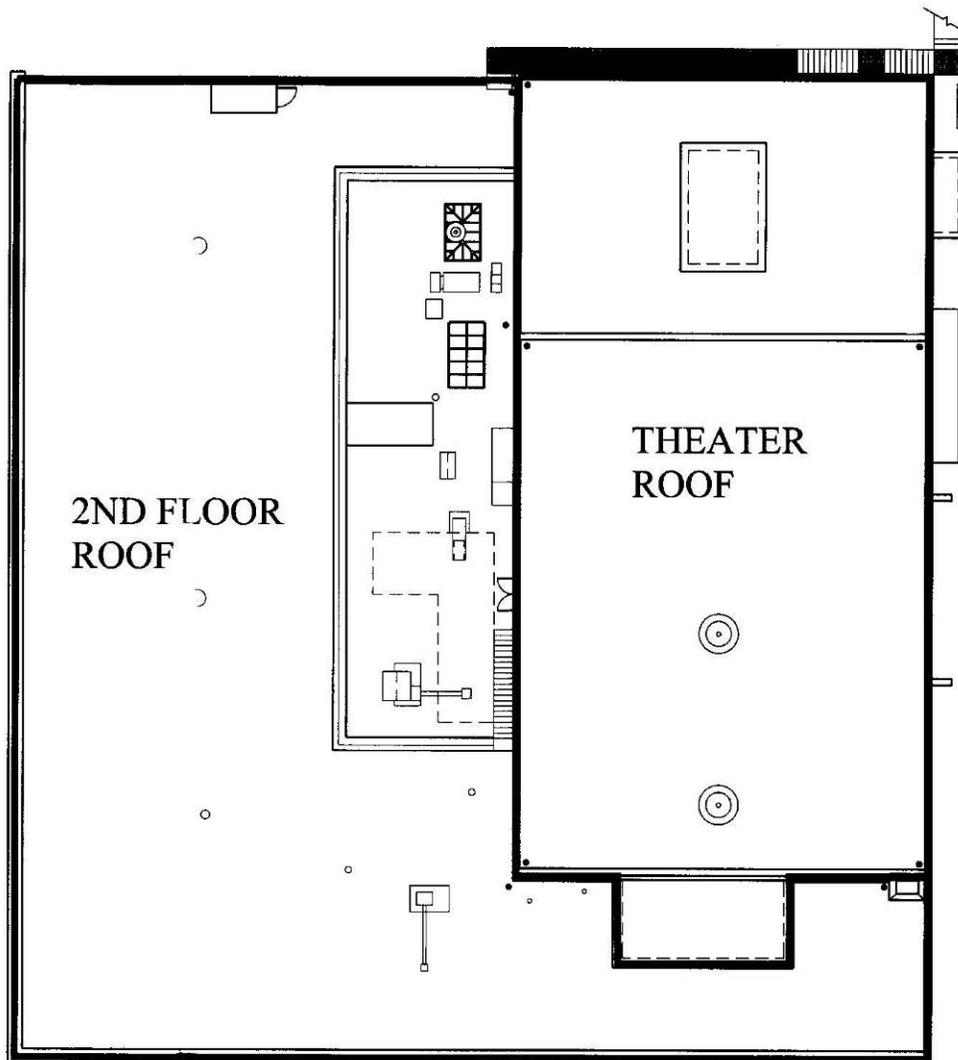
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 EXHIBIT 2  
 PAGE 3



**O<sup>2</sup>A**  
O2 ARCHITECTS  
208 N. BROADWAY #350  
BILLINGS, MONTANA 59101  
FAX 406-256-7123  
PHONE 406-259-7123

**SECOND FLOOR PLAN**  
BABCOCK BUILDING RENOVATION PROJECT

SEPT. 08  
EXHIBIT 2  
PAGE 4



**O<sup>2</sup>A**  
 O2 ARCHITECTS  
 208 N. BROADWAY #350  
 BILLINGS, MONTANA 59101  
 FAX 406-256-7123  
 PHONE 406-259-7123

**ROOF-PLAN**  
 BABCOCK BUILDING RENOVATION PROJECT

SEPT.08  
 EXHIBIT 2  
 PAGE 5

After recording please return to  
Jeffery A. Hunnes, Esq.  
P.O. Box 1977  
Billings, MT 59103

Exhibit 3

### DEED OF TRUST

**THIS DEED OF TRUST** is made this \_\_\_\_\_ day of September, 2008, among

**GRANTOR:** The Babcock, LLC, a Montana limited liability company  
115 North Broadway, #515  
Billings MT 59101

**TRUSTEE:** American Title & Escrow  
1001 South 24<sup>th</sup> Street West  
Billings, MT 59102

**BENEFICIARY:** City of Billings, a municipality of the State of Montana  
210 North 27<sup>th</sup> Street  
Billings, MT 59101

**CONVEYANCE AND GRANT:** GRANTOR hereby irrevocably GRANTS, BARGAINS, SELLS, CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, nevertheless, WITH POWER OF SALE that certain real property, which does not exceed forty (40) acres in area, situated in the County of Yellowstone, State of Montana, particularly described as follows, to-wit:

All of Lots 7, 8, 9, 10, 11 and 12 and that part of Lot 6 described as follows:

Commencing at the northwest corner of said Lot 6;  
Thence in a southerly direction along the west line of said Lot 6 0.22 feet;  
Thence in a northeasterly direction to the northeast corner of said Lot 6;  
Thence in a westerly direction along the north line of said Lot 6 to the point of beginning;

All in Block 93 of the Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #16312.

**FOR THE PURPOSE OF SECURING:** (1) Performance of all of the obligations, covenants and agreements of GRANTOR according to the terms and conditions of the Development Agreement between City of Billings, Downtown Billings Partnership, Inc. and GRANTOR, dated September \_\_, 2008 ("Development Agreement") (and any extensions and/or renewals or modifications thereof); (2) Payment of the principal sum of One Million Nine Hundred

Thousand Dollars and no/100 (\$1,900,000.00) together with interest thereon as provided in the Development Agreement ("City Advance Amount"); (3) Payment of all sums expended or advanced by BENEFICIARY under or pursuant to the terms hereof, together with interest thereon as herein provided; and (4) Performance of each agreement of GRANTOR herein contained.

In the event of GRANTOR's default under the Development Agreement or this Deed of Trust, all of GRANTOR's obligations under the Development Agreement and this Deed of Trust shall be quantified and shall be part of the indebtedness secured by this Deed of Trust.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, AND FOR OTHER PURPOSES. GRANTOR AGREES:**

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to use the property nor permit the use of the property to generate, manufacture, store, treat, dispose of or release hazardous waste or substance; not to commit, suffer or permit any act upon said property in violation of the law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to BENEFICIARY, insurance of such type or types and amounts as BENEFICIARY may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by the BENEFICIARY with loss payable clause in favor of and in form acceptable to BENEFICIARY. In the event of loss, GRANTOR shall give immediate notice to BENEFICIARY, who may make proof of loss and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to BENEFICIARY instead of to GRANTOR and BENEFICIARY jointly, and the insurance proceeds, or any part thereof, may be applied by BENEFICIARY, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to, pay for and maintain with BENEFICIARY until the indebtedness secured hereby is paid in full, such evidence of the title as BENEFICIARY may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To pay before delinquent all taxes and assessments, including interest and penalties, affecting said premises and improvements; to promptly pay and discharge all encumbrances, charges and liens on said property which at any time are, or appear to be, prior or superior hereto.

5. Except as otherwise expressly provided herein, to pay all costs, fees and expenses of this trust, including cost of search and evidence of title, advertising and recording expense, documentary taxes and TRUSTEE'S and attorney's fees as allowed by law.

6. Should GRANTOR fail to make any payment or to do any act as herein provided, then BENEFICIARY or TRUSTEE, without obligation so to do and without notice to or demand upon GRANTOR and without releasing GRANTOR from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, BENEFICIARY or TRUSTEE being authorized to enter unto said property for such

purposes.

7. To pay immediately and without demand all sums expended hereunder by BENEFICIARY or TRUSTEE, with interest from date of expenditure at the rate of twelve percent (12%) per annum until paid, and the payment thereof shall be secured hereby.

**GRANTOR AGREES THAT:**

8. Without affecting the liability of any person, including GRANTOR, for the payment of any indebtedness or obligation secured hereby, or the lien of this Deed of Trust on the remainder of the property for the full amount of any indebtedness unpaid, BENEFICIARY and TRUSTEE are respectively empowered as follows; BENEFICIARY may from time to time and without notice:

- (a) Release any person liable for payment of any of the indebtedness,
- (b) Extend the time or otherwise alter the terms of payment of any of the indebtedness,
- (c) Alter, substitute or release any property securing the indebtedness;

TRUSTEE may, at any time and from time to time, upon the written request of BENEFICIARY:

- (a) Consent to the making of any map or plat of the property;
- (b) Join in granting any easement or creating any restriction thereon,
- (c) Join in any subordination or other agreement affecting this Deed of Trust or lien or charge thereof,
- (d) Reconvey, without warranty, all or any part of the property.

9(a) Both parties agree that BENEFICIARY may, if BENEFICIARY so elects, procure and thereafter continue during the term of this Deed of Trust, for as long as BENEFICIARY desires, a form of insurance acceptable to BENEFICIARY insuring BENEFICIARY against any loss sustained by BENEFICIARY by reason of any default in payment by GRANTOR of the secured indebtedness. If BENEFICIARY elects to procure such insurance, GRANTOR shall promptly reimburse BENEFICIARY the full amount of all premiums for such insurance.

9(b). Upon written request of BENEFICIARY stating that all sums and obligations secured hereby have been paid and satisfied, and upon surrender of this Deed of Trust and said note to TRUSTEE for cancellation and retention and upon payment by BENEFICIARY of its fees, TRUSTEE shall reconvey to GRANTOR, without warranty, the property then held hereunder.

10. As additional security, GRANTOR hereby assigns to BENEFICIARY, during the continuance of these trusts, all rents issues, royalties, and profits of the property affected by this Deed of Trust and of any personal property located thereon. Until GRANTOR shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, GRANTOR shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Grantor shall default as aforesaid, GRANTOR'S right to collect any of such monies shall cease and BENEFICIARY shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues and profits. failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by BENEFICIARY of the right, power and authority to collect the same. Nothing contained herein, nor the exercise of the right by BENEFICIARY to collect, shall be, or be construed to be, an affirmation by BENEFICIARY of any tenancy, lease or option, nor an assumption of liability under, nor subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.

11. Upon any default by GRANTOR hereunder, BENEFICIARY may at any time without notice, either in person, by agent, or by receiver to be appointed by a court (GRANTOR

hereby consent to the appointment of BENEFICIARY as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less cost and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as BENEFICIARY may determine.

12. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire or other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. Time is of the essence hereof. Subject to the notice and opportunity to cure provisions in the Development Agreement, upon default by GRANTOR in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the BENEFICIARY. In the event of such default, BENEFICIARY may execute or cause TRUSTEE to execute a written notice of default and of election to cause such property to be sold to satisfy the obligations hereof, and TRUSTEE or BENEFICIARY shall file such notice for record, in each county wherein said property or some part thereof is situated. BENEFICIARY shall also deposit with TRUSTEE, the Development Agreement and all documents evidencing expenditures secured hereby.

14. After the lapse of such time as may then be required by law following the recordation of said notice of default and of election to cause said property to be sold, and notice of default and notice of sale having been given as then required by law, TRUSTEE, or its attorney, without demand on GRANTOR, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of GRANTOR to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in cash in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding fifteen (15) days by public proclamation by such person at the time and place fixed in the notice of sale, and no other notice of the postponed sale need be given. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including BENEFICIARY (but excluding TRUSTEE) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including cost of search and evidence of title, advertising and recording expense, documentary taxes and TRUSTEES' and attorneys' fees, TRUSTEE shall apply the proceeds of sale to payment of all amounts secured hereby and due hereunder, including all sums expended by the TRUSTEE and BENEFICIARY, or either of them, with accrued interest thereon at the rate of twelve percent (12%) per annum from the date of expenditure thereof, and the surplus, if any, to the person or persons legally entitled thereto; provided that the TRUSTEE, in its discretion, may deposit such surplus with the County Clerk and Recorder of the county in which the sale took place.

15. GRANTOR agrees to surrender possession of the hereinabove described trust property to the purchaser at the aforesaid sale on the tenth (10th) day following said sale, in the event such possession has not previously been delivered by GRANTOR.

16. Each abstract of title, title insurance policy and all other evidences of title, and all hazard insurance policies placed or deposited with the BENEFICIARY shall be deemed an incident to the title to the trust property and upon foreclosure by exercise of power of sale, or otherwise, shall pass to the purchaser and the same are hereby pledged as additional security for payment of the indebtedness secured hereby.

17. Upon the occurrence of any default hereunder, BENEFICIARY shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law either through judicial proceedings or by notice and private sale, and BENEFICIARY shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the Court. In the event of BENEFICIARY'S foreclosure of this Deed of Trust through judicial proceedings, BENEFICIARY shall not be entitled to recover a deficiency judgment against GRANTOR as to the City Advance Amount. However, in such event, BENEFICIARY shall be entitled to recover a deficiency judgment against GRANTOR as to all other quantified obligations that become part of the indebtedness secured by this Deed of Trust.

18. Except as may be otherwise provided herein, GRANTOR agrees to pay BENEFICIARY or TRUSTEE the costs and expenses, including attorney's fee as allowed by statute, or as incurred by either of them in instituting, prosecuting or defending any Court action in which GRANTOR does not prevail, if such action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof by a party hereto, including but not limited to an action to obtain possession of the above described property after exercise of the power of sale granted hereunder.

19. This Deed of Trust shall apply to, inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of GRANTOR hereunder are joint and several. The term "beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

20. TRUSTEE accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. TRUSTEE is not obligated to notify any party hereto of a pending sale under any other trust indenture or of any action or proceeding in which GRANTOR, BENEFICIARY, OR TRUSTEE shall be a party, unless brought by TRUSTEE.

21. This Deed of Trust is made within the State of Montana pursuant to the Small Tract Financing Act of Montana and is not made or taken in substitution for any mortgage in existence on the effective date of said Act. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Montana.

22. GRANTOR requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinabove set forth.

23. In the event GRANTOR sells, transfers, assigns or in any way conveys all or any part of his interest in and to the property herein described during the term of the Development Agreement secured by this obligation, or any extensions thereof, the whole of all obligations under the Development Agreement and this Deed of Trust shall, at BENEFICIARY'S ELECTION, be quantified and become immediately due and payable. Should BENEFICIARY, its successors or assigns consent to any transfer of interest by GRANTOR during the term of the Development Agreement secured hereby and waive entitlement to acceleration of the remaining balance due, such

consent shall be valid only if evidenced by written consent executed by City and DBP. Notwithstanding the foregoing, City will provide partial releases of this Deed of Trust as to sales of all or any portion of the property (excluding the Babcock Theater as defined in the Development Agreement), provided that: (i) any sale is for fair market value and such sale does not adversely affect the value of the remaining property; (ii) the terms of sale are approved by City and DBP; and (iii) sales proceeds are transferred to an escrow which will provide that the proceeds shall be utilized for the completion of Developer's Improvements in Phases 2 and 3 of the Project (as defined in the Development Agreement) for the construction work on the Babcock Theater, unless the parties agree to a different use of such proceeds.

24. Any payment not made within fifteen (15) days of its due date shall accrue a late payment penalty in the amount of five (5) percent of the amount of the payment. No payment made more than fifteen (15) days after its due date will be deemed paid unless accompanied by the late payment fee.

25. Should GRANTOR default on any obligation secured hereby, or fail to satisfactorily perform any other term or requirement set forth in this Deed of Trust, and his interest be declared by the BENEFICIARY to be in default, any obligation under the Development Agreement and this Deed of Trust shall, from the date default is declared accrue interest in lieu of any other interest provided for in the note at the rate of thirteen (13) percent per annum.

26. Notices. Any notice under this Deed of Trust shall be in writing, may be sent by facsimile, and shall be effective when actually delivered, or when deposited with a nationally recognized, overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail, first class, certified, or registered mail, postage prepaid, directed to the addresses near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties specifying that the purpose of the notice is to change the party's address. For notice purposes, GRANTOR agrees to keep BENEFICIARY and TRUSTEE informed at all times of GRANTOR'S current address.

#### **NO HOMESTEAD EXEMPTION**

GRANTOR HEREBY ACKNOWLEDGES THAT THE REAL PROPERTY IN WHICH A LIEN IS BEING GRANTED UNDER THIS DEED OF TRUST IS NOT EXEMPT FROM EXECUTION AS A HOMESTEAD, BECAUSE UNDER MONTANA STATUTES, IT IS SUBJECT TO EXECUTION OR FORCED SALE TO SATISFY A JUDGMENT OBTAINED ON DEBTS SECURED BY A MORTGAGE OR OTHER ENCUMBRANCE ON THE PREMISES. GRANTOR HEREBY RELEASES AND WAIVES ALL RIGHTS AND BENEFITS OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF MONTANA AS TO ALL INDEBTEDNESS SECURED BY THIS DEED OF TRUST.



After Recording Return to:

**REQUEST FOR FULL RECONVEYANCE**

TO: TRUSTEE \_\_\_\_\_, 20\_\_

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate not held by you thereunder.

\_\_\_\_\_  
\_\_\_\_\_

Mail reconveyance to \_\_\_\_\_

**BABCOCK BUILDING RENOVATION**  
**DEVELOPER'S IMPROVEMENTS**

**BABCOCK PROJECT - DESCRIPTION OF CONSTRUCTION AND RENOVATION WORK BY PHASE**

**PHASE 1**

- Roof – Remove existing roofing on entire Babcock Building and install new insulation and new roof complete with all flashings and trim as required above the second floor apartments and light well. Install insulation and new roof on arched roof area over theater.
- Façade Study– Remove a study section of bluish colored panel and trim from the second floor of the building along the Broadway Street side. Verify condition of original brick façade. Also remove logs and display case from the center column of the southern most retail unit. Verify condition of structural system and trim. Verify condition of building cornice and parapet wall.  
Façade Renovation - Remove panel and fastening system complete from upper level of both street elevations. Restore brick at second floor level. Remove and replace first floor storefronts with system sensitive to original design.
- Restore Stage – Remove concrete masonry wall, concrete mezzanine deck, power, lighting, HVAC and plumbing complete from easterly wall of Theater to alley. Remove infill and door at alley entry and replace with oversized door. Infill and refinish wood stage floor.
- Retail Clean up – remove misc. carpet, wall finish and ceilings as required to facilitate new tenant build out.
- HVAC General – Provide new cooling tower in conjunction with re-using the recently upgraded boiler / hot water based heating system. Develop new fluid supply loop for heat pump systems to service whole facility.
- HVAC Retail –Existing system to remain until new retail tenant needs and design is known. Tie in each retail space to new heat pump system as part of tenant lease build out.
- HVAC Theater – tie the theater into new heat pump loop. Install new heating and cooling coils in existing duct work system including restoration of the fresh air supply to include backdrafts and economizing dampers. Abate friable asbestos from existing (to be abandoned) steam heat system.
- Main plumbing – Install new hot and cold water distribution and sanitary sewer system trunk lines throughout building for tie in during future phases.

- Retail Electrical - New feeds and panel boxes from existing service mains in basement to the retail spaces as required.
- Environmental Remediation – Per Section 4.10 of Development Agreement.

## **PHASE 2**

- Miscellaneous code egress – develop and install logical exiting system for main floor and the whole basement area allowing both access from retail spaces, theater and outside access.
- Second Floor upgrades – replace plumbing fixtures, waste lines, cold and hot water supply, wiring and lighting, add smoke detectors – to bring to tenant ready condition.
- Fire sprinkler – Install fire sprinklers, smoke detectors and fire alarms where required by code.
- Lobby and restrooms – Per Exhibit 2 restore a portion of the original lobby space from retail space to public space and construct new ground floor handicapped accessible restrooms to serve theater and ground floor retail.

## **PHASE 3**

- Existing theater restrooms – renovate and upgrade existing mezzanine restrooms including fixtures and finishes as required.
- Theater Electrical – Install power feeds to stage, sound and light board locations as required to serve current and anticipated lighting, sound and projection requirements of proposed users.
- Theater ceiling and HVAC – Refinish / patch ceiling as needed and clean / restore ceiling grilles.
- Fire sprinkler – Install or extend sprinkler system where required by code.

**GUARANTY**

This Guaranty is made on the \_\_\_\_ day of \_\_\_\_\_, 2010/2011 by Donald Olsen, Kimberly A. Olsen, Catherine G. Foster and Michael S. Mathew of Billings, Yellowstone County, Montana ("Guarantors") to City of Billings, a municipality of the State of Montana ("City") and to Downtown Billings Partnership, Inc., a Montana non-profit corporation ("DBP"), and their successors and assigns.

WHEREFORE, City and DBP have entered into a Development Agreement with The Babcock, LLC ("Developer") dated September \_\_\_\_, 2008. A copy of the Development Agreement is attached hereto as Exhibit A.

WHEREFORE, City and DBP are prepared to enter into Phases 2 and 3 of the Project as defined in the Development Agreement with Developer.

WHEREFORE, City and DBP require as a condition of proceeding to Phases 2 and 3 of the Development Agreement that performance of Phase 3 of the Development Agreement will be guaranteed by responsible third parties, consisting of all members of Developer.

WHEREFORE, Phase 3 of the Project requires Developer to complete specific Developer's Improvements described in Exhibit 4 to the Development Agreement on or before April 1, 2016.

WHEREFORE, Guarantors are willing to guarantee performance of Phase 3 of the Project under the Development Agreement on the terms set forth below.

NOW THEREFORE, for good and valuable consideration, receipt of which is acknowledged, Guarantors agree as follows:

1. Guarantors guarantee prompt and satisfactory performance and completion of the Developer's Improvements in Phase 3 of the Project as set forth in the Development Agreement.

Exhibit 5

If Developer defaults in performance of its obligations to construct and complete the Developer's Improvements under Phase 3 of the Development Agreement according to its terms and conditions, Guarantors shall pay to City and DBP all damages, costs, and expenses that City and DBP are entitled to recover from Developer by reason of such default.

2. This guaranty shall continue in force until all obligations of Developer under Phase 3 of the attached Development Agreement have been satisfied and discharged. Guarantors shall not be discharged from liability as long as any claim by City or DBP against Developer for the Phase 3 Developer's Improvements remains outstanding.

3. Guarantors shall be jointly and severally liable for all obligations under this Guaranty. This Guaranty may be enforced against any Guarantor separately or against any combination of or all Guarantors jointly.

4. This guaranty shall not be enforceable if Developer's interest in the Property has been foreclosed upon and sold by a lender prior to April 1, 2016.

5. The undersigned hereby waive notice of acceptance. The undersigned hereby waive notice of default of said Development Agreement. The undersigned hereby waive notice of and protest to any extensions of time of payment or performance granted by City or DBP, their successors or assigns, to Developer under said Development Agreement.

6. This Guaranty is a continuing Guaranty for the performance and enforcement of Phase 3 of the Development Agreement. This guaranty may not be revoked by the undersigned until the performance and payment obligations of Developer under Phase 3 of the Development Agreement are performed and paid in full.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2010/2011.

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Donald J. Olsen

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Kimberly A. Olsen

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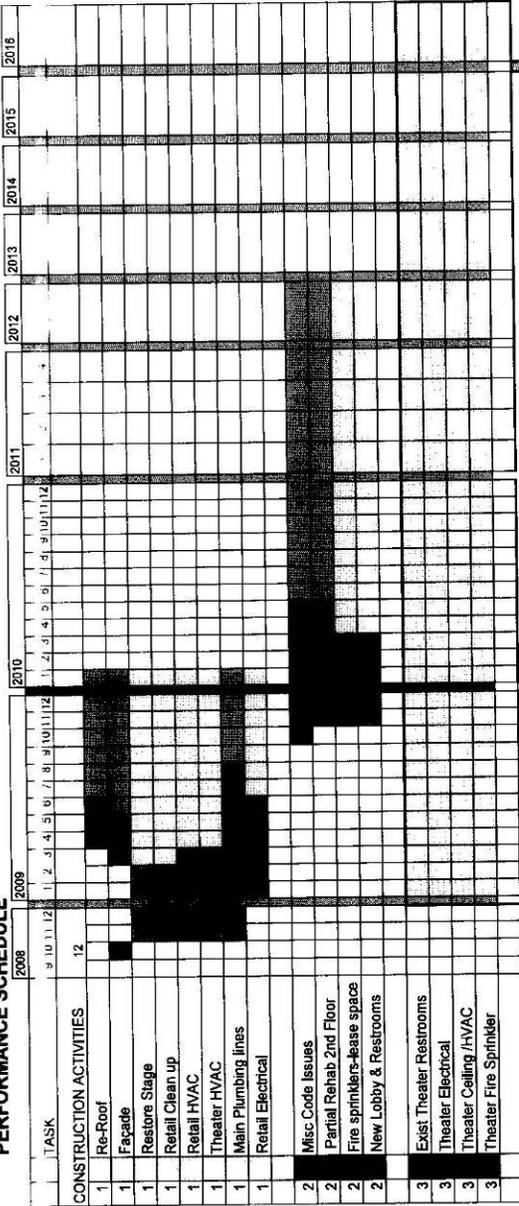
Catherine G. Foster

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Michael S. Mathew

# BABCOCK RENOVATION PROJECT

## PERFORMANCE SCHEDULE



Check Point - Completion of Phase 1 - February 1, 2010  
 Check Point - Completion of Phase 2 - January 1, 2013  
 Project Completion - April 1, 2016



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, September 22, 2008**

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**SUBJECT:** Expansion of the N. 27<sup>th</sup> Street Tax Increment Financing District  
**DEPARTMENT:** (Prepared by the Downtown Billings Partnership, Inc.)  
**PRESENTED BY:** Christina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** In March of 2008, the original Tax Increment District in Downtown Billings came to an end. Much was accomplished over the 32 year span and despite several changes in property tax valuation and several economic slow-downs, the taxable value of that district was doubled during the years that the Downtown Billings Partnership working with The City of Billings implemented the Urban Renewal Plan that was modified in 1998 by the addition of the Framework Plan. This stabilization and ultimate growth of the tax base is now part of the general funds of the taxing authorities, starting with in FY 2009.

Even with the successes, many areas of deep concern remain in that old (roughly) 123 block district. Further, a new East Billings Tax Increment district was created with a west boundary that contains several “blighted” and underdeveloped blocks just to the west. If those blocks are not addressed by an approved urban renewal plan, their impact on the East Billings TIFD could be damaging to the sustained growth that is planned for that area.

In 2005, just under ½ of City of Billings Block 91 within the Downtown TIFD was removed from that TIFD and established as a separate N. 27<sup>th</sup> Street TIFD. In 2006, that newly created N. 27<sup>th</sup> Street TIFD was expanded by resolution to a contiguous 14 block TIFD that was, like before, removed from the Downtown TIFD and established as the Expanded N. 27<sup>th</sup> Street District. Of those 14 blocks almost 40% of the parcels were not taxable. Of the taxable properties, 39% had declined in taxable value between 2005 and 2006.

The Downtown Billings Partnership, working with City of Billings staff and property owners formed a committee to review the possibility of expanding the N. 27<sup>th</sup> Street TIFD once again in 2008 to continue the implementation of the Framework Plan, stabilize the parcels that had been revitalized and remediate the remaining significant blight. It was decided by that group to recommend expanding the 14 block district to encompass roughly 79 blocks. The newly formed TIFD would have the East Billings TIFD as its east boundary, 6<sup>th</sup> Ave. North as its north boundary, N. 31<sup>st</sup> Street as its west boundary (including Park IV and the First Interstate Building with Park IV currently non-taxable and First Interstate valued at its highest taxable

value as the base) and 2<sup>nd</sup> Ave. South as the southern boundary. This would be roughly 64% of the old downtown TIFD of which about 38% of the parcels are either non-taxable, severely blighted, or deeply undervalued. If this 38% continues to decline in value with no reinvestment, it would have an extreme negative impact on not only the remaining 62% of the area but the entire downtown.

**ALTERNATIVES ANALYZED:** The Council may:

- 4) Approve the expanded district by Ordinance
- 5) Amend the boundaries as presented and approve the expansion by Ordinance
- 6) Deny the expansion.

**FINANCIAL IMPACT:** If approved before the end of calendar year 2008, the expanded N. 27<sup>th</sup> Street TIFD would capture less than ½ of the improved taxable value of the Crowne Plaza Building with several other parcels of land (such as the Babcock Theatre block and the Northern Hotel block) coming in at either their lowest taxable value. All of the properties would enter the district at their current 2008 taxable value. Thus the impact to the general funds of the taxing entities would not be significant. Further, if projects like the renovation of the Babcock and the Northern along with a new Federal Courthouse are enabled, the City could see significant investment of the increment generated through those projects leveraged to stabilize and grow the Central Business District significantly over the next 12 years.

**RECOMMENDATION**

The Downtown Billings Partnership, Inc. (DBP recommends that Council enter into a new management agreement for FY 2010 with the DBP and approve the proposed expansion of the Expanded N. 27<sup>th</sup> St. District before the end of calendar year 2008.

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

**ATTACHMENTS:**

A:     Proposed Expansion Timeline and Map from the DBP

**Timeline and Outline for Expansion  
of the N. 27<sup>th</sup> Street Tax Increment District**

**I. Timeline**

- a. Boundary changes and plan overview review by **Planning Board**. (October 14<sup>th</sup>)
- b. Review and approval of **Resolution of Blight at Council**. (October 27<sup>th</sup>)  
Mail notices to property owners **regarding Ordinance to expand the district through adoption of an amended Urban Renewal Plan** and publish notice of hearing. (by October 30<sup>th</sup>)
- d. **Public Hearing** on Expansion Ordinance and Adoption of Modifications to the Urban Renewal Plan at Council (November 10<sup>th</sup>) First Reading
- e. **2<sup>nd</sup> Reading and Approval** of Ordinance. (November 24<sup>th</sup>)
- f. Ordinance goes into effect and notice is sent to Montana Dept. of Revenue. (December 24<sup>th</sup>)

**II. Establish January, 2008 as BASE year for expanded area**

- a. Amend current boundaries to:
  - i. A point at the intersection of the centerlines of 6<sup>th</sup> Avenue North and North 31<sup>st</sup> St. proceeding east along the centerline of 6<sup>th</sup> Ave. North to a point at the intersection of the centerlines of 6<sup>th</sup> Avenue North and N. 22<sup>nd</sup> Street proceeding south along the centerline of North 22<sup>nd</sup> Street to a point at the intersection of South 22<sup>nd</sup> Street and Minnesota Avenue proceeding west along the centerline of Minnesota Avenue to a point at the intersection of Minnesota Avenue and South 23<sup>rd</sup> Street proceeding south along the centerline of South 23<sup>rd</sup> Street to a point at the intersection of South 23<sup>rd</sup> Street and 2<sup>nd</sup> Avenue South proceeding west along the centerline of 2<sup>nd</sup> Ave South to a point at the intersection of the centerlines of 2<sup>nd</sup> Avenue South and South 31<sup>st</sup> Street proceeding north along the centerline of South 31<sup>st</sup> Street to the starting point at the intersection North 31<sup>st</sup> Street and 6<sup>th</sup> Avenue North encompassing all parcels and taxcodes therein.

**III. Proposed Modifications to N. 27<sup>th</sup> Street TIFD Urban Renewal Plan**

- a. Business Retention
  - i. Targeted assistance and review of existing street level businesses
  - ii. Retail market survey
- b. Business Recruitment
  - i. Development of a “chainlet” network
  - ii. Business plan development assistance
  - iii. Association networking
  - iv. Business Improvement District support
  - v. Business cluster analysis
  - vi. Pedestrian study
    1. demographics

2. directions
3. linkages
4. destinations
5. wayfinding

**IV. Parking and Transportation**

- a. Increase use of public transit
- b. Parking structures to support current and future needs
- c. Explore parking linkages to adjacent destinations
- d. Explore parking management practices and programs
  - i. Off street parking
  - ii. On street parking

**V. Crime Prevention and Public Safety**

- a. Cooperative Security Program
- b. Business Watch Program
- c. Crime and Fraud prevention programs
  - i. Geared towards street level businesses

**VI. Management, Implementation and Maintenance**

- a. Downtown Billings Partnership, Inc. management agreement
  - i. Project development
  - ii. Public awareness
  - iii. Advocacy and liaison between public and private sectors
- b. Business Improvement District expansion and development
  - i. Cooperative work agreements with PMDs
  - ii. Development and promotion of Conference Corridor
  - iii. BID expansion
  - iv. “Green” Management
    1. Recycling programs
    2. Tree management

**VII. Infrastructure Improvements**

- a. Public
  - i. Expansion of Historic District
  - ii. New Library
  - iii. New Planning Department Offices
  - iv. Public Parking and Greenspace
  - v. Intersection Lighting by Public Works
  - vi. New SLMDs for mid-block lighting
  - vii. Streetscapes and traffic calming plans
  - viii. Sidewalks, curbs and gutter improvements
    1. stabilization of vaults
  - ix. Relocation of public and private utility lines
- b. Private (Public/Private)
  - i. Workforce housing development

