

NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

October 14, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Astle

ROLL CALL

MINUTES – September 22, 2008

COURTESIES

PROCLAMATIONS – Community Planning Month, October 2008

ADMINISTRATOR REPORTS – Tina Volek

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

Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. Mayor's appointment:

Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Linda Gallagher	Tourism BID Board	10/13/2008	12/31/12

1. Vacancy due to term expiration.

B. Bid Awards:

(1) 2009 4-Wheel Mechanical Broom High Dump Sweeper (Opened 9/16/08). Delayed from 9/22/08. Recommend Western Plains I, using Unit #1252, valued at \$10,000, as a trade-in, for a total bid of \$180,627.

(2) Sixteen (16) car and light truck class vehicles for City fleet. (Opened 9/23/08). Recommend Archie Cochrane Ford for Schedules I, III, IV, V, VI, IX, XI, XII & XIII without trades, \$311,413; Rimrock Auto Group for Schedules II, VII, VIII & X without trades, \$85,113.29.

(3) W.O. 03-07, Alkali Creek Multi-Use Path -- Segment 1B (Main Street Tunnel). (Opened 9/30/08). Recommend delay of action until 10/27/08.

(4) W.O. 05-17*, Highland School Sidewalks Poly Drive at 11th Street West (*Billings Federal Aid Project No. STPE SRTS 1099(48) MDT CN5909). (Opened 9/30/08). Recommend Riverside Sand & Gravel, \$149,748.30. **(5) W.O. 06-22 Water Treatment Facility L-Structure Improvements**, for L-Structure upgrades at the Water Treatment Facility. (Opened 9/30/08). Recommend Williams Brother Construction, \$1,016,000.

(6) W.O. 07-06, Aronson Avenue & Governor's Boulevard Traffic Signal Installation. (Opened 9/30/08). Recommend Ace Electric, \$161,999.20.

(7) W.O. 05-09, Wastewater Treatment Plant Generator Installation. (Opened 10/14/08). Recommend delay of award to 10/27/08.

C. Change Order #2, Water System Backup Power Project, Phase I, Colstrip Electric, \$108,977.

D. Contract with State of Montana Department of Public Health and Human Services, Developmental Disabilities Division for specialized transportation provided by MET Transit for developmentally disabled individuals. One-year term, \$100,000 estimated revenue for FY 2008-09.

E. Approval of Limited Commercial Aviation Building and Ground Lease with Billings Clinic, five-year term, \$26,460 first year revenue.

F. Assignment of MET Transit's Bus/Bench Advertising Concession Agreement to Blair Unlimited, Inc. from Mark Blair, dba Blair Unlimited, with no financial impact to the City.

G. Amendment #1, Professional Services Agreement for Water System Emergency Power, HDR Engineering, Inc., \$97,800.

H. Amendment to State Highway Traffic Safety FY 2008 STEP agreement, extending the agreement to September 30, 2009, and increasing the total amount to \$28,000, with no City match required.

I. Approval of Right-of-Way Easement dedication for Sweet Subdivision, 24th Street West and Grand Avenue.

J. Resolution approving an agreement for payment or reimbursement between Rocky Mountain College and First Interstate Bank relating to \$10,200,000 Higher Education Revenue Note, with no financial impact to the City.

K. Second/Final 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 56th Street West. Dorn-Wilson Development, Douglas and Deborah Frank, and Ronald Frank, owners; Engineering, Inc., agent.

L. Second/Final 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 30th Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner.

M. Preliminary Subsequent Minor Plat of North Pointe Subdivision, 2nd Filing, five lots on approximately 4.8 acres for commercial development located on the northwest corner of U.S. Highway 87 and Main Street; Vacant Land, LLC, owner; Engineering, Inc., agent; conditional approval of the plat and adoption of the Findings of Fact.

N. Bills and Payroll

- (1) September 5, 2008
- (2) September 12, 2008
- (3) September 19, 2008

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **TRANSFER** of Rehberg Ranch sanitary sewer lift station, force main, treatment lagoons, and effluent storage ponds and dispersal system to the City of Billings. Delayed from 9/8/08 and 9/22/08. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)
3. **RESOLUTION** relating to Special Improvement District Bonds 1385; awarding the sale and approving the form and detail of the bonds. Delayed from 9/22/08. Bids opened 10/14/08. Recommendation to be made at meeting. **(Action:** approval or disapproval of staff recommendation.)

4. **CONTINUED PUBLIC HEARING AND RESOLUTION** approving the original spread of Special Improvement District 1380. Action delayed from 9/22/08. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
5. **PUBLIC HEARING AND RESOLUTIONS** levying and assessing FY2009 assessments:
 - (a) Encumbrances, Obstructions, or Encroachments on, over, across or above the streets, avenues, sidewalks, or alleys of the City of Billings.
 - (b) Cost of cutting and/or exterminating weeds.

Staff Recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. **PUBLIC HEARING AND RESOLUTION** to Create SILMD 305, King Avenue West from 31st Street West to Shiloh Road. Staff Recommends approval. (**Action:** approval or disapproval of staff recommendation.)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward V to include recently annexed property in Annex #08-08; 55.45 acres described as Tracts 7-A and 6-A-1, Certificate of Survey 2314 and Tract 1-A-1, Certificate of Survey 2702, generally located on the south side of Grand Avenue between 30th Street West to west of Zimmerman Trail. Yegen Grand Avenue Farms, Inc., owner and petitioner. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
8. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**
(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

Council Initiatives

ADJOURN

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

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

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

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

PROCLAMATION

WHEREAS ~ Change is constant and affects all cities, towns, suburbs, counties, townships, rural areas, and other places; and

WHEREAS ~ community planning and plans can help manage this change in a way that provides better choices for how people work and live; and

WHEREAS ~ community planning provides an opportunity for all residents to be meaningfully involved in making choices that determine the future of their community; and

WHEREAS ~ the full benefits of planning requires public officials and citizens who understand, support, and demand excellence in planning and plan implementation; and

WHEREAS ~ the month of October is designated as National Community Planning Month throughout the United States of America and its territories; and

WHEREAS ~ the American Planning Association and its professional institute, the American Institute of Certified Planners, endorse National Community Planning Month as an opportunity to highlight the contributions sound planning and plan implementation make to the quality of our settlements and environment; and

WHEREAS ~ the celebration of National Community Planning Month gives us the opportunity to publicly recognize the participation and dedication of the members of planning commissions and other citizen planners who have contributed their time and expertise to the improvement of Yellowstone County and the City of Billings; and

WHEREAS ~ we recognize the many valuable contributions made by professional community planners of Yellowstone County and the City of Billings and extend our heartfelt thanks for the continued commitment to public service by these professionals.

NOW, THEREFORE, BE IT RESOLVED THAT, the month of October 2008 is hereby designated as **Community Planning Month** in the City of Billings, Montana in conjunction with the celebration of National Community Planning Month.

Mayor Ron Tussing

A



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, OCTOBER 14, 2008

TITLE: Boards & Commissions –Appointment
DEPARTMENT: City Administrator's Office
PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of the appointment for the Board and Commission position that is vacant due to term expiration.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Linda Gallagher	Tourism BID Board	10/13/2008	12/31/12

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

Attachments



RECEIVED

SEP - 8 2008

Mayor

Boards and Commissions

Re-appointment Form

Date: September 5, 2008

Name of Member: Linda Gallagher

I presently serve on the TBID and
(Board/Commission)

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

Signature: Linda E. Gallagher

Date: September 5, 2008

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

RECEIVED

MAY 15 2008



REQUEST TO SERVE AS A MEMBER OF A BOARD/COMMISSION/COMMITTEE FOR THE CITY OF BILLINGS

Mayor

BOARD/COMMISSION/COMMITTEE: T.B.I.D. Board

City Boards, Commissions and Committees are appointed by the Mayor and confirmed by the City Council. City Boards, Commissions and Committees are advisory only. These Boards, Commissions and Committees shall have no administrative authority unless specifically required by Federal or State Law, or Interlocal Agreement. Members of Boards, Commissions and Committees shall serve without compensation. Members must be at least 18 years of age and reside within the City limits (home residence).

Please complete the following and return it to:

Mayor's Office
PO Box 1178
Billings, MT 59103

NAME: Linda Gallagher

ADDRESS: 843 Parkway Ln
Blgs. 59101

TELEPHONE: 406-252-4007

OCCUPATION: owner/operator - Days Inn

Please describe your experience and/or background which you believe qualifies you for service on this Board/Commission/Committee:

See Attached

Please be advised that if a subject is presented for discussion to your Board/Commission/Committee where you have a conflict of interest, you should excuse yourself from the discussion and abstain from voting.

IF THREE (3) CONSECUTIVE MEETINGS ARE MISSED WITHOUT AN EXCUSE, YOU MAY BE REMOVED FROM THE BOARD/COMMISSION/COMMITTEE.

Linda Gallagher
Signature of Applicant

5-13-08
Date



RECEIVED

MAY 15 2008

Mayor

Mayor Ron Tussing
PO Box 1178
Billings, MT 59103

May 12, 2008

Re: T.B.I.D. Board of Directors

Dear Mr. Mayor,

It is my understanding that there are two (2) vacant seats on the T.B.I.D. Board. I would be very interested in serving on this board representing the hospitality industry in our area.

I have been owner/operator of the Days inn-Billings since 1993. Since that time I have been very active in our community, serving as a representative to the Destination Mktg. Committee and on the Y.C.L.A. Board of Directors for many years. I also served on the Metra Park Foundation until its demise. Since this past October I have also had the privilege to serve on the Billings Chamber of Commerce Board of Directors. This is, as yet, very new for me, but I find the direction of the Chamber very exciting, and am thrilled to be a part of this organization.

My experience has also been widespread statewide and nationally. I spearheaded the organization of the Big Sky Alliance (a state organization for Days Inns) in 1994. It is still a very viable entity today. I was elected to the Days Inn Franchise Advisory Board in 1997. I was on this board for 9 years, representing nearly 2000 properties very fairly and with everyone's interest paramount when making decisions.

If you have further questions please feel free to contact me at my property (252-4007) or on my cell (698-7397).

Thank you for your consideration regarding this matter.

Best Regards,

Linda Gallagher
Linda Gallagher

Cc. Shelli Mann-T.B.I.D. Chair
John Brewer-Billings Chamber
Y.C.L.A. Board of Directors

Days Inn - Billings • 843 Parkway Ln., Billings, MT 59101 • (406) 252-4007

This facility is operated under franchise agreement with Days Inns Worldwide, Inc.

Linda Gallagher

1. I was a member of the Franchise Advisory Board for Days Inn International for 9 years. Voted in by my peers, this 9-person board oversees all issues relating to the Days Inn franchises, including; marketing, quality assurance, new technology/procedures, property management system, training, etc. During my time on the Board I served as chairperson for several special committees within the Franchise Advisory Board.

As a member of this Board, I had to always work to best represent the needs of all hotel owners, big and small; while also maintaining the integrity and needs of corporate. Many times I had to make decisions that may not have benefited my own property; but was the best decision overall

2. At the request of Days Inn corporate I set up a state-wide alliance of Days Inn hotels. Under my leadership the Big Sky Alliance has turned into a strong group and we were named the Alliance of the Year one year and for two years have received the Marketing Alliance of the year.
3. I served on the AH & LA Council of Inns and Suites at the request of the President of Days Inns. The council consisted of 30 people from all across the industry. I served on this board for five years.
4. Owner/Operator of the Billings Days Inn since 1993.
5. President of YCLA for at least 8 years. I have also served as vice-president and treasurer for the Association.
6. I am currently a member of the Chamber of Commerce Board.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

SUBJECT: Bid Award for a New Street Sweeper

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This bid award is for the Street/Traffic Division of the Public Works Department for a new 4-wheel mechanical broom high dump sweeper. 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 sweeper is budgeted in the Equipment Replacement Fund (\$149,400).

<u>Vendor</u>	<u>Bid</u>	<u>Trade In</u>	<u>Net Bid</u>	<u>Warranty 5yr</u>	<u>Total</u>
Kois Bros	\$198,315	\$0.00	\$198,315	\$1,500	\$199,815
Western Plains I	\$186,124	\$10,000	\$176,315	\$4,312	\$180,627
Western Plains II	Doesn't meet specifications				

RECOMMENDATION

Staff recommends City Council award this sweeper bid to Western Plains I that was received as the low bid. Staff also recommends trading Unit #1252 for this new sweeper in the amount of \$10,000.

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Award of bid for City Vehicles

DEPARTMENT: Administration – Fleet Services

PRESENTED BY: Larry Deschene, Fleet Services Manager

PROBLEM/ISSUE STATEMENT: Sixteen City Vehicles in the car and light truck class are scheduled for replacement in the City's Equipment Replacement Program and were approved by City Council during the FY 08/09 budget process.

The bids are for the following types of vehicles:

- One ¾ ton 4x4 crew cab pickup with service body (PW Belknap),
- One ½ ton mid-size regular cab pickup (PW Belknap),
- Four mid-size sedans (3 Police/ 1 Building),
- One 1 ton 4x4 crew cab pickup with service body (Airport),
- One 1 ton regular cab 4x4 pickup (Airport),
- One 1-ton regular cab 2wd pickup with service body (Solid Waste),
- One 1/2 ton 4x4 regular cab pickup (Fire),
- One 3/4 ton 4x4 regular cab pickup (Solid Waste),
- One 1 ton extended cab 4x4 pickup with plow (MET),
- One ½ ton mid-size 4x4 regular cab pickup with plow (Parks),
- One ¾ ton 2wd regular cab pickup with service body (Street),
- One 1 ton 4x4 regular cab pickup with plow (Street),
- One ¾ ton 4x4 ext cab pickup (Animal Shelter).

The Fleet Services Division advertised for sealed bids for City Vehicles on September 4 and 11, 2008, with a bid opening on September 23, 2008.

FINANCIAL IMPACT: The City received bids on the vehicles as outlined below:

<u>Bid Schedule I – One ¾ ton 4x4 crew cab pickup with service body</u>			
<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$30,485.00	\$2,000.00	\$28,485.00
Rimrock Auto Group	\$32,635.30	\$1,000.00	\$31,635.30

Bid Schedule II– One ½ ton mid-size 2wd pickup

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$17,750.00	\$1,000.00	\$16,750.00
Rimrock Auto Group	\$17,093.70	\$ 500.00	\$16,593.70

Bid Schedule III– Four mid-size 4 door sedans

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$75,400.00	\$2,900.00	\$72,500.00
Rimrock Auto Group	\$79,052.72	\$1,750.00	\$77,302.72

Bid Schedule IV– One 1 ton 4x4 crew cab pickup with service body

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$33,911.00	\$1,200.00	\$32,711.00
Rimrock Auto Group	\$34,425.00	\$1,000.00	\$33,425.00

Bid Schedule V– One 1 ton 4x4 regular cab pickup

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$23,916.00	\$1,000.00	\$22,916.00
Rimrock Auto Group	\$25,648.53	\$ 500.00	\$25,148.53

Bid Schedule VI– One 1 ton dual rear wheel 2wd pickup with service body

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$35,638.00	\$1,200.00	\$34,438.00
Rimrock Auto Group	\$34,962.09	\$ 800.00	\$34,162.09

Bid Schedule VII– One ½ ton full size regular cab 4x4 pickup

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$23,880.00	None	\$23,880.00
Rimrock Auto Group	\$20,624.68	None	\$20,624.68

Bid Schedule VIII– One ¾ ton 4x4 regular cab pickup

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$25,500.00	\$1,750.00	\$23,750.00
Rimrock Auto Group	\$23,975.13	\$1,500.00	\$22,475.13

Bid Schedule IX– One 1 ton 4x4 extended cab pickup with lift gate and snow plow

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$33,984.00	\$2,800.00	\$31,184.00
Rimrock Auto Group	\$36,106.53	\$2,500.00	\$33,606.53

Bid Schedule X– One ½ ton mid-size regular cab pickup with snow plow

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	No Bid		
Rimrock Auto Group	\$23,419.78	\$ 500.00	\$22,919.78

Bid Schedule XI– One ¾ ton 2wd pickup with service body

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$24,035.00	\$1,000.00	\$23,035.00
Rimrock Auto Group	\$25,979.38	\$ 700.00	\$25,279.38

Bid Schedule XII– One 1 ton 4x4 regular cab pickup with snow plow

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$29,394.00	\$ 700.00	\$28,694.00
Rimrock Auto Group	\$31,097.53	\$ 500.00	\$30,597.53

Bid Schedule XIII– One ¾ ton 4x4 extended cab pickup

<u>Vendor</u>	<u>Total Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Archie Cochrane Ford	\$24,650.00	None	\$24,650.00
Rimrock Auto Group	\$26,691.05	None	\$26,691.05

Staff recommends retaining trade vehicles for sale at the next annual City auction because the auction prices will probably exceed the offered trade-in prices. The total trade-in price for 14 vehicles is \$15,300. By comparison, 1996 and 1997 Chevrolet Luminas sold for \$1,600 and \$2,100 respectively and a 1979 2wd pickup sold for \$1,600 at the September 27, 2008 City auction. Therefore, staff is confident that the auction prices will be higher than the proposed trade-in values.

RECOMMENDATION

Staff recommends awarding Schedules I, III, IV, V, VI, IX, XI, XII & XIII without trades to Archie Cochrane Ford for the bid amount of \$311,413.00 and to award Schedules II, VII, VIII & X without trades to Rimrock Auto Group for the bid amount of \$85,113.29.

The recommended bid award for Schedule VI to Archie Cochrane Ford is \$675.91 higher than the lowest bid from Rimrock Auto Group for the GMC. Staff recommendation for the higher bid is due to the amount of warranty coverage offered. Ford offers

5 years/60,000 mi Power Train and 3 years/36,000 mi Bumper to Bumper warranty while GMC only offers 2 years unlimited mileage warranty. Since the warranty mileage limits will not be exceeded, the time of warranty coverage is of greater value to the City.

Approved By: City Administrator _____ City Attorney _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 14, 2008

TITLE: W.O. 03-07, Alkali Creek Multi-Use Path—Segment 1B (Main Street Tunnel), Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project provides another segment to the city-wide pedestrian/bike trail system and will feature a grade separated crossing of Main Street. It includes construction of approximately 610 lineal feet of concrete path, a tunnel under Main Street, and all associated site work (grading, drainage, lighting, signing, planting, etc.). The project location is near the crossing point of Alkali Creek and Main Street. Ultimately, this segment of path will allow the existing paths along Alkali Creek, through Sword's Park, and by METRA Park to be tied together, thus greatly enhancing the City's network of trails. The project was designed by HKM Engineering, with whom the City has a contract for professional services. No bids were received when the project was initially bid July 1, 2008, so the project was broken into two schedules—one for primarily the tunnel work and one for the majority of the path work—for rebidding. Bids were opened for the project September 30, 2008, and by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: The project is being funded by CTEP, TCSP, and some local grants. There is currently \$833,931.00 in the total project budget. \$258,495.00 has been allocated to HKM Engineering for their professional services, leaving \$575,436.00 available.

Bids were opened September 30, 2008, with the following results:

Firm(s)	Schedule I (tunnel)	Schedule II (path)	
Riverside Sand & Gravel	\$2,132,167.00	\$107,198.00	
Knife River Const.	NO BID	\$124,198.00	
Western Municipal Const.	\$1,966,076.00	NO BID	
Don Kelly Construction	\$2,073,461.00	\$221,381.00	
Engineer's Estimate	\$779,561.75	\$117,007.00	

RECOMMENDATION

Staff recommends that Council delay action until October 27 on the bids received for W.O. 03-07, Alkali Creek Multi-Use Path—Segment 1B (Main Street Tunnel).

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: WO 05-17* Highland School Sidewalks Poly Drive at 11th Street West
 *Billings Federal Aid Project No. STPE SRTS 1099(48) MDT CN5909

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 05-17* Highland School Sidewalks Poly Drive at 11th Street West *Billings Federal Aid Project No. STPE SRTS 1099(48) MDT CN5909 on September 30, 2008. This project will provide a crosswalk at the intersection of 11th Street West and Poly Drive, and sidewalks on 11th Street West, O'Malley Drive, Azalea Lane, and Beverly Hills Boulevard for school children walking to Highland School.

ALTERNATIVES ANALYZED:

1. Award the contract for W.O. 05-17 to Riverside Sand and Gravel in the amount of \$149,748.30; or
2. Reject all bids and do not award contract for W.O. 05-17

FINANCIAL IMPACT: Funding for this project will be out of the 2009 Arterial, CTEP, Sidewalks, Gas Tax, and Storm Funds. We received four bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 175,776.25
Riverside Sand and Gravel	\$ 149,748.30
J & J Concrete	\$ 151,877.50
HL Ostermiller	\$ 182,007.00
Knife River	\$ 253,688.00

A breakdown of the project funds per the CIP is listed below:

<u>Work Order 05-17 Highland School Sidewalks Poly Drive at 11th Street West Funding</u>	
Arterial	\$ 40,000.00
CTEP	\$ 47,994.00

Sidewalks	\$ 37,000.00
Gas Tax	\$ 28,000.00
Storm	\$ 5,000.00
Contract Amount (This Memo)	\$149,748.30
Remaining Funds	\$ 8,250.70

RECOMMENDATION

Staff recommends that Council award Riverside Sand and Gravel's bid for WO 05-17* Highland School Sidewalks Poly Drive at 11th Street West *Billings Federal Aid Project No. STPE SRTS 1099(48) MDT CN5909 in the amount of \$149,748.30.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: W.O. 06-22, Water Treatment Facility L-Structure Improvements, Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project will improve the reliability and operability of the L-Structure facilities at the Water Treatment Facility (WTF). The L-Structure includes Intake No. 1, which is the primary means of receiving water from the river for treatment and distribution into the City's water supply system. The existing L-Structure is limited in capacity and service and is continually affected by high levels from flooding, often resulting in the gates clogging with debris. The current intake has a natural bottom between sheet pilings, so it is difficult to clean out deposited sediments and maintain the proper channel bottom elevation. The intake will be upgraded by installing a concrete bottom and constructing a new channel that wraps around the building, new gates will be installed, and new sample pumps will be installed. In addition, the access road will be widened and raised to provide a safer road that is better protected from floods. Building improvements will be undertaken in the future when additional funding is available. The L-Structure will be taken out of service during construction, which should occur during the winter when river levels and water demands are low. The ability to adequately supply water will not be affected, and operations will continue during construction with water being taken from the river at an alternative location and still routed through the City's treatment process.

The project was designed by HDR Engineering, with whom the City has a contract with for these professional services. Bids were opened for the project September 30, 2008, and by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: The project is being funded by water revenues, account #416-7493-603-9340. \$1,461,462.00 has been approved in the FY 09 budget. Only \$206,743.00 has been encumbered, so there are adequate funds available to cover the entire costs of construction.

Bids were opened September 30, 2008, with the following results:

Firm(s)	Rice Lake Const.	Williams Brother Const.	COP Construction	Engineer's Estimate
BASE BID	\$1,905,000.00	\$1,016,000.00	\$1,288,000.00	\$900,000.00

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 06-22, Water Treatment Facility L-Structure Improvements to Williams Brother Construction for \$1,016,000.00.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Work Order 07-06 Aronson Avenue & Governors Boulevard Traffic Signal Installation

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 07-06 Aronson Avenue & Governors Boulevard Traffic Signal Installation on September 30, 2008. This project will install a signal at the intersection of Aronson Avenue and Governors Boulevard to accommodate the additional traffic from the Aronson Avenue Extension.

ALTERNATIVES ANALYZED:

2. Award the contract for W.O. 07-06 to Ace Electric in the amount of \$161,999.20; or
2. Reject all bids and do not award contract for W.O. 07-06

FINANCIAL IMPACT: Funding for this project will be out of the 2009 Arterial funds. We received three bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 204,158.00
Ace Electric	\$ 161,999.20
Riverside Sand and Gravel	\$ 177,910.93
Yellowstone Electric	\$ 223,223.05

A breakdown of the project funds per the CIP is listed below:

<u>Work Order 07-06 Aronson Avenue & Governors Boulevard Traffic Signal Installation Funding</u>	
2009 Arterial Funds	\$ 351,916.00
Contract Amount (This Memo)	<u>\$161,999.20</u>
Remaining Funds	\$ 189,916.80

RECOMMENDATION

Staff recommends that Council award Ace Electric's bid for Work Order 07-06 Aronson Avenue & Governors Boulevard Traffic Signal Installation in the amount of \$161,999.20.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: W.O. 05-09—Wastewater Treatment Plant Generator Installation, Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project consists of the construction of a CMU partition wall in the single drive-thru bay in the Solids Processing Building at the Wastewater Treatment Plant (WWTP), the installation of a new generator (previously purchased by the City) and associated electrical switchgear and wiring, and installation of the bulk diesel storage tank (also previously purchased by the City). The generator will be used initially to provide backup power to the Secondary Pump Station and ultimately to the WWTP blowers, basin complex, and possibly the new effluent disinfection system to be constructed in the near future. The project was designed by HDR Engineering, with whom the City has a contract for these professional services. Bids were opened October 14, 2008, and by law, Council must act on the bid opening at this meeting.

A design was previously completed for a new structure to house the generator and switchgear, but did not include the full installation of wiring and implementation of the generator. When that segment of the project was put out for bids, no contractors expressed interest in the project or obtained project plans and specifications. As a result, Staff worked with HDR to modify the scope of the project to its current state. The existing scope has many positive aspects in that the project now utilizes existing space at the WWTP that was used very little in the past, and the full installation and implementation of the generator can now be completed within the same expanded budget.

FINANCIAL IMPACT: The project is being funded by Wastewater Building and Operation Facility Funds. The approved FY 09 budget provides \$236,000 for design and construction, so there are adequate funds available to cover the construction costs.

Bids will be opened October 14, 2008, and results will be available for the October 27 Council meeting.

RECOMMENDATION

Staff recommends that Council delay award of a construction contract for W.O. 05-09—Wastewater Treatment Plant Generator installation due to the bids being opened the same day as the Council meeting and there not being ample time to review the bids.

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Change Order #2, Water System Backup Power Project, Phase I
DEPARTMENT: Public Works
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Colstrip Electric, Inc. has a contract to provide backup power equipment at three booster pumping stations in the Billings Water System. When this project was originally bid the bidding documents included a fourth pumping station (Thomas Pump Station). This station was not awarded due to budgetary constraints in FY2008. FY2009 funding is now available for this station. Colstrip Electric has submitted a price for this station that staff considers to be appropriate when compared to the original bids received and the rising cost indices during the intervening time since the bid. If the City has to rebid this portion of the phase I project, the City will incur approximately \$10,900 in additional engineering and contract administration expenses. Most of these expenses can be avoided by including this work as a change order to our contract with Colstrip Electric. The dollar amount of this change order requires Council approval.

ALTERNATIVES ANALYZED: The only alternative to including this work in a change order is to reformat the engineering and bidding documents and rebid the work. Staff estimates that rebidding will ultimately increase our costs about 10% over the change order approach.

FINANCIAL IMPACT: Change Order #2 is for \$108,977.00 making the overall project total \$505,790.34. Adequate funding is available in the Capital Water Construction account to award Change Order #2.

RECOMMENDATION

Staff recommends that Council approve Change Order #2 to the Water System Backup Power, Phase I contract in the amount of \$108,977.00

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

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 14, 2008

TITLE: Approval of Contract with the State of Montana Department of Public Health and Human Services – Developmental Disabilities Division

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: Since July 1997, the State of Montana Department of Public Health and Human Services (DPHHS) - Developmental Disabilities Division (DD) has contracted with MET Transit to provide specialized transportation for developmentally disabled individuals to and from their home or group home and their respective DD Division day/work programs. The service MET Transit provides improves the quality of life for persons with developmental disabilities. The contract payments for this service are based on a per-person, per-mile ridership.

The contract term is from July 1, 2008 through June 30, 2009; however, the contract does contain a clause, which allows the service to be extended for up to two additional one-year periods; not to exceed a total contractual term of four years, if both parties agree. A copy of the contract is on file in the City Clerk's office.

FINANCIAL IMPACT: Through this contract the City's Transit Division could receive up to \$100,000 in revenue for FY 08/09 for the services provided. This is somewhat less than the anticipated revenue (\$137,241) budgeted for FY 08/09. However, the MET is currently seeking additional funding from the Montana Department of Transportation to help cover this shortfall. It is unknown at this time at what level DPHHS will fund future year contracts.

RECOMMENDATION

Staff recommends that Council approve the one year contract and authorize the Mayor to execute the attached transportation contract between the City's MET Transit Division and the Montana Department of Public Health and Human Services - Developmental Disabilities Division.

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

ATTACHMENTS: A – DD Contract Amendment (7 pages)

CONTRACT AMENDMENT

This agreement is entered into by the Montana State Department of Public Health and Human Services (hereinafter referred to as the Department), whose address is 111 Sanders, P.O. Box 4210, Helena, MT 59604, and whose phone number is (406) 444-2995 and **City of Billings MET Transit (MET)** (hereinafter referred to as the "Contractor"), whose address is PO Box 1178, Billings, MT 59103, phone number is (406) 657-8217, fax number (406) 657-8419, whose **Montana Medicaid Provider ID #** is **[REDACTED]**, and whose Federal ID Number is 81-6001237 and has as its purpose the modification of Contract Number 08-143-2300 pursuant to Section 3.1 of that contract.

The parties agree to modify the contract effective July 1, 2008 for the following purposes:

- A. This agreement is intended to modify DPHHS Contract Number 08-143-2300 only as herein specifically provided. All other contract provisions shall remain in full force and effect.
- B. To change the Contract Number from 08-143-2800 to 09-143-2300.
- C. To extend the contract term by one year, in accordance with the FY09 Guidelines for Contract Extension Amendments, to include July 1, 2008 through June 30, 2009.
- D. The contract is amended to include a new Appendix I for the extended contract term. Appendix I, dated for the extended term, is attached to this set of amendments and is hereby incorporated.
- E. Section 1.0 of the contract is amended to include the Contractor's **Montana Medicaid Provider ID #**.
- F. To amend Subsection 2.2, requiring that the Contractor be a qualified provider, to clarify that the requirement is only applicable to a Contractor delivering those types of services that necessitate qualified provider status.
- G. To amend Subsection 2.3, requiring the Contractor to be ready to accept into services persons with developmental disabilities who are eligible for services, to add that those contractors who provide Part C services and Family Education and Support services funded with state general funds to children under the age of 6 are ready to accept into services persons with developmental delays, as well as developmental disabilities, who are eligible for those services.
- H. To amend Section 6, concerning matters of consideration and payment, to reduce Subsection 6.1 to a statement of consideration for delivery of services and remove the other material, pertaining to limits upon expenditures for monies not derived from the DD Program standardized rates reimbursement system, to a new Subsection 6.2, requiring conformance with the Attachment A, contractor's

budget, required at Subsection 6.4. when expending monies not derived from the DD Program standardized rates reimbursement system.

- I. To amend Subsection 6.5, pertaining to the submittal to and approval of the Contractor's budget by the Department, to limit the applicability of the provision to services that are not reimbursed through the DD Program standardized rates reimbursement system, to provide for formal budget revision only when a change amounts to 5% or more of the total monies budgeted for a service, and to provide cross-reference to Subsections 6.19 – 6.20 that also govern budget changes.
- J. To amend Subsection 6.7 and 6.8, providing in relation to a change of service provider by a consumer certain fiscal measures including the formula of allocation, to exclude those provisions from being applicable to consumers of Part C and Family Education & Support, Evaluation and Diagnoses, and PASARR services.
- K. To amend Subsection 8.1, a provision providing that the Contractor maintain an appropriate system of accounting, to include the requirement for a system of adequate internal controls.
- L. To remove Subsection 8.10 that allows for up to 15% of SSI related income to be added to a SSI restricted fund established by the corporation.
- M. To amend Section 24, pertaining to property, to add a new Subsection 24.1 to clarify that the requirements of Section 24 are not applicable to property purchased with monies derived solely from the DD Program standardized rates reimbursement system.

The parties agree to the following contract modifications:

- 1 Subsection 2.2 is amended to read as follows:
For each category of developmental disabilities community services that are to be delivered by the Contractor as specified in Section Five, the Contractor must be designated by the Department as a qualified provider if qualified provider status is required by the Department for purposes of delivery of that category of service.
- 2 Subsection 2.3 is amended to read as follows:
The Contractor is ready, willing and able, to the extent provided for in this Contract, to accept into the Contractor's services persons with developmental disabilities who are eligible for one or more of the state administered developmental disabilities services. If the Contractor is to provide Part C services or state funded Family Education and Support services to children under the age of 6, the Contractor is ready, willing and able, to accept into those services children with developmental delays or developmental disabilities who are eligible for those services.

- 3 Subsection 6.1 is amended to read as follows:
In consideration of the services to be provided to consumers through this Contract, the Contractor is to receive payment from the Department in the performance of this Contract.
- 4 Section 6 is amended to add a new Subsection 6.2 to read as follows:
The Contractor's expenditures on services of monies that are not derived through the DD Program standardized rates reimbursement system must conform to the Contractor's budget as required in 6.4. For those services not reimbursed through the DD Program standardized rates reimbursement system, the Contractor may not receive more than the total amount of monies allocated by the Department for the delivery to consumers of each type of service as specified in Appendix B and the total consideration available through this Contract may not exceed the sum of the expenditures authorized in Appendix B.
- 5 Subsection 6.5 is redesignated as 6.4.1 and is amended to read as follows:
The Contractor's budget, in accordance with this subsection and Subsections 6.19 and 6.20, may be revised as necessary during the term of this Contract. Upon any proposed revision to the Contractor's budget that involves 5% or more of the total monies budgeted for a service, the proposed revised budget must be submitted to the Department for review and acceptance memorialized by the dated signature of the Program Manager of the Developmental Disabilities Program. Upon acceptance by the Department, the revised budget replaces the current incorporated budget as Attachment A.
- 6 Subsections 6.7 and 6.8 are amended to read as follows:
6.7 The Contractor, except in the delivery of Part C and Family Education & Support, Evaluation and Diagnoses, and PASARR services, must allow for a consumer currently served by the Contractor to leave the Contractor's services if the consumer desires to obtain services from one or more other contractors and if all arrangements necessary for the move, inclusive of the provision of adequate funding for the new services and of acceptance by the other contractor, have been completed. The consumer may change services at any time during the fiscal year. Before a consumer may move and thereby leave the Contractor's services the consumer must provide the Contractor with a 90 day notice unless all parties to the move agree to implementation of the move without the full 90 day notice.
- 6.8 When a consumer, except for a consumer of Part C and Family Education & Support, Evaluation and Diagnoses, and PASARR services, whose services are not reimbursed by the DD Program standardized rates reimbursement system changes to a service provided by another contractor, the Contractor's consideration to be received that fiscal year, as memorialized in Appendix B, is accordingly reduced by an amount prorated based upon the remaining portion of the fiscal year. The monies allocable to the consumer are those determined appropriate based upon the available monies allocated to the consumer in Appendix B and as may be negotiated among the consumer and the current and prospective providers. If the consumer is entering a service that is compensated

through the DD Program standardized rates reimbursement system, prorating is not applied and the types and amounts of the services to be delivered to the consumer as set forth and authorized in the Individual Cost Plan (ICP) are reimbursed in accordance with the applicable rates adopted in the DD Program standardized rates reimbursement system.

- 7 Subsection 8.1 is amended to read as follows:

The Contractor must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP), as interpreted by the Department and other pertinent federal and state authorities, and that conforms to any other accounting requirements required by the Department or other entities or that may be required under 18-4-311, MCA or any pertinent federal and state authorities. The Contractor must also maintain and document an adequate system of internal controls that address the five elements of internal controls: the control environment, the risk assessment, the control activities, information and communication, and monitoring.
- 8 Section 24 is amended to include a new Subsection 24.1 provision to read as follows:

This provision is applicable to expenditures under this Contract of both federal and state funding, except for monies received through the DD Program standardized rates reimbursement system.

The term of this Contract for the purpose of delivery of services is from July 1, 2008 through June 30, 2009, unless terminated otherwise in accordance with the provisions of this Contract.

Any amendments necessary for the implementation of an extension of this Contract must be entered into prior to the current term of this Contract. Amendments for implementation of an extension must include the budget amounts and the details of service delivery necessary for performance during the period of extension.

This set of amendments shall take effect on the date last signed below and shall continue in effect through June 30, 2009.

Joe A. Mathews, Administrator
Disabilities Services Division

Ron Tussing, Mayor
City of Billings MET Transit

Contract # 09-143-2300
Amend # 00

Page 4 of 4

APPENDIX I
INDIVIDUAL CORPORATION PLAN
FY2009

Corporation Name: City of Billings - MET Transit

APPENDIX I

Appendix I - The Individual Corporation Plan Appendix contains agreements that are individualized for this Contractor. Items in this appendix may include those referenced in the rules to be included in the contract, previously negotiated items, and items which address current concerns or incorporate future planning of the Contractor or Department. These items may be based on an assessment of need. They may include training requests, corporation management objectives, contract compliance concerns, fiscal concerns or services the DDP is agreeing to provide to the Contractor.

The parties agree that the following terms and conditions must be complied with in addition to the other provisions of the contract.

General Requirements

The Contractor agrees to pursue reimbursement for cost plan services through private insurance, Medicaid, and/or other available sources. This contract will be charged as the payor of last resort.

The Contractor agrees to provide all services as specified in each individual's Individual Plan (IP), Individual Family Service Plan (IFSP) or Specialized Service Plan (SSP) including the provision of staff assistance by adhering to staffing ratios, number of direct service hours, time service hours, and any other specified assistance, supervision, training or support.

There is a 90-day notification period to port services from one Qualified Provider to another. This period may be waived if all interested parties are in agreement to an earlier date.

A. FINANCIAL INFORMATION - N/A

B. ADULT SERVICES DETAIL DESCRIPTIONS

For services where individuals are not listed in Appendix B, movement between service category, service option or funding source, with no change in the total financial resources, number of persons served or, with Case Management services, the number of units available, will be reflected in changed Individual Service Records (ISRs) and monthly invoices. Any movement will be approved by the IP team of the involved person. Recommendations for movement of persons or

different use of a service opportunity may be made by IP teams, local screening teams, the Contractor or Regional DDP staff.

C. CHILDREN SERVICES DETAIL DESCRIPTIONS - N/A

D. SPECIAL CIRCUMSTANCES FOR CONTRACT

Include here items that are unique to this Contractor that must be tracked from one contract period to another.

1. All services are portable.
2. Transportation, non-intensive Family Education and Support service options, Case Management, Adaptive Equipment, Evaluation and Diagnosis and PASARR are listed on the Resource Allocation Sheet, Appendix B, but are not individualized.
3. Any Contractor that is a recipient of resources through Montana's Capital Assistance 5310 Program, the Contractor will be expected to serve on the local Transportation Advisory Committee (TAC) to promote the coordination and development of transportation systems. The purpose of this is to enhance coordination of federal assisted programs and services in order to encourage the most efficient use of federal and state resources and achieve the national goal of improved mobility for elderly persons and persons with disabilities.

E. ITEMS NEGOTIATED IN PREVIOUS CONTRACT PERIOD(S)

The items or language negotiated in the previous contract period to be continued during this contract period are: None

F. ITEMS NEGOTIATED FOR CURRENT CONTRACT PERIOD

The items or language negotiated for this contract period are:

1. Transportation services provided will specifically be curb to curb at all group homes and day training or work sites, e.g., COR, BTI, BAP.
2. Contractor will maintain a written ride log documenting each ride provided to individuals.

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, October 14, 2008**

TITLE: Approval of Limited Commercial Aviation Building and Ground Lease with Billings Clinic

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Billings Clinic has been a long-term tenant of Billings Logan International Airport. Early in the 1990s, the Clinic acquired two (2) large aircraft hangars in the Executive Hangar area west of the Terminal Building, and assumed the two (2) underlying ground leases from Cardinal Drilling Company. These ground leases dated back to the 1980s, and contained a reversion of improvements clause, which transferred the ownership of any improvements (including structures such as aircraft hangars) made to the leased premises back to the City upon expiration of the initial lease term. These leases also provided the lessee or its assignee with the first right of refusal on a new lease, upon expiration of the initial term. Both of these leases were initially twenty (20) year leases. The reversion of ownership of improvements for the first lease was effective on December 16, 2000. At that time, the City assumed ownership of the hangar constructed on that leasehold and subsequently entered into a new lease with the Clinic for use of the hangar. The second Non-Commercial Aviation Ground Lease has expired, triggering the reversion of improvements clause and the transfer of ownership of a 5,400 square foot hangar located at 2401 Overlook Drive to the City. The Clinic has conducted its flight operations from both hangars since its assumption of the original leases from Cardinal Drilling. The Clinic wishes to continue to utilize this second hangar for its flight operations. As required under the original lease, the Clinic notified staff of its intent to exercise its first right of refusal option. Staff has negotiated a new five (5) year Limited Commercial Aviation Building and Ground Lease with the Clinic for a term commencing September 1, 2008, and terminating on August 31, 2013.

FINANCIAL IMPACT: This Building and Ground Lease will generate \$26,460.00 in the first year of the Lease. The hangar lease rate of \$4.90 per square foot per annum is comparable with the rate paid by other ground lease tenants located in this area. Future rents will be adjusted annually by the Consumer Price Index for all Urban Consumers (CPI-U) on the anniversary date of the Lease.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a new five-year Limited Commercial Aviation Building and Ground Lease at Billings Logan International Airport with the Billings Clinic beginning September 1, 2008, and terminating August 31, 2013.

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, October 14, 2008**

TITLE: Acceptance of Blair Unlimited's Request to Assign MET Transit's Bus/Bench Advertising Concession Agreement to Blair Unlimited, Inc.

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: On February 26, 2007, the City Council approved a five-year contract with Mark Blair, dba Blair Unlimited, a sole proprietorship, for the right to sell advertising on MET buses, vans, and bus benches. Mr. Blair has subsequently changed his business from a sole proprietorship to a corporation and has requested that he be allowed to assign the MET Transit Bus/Bench Advertising Concession Agreement from Mark Blair, dba Blair Unlimited, a sole proprietorship to Blair Unlimited, Inc.

FINANCIAL IMPACT: There will be no financial impact to the City of Billings with regard to the change from Mark Blair, dba Blair Unlimited, a sole proprietorship to Blair Unlimited, Inc. All terms and conditions of the contract remain unchanged.

RECOMMENDATION

Staff recommends that Council approve the assignment from Mark Blair, dba Blair Unlimited, a sole proprietorship to Blair Unlimited, Inc. and authorize the Mayor to sign the assignment of the MET Transit Bus/Bench Advertising Concession Agreement.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday October 14, 2008

TITLE: Amendment Number One to the Professional Services Agreement with HDR Engineering, Inc. for Water System Emergency Power

DEPARTMENT: Public Works

PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: This amendment to our professional services contract with HDR Engineering, Inc. provides for engineering design services through the bidding phase of the back up power facilities at the Water Treatment Facility. Engineering oversight during construction of the phase II backup power units will be covered in a future contract amendment. Phase II of this project is larger and more complex than phase I. The increased engineering costs for phase II as compared to phase I are within the range typically encountered for projects of this size. Actual installation of back up power at the Water Treatment Facility is currently planned for FY2010. HDR Engineering was selected through competitive proposals in mid-2007 for this multi-phased multiyear project.

FINANCIAL IMPACT: Amendment #1 is for \$97,800.00.00 making the overall contract total \$172,439.00. Adequate funding is available in the Capital Water Construction account to award Amendment Number One.

RECOMMENDATION

Staff recommends that Council approve Amendment Number One in the amount of \$97,800.00 to the Agreement for Professional, Architectural and Engineering Services with HDR Engineering, Inc. for the Emergency Power for the Water Treatment Facility and Booster Pumping Stations.

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, October 14, 2008**

TITLE: Approval of State Highway Traffic Safety Agreement Amendment in the amount of \$14,000 which updates FY 2008 STEP contract 2008-13-13-04, extending the agreement to September 30, 2009, and increasing the total amount of the agreement to \$28,000

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: The State of Montana, State Highway Traffic Safety Division has notified the City that it has increased the 2008 STEP (Selective Traffic Enforcement Program) Agreement by \$14,000, bringing the total amount of the agreement to \$28,000; and extending the agreement to September 30, 2009. This grant is for the deterrence of violations such as drinking and driving, speeding, lack or misuse of safety restraints, and others. Council is being asked to approve this amendment.

FINANCIAL IMPACT: None. There is no City match required.

RECOMMENDATION

Staff recommends that Council approve the amendment to the State Highway Traffic Safety FY 2008 STEP agreement in the amount of \$14,000, increasing the total amount to \$28,000.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 14, 2008

TITLE: Acceptance of Right of Way Dedication at 24th Street West and Grand Avenue

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The developer of Sweet Subdivision submitted an exempt plat for a boundary relocation. As part of the plat, right of way along Grand Avenue being dedicated. The City must accept the dedicated right of way before the plat can be filed. The right of way is needed to widen Grand Avenue in order to accommodate an additional right turn lane at that location.

ALTERNATIVES ANALYZED:

1. Accept the right of way dedication at 24th Street West and Grand Avenue which would allow widening of Grand Avenue to accommodate a right turn lane.
2. Do not accept the right of way dedication at 24th Street West and Grand Avenue which would not allow the additional lane needed to accommodate increased traffic.

FINANCIAL IMPACT: There is no financial impact with acceptance of the right of way.

RECOMMENDATION

Staff recommends that Council approve the exempt plat dedicating right of way at 24th Street West and Grand Avenue.

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

ATTACHMENTS

- A. Map of Dedicated ROW

J



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October, 14, 2008

SUBJECT: Resolution Approving an Agreement for Payment or Reimbursement Between Rocky Mountain College and First Interstate Bank Relating to the Higher Education Revenue Note

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Rocky Mountain College is requesting the City of Billings act as the conduit for the proposed SWAP of debt. First Interstate Bank has advised the College to lock into this rate. Therefore, The College's desire to enter into this SWAP is to lock in what they think is favorable interest rate now (prior to the mess on Wall Street) rather than wait until the Interest Adjustment Date of September 1, 2009. This agreement is deemed a reissuance for federal tax purposes.

ALTERNATIVES AVAILABLE: These are Industrial Revenue Bonds and the authority to do this derives from the authority that the City used to issue the Bonds initially, Title 90, Chapter 5, Part 1 of IRB law. The College can not enter into this agreement and preserve the tax exempt status of the bonds without the City's approval. The City would want to pass this resolution in order to save Rocky interest on their Bonds.

FINANCIAL IMPACT: There are no financial implications or future payment liabilities for the City with passage of the resolution.

BACKGROUND: The City previously issued its Higher Education Revenue Note (Rocky Mountain College Project), Series 2004 in the original aggregate principal amount of \$10,200,000 (the "Series 2004 Note") pursuant to Resolution No. 03-18010 approved by this Council on November 24, 2003 and a Loan Agreement dated as of February 15, 2004 (the "Loan Agreement") between the City and Rocky Mountain College (the "College").

RECOMMENDATION

It is recommended that the City Council approve the attached resolution.

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

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. ___ entitled: "RESOLUTION RELATING TO \$10,200,000 HIGHER EDUCATION REVENUE NOTE (ROCKY MOUNTAIN COLLEGE PROJECT), SERIES 2004; APPROVING AN AGREEMENT FOR PAYMENT OR REIMBURSEMENT BETWEEN ROCKY MOUNTAIN COLLEGE AND FIRST INTERSTATE BANK (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on October 14, 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 October, 2008.

(SEAL)

City Clerk

RESOLUTION NO. __

RESOLUTION RELATING TO \$10,200,000 HIGHER EDUCATION REVENUE
NOTE (ROCKY MOUNTAIN COLLEGE PROJECT), SERIES 2004; APPROVING
AN AGREEMENT FOR PAYMENT OR REIMBURSEMENT BETWEEN ROCKY
MOUNTAIN COLLEGE AND FIRST INTERSTATE BANK

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

Section 1. Recitals; Authorizations; Requests.

1.01. The City previously issued its Higher Education Revenue Note (Rocky Mountain College Project), Series 2004 in the original aggregate principal amount of \$10,200,000 (the “Series 2004 Note”) pursuant to Resolution No. 03-18010 approved by this Council on November 24, 2003 and a Loan Agreement dated as of February 15, 2004 (the “Loan Agreement”) between the City and Rocky Mountain College (the “College”).

1.02. First Interstate Bank, Billings, Montana (the “Bank”) was the original purchaser and is the current holder of the Note as therein defined (the “Holder”).

1.03. The City, pursuant to an Assignment of Loan Agreement dated February 15, 2004, has assigned and transferred certain rights under the Loan Agreement to the Holder, including without limitation the rights to Loan Repayments (as defined in the Loan Agreement).

1.04. Under its terms, the interest payable on the Note is subject to adjustment each Rate Adjustment Date (as defined in the Note), the first of which is September 1, 2009 (the “First Rate Adjustment Date”).

1.05. Under the terms of the Loan Agreement, the College is required at all times to make Loan Repayments in an amount equal to the interest and principal due and payable on the Note.

1.06. At the request of the College, the Bank is discussing a swap transaction with The Northern Trust Company (“Northern Trust”), under which the Bank would establish the rate to become effective on the First Rate Adjustment Date in accordance with a Master Agreement to be entered into by and between Northern Trust and the Bank (together with all schedules, exhibits, amendments and modifications thereto, the “Master Agreement”).

1.07. On the First Rate Adjustment Date, Northern Trust would settle the swap by either paying to the Bank or receiving from the Bank a differential based on current rates as of the First Rate Adjustment Date.

1.08. If the Future Swap Rate is higher than the Current Swap Rate, then Northern Trust would settle the swap by paying the differential to the Bank; conversely, if the Future Swap Rate is lower than the Current Swap Rate, then the Bank would settle the swap by paying the differential to Northern Trust.

1.09. The Bank is willing to execute the Master Agreement in order to potentially minimize the effect of the interest rate adjustment to the Note on the First Rate Adjustment Date, as well as the effect of such adjustment to the Loan Repayments under the Loan Agreement, subject to the terms and conditions of an agreement to be entered into between the College and the Bank with respect to the payments to be made or received under the Master Agreement.

1.10. To effectuate the foregoing, the Bank and the College have presented to the City a draft of an Agreement for Payment or Reimbursement to be dated as of October 14, 2008 (the “Agreement for Payment or Reimbursement”) between the College and the Bank, a copy of which is attached hereto as Exhibit A, and the form of the ISDA Master Agreement and Schedule dated as of July 16, 2008 to be entered into between the Bank and Northern Trust (collectively, the “Agreements”), copies of which have been presented to this Council and attached hereto as Exhibit A to the Agreement for Payment or Reimbursement.

1.11. The City has been advised by Dorsey & Whitney LLP, bond counsel for the Series 2004 Note, that entering into the Agreements will result in a deemed “reissuance” of the Note for federal tax purposes, and in order to maintain the Series 2004 Note exemption of interest from federal income taxation, the City must approve the Agreement and file certain documents with the Internal Revenue Service.

Section 2. Approvals.

2.01. This Council hereby approves the entering into of the Agreement for Payment or Reimbursement which along with the Master Agreement and Schedule shall be filed with the City Clerk and made a part of the proceedings related to the Series 2004 Note.

2.02. The Council authorizes Dorsey & Whitney LLP (“Bond Counsel”) at the sole expense of the College to prepare, deliver and file all documents as may be necessary to effectuate this Resolution and to preserve the exemption from federal income tax of the Series 2004 Note.

Section 3. Tax and Arbitrage Considerations.

3.01. As a result of the transaction contemplated and approved by this Resolution, the Series 2004 Note will be deemed reissued as of the date of execution of the Agreements. The City has executed and delivered a Tax Certificate with respect to the Series 2004 Note and the College has executed and delivered as part thereof a Tax and Rebate Certificate (the “College Tax Certificate”)(collectively the “Tax Certificates”), under which the College has covenanted to meet various requirements to maintain the tax exempt status of the Series 2004 Note, including among other things compliance with Section 148(f) of the Internal Revenue Code. In Section 13.1 of the College Tax Certificate the College agrees to prepare calculations of Rebatable Arbitrage within 30 days of each Computation Date as defined therein. In the City’s Tax Certificate, the Computation Date is defined as “an Installment Computation Date and the Final Computation Date.” Installment Computation Date is defined as “the last day of the fifth Note Year and the last day of every fifth Note Year thereafter but not including the Final Computation Date. If the principal installments of the Notes are paid on their stated maturity dates, the installment Computation Dates will be September 1, 2009, September 1, 2014, September 1, 2019, September 1, 2024, September 1, 2029,

and September 1, 2034.

3.02. Since the 2004 Note will be deemed “reissued” as a result of the Agreements, the first Computation Date will be the date of execution and delivery of the Agreements, the date the Series 2004 Note is deemed to have been redeemed and reissued. Subsequent Computation Dates will be each fifth year thereafter: September 1, 2013, 2018, 2023, 2028, and 2033. All other terms, conditions and obligations under the Tax Certificates shall be binding and enforceable as originally written.

3.03. Swap Identification. If advised to do so by the City’s bond counsel, the City Clerk is authorized and directed to identify the swap transaction on its books and records and to execute such certifications of the swap identification as bond counsel may request.

Section 4. Indemnification. The Borrower’s Agreement to indemnify and hold harmless the City as set forth in Section 4.02 of the Loan Agreement is a continuing obligation as long as the Series 2004 Note is outstanding and shall extend to any actions taken by the City under this Resolution.

Section 5. Effective Date. The Resolution shall become effective on approval by the Council.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this ____ day of _____, 2008.

Mayor

Attest:

City Clerk

(SEAL)

EXHIBIT A

AGREEMENT FOR PAYMENT

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Zone Change #847, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

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 unplatte parcel in the NE1/4 of Section 5, Township 1 South, Range 25 East located south of Grand Avenue and west of 56th 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 56th 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 2nd public hearing on September 2, 2008, and is forwarding a recommendation of approval on a 4-0 vote. The City Council held a public hearing and approved the first reading of the zone change by a 2/3 majority vote of 6-3 on September 22, 2008.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change, 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: Ordinance

ATTACHMENT A

Zone Change #847

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 56th 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 56th 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 from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6,000-Restricted** 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:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Zone Change #848, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

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. The City Council held a public hearing and approved the first reading of the zone change by a unanimous vote on September 22, 2008.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change, if approved, could increase the City's tax base if the property is re-developed. Denial of the proposed zone change should have no effect on the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #848 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

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

ATTACHMENTS:

A: **Ordinance**

ATTACHMENT A
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 2702, 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:

YEGEN GRAND AVENUE FARM, INC.

AND

THE CITY OF BILLINGS, MONTANA

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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 Yegen Grand Avenue Farm, Inc. (“YGAF, Inc.”), 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 27th Street, Billings, MT 59101.

RECITALS

NOW WHEREAS:

A. YGAF, Inc. owns approximately 47 acres of real property in Billings, Montana, more particularly described as:

Tract 6-A-1 of Amended Tract 6-A, Certificate of Survey No. 2314 Amended; Tract 7-A, Certificate of Survey No. 2314, Amended; and Tract 1-A-1 of Amended Tracts 1-A and 2, Certificate of Survey No. 2702

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. YGAF, Inc. 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. YGAF, Inc. 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 YGAF, Inc. 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 YGAF, Inc. 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 YGAF, Inc. 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 YGAF, Inc., which YGAF, Inc. may grant or deny in its discretion, before submitting an application for Special Review Approval to the City.

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 YGAF, Inc. and after Special Review approval as described in Article IV.D. Some uses may also be subject to a special level of review by YGAF, Inc. 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 YGAF, Inc. *
- 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 YGAF, Inc. 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 YGAF, Inc. 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. YGAF, Inc. 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 alteration 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 YGAF, Inc.
- 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 YGAF, Inc.

G. Procedure for Obtaining YGAF, Inc. Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of YGAF, Inc. 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 YGAF, Inc.'s approval. Neither YGAF, Inc. 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. YGAF, Inc. 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 YGAF, Inc. 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 YGAF, Inc. 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 centerline).

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 YGAF, Inc. 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 YGAF, Inc. 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 walls 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 YGAF, Inc.

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 YGAF, Inc.

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 ten (10) 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 Activities. 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 signed, 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 YGAF, Inc. or its assigns, and the costs for removal plus a handling fee to be assessed by the YGAF, Inc. 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 YGAF, Inc. 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 YGAF, Inc. or the developer of the Lot, YGAF, Inc. 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 YGAF, Inc. or the developer of the Lot, YGAF, Inc. 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, YGAF, Inc., 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 YGAF, Inc., 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 YGAF, Inc. (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 YGAF, Inc. 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 YGAF, Inc., 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 YGAF, Inc. 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. YGAF, Inc. 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. YGAF, Inc. 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 YGAF, Inc. 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. YGAF, Inc. may, in its sole and exclusive discretion, revoke an agent's appointment or make an additional appointment at any time.

B. Assignment by YGAF, Inc. YGAF, Inc. 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, YGAF, Inc. 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. YGAF, Inc. 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 YGAF, Inc. or the City shall be given at the following addresses or such other addresses as YGAF, Inc. or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to YGAF, Inc.:

Peter Yegen III
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, 4th Floor Parmly 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 YGAF, Inc., 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 YGAF, Inc., the City, the property owners, and their heirs, successors, and assigns.

R. Contact Person. YGAF, Inc. 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.

YEGEN GRAND AVENUE FARM, INC.:

YEGEN GRAND AVENUE FARM, INC.

By: _____

Its: _____

CITY:

CITY OF BILLINGS

By: _____
Ron Tussing
Its: Mayor

By: _____
Cari Martin
Its: City Clerk

STATE OF _____)
)ss.
County of _____)

[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)
County of Yellowstone)ss.

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.

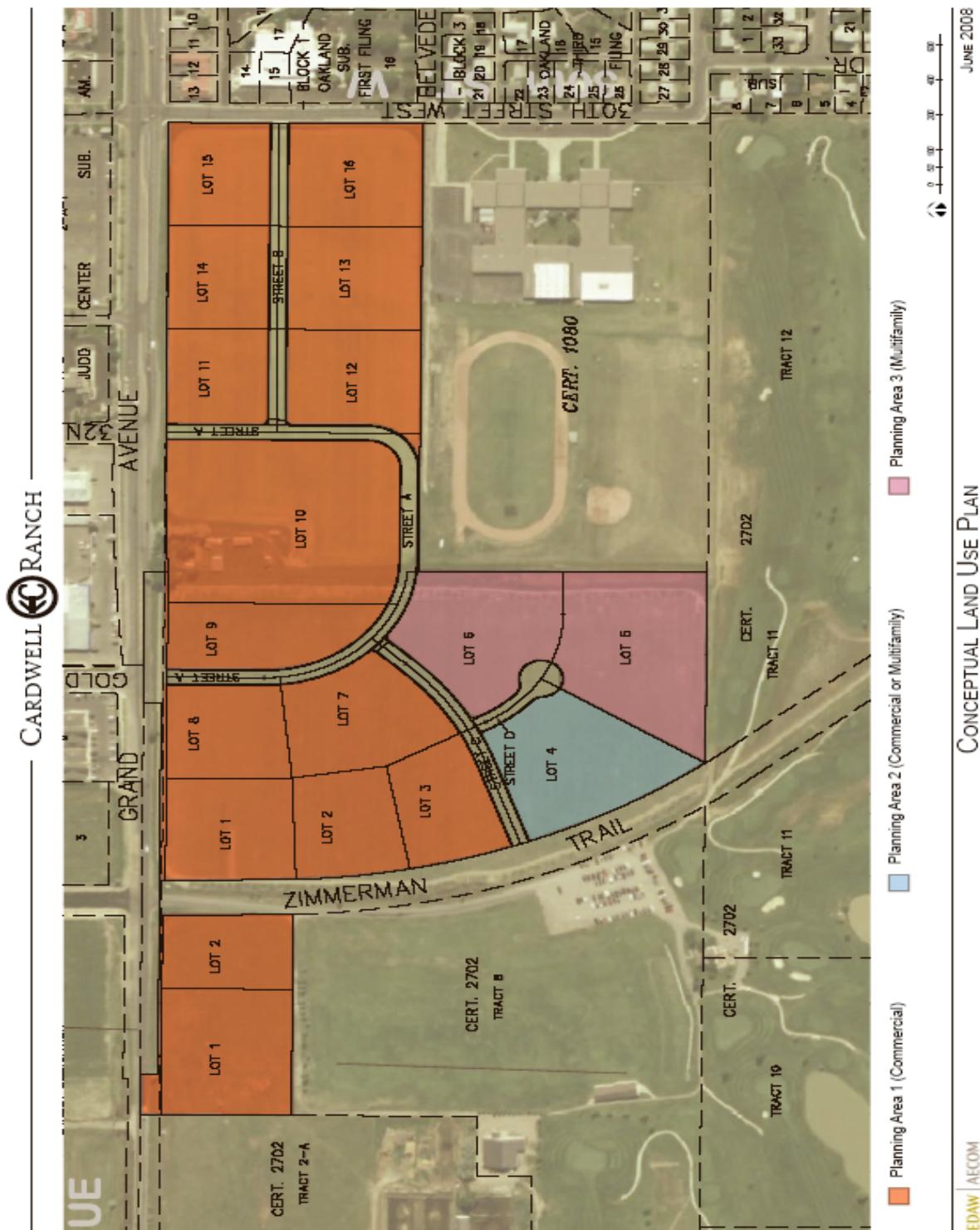
[signature]

[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





CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Preliminary Minor Plat of North Pointe Square Subdivision, 2nd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On September 1, 2008, the subdivider, Vacant Land, LLC, applied for preliminary minor plat approval of North Pointe Square Subdivision, 2nd Filing, which contains five lots on approximately 4.8 acres for commercial development. The subject property is located on the northwest corner of U.S. Highway 87 and Main Street in the Heights. The owner is Vacant Land, LLC, and Engineering, Inc. is the agent. The subject property is currently vacant and is Zoned Community Commercial (CC).

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 21, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of North Pointe Square Subdivision, 2nd Filing and adopt the Findings of Fact as presented in the staff report.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

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

INTRODUCTION

On September 1, 2008, the subdivider, Vacant Land, LLC, applied for preliminary minor plat approval of North Pointe Square Subdivision, 2nd Filing, which contains five lots on approximately 4.8 acres for commercial development. The subject property is located on the northwest corner of U.S. Highway 87 and Main Street in the Heights. The owner is Vacant Land, LLC, and Engineering, Inc. is the agent. The subject property is currently vacant and is zoned CC.

PROCEDURAL HISTORY

- On January 10, 2008, a pre-application meeting was conducted between City staff and Engineering, Inc.
- February 27, 2008, the application was determined sufficient for submittal of a subdivision application.
- On September 1, 2008, an application for a preliminary minor subdivision was submitted to the Planning Division.
- On October 14, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed minor subdivision.

BACKGROUND

General location:	Northwest corner of U.S. Highway 87 and Main Street in the Heights
Legal Description:	Tract 2-A-1 of Amended Tract 2-A of Amended Tracts 1 and 2 of Certificate of Survey 1965
Subdivider/Owner:	Vacant Land, LLC
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	CC
Existing land use:	Vacant
Proposed land use:	Commercial Retail
Gross area:	4.79 acres
Net area:	4.63 acres
Proposed number of lots:	5
Lot size:	Max: 1.38 acres Min.: 0.62 acres

Parkland requirements:

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

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the access road into the subdivision off of North Pointe Drive shall be renamed "North Pointe Square Drive" to aid in addressing issues. *(Recommended by the City Fire Department)*
3. To minimize effects on local services, Section VI of the SIA shall be revised to state the following: *(Recommended by the County Water District of Billings Heights)*
 - Paragraph I: *Water for the subdivision is supplied by the County Water District of Billings Heights. The existing water mains and appurtenances inside property lines are a private system. Said private system connects to the County Water District of the Billings Heights main in Pemberton Lane, south of the subdivision and east off of Main Street.*
 - Paragraph III, sentence two: *Include County Water District of Billings Heights.*
 - Paragraph VII: *The developer/owner acknowledges that the subdivision shall be subject to the County Water District of Billings Heights system development costs in effect at the time new water service connections are made. Said fees shall be based on the size of services/fire lines.*
4. To minimize the effects on local services and to meet the requirements of Section 23-404(C) of the City of Billings Subdivision Regulations the applicant shall submit an Reciprocal Access Agreement with the final plat application of North Pointe Subdivision, 2nd Filing, to be recorded at the County Clerk and Recorders office.

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

VARIANCES REQUESTED

There are no variances requested with this application.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

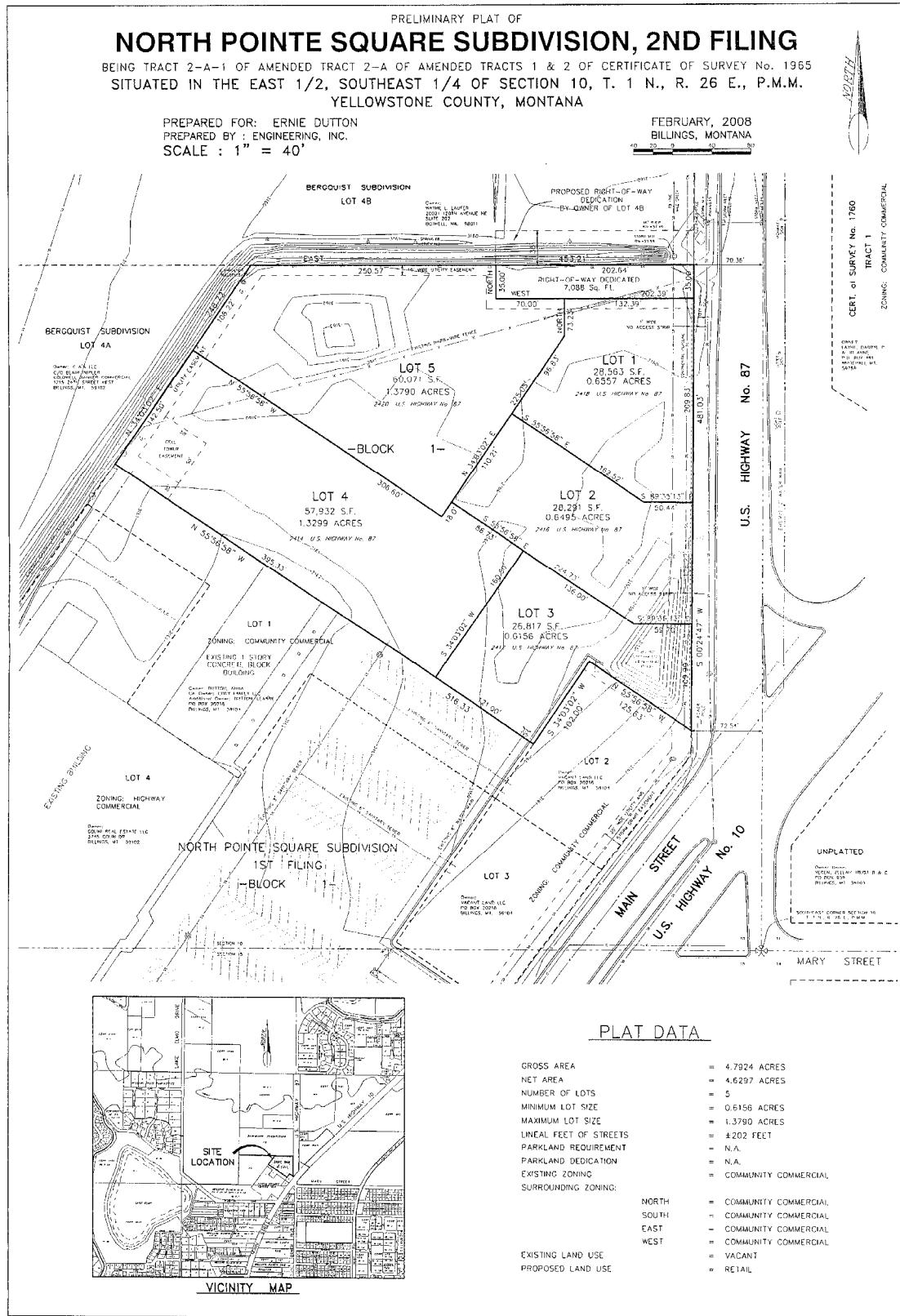
RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of North Pointe Square Subdivision, 2nd Filing and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

ATTACHMENT A
Preliminary Plat of North Pointe Square, 2nd Filing



ATTACHMENT B

Findings of Fact

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

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

1. Effect on agriculture and agricultural water user facilities

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

2. Effect on local services

- a. **Utilities** – Water to the subject property is provided by the County Water District of Billings Heights and will be extended to the subdivision from the existing main line in Pemberton Lane. Condition #3 requires revisions to the language in the SIA regarding the Heights Water District service to the property.

An 8-inch sanitary sewer line exists within North Pointe Square to the south and will be extended north to service the subject property.

- b. **Stormwater** – There is no storm drain system available to this area at this time, therefore, stormwater will be handled through a combination of onsite surface flow on streets and parking lots with collection through a network of basins, inlets, and piping. Discharge of the stormwater will be through the existing private storm drain outfall to Five Mile Creek. As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via private internal subdivision streets from U.S. Highway 87. North Pointe Drive is located along the northern boundary of the subdivision and is required to be renamed “North Pointe Square Drive” to eliminate addressing issues for the Fire Department, as required by Condition #2. The internal private streets will be controlled by a reciprocal access agreement to be submitted with the final plat of North Pointe Square, as required by Condition #4.

U.S. Highway 87, a state controlled highway, is located on the eastern boundary of the subdivision and is a principal arterial. Only one access point is permitted to the

subdivision from this street and is located along the northern boundary of the property. In order to prevent further accesses to the subdivision from the highway, a 1-foot no access strip has been depicted on the eastern border of the property with the exception of North Pointe Drive.

A Traffic Accessibility Study was submitted with North Pointe Square Subdivision, 2nd Filing. The required improvements are specified within the SIA and include:

- The installation of a northbound dedicated left-turn lane to be reviewed and approved by the City Engineering Division and the Montana Department of Transportation.
- The development of the subdivision shall include installation of separate dedicated left and right turn lanes on the North Pointe Drive Access. The access to the subdivision shall be stop controlled.
- A comprehensive signal warrant analysis shall be completed prior to the filing of the final plat. The warrant analysis shall determine the timing of a signal installation. The subdivider shall provide a cash contribution to the city for their proportional share of the estimated traffic signal installation costs.

e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located approximately 2 miles by road at 1601 St. Andrews Drive (Station #6).

3. Effect on the natural environment

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

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

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

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth

Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

The proposed subdivision is consistent with the surrounding commercial uses and is located on U.S. Highway 87, a principal arterial.

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

The subject property is compatible with the commercial developments to the south and east.

2. Urban Area 2005 Transportation Plan Update

U.S. Highway 87, a state controlled highway, is located on the eastern boundary of the subdivision and is a principal arterial. Only one access point is permitted to the subdivision from this street and is located along the northern boundary of the property.

3. Heritage Trail Plan

A Heritage Trail arterial on-street bikeway is identified along U.S. Highway 87. No improvements are required by the subdivider at this time.

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

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

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

The property will be served by Heights Water and City sewer services extended through North Pointe Drive from U.S. Highway 87.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the CC zoning district.

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

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

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

Access to the lots will be via private internal streets (through a reciprocal access agreement) from the proposed dedicated right-of-way located on the northern portion of the property from U.S. Highway 87.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of North Pointe Square Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, October 14, 2008

Ron Tussing, Mayor

ATTACHMENT C
Mayor's Approval Letter

October 14, 2008

Vacant Land, LLC
Attn: Ernie Dutton, Managing Member
P.O. Box 20218
Billings, MT 59104

Dear Mr. Dutton:

On October 14, 2008, the Billings City Council conditionally approved the preliminary plat of North Pointe Square Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. (*Recommended by the Engineering Division*)
2. To minimize effects on local services, the access road into the subdivision off of North Pointe Drive shall be renamed “North Pointe Square Drive” to aid in addressing issues. (*Recommended by the City Fire Department*)
3. To minimize effects on local services, Section VI of the SIA shall be revised to state the following: (*Recommended by the County Water District of Billings Heights*)
 - Paragraph I: *Water for the subdivision is supplied by the County Water District of Billings Heights. The existing water mains and appurtenances inside property lines are a private system. Said private system connects to the County Water District of the Billings Heights main in Pemberton Lane, south of the subdivision and east off of Main Street.*
 - Paragraph III, sentence two: *Include County Water District of Billings Heights.*
 - Paragraph VII: *The developer/owner acknowledges that the subdivision shall be subject to the County Water District of Billings Heights system development costs in effect at the time new water service connections are made. Said fees shall be based on the size of services/fire lines.*
4. To minimize the effects on local services and to meet the requirements of Section 23-404(C) of the City of Billings Subdivision Regulations the applicant shall submit an Reciprocal Access Agreement with the final plat application of North Pointe Subdivision, 2nd Filing, to be recorded at the County Clerk and Recorders office.

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

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

Sincerely,

Ron Tussing, Mayor

pc: Dennis Randall, PE, Engineering, Inc.

N1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 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 \$1,382,578.47 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 05, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

N₂

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 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 \$1,823,577.65 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 12, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

N₃

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 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 \$1,075,001.47 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 19, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

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

PROBLEM/ISSUE STATEMENT: As part of the development of the Rehberg Ranch Subdivision the developer constructed a sewer lift station, force main, and effluent storage pond and dispersal system in addition to the normal sanitary sewer collection 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. This item was delayed from the September 22 council meeting at the developer's request.

ALTERNATIVES ANALYZED: The following alternatives are available for consideration:

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

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

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

RECOMMENDATION

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

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

ATTACHMENTS

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

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

C-Sewage Effluent Storage and Dissemination License

D-Access, Construction and Maintenance Easement

INTRODUCTION

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

BACKGROUND

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

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

ALTERNATIVES ANALYSIS

- Do not approve transfer of facilities - Not accepting these portions of the system will perpetuate a confusing situation regarding service responsibilities since the collection system portions are already being operated and maintained by the City. The City constructed the lagoon treatment system under separate contract with the understanding from the beginning that the entire system would eventually be operated by the City. Not accepting these remaining facilities would raise legal questions about responsibilities and create potential liability to the City should systems not be properly maintained and operated. Not accepting the facilities will also cause a problem with the state Department of Environmental Quality as their expectation is that the City will be the party responsible for operation of this system in its entirety.

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

RECOMMENDATION

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

ATTACHMENTS

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

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

C-Sewage Effluent Storage and Dissemination License

D-Access, Construction and Maintenance Easement

After recording send to: City Clerk
P.O. Box 1178
Billings, MT 59103

ACCESS, CONSTRUCTION AND MAINTENANCE EASEMENT

This 6th day of October, 2008, Rehberg Ranch, LLC, formerly known as Rehberg Ranch Estates, LLC, a Montana, Limited Liability Company of 4401 Highway 3, Billings, Montana 59106, Billings, MT ("Rehberg") and the City of Billings, of Billings City Hall, Billings, MT 59101 ("Billings") enter into the following Easement Agreement:

WHEREAS, Rehberg has subdivided and intends to further subdivide through later filings a subdivision known as Rehberg Ranch Estates Subdivision;

WHEREAS, Rehberg intends to deed to Billings parcels of land upon which Billings constructed a local lagoon sewage processing system ("sewage system") to serve the Rehberg Ranch Estates Subdivision and grant a license to Billings to use other lands for effluent storage and dissemination;

WHEREAS, In order for Billings to operate the sewage system and disseminate the effluent therefrom, it needs access for ingress and egress and to install and maintain sanitary sewer piping to both the sewage system and the area upon which it will store and disseminate sewage effluent; and

WHEREAS, Rehberg owns Tracts 1, 4 and 5 of Certificate of Survey No. 3091 situated in the NE $\frac{1}{4}$ of Section 22 & the W $\frac{1}{2}$ of Section 15, Township 1 North, Range 25 East, P.M.M. ("Burdened Property") upon which it will grant Billings access necessary to operate and maintain the sewage system and dissemination therefrom;

WHEREFORE, the parties agree as follows:

1. Granting clause:

Rehberg hereby grants to Billings an easement for the construction and maintenance of a roadway access and underground sewer lines over and across the strip of land described by metes and bounds upon Exhibit "A", subject to the conditions hereafter specified ("Easement").

2. Benefited and burdened property:

The tracts of land that will be deeded to Billings for the sewage system are set forth in attached Exhibits "B" and "C" and identified by meets and bounds description. An amendment of Tract 4 of Certificate of Survey No. 3091 has been submitted for approval reflecting the subdivision of these tracts which, upon recording in the Clerk and Recorders Office of Yellowstone County of the amended Certificate of Survey, be referred to as Tracts 4B and 4C of Amended Tract 4 of Certificate of Survey 3091. Such tracts shall be the Benefited Property under this Easement. Tract 4A of Amended Tract 4 of Certificate of Survey 3091, which consists of the remainder of Tract 4 excluding the parcels identified in Exhibits "A" and "B", and Tracts 1 and 5 of Certificate of Survey No. 3091 shall be the Burdened Property. Certificate of Survey No. 3091 is on file and of record within the office of the Clerk and Recorder of Yellowstone County under Document No. 3147996. The Amended Tract 4 of Certificate of Survey is pending review and will be recorded following approval.

3. Purpose of use:

This Easement is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewer lines and an access roadway for ingress and egress from the developed portions of Rehberg Ranch Estates Subdivision to the sewer system located on Tracts 4B and 4C of Amended Tract 4 of Certificate of Survey No. 3091, as reflected in Exhibits "B" and "C" and to other property in Tracts 1, 4 and 5 of Certificate of Service 3091 which will be utilized for storage and dissemination of effluent as those properties may be defined by License Agreement between Rehberg and Billings. Such rights of access shall include the right of authorized representatives of Billings to freely travel within the Easement with their equipment in the performance of their duties, day or night, regardless of outside weather conditions.

4. Duration of use:

The Easement granted herein shall remain in effect for so long as used for the purposes set forth in paragraph 3 and to and through the date upon which equivalent access is provided for the purposes stated in this Agreement through dedication to Billings of an improved public road. This Easement shall continue to the extent necessary to provide Billings with access from the dedicated public road to the Benefited Property and for operation and maintenance of the sewer lines constructed within the Easement. Upon providing Billings with an equivalent access over a dedicated and improved public road, Billings shall execute a document prepared by Rehberg to demonstrate of record that the instant Access Easement has been amended. If relocation of water or sewer lines or any other associated underground or above ground equipment is necessary due to changed access conditions made by Rehberg, Rehberg agrees to pay for such relocation costs. It is understood that Billings and Rehberg will cooperate with one another during the construction phase of the public road so as to minimize costs and losses occasioned by the need of Billings to use the existing Easement during the construction activities.

5. Improvement and maintenance of access Easement and sewer lines:

Billings and Rehberg have improved the access Easement to the extent necessary for its purposes and installed underground sewer lines connecting the existing subdivision with the sewer lagoon system in Tract 4, Certificate of Survey No. 3091. Until such time as the anticipated public roadway is dedicated to Billings, Billings will maintain, reconstruct or enlarge the access Easement as may be required for the continued use of the Easement and the sewer lines and roadway constructed therein. Billings shall at all times be solely responsible for all activities involved in the maintenance, operation and control of the sanitary sewer lines installed within this Easement and warrants that it has and will continue to operate the lines in conformance with all federal, state and local environmental and health laws, regulations and permits in effect during such operation. In the event Billings alters or damages the surface area of any roadway existing within this Easement now or in the future during the course of any construction, replacement, repair or service work to the sanitary sewer, Billings shall restore the surface to the condition in which it existed prior to any work being performed by Billings;

6. Change in location:

Billings will be deemed to have abandoned the Easement Area to the extent that Rehberg, its agents or assigns construct dedicated city streets which can reasonably be used by Billings in substitution of the Easement being granted herein. Upon demand by Rehberg, Billings shall execute any documents prepared by Rehberg which are needed to demonstrate of record that portions of the Easement Area have been abandoned as described above. However, as stated above in Section 4, costs incurred due to change in access by Rehberg which requires relocation of any underground or above ground lines or equipment shall be paid by Rehberg.

7. Use of the Easement for special purposes:

This Easement may be used for emergency purposes with respect to said Subdivision and may also be used for ranching and agricultural purposes relative to the benefit of the Burdened Property; provided, however, that Rehberg agrees not to construct, nor cause to be constructed, within the Easement any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as may be licensed by Billings.

8. Hold harmless and waiver:

Each party agrees to hold the other harmless and defend the other from any claims, demands, lawsuits, damages, judgments or losses, including costs and attorney's fees, arising out of the negligent acts or omissions of the other arising from the use of the Easement for access purposes. It is understood that all use of the Easement for access purposes will be solely at the risk of the user, user being defined as the parties hereto, their officers, agents, licensees, invitees or those using the Easement for emergency purposes.

It is further understood that Billings is solely responsible for use of the Easement for purposes associated with the sewer system and sewer lines, and BILLINGS SHALL INDEMNIFY AND HOLD REHBERG AND ITS SHAREHOLDERS, OWNERS, MEMBERS, OFFICERS, AGENTS, EMPLOYEES, OR DIRECTORS HARMLESS FROM ALL LOSSES, CLAIMS, DEMANDS AND COSTS ASSOCIATED WITH CLAIMS ARISING OUT OF BILLINGS' OPERATION OF THE SEWER SYSTEM, INCLUDING BUT NOT LIMITED TO THE SEWER LINES INSTALLED WITHIN THIS EASEMENT, AND INCLUDING ANY ATTORNEYS FEES OR COSTS ASSOCIATED WITH LITIGATION OR CLAIMS ARISING THEREFROM. Billings shall carry property damage and liability insurance, in the amount of seven hundred and fifty thousand dollars (\$750,000.00) per claim and one million five hundred thousand dollars (\$1,500,000.00) per occurrence, or the statutory tort limit for governmental entities pursuant to MCA Section 2-9-108(1), whichever is greater, to cover sewer lines now existing or constructed in the future and the activities conducted by Billings on this Easement

9. **Assignability of Easement:**
Upon transfer of title to the entire than existing Easement Area by Rehberg, Billings shall be deemed to be bound by and granted the benefits of this Easement.

10. **Running with the Land:**
This Easement shall be deemed to run with the Benefited Property.

11. **Attorney's fees and costs upon dispute:**
In the event a dispute occurs between the parties hereto as to this Easement, the prevailing party shall be entitled to recover from the other all attorney's fees and costs incurred.

12. **Complete understanding of the parties:**
This Easement incorporates all of the understanding of the parties relative to the terms hereof and supersedes all prior written and oral understandings which the parties may have had prior to the date of this Easement.

13. **Amendment:**
This Easement may only be amended by a written and recorded document executed by both parties.

REHBERG RANCH, LLC

By: *Janice L. Rehberg*
Janice L. Rehberg, its managing member

STATE OF MONTANA)
ss.
COUNTY OF YELLOWSTONE)

This instrument was acknowledged before me on the 6th day of October,
2008, by Janice L. Rehberg as managing member of Rehberg Ranch, LLC, formerly known as
Rehberg Ranch ~~LLC~~ M.C.



Barbara T. Powelson
Printed Name: Barbara T. Powelson
Residing at: Billings, Montana
Notary Public for the State of Montana
My Commission Expires 11/5/2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

EXHIBIT "A"
EASEMENT EXHIBIT

SITUATED IN THE NE 1/4 OF SECTION 22 & THE W 1/2 OF SECTION 15, T. 1 N, R. 25 E, P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : PUBLIC UTILITIES DEPARTMENT
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 500'

JULY, 2003
BILLINGS, MONTANA

END POINT
S 00°20'31" E A DISTANCE OF
556.00 FEET AND S 89°39'29" W
A DISTANCE OF 35.00 FEET FROM
THE CORNER COMMON TO SECTIONS
10, 11, 14 AND 15.

TRACT 1
COS 3091

NE 1/4
SECTION 15

TRACT 4
COS 3091

SE 1/4
SECTION 15

UNPLATTED

POINT OF BEGINNING
S 58°37'43" E A DISTANCE
OF 25.61 FEET FROM THE NE
CORNER OF LOT 37, BLOCK 5,
REHBERG RANCH ESTATES
SUBDIVISION, FIRST FILING.

VICINITY MAP

BILLINGS, MONTANA

NORTH

SITE

900 250 0 500

W.C. CO. 1

W.C. CO. 2

MEETES & BOUNDS - CENTERLINE DESCRIPTION

An easement 50 feet in width, 25 feet either side of the following described centerline, the boundaries being lengthened or shortened to form a closed figure:

BEGINNING at a point which is situated 5 58'37"43' E. of a distance of 25.61 feet from the NE. corner of lot 37, Block 5, REHBERG RANCH ESTATES SUBDIVISION, FIRST FUND;

thence along a point which is situated 25.61 feet from the point of beginning, along a curve to the right with a radius of 200.00 feet, a distance of 151.61 feet (chord bearing 233°11'43" E. of S. 58'37"43' E. of a distance of 25.61 feet);

thence N. 23°11'43" E. a distance of 45.57 feet;

thence along a curve to the left, with a radius of 300.00 feet;

a distance of 358.70 feet (chord bearing N 110°39' W, chord distance 337.71 feet);
 then curve to the right with a radius of 300.00 feet a distance of 45.20 feet (chord bearing N 003°31' E, chord distance 42.70 feet);
 then curve to the left with a radius of 78.31 feet (chord bearing N 003°31' E, chord distance 75.81 feet);
 then curve to the left with a radius of 305.00 feet a distance of 522.43 feet (chord bearing N 061°54' W, chord distance 490.41 feet);
 then curve to the right with a radius of 294.00 feet a distance of 284.96 feet (chord bearing N 30°45' W, chord distance 273.85 feet);
 thence N 02°28'00" E a distance of 87.12 feet;
 then curve to the left with a radius of 300.00 feet a distance of 35.20 feet (chord bearing N 03°50' W, chord distance 35.18 feet);
 thence N 80°40'59" E a distance of 107.57 feet;
 then curve to the left with a radius of 200.00 feet a distance of 103.33 feet (chord bearing N 03°23'35" E, chord distance 102.19 feet);
 thence N 51°04'31" E a distance of 144.93 feet;
 then curve to the right with a radius of 190.00 feet a distance of 135.56 feet (chord bearing N 71°17'12" E, chord distance 132.70 feet);
 then N 58°00'27" E a distance of 402.63 feet;
 then curve to the left with a radius of 260.00 feet a distance of 420.45 feet (chord bearing N 45°37'20" E, chord distance 376.18 feet);
 thence N 00°42'53" E a distance of 135.63 feet;
 then curve to the left with a radius of 300.00 feet a distance of 159.75 feet (chord bearing N 15°36'13" W, chord distance 157.87 feet);
 then N 31°13'32" W a distance of 172.00 feet;
 then curve to the right with a radius of 180.00 feet a distance of 103.44 feet (chord bearing N 14°45'44" W, chord distance 102.02 feet);
 thence N 01°42'00" E a distance of 1281.13 feet;
 then curve to the left with a radius of 400.00 feet a distance of 190.41 feet (chord bearing N 15°10'10" W, chord distance 188.62 feet);
 thence N 25°34'25" W a distance of 96.97 feet;
 then curve to the right with a radius of 205.00 feet a distance of 261.98 feet (chord bearing N 02°44'53" E, chord distance 251.44 feet);
 thence N 31°04'22" E a distance of 108.23 feet;
 then curve to the left with a radius of 300.00 feet a distance of 281.35 feet (chord bearing N 00°06'46" E, chord distance 253.16 feet);
 thence N 18°50'37" W a distance of 187.63 feet;
 then curve to the right with a radius of 400.00 feet a distance of 188.16 feet (chord bearing N 12°11'41" E, chord distance 188.30 feet);
 thence N 44°14'00" E a distance of 72.50 feet;
 then curve to the left with a radius of 325.00 feet a distance of 252.84 feet (chord bearing N 21°56'44" E, chord distance 246.52 feet);
 thence N 00°20'31" W a distance of 382.16 feet;
 then curve to the left with a radius of 400.00 feet a distance of 179.89 feet (chord bearing N 13°13'31" W, chord distance 178.38 feet);
 thence N 26°06'32" E a distance of 204.16 feet;
 then curve to the right with a radius of 300.00 feet a distance of 228.70 feet (chord bearing N 04°16'51" W, chord distance 223.20 feet);
 thence N 17°34'09" E a distance of 417.53 feet;
 then curve to the left with a radius of 300.00 feet a distance of 93.78 feet (chord bearing N 08°36'49" E, chord distance 93.40 feet);
 thence N 00°20'31" W a distance of 36.79 feet to a point which is the intersection of the line of section and the common section to Section 10, 11, 14 & 15, Township 1 North, Range E, P.M.M., bears N 89°39'29" E a distance of 35.00 feet on N 00°20'31" W a distance of 656.06 feet.

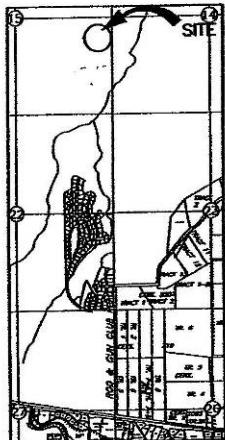
EXHIBIT B-3A

EASEMENT EXHIBIT

SITUATED IN THE SE 1/4 OF SECTION 15, T. 1 N, R. 25 E, P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : PUBLIC UTILITIES DEPARTMENT
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 100'

JULY, 2003
BILLINGS, MONTANA



VICINITY MAP

TRACT 4
COS 3091

MEETES & BOUNDS

Beginning at a point which is situated S 0025'43" E a distance of 325.44 feet and S 89'34"17" W a distance of 184.35 feet from the East $\frac{1}{4}$ corner of Section 15, Township 1 North, Range 25 East, P.M.M.; thence, from said point of beginning, along a curve to the right with a radius of 275.00 feet a distance of 68.99 feet (chord bearing S 23°52'59" W, chord distance 68.81 feet); thence S 31°04'12" W a distance of 109.23 feet; thence along a curve to the left with a radius of 290.00 feet a distance of 183.53 feet (chord bearing S 12°56'24" W, chord bearing 180.48 feet); thence N 74°01'51" W a distance of 201.27 feet; thence N 35°30'18" W a distance of 273.97 feet; thence N 58°02'12" E a distance of 396.31 feet; thence S 42°08'51" E a distance of 210.17 feet to the point of beginning.

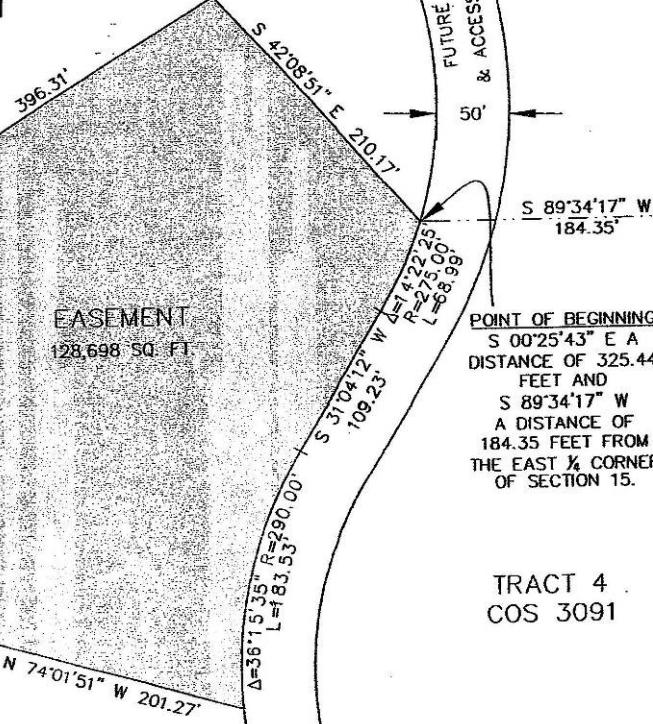
Said easement containing an area of 128,698 sf.

E. 1/4 COR.
SECTION 15

S 0025'43" E 325.44'

FLATIRON

EASEMENT
128,698 SQ. FT



ESMT-EXH.DWG 00102.02

7-24-03 CMK

EXHIBIT 4
EASEMENT EXHIBIT

SITUATED IN THE SE 1/4 OF SECTION 15, T. 1 N, R. 25 E, P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : PUBLIC UTILITIES DEPARTMENT
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 100'

JULY, 2003
BILLINGS, MONTANA

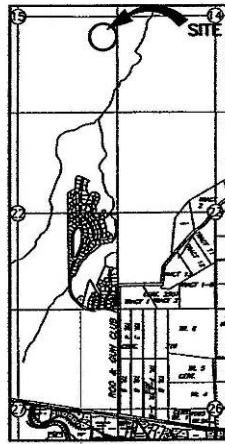
100 50 0 100

TRACT 4
COS 3091

E. 1/4 COR.
SECTION 15

FUTURE
UTILITY
& ACCESS
EASEMENT

S 00°25'3" E
502.53'



VICINITY MAP

POINT OF BEGINNING
S 00°25'43" E A DISTANCE
OF 502.53 FEET FROM
THE EAST 1/4 CORNER
OF SECTION 15



METES & BOUNDS

Beginning at a point which is situated S 00°25'43" E a distance of 502.53 feet from the East 1/4 corner of Section 15, Township 1 North, Range 25 East, P.M.M.; thence, from said point of beginning, S 00°25'43" E a distance of 339.58 feet; thence S 89°33'56" W a distance of 189.94 feet; thence along a non-tangent curve to the left with a radius of 425.00 feet a distance of 21.38 feet (chord bearing N 24°07'57" W, chord distance 21.37 feet); thence N 25°34'25" W a distance of 96.97 feet; thence along a curve to the right with a radius of 240.00 feet a distance of 237.27 feet (chord bearing N 02°44'53" E, chord distance 227.72 feet); thence S 31°04'12" E a distance of 104.24 feet; thence S 64°29'00" E a distance of 192.00 feet to the point of beginning.
Said easement containing an area of 91,037 sf.

Δ=02°52'55"
R=425.00'
L=21.38'

S 89°33'56" W 189.94'

ESMT-EXH.DWG 00102.02

7-24-03 CMK

After recording send to: City Clerk
P.O. Box 1178
Billings, MT 59103

**SEWAGE EFFLUENT STORAGE AND
DISSEMINATION LICENSE**

This 41 day of October, 2008, Rehberg Ranch, LLC, formerly known as Rehberg Ranch Estates, LLC of 4401 Highway 3, Billings, Montana 49106 ("Rehberg") and the City of Billings, of Billings City Hall, Billings, MT 59101 ("Billings") enter into the following License Agreement:

WHEREAS, Rehberg has subdivided and intends to further subdivide through later filings a subdivision known as Rehberg Ranch Estates Subdivision ("the Subdivision");

WHEREAS, Rehberg will convey fee title to Billings as to Tracts 4B & 4C of Amended Tract 4 of Certificate of Survey No. 3091, situated in the NE1/4 of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana on file and of record in the office of the Clerk and Recorder of Yellowstone County, under Document No. _____, for purposes of operating a local lagoon sewage processing system to serve the Rehberg Ranch Estates Subdivision ("the sewage system");

WHEREAS, In order for Billings to operate the sewage system, Billings needs an area in which to store and disseminate the sewage effluent generated within the sewage system following treatment in the lagoons;

WHEREAS, there is land within the proposed Rehberg Ranch Estates Subdivision upon which effluent could be stored and disseminated by land application; and

WHEREAS, Rehberg is willing to provide Billings with a license for the storage and dissemination of sewage effluent within a variable portion of Tracts 1, 2, 3, & 4 of Certificate of Survey No. 3091, on file and of record in the office of the Clerk and Recorder of Yellowstone County under Document No. 3147996;

THEREFORE, the parties agree as follows:

1. Granting clause:

Rehberg hereby grants the City of Billings a LICENSE FOR STORAGE AND DISSEMINATION OF SEWAGE EFFLUENT upon a variable portion of Tracts 1, 2, 3, & 4 of Certificate of Survey No. 3091 as more particularly described upon Exhibit A by the area delineated in light gray shading, which may, from time to time, be more particularly described or limited by supplements to Exhibit A that define a particular parcel within the light gray shaded area consisting of a combination of land area and vegetation suitable to meet the storage and dissemination needs of Billings ("the License Area") subject to the conditions hereafter specified. (It is understood that this License shall not be deemed to restrict Rehberg from changing land uses depicted upon Exhibit A, except as expressly stated herein.)

2. Benefited and Burdened property:

Tracts 4B & 4C of Amended Tract 4 of Certificate of Survey No. 3091, situated in the NE1/4 of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone

County, Montana shall be the Benefited Property and the License Area shall be Burdened Property. It is understood that the License Area is larger than what is needed to disseminate effluent from the lagoons located on the Benefited Property and that the amount of land needed for land application of the effluent will vary depending upon soil conditions and vegetation. It is recognized by both parties, therefore that the size of the License Area will be decreased as the subdivision develops, better vegetation is planted and final platting is approved, that the location of the License Area may change from time to time depending on the ultimate development of the subdivision and that these modifications will be depicted in periodic supplements to Exhibit A.

3. Purpose of use:

Billings shall be entitled to use the License Area for the purpose of storing and disseminating sewage effluent from the sewage system located in the Benefited Property and generated within the Rehberg Ranch Estates Subdivision by means of land application. In so doing, Billings and/or Rehberg may construct any improvements on or under the ground as reasonably needed, subject to the condition that the location and type of the improvements, and the operational costs and methods, shall be mutually agreed upon by the parties prior to installation or use and shall be compatible with the stage of development of the surrounding area. Following installation, the party undertaking the construction shall restore any disturbed areas to the condition existing before such disturbance unless otherwise approved by Rehberg.

Rehberg will construct one or more storage effluent ponds within the License area, in conformance with applicable requirements of the any state and federal approval agencies and the Billings Public Works Department ("BPWD") for operation of the sewage system, from which the effluent will be disseminated during the growing season. Rehberg shall be responsible for the original construction of such ponds, which shall be incorporated into the overall landscape and recreational amenities within Rehberg Ranch. To the extent compatible with the storage function and approved by Billings, the storage effluent ponds may be utilized by Rehberg for other purposes as mutually agreed upon in writing by the parties to this agreement.

4. Dissemination control and maintenance:

The sewage effluent shall be disseminated by Billings in a manner which uniformly spreads the effluent within the License Area during each growing season. Prior to each irrigation season, Billings shall consult with Rehberg or any successor in interest and the parties shall mutually agree upon the timing and location of the dissemination program for that season. In this regard, Billings will cooperate with reasonable requests by Rehberg to alter its dissemination program to the extent that such cooperation will not increase Billings' costs. Except for the initial construction of storage ponds by Rehberg, Billings shall be responsible for the installation, repair, maintenance and operation of the entire sewage effluent dissemination system. Damages to the system from all causes, including but not limited to vandalism, shall be the responsibility of Billings; provided, however, that so long as livestock are permitted by Rehberg to graze on Section 15, T1N, R25E, Rehberg shall construct and maintain legal livestock fence as defined in Section 81-4-101, M.C.A., around the perimeter of the effluent storage pond(s) to prevent livestock from accessing the pond(s). At such time as an area in which an effluent storage pond is located is included in a preliminary plat for development, the parties shall consult and mutually determine what fencing, security or other measures are required to incorporate the pond into the proposed zoning and character of the platted area.

5. Duration of use:

The License provided for herein shall terminate in whole or part at the time that all or part of the sewage system is connected to another sewage system resulting in a reduction or elimination of the storage and dissemination requirements so that this License is no longer needed to the extent originally granted; provided, however, that Billings will provide Rehberg with 12 months notice of its intent to reduce or eliminate storage and dissemination so that Rehberg can reasonably replace the effluent generated by the sewage system and utilized by Rehberg to maintain vegetation within the

subdivision. In addition this License may be partially or totally terminated upon the mutual consent of both parties. In the event of termination, the License Area shall be proportionally released to the minimum area needed or totally released from this License as dictated by the circumstances. Upon such a proportional release, Billings shall execute documents necessary to demonstrate the extent of the License in the future. At Rehberg's request, Billings shall remove all improvements on or under the released License Area, compact any soils needing compaction and any disturbed areas with compatible vegetation and otherwise return the License Area to a clean and environmentally safe condition. Billings shall at its own expense conduct necessary environmental assessment phases with respect to (1) any property removed by Rehberg from the light gray shaded area upon Exhibit A and (2) any property remaining under this Agreement upon abandonment of sewage dissemination by Billings, which demonstrate that the property so removed or abandoned is free of all state and federal regulated hazardous wastes at the time. In the event the property so removed or abandoned is not free of regulated hazardous wastes, Billings will, at its own expense, remediate any such contamination that is a result of the sewage dissemination operation.

6. Change in use of the License Area:

Rehberg may change the use of the License Area and type of vegetation grown there on as long as the new use and/or vegetation are compatible with allowances under pertinent regulations.

7. Additional Subdivision Phases:

In the event any additional phases of the Subdivision require the expansion of that portion of the License Area upon which effluent is to be physically disseminated, both Billings and Rehberg must mutually agree as to the area of expanded use.

8. Change in location and size of the License Area by Rehberg:

Rehberg may change the location and size of the License Area as long as the location does not unreasonably increase the cost of spreading the effluent and/or the size is not less than the size required to disseminate sewage effluent generated from the Subdivision and treated in the lagoons in Tracts 4B and 4C.

9. Subdivision within and around dissemination area:

Rehberg shall be permitted to subdivide within the License Area and/or adjacent to the License Area as long as the area which is required to be used for the dissemination of sewage effluent, taking into account the use of different grasses upon which the sewage may be disseminated in the future, is not less than the size required for dissemination of the sewage effluent generated in the lagoons in Tracts 4B and 4C from the Subdivision. Future subdivisions within the license area shall comply with all local and state zoning, subdivision and sanitary rules and regulations.

10. Environmental hazardous substance assurance and compliance:

All effluent stored or disseminated by Billings shall be treated within the sewage system located on Tracts 4B and 4C prior to discharge into the effluent storage ponds located within the license area and dissemination therefrom shall be conducted under permit from the State of Montana. Billings shall at all times comply with all applicable federal, state and local laws, regulations and permits in the treatment, storage and dissemination of sewage and sewage effluent.

11. Indemnification, hold harmless agreement and insurance:

BILLINGS SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS REHBERG, ITS OWNERS, MEMBERS, OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS FROM AND AGAINST ALL LIABILITIES, CLAIMS, LOSSES, JUDGMENTS, LITIGATION COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEYS FEES, INCURRED BY REHBERG ARISING OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF BILLINGS DURING THE PERFORMANCE OF ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY FEES OR COSTS RELATED TO CLAIMS ARISING FROM ALLEGED ENVIRONMENTAL DAMAGE, REQUIRED CLEAN-UP ACTIVITIES OR ASSERTED HEALTH PROBLEMS.

REHBERG SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS BILLINGS, ITS AGENTS, EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS FROM AND AGAINST ALL LIABILITIES, CLAIMS, LOSSES, JUDGMENTS, LITIGATION COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEYS FEES, INCURRED BY BILLINGS ARISING OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF REHBERG RANCH DURING THE PERFORMANCE OF ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT."

At all times while Billings is operating under this License and for a period of 3 years after Billings ceases to operate under this License or until such time as Billings has completed and obtained all required approvals for any and all clean-up or restoration activities required by this Agreement or by local, state or federal law or regulations, whichever is later, Billings shall carry property damage and liability insurance in the amount of seven hundred fifty thousand dollars, (\$750,000.00) per claim and one million five hundred thousand dollars (\$1,500,000.00) million per occurrence, or the statutory tort limit for governmental entities pursuant to MCA Section 2-9-108(1), whichever is greater, to cover its activities within the License Area; provided, however, that Rehberg shall install and maintain fencing as required in paragraph 4 of this agreement.

12. Communication Towers or Poles:

Any communication towers or poles placed upon property owned by Rehberg which are used in conjunction with the sewer system may be relocated, replaced and the antennas re-oriented by Rehberg at its expense to accommodate future infrastructure development or design modifications provided that towers or poles are the same as, equivalent to or better than the pole which will be relocated or replaced and that such relocation or replacement will not impair the communication functions associated with the tower or pole. Rehberg shall provide written notice of doing so and must obtain written approval from the Public works department of the design and location of the tower or pole prior to its being moved or replaced, which approval may not be unreasonably withheld. Equipment and workmanship involved in such relocation shall be compatible with equipment used by Billings and shall meet Billings' requirements and be approved by Billings.

13. Assignability of License:

Rehberg shall be entitled to Transfer the License Area to the Rehberg Ranch Community Association, any successor organization, any lessee or any successor in title to the property covered by this License; provided, however, that any assignment shall be through a written assignment binding the assignee(s)/successor(s) to all obligations and indemnifications required of Rehberg under this License and any other agreements between the Billings and Rehberg affecting the License Area. If multiple assignee(s)/successor(s) are involved, the assignment shall specifically describe and provide the responsibilities of each assignee(s)/successor(s) consistent with this License. Upon Rehberg's transfer of title to the entire then existing License Area, Rehberg's grantee(s) shall be deemed bound by and granted the benefits of this License. Upon such title transfer, Rehberg shall be relieved of all of its responsibilities hereunder.

14. Attorney's fees and costs upon dispute:

In the event a dispute occurs between the parties hereto as to this agreement, the prevailing party shall be entitled to recover from the other all attorneys' fees and costs incurred.

15. Complete understanding of the parties:

This License incorporates all of the understanding of the parties relative to the terms hereof and supercedes all prior written and oral understandings which the parties may have had prior to the date of this License.

16. Amendment:

This License may only be amended by a written and recorded document executed by both parties except that supplements to Exhibit A defining the License Area from time to time may be as agreed to and accepted by Rehberg and Billings.

17. **Binding effect:**

The terms of this agreement shall be binding upon any assignees or successors in interest to Rehberg or the City for so long as the License is in effect.

REHBERG RANCH LLC, formerly
Rehberg Ranch Estates LLC

By: *Janice L. Rehberg*
Janice L. Rehberg
Its: Managing Member

STATE OF MONTANA)
ss.
COUNTY OF YELLOWSTONE)

This instrument was acknowledged before me on the 6th day of October,
2008, by Janice L. Rehberg as managing member of REHBERG RANCH LLC, formerly
Rehberg Ranch Estates LLC.



Barbara T. Powelson
Printed Name: Barbara T. Powelson
Residing at: Billings, Montana
Notary Public for the State of Montana
My Commission Expires: 01/05/2010

ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledge receipt of this license and hereby accept the property interest conveyed through this Instrument.

CITY OF BILLINGS

BY: _____
Ron Tussing, Mayor

ATTEST

By: _____
Cari Martin, City Clerk

After Recording Send To: City Clerk
P.O. Box 1178
Billings, MT 59103

**GRANT DEED OF ESTATE ON SPECIAL LIMITATION
WITH THE POSSIBILITY OF REVERTER AND COVENANTS**

GRANT DEED WITH SPECIAL LIMITATION:

For valuable consideration, receipt of which is hereby acknowledged, the undersigned,

REHBERG RANCH, LLC, a Montana Limited Liability Company,
formerly known as REHBERG RANCH ESTATES, LLC, whose address
is 4401 Highway 3, Billings, Montana 59106 ("Grantor"),

hereby grants and conveys unto:

CITY OF BILLINGS, a Montana municipal corporation and political
subdivision of the State of Montana, whose address is Billings City Hall,
Billings, MT 59101, ("Grantee"),

the following described premises in Yellowstone County, Montana, to-wit:

Tracts 4B and 4C of Amended Tract 4 of Certificate of Survey No. 3091,
situated in the SE $\frac{1}{4}$ of Section 15, Township 1 North, Range 25 East,
P.M.M., Yellowstone County, Montana, on file and of record in the office of
the Clerk and Recorder of said County, under Document No.

together with appurtenances, specifically including the existing local lagoon sewage processing system,
comprised of sewage processing lagoons and related facilities, located on such tracts.

TO HAVE AND TO HOLD by Grantee, its successors and assigns, so long as used for the purposes of
operating the existing local lagoon sewage processing system (and ordinary repairs, improvements, and
replacements thereto in the ordinary course of Grantee's operations) now and hereafter situated in and upon
the said premises.

COVENANTS:

By its acceptance and recording of this deed, Grantee separately and additionally covenants as follows:

1. Grantee is solely responsible for all activities conducted on Tracts 4B and 4C and warrants that it
has and will continue to operate the lagoons in conformance with all federal, state and local
environmental and health laws, regulations and permits in effect during such operation.
2. GRANTEE SHALL INDEMNIFY AND HOLD REHBERG AND ITS SHAREHOLDERS,
OWNERS, MEMBERS, OFFICERS, AGENTS, EMPLOYEES, AND DIRECTORS
HARMLESS FROM ALL LOSSES, CLAIMS, DEMANDS AND COSTS ASSOCIATED
WITH GRANTEES' ACTIVITIES ON THESE TRACTS, INCLUDING, BUT NOT
LIMITED TO ANY ATTORNEYS FEES OR COSTS ASSOCIATED WITH LITIGATION
OR CLAIMS ARISING THEREFROM. Grantee shall carry property damage and liability
insurance in the amount of \$750,000 per claim and \$1.5 million per occurrence or the
statutory tort limit for governmental entities pursuant to MCA Section 2-9-108(1), whichever
is greater, to cover its activities on these Tracts.
3. At such time as the said premises are no longer used by the Grantee for the purposes stated in
the grant of estate upon special limitation stated above, and upon reverter of said premises
pursuant to this grant, Grantee at its own expense shall remove all pipes, sewage processing
facilities, buildings, structures, lagoons, and related equipment; shall restore the said premises

to a surface contour and vegetation which matches the existing topography at the time; shall obtain a Phase I Environmental Assessment (or its equivalent) of the said premises which demonstrates that the same are free and clear of hazardous substances as defined under Federal and State law; and shall thereupon prepare and place of record a satisfactory and requisite recorded instrument evidencing for the record the reverter of the fee estate upon occurrence of the special limitation stated above.

DATED this 6th day of October, 2008.

REHBERG RANCH LLC,

Janice L. Rehberg
Janice L. Rehberg, it's Managing Member

STATE OF MONTANA)
)
COUNTY OF YELLOWSTONE)

This instrument was acknowledged before me on the 6th day of October, 2008, by Janice L. Rehberg as managing manager of REHBERG RANCH, LLC,



Sign: Barbara T. Poulsen
Print name: Barbara T. Poulsen
Residing at: Billings, Montana
Notary Public for the State of Montana
My Commission Expires 01/05/2002/10

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledge receipt of this Grant Deed and hereby accept the property interest conveyed through this instrument.

CITY OF BILLINGS

BY: Ron Tussing, Mayor

ATTEST

BY: _____
Cari Martin, City Clerk

After recording send to: **City Clerk**
P.O. Box 1178
Billings, MT 59103

**GRANT DEED OF ESTATE ON SPECIAL LIMITATION
WITH POSSIBILITY OF REVERTER, RESERVATION OF EASEMENT AND COVENANTS**

GRANT DEED WITH SPECIAL LIMITATION:

For valuable consideration, receipt of which is hereby acknowledged, the undersigned,

REHBERG RANCH, MARKETING, INC., a Montana Corporation,
formerly known as REHBERG RANCH ESTATES MARKETING, INC.,
whose address is 4401 Highway 3, Billings, Montana 59106, ("Grantor")

hereby grants and conveys to :

THE CITY OF BILLINGS, a Montana municipal corporation and political
subdivision of the State of Montana, whose address is City Hall, Billings,
Montana 59101, ("Grantee")

the following described premises in Yellowstone County, Montana, to-wit:

Lot 5 of Block 12 of REHBERG RANCH ESTATES SUBDIVISION,
SECOND FILING, situated in the NE $\frac{1}{4}$ of Section 22, Township 1 South,
Range 25 East, P.M.M., in Yellowstone County, Montana on file and of
record in the office of the Clerk and Recorder of said County, under
Document No. 3372373,

together with appurtenances, specifically including the existing lift station and associated facilities constructed
on such lot by Grantor.

TO HAVE AND TO HOLD by Grantee, its successors and assigns so long as used by the Grantee for the
purposes of operating a sewer lift station (including ordinary repairs, improvements and replacements thereto
in the ordinary course of Grantee' operation) now and hereafter situated in and upon the said premises.

RESERVATION OF EASEMENT:

Grantor hereby reserves a perpetual easement for itself, its successors and assigns over and across the unused
portion of Lot 5, Block 12, REHBERG RANCH ESTATES, SECOND FILING for any and all purposes of
Grantor, its successors and assigns which benefit the Rehberg Ranch Estates Subdivision. The terms and
conditions of such easement are set forth below:

1. Any and all uses of Lot 5, Block 12 by Grantor, its successors or assigns shall be subordinate to
the Grantee's need to use as much of Lot 5, Block 12 as is necessary for the operation and
maintenance of the lift station and associated facilities constructed by Grantor upon such lot;
2. Grantor, its successors and assigns shall reasonably maintain all areas over which it exercises its
rights under this easement, and Grantee shall reasonably maintain all other portions of the
property, including but not limited to the lift station and associated facilities;
3. Grantor, its successors and assigns shall each carry reasonably sufficient property damage and
liability insurance to cover any improvements it may construct upon the lot and the activities
conducted thereon by Grantor, its successors and/or assigns; and
4. The easement reserved herein shall burden Lot 5, Block 12 Rehberg Ranch Estates Subdivision,
and Second Filing and shall benefit Rehberg Ranch Estates, First and Second Filings, on file and
of record under Document Nos. 3183382 and 3372373 within the office of the Clerk and
Recorder of Yellowstone County and any subsequent filings recorded by the Grantor within the
Rehberg Ranch Master Plan Area.

COVENANTS:

By acceptance and recording of this deed, Grantee separately and additionally covenants as follows:

1. With respect to the GRANT DEED WITH SPECIAL LIMITATION, Grantee covenants as follows:

a. Grantee shall be solely responsible for all activities involved in the maintenance, operation and control of the lift station and related facilities and warrants that it has and will continue to operate the lift station in conformance with all federal, state and local environmental and health laws, regulations and permits in effect during such operation.

b. GRANTEE SHALL INDEMNIFY AND HOLD REHBERG AND ITS SHAREHOLDERS, OWNERS, MEMBERS, OFFICERS, AGENTS, EMPLOYEES, AND DIRECTORS HARMLESS FROM ALL LOSSES, CLAIMS, DEMANDS AND COSTS ASSOCIATED WITH GRANTEES' ACTIVITIES ON THESE TRACTS, INCLUDING, BUT NOT LIMITED TO ANY ATTORNEY'S FEES OR COSTS ASSOCIATED WITH LITIGATION OR CLAIMS ARISING THEREFROM. Grantee shall carry property damage and liability insurance in the amount of seven hundred fifty thousand dollars (\$750,000.00) per claim and one million five hundred thousand dollars (\$1,500,000.00) million per occurrence, or the statutory tort limit for governmental entities pursuant to MCA Section 2-9-108(1), whichever is greater, to cover its activities on these Tracts.

c. At such time as the said premises are no longer used by the Grantee for the purposes stated in the GRANT OF ESTATE UPON SPECIAL LIMITATION stated above, and upon reverter of said premises pursuant to this grant, Grantee at its own expense shall remove the lift station and associated facilities, including all buildings, pumps, piping and , related equipment; shall restore the said premises to a surface contour and vegetation which matches the existing topography at the time; shall obtain a Phase I Environmental Assessment (or its equivalent) of the said premises which demonstrates that the same are free and clear of hazardous substances as defined under Federal and State law; and shall thereupon prepare and place of record a satisfactory and requisite recorded instrument evidencing for the record the reverter of the fee estate upon occurrence of the special limitation stated above.

2. With respect to the EASEMENT reserved by Grantor, Grantee covenants that upon termination of this easement, Grantee shall pay to Grantor an agreed value for any of Grantor's improvements placed upon the Easement which the Grantee desires to retain; otherwise Grantor shall remove the same within a reasonable time, returning the easement to the condition in which it existed prior to the placement of such improvements thereon.

DATED this 16th day of October, 2008.

REHBERG RANCH MARKETING, INC.

Janice L. Rehberg
By: Janice L. Rehberg, its President

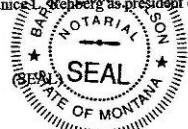
STATE OF MONTANA)

)
ss.

COUNTY OF CELLOWSOME)

)
This instrument was acknowledged before me on the 6th day of October, 2008, by

Janice L. Rehberg as president of REHBERG RANCH MARKETING, INC.



Signature: *Barbara T. Powellson*
Print name: Barbara T. Powellson
Residing at: Billings, Montana
Notary Public for the State of Montana
My Commission Expires: 15/2006/2010

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledge receipt of this Grant Deed and hereby accept the property interest conveyed through this instrument.

CITY OF BILLINGS

BY: _____
Ron Tussing, Mayor

ATTEST

BY:
Cari Martin, City Clerk



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 14, 2008

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

PROBLEM/ISSUE STATEMENT: The bond sale for SID 1385 was originally scheduled for September 22, 2008 but was postponed so the City had a better opportunity to get the bonds rated in an uncertain financial environment. The sale was delayed until October 14, 2008, and advertisements were submitted with the new sale date. 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 INFORMATION: Bids on \$5,360,000 for bonds will be received October 14, 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

PRELIMINARY DRAFT 09/19/08
(To Be Completed on Acceptance of Bid for Bonds)

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 October 14, 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 October, 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 __, 2008, and the Addendum to the Official Statement, dated October 14, 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, 2008, 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) information, for such fiscal year, relating to special assessments, collections, investment earnings and debt service payments, amounts on hand in the Revolving Fund and transfers in and out contained in the table under the captions "The District," "The Revolving Fund," "Other Outstanding Special Improvement District Bonds and the Revolving Fund," "Statement of Changes in Fund Balance of the Revolving Fund" and "Future Financings" in the Official Statement;

(2) updated information for such fiscal year until the time the property in the District is fully developed, relating to ownership of the property in the District, the status of development of the property in the District, and the delinquencies, if any, in the payments of assessments;

(3) information, as of January 1 for the current tax year, relating to the appraised value and taxable value of taxable property in the District;

(4) identification of the property owners in the District and the assessments by name, type of property and taxable value;

(5) information, as of the most recent date available, regarding employment in the Billings MSA, the State of Montana and the United States of the type contained in the table under the caption "The City—Employment" in the Official Statement; and

(6) Information, as of the most recent date available, regarding the larger employers in the Billings MSA, identifying the employer and

estimated number of employees of the type contained in the table under the caption “The City—Employment—Major Employers” in the Official Statement; and

(7) Information, as of the end of the most recent fiscal year, regarding the direct debt of the City, including debt evidenced by special improvement district bonds, overlapping general obligation debt and debt ratios of the type contained under the captions “The City—Direct Debt of the City,” “—Overlapping General Obligation Debt,” “—Debt Ratios for General Obligation Debt” and “—Additional Debt” in the Official Statement.

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 successor to 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 Bondholders 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 14th day of October, 2008.

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 1st day of January and the 1st day of July
in each year, commencing July 1, 2009.

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

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 October 14, 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

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

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

Additional abbreviations may also be used.

ASSIGNMENT

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

Dated: _____

PLEASE INSERT SOCIAL SECURITY
OR OTHER IDENTIFYING NUMBER
OF ASSIGNEE:

/ _____ /

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

SIGNATURE GUARANTEED

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

EXHIBIT C

FORM OF DTC LETTER



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, OCTOBER 14, 2008

SUBJECT: Continuance of 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.

The actual costs have been used for each property owner's assessment on this resolution versus the engineers estimate used for the September 22, 2008 meeting. The difference over the 15 years is \$52.68 less per property owner.

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 $\frac{1}{2}$ of 1% for a total rate of 5.6 %. The $\frac{1}{2}$ 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 continuance of the public hearing be held and Council passes the proposed resolution on October 14, 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:

A28700	\$972.96	5.600	15
LORTZ, STEVEN L & JULIE A			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 002, LT 2 BLK			
A28701	\$972.96	5.600	15
MILLER, DONALD D & AUDREY K			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 003, LT 3 BLK			
A28702A	\$972.96	5.600	15
HERMAN, KENNETH D & OLGIE			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 004, UNIT 306			
A28702B	\$972.96	5.600	15
SCHRUP, WILLIAM T			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 004, UNIT 306			
A28703A	\$972.96	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNIT A T			
A28703B	\$972.96	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNIT B T			
A28704A	\$972.96	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNIT C T			

A28704B	\$972.96	5.600	15
PICARD, SAM			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 001, Lot 005, UNID D T			
A28706	\$972.96	5.600	15
BRINKMAN, BRIAN			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 003, LT 3 BLK			
A28707	\$972.96	5.600	15
LOUDAN, TIMOTHY			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 004, LT 4 BLK			
A28708	\$972.96	5.600	15
KIRKPATRICK, DANIEL D			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 005, LT 5 BLK			
A28709	\$972.96	5.600	15
GARRAD, TIMOTHY			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 006, LT 6 BLK			
A28710	\$972.96	5.600	15
MATOVICH, MICHAEL R			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 007, LT 7 BLK			
A28711	\$972.96	5.600	15
SHERIDAN, PAUL T			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 008, LT 8 BLK			
A28712	\$972.96	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	\$972.96	5.600	15
MEGED, BEVERLY N			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 010, LT 10 BL			
A28714	\$972.96	5.600	15
ERVING, SHANE M			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 011, LT 11 BL			
A28715	\$972.96	5.600	15
JUROVICH, DANIEL D			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 002, Lot 012, LT 12 BL			
A28716	\$972.96	5.600	15
CITY OF BILLINGS			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, TERRA WEST SUBD 3RD FILING P			
A28717	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	5.600	15
CITY OF BILLINGS			
TERRA WEST SUBD 1ST FILING, S12, T01 S, R25 E, BLOCK 003, Lot 001, TERRA WE			
A28721	\$972.96	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	\$972.96	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	\$972.96	5.600	15
SWEENEY, PATRICK C & LOTTIE A			
UNIT 3112 VILLAS ON THE PARK 20% INT IN COMMON ELEMENTS TERRA WEST SUB 3RD			
A28723A	\$972.96	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	\$972.96	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	\$972.96	5.600	15
COWAN, MARLA J			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 005, LT 5 BLK			
A28726	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	5.600	15
TINNES, RICHARD DEAN			
TERRA WEST SUBD 3RD FILING, S12, T01 S, R25 E, BLOCK 003, Lot 010, LT 10 BL			
A28731A	\$972.96	5.600	15

SOCHA, JOHN D				
UNIT 1 DAYSTAR TOWNHOMES	(04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A &			
A28731B	\$972.96	5.600	15	
KRISTENSEN, M JOYCE				
UNIT 2 DAYSTAR TOWNHOMES	(04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A &			
A28733A	\$972.96	5.600	15	
DRAKE, PERRY ANN				
UNIT 3 DAYSTAR TOWNHOMES	(04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A &			
A28733B	\$972.96	5.600	15	
FOLEY, DAVID NEILL & GAYLE M				
UNIT 4 DAYSTAR TOWNHOMES	(04) 1/4 INT COMMON ELEMENTS LOCATED ON LTS 1A			
A29976	\$972.96	5.600	15	
PIPER, BETH A				
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 07A, LT 7A BL				
A29977	\$972.96	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	\$972.96	5.600	15	
NEARY, PATRICK T				
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 009, LT 9 BLK				
A29979	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	5.600	15	
EDWARDS, BRIAN				
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 013, LT 13 BL				
A29983	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	5.600	15
HALLAND, DAVID S			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 018, LT 18 BL			
A29988	\$972.96	5.600	15
HODIK, KYLE & KATHLEEN			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 019, LT 19 BL			
A29989	\$972.96	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	\$972.96	5.600	15
CHRISTENSON, ERIC & TREASA			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 001, Lot 021, LT 21 BL			
A29991	\$972.96	5.600	15
BOOTH, ELIZABETH D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 04A, LT 4A BL			
A29992	\$972.96	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	\$972.96	5.600	15
REDDING, JEFFREY A & ANNENETTE L			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 006, LT 6 BLK			
A29994	\$972.96	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	\$972.96	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	\$972.96	5.600	15
KIMMELL, MARLEE			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 009, LT 9 BLK			
A29997	\$972.96	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	\$972.96	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	\$972.96	5.600	15
PALMER, RICHARD L			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 012, LT 12 BL			

A30000	\$972.96	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	\$972.96	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	\$972.96	5.600	15
PICARD, SAM			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 015, LT 15 BL			
A30003	\$972.96	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	\$972.96	5.600	15
BETZOLD, ANTHONY ASHLEY			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 004, Lot 017, LT 17 BL			
A30005	\$972.96	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	\$972.96	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	\$972.96	5.600	15
FOOTE, ROBERT D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 005, Lot 002, LT 2 BLK			
A30008	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	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	\$972.96	5.600	15
BUTZ, MICHAEL R &			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 002, LT 2 BLK			
A30013	\$972.96	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	\$972.96	5.600	15
WULFF, DENISE D			
TERRA WEST SUBD 4TH FILING, S12, T01 S, R25 E, BLOCK 006, Lot 004, LT 4 BLK			
A30015	\$972.96	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. 27th 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. Council voted to continue the public hearing on the October 14, 2008 meeting.

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

Tuesday, October 14, 2008

SUBJECT: Public Hearing and Resolution - Annual Encroachment and Weed Assessments for FY 2009

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following annual assessment resolutions have been completed by the Finance Division and are ready to spread on the tax rolls.

Encroachment – Pursuant to BMCC Section 13-301, every person maintaining or owning any structure, encumbrance, obstruction or encroachment, in or upon or extending or projecting on, over, across or above and within seven (7) feet of the grade of any public property, public street, avenue, sidewalk or alley in the city, shall obtain an encroachment permit and shall pay to the city an annual encroachment rental fee.

Weed – Pursuant to City code 25-304, the property owner is notified in writing and given ten (10) days from the date of the notice of noncompliance to exterminate or remove the weeds. Upon failure to comply to the written notification the City may by its own work forces or by contract cause the weeds to be exterminated, removed or cut and the cost therefore shall be assessed against the non complying real property together with an additional administrative cost equal to 25% of the cost of removal and a \$25 penalty. If the charges are not paid within a given time the costs with penalties shall constitute a lien on the non complying real property and will be taxed as a special assessment against the real property.

Weed removal was done on the attached list of properties with the General Fund bearing the actual cost. These assessments will reimburse the General Fund.

RECOMMENDATION

Staff recommends that a public hearing be held and that Council passes the resolutions on October 14, 2008.

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

ATTACHMENTS

A-Encroachment Annual Assessment Resolution
B-Weed Cutting & Removal Annual Assessment Resolution

EXHIBITS

A-Encroachment Properties
B-Weed Removal Properties

Attachment A

RESOLUTION 08-_____

A RESOLUTION FIXING THE AMOUNT OF THE ANNUAL SPECIAL ASSESSMENT TAX FOR THE FISCAL YEAR 2008 TO BE PAID BY PERSONS, FIRMS, AND CORPORATIONS, MAINTAINING ENCUMBRANCES, OBSTRUCTIONS, OR ENCROACHMENTS ON, OVER, ACROSS, OR ABOVE THE STREETS, AVENUES, SIDEWALKS, OR ALLEYS OF THE CITY OF BILLINGS AND LEVYING AND ASSESSING SAID SPECIAL ASSESSMENT TAX.

WHEREAS, Chapter 13 of the Billings, Montana City Code provides that every person, firm, or corporation that has or maintains any encumbrances, obstructions, or encroachments on, over, across, or above any street, avenue, sidewalk, or alley shall pay an annual rental, and;

WHEREAS, Billings, Montana City Code, Section 13-303 provides that the City Council shall annually, by resolution, make a special assessment for such rental upon certain lots abutting on that part of the street, avenue, sidewalk, or alley upon which encumbrance, obstruction, or encroachment on the owner of such abutting lot or lots.

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

1. ANNUAL ASSESSMENT FOR RENTAL: That for the purposes of collecting said rents for the fiscal year 2008 for said encumbrances, obstructions, and encroachments on, over, across, or above the streets, avenues, alleys, and sidewalks of the City of Billings, there is hereby fixed, levied, and assessed a special assessment tax upon the lots or parcels of land provided in the schedule attached, described as EXHIBIT "A" and by this reference made a part hereof.

2. DISPOSITION OF COLLECTIONS. All monies collected from said taxes shall be paid to the General Fund of the City of Billings, Montana.

3. NOTICE OF HEARING. That on Monday, the 24th day of September 2007, 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 Council will hear objections to the final adoption of this resolution. The City Clerk published notice hereof twice, on September 6th and September 13th, 2007 in the Billings Times.

4. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **14th** day of **October, 2008**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

Property Address Owner Name	T	Subd(CS)/Block/Lot/Unit ax A/C ID Location ID	Tax Code	Valuation Code	Current Assessment
11 ANTELOPE TRL		HLO 014 001,2	A09148	ENCH	220.00
FRIED, WILLIAM JR & SALLY AN		8701 10914800	RE		
		EVE 007 023			
1443 AVE D		W15' &	A06751	ENCH	6.50
DYE, CINDY D		6389 10675100	RE		
2720 BEARTOOTH DR		BEA 002 013	A02920	ENCH	5.00
COFFMAN, STEPHEN L & VICTOR		2604 10292000	RE		
2840 BETH DR		SFF 000 001	A13885	ENCH	1.00
THOMAS, FRANK E & MARGARET G		13416 11388500	RE		
		SRS 000 008			
430 S BILLINGS BLVD		S326'	D01389	ENCH	675.00
HANSER AUTOMOTIVE CO INC		35929 40138900	RE		
928 BROADWATER AVE		BDW 002 028	A03302	ENCH	12.00
ZIMMERER, STEPHEN L & BRENDA		2998 10330200	RE		
1127 CALICO AVE		TE2 009 024	A24843	ENCH	50.00
KOHN, JAY A & JUDY K		24218 12484300	RE		
322 CAMEL PL		SS2 001 061	A23703	ENCH	58.50
VALKENBURG, CORNELIUS A & LI		23120 12370300	RE		
CENTRAL AVE		YEL 026 001-11 &	A19326	ENCH	10.00
JEWEL FOOD STORES INC		18816 11932600	RE		
1625 CENTRAL AVE		WWH 001 004-8 &	A17571	ENCH	48.00
GRAND LANES INC		17099 11757100	RE		
3040 CENTRAL AVE		SRD 000 002	A31495	ENCH	30.00
HUNTERS POINTE APARTMENTS LL		39020 14610	RE		
1301 DIVISION ST		BLG 003 017-20 &	A00028	ENCH	10.00
ATWOOD, SCOTT		17 10002800	RE		
2300 ELIZABETH ST		STH 003 001	A13999	ENCH	25.00
SCHAEFER, JOSHUA T & COREY R		13542 639	RE		
		FLA 000 007			
141 FLORINE LN		14&15A	A07017	ENCH	15.00
JACOBSON, RICHARD LEE &		6655 10701700	RE		
4148 FRANCES AVE		HRM 000 001	A08646	ENCH	25.00
BRYSON, JEFFERY A		8092 10864600	RE		
828 GOVERNORS PL		KH3 021 011	A20220	ENCH	34.00
WICKUM, LANCE D		19673 12022000	RE		
2500 GRAND AVE 001		LP2 002 002 001	A20713	ENCH	1.00
BOGGS, JUSTIN DALE		20144 13300	RE		
2700 GRAND AVE A		SVM 001 001 00A	A28233A	ENCH	19.34
GRAND AVE INVESTOR LLC		42304 12823300	RE		
2700 GRAND AVE B		SVM 001 001 00B	A28233B	ENCH	91.70
GRAND AVE INVESTOR LLC		42305 3296	RE		
2700 GRAND AVE C		SVM 001 001 00C	A28233C	ENCH	11.58

GRAND AVE INVESTOR LLC	42306	3297	RE			
2700 GRAND AVE D	SVM	001 001	00D	A28233D	ENCH	11.28
GRAND AVE INVESTOR LLC	42307	4550	RE			
2700 GRAND AVE E	SVM	001 001	00E	A28233E	ENCH	13.10
GRAND AVE INVESTOR LLC	42308	26245	RE			
1323 GRANITE AVE	LER	000 013		A10613	ENCH	102.00
STOUGHTON, ALICE CASADY	10105	11061300	RE			
3221 GREEN TERRACE DR	CDF	007 024		A05687	ENCH	41.00
ROSE, BERNARD J III	5385	10568700	RE			
2760 GREGORY DR S	GR3	002 010		A19680	ENCH	50.00
COZZENS, LAWRENCE B & JEANNI	19127	11968000	RE			
4103 JANSMA AVE	SW4	012 011		A22975	ENCH	50.00
MOFFETT, DAVE	22382	12297500	RE			
4780 KING AVE E	MLC	001 001		A28994	ENCH	25.00
BK RE 11036 LLC	28086	1874	RE			
2883 KING AVE W	0662	000 000		D00527	ENCH	1000.00
RMR I LLC	35758	11622	RE			
4009 LAREDO PL	MYP	004 002		C06176	ENCH	112.50
ZIMNY, GERARD P & MICHELLE A	32925	30617600	RE			
3218 LEEANN BLVD	W5A	003 014A1		A20842	ENCH	10.00
TEICHERT, LYLE W & VALERIE R	20240	12084200	RE			
	HLR	000 001				
595 MAIN ST	W10' &			A09171	ENCH	50.00
MAIN STREET PARTNERS	8745	10917100	RE			
5435 MIDLAND RD	VAQ	001 001		C07319	ENCH	706.00
MANNY 422 LLC	33243	30731900	RE			
1117 MILES AVE	BDW	012 009		A03492	ENCH	10.00
MILLER, JANEL R	3187	10349200	RE			
2622 MINNESOTA AVE	BLG	189 017		A01272	ENCH	88.00
CITY OF BILLINGS	1060	10127200	RE			
2624 MINNESOTA AVE	BLG	189 018		A01273	ENCH	207.00
L & L DEVELOPMENT VENTURE LP	1061	10127300	RE			
2702 MINNESOTA AVE	BLG	190 007-8		A01281	ENCH	27.00
MORLEDGE, KARL	1069	10128100	RE			
2712 MINNESOTA AVE	BLG	190 012A		A01285	ENCH	46.00
MCKAY, TERRY & BARBARA J	1072	10128500	RE			
2804 MINNESOTA AVE	BLG	191 007-16		A01294	ENCH	421.00
LJR, LLC	1080	10129700	RE			
2319 MONTANA AVE	BLG	113 005A &		A00833	ENCH	442.00
COMPUTERS UNLIMITED	685	10083300	RE			
2401 MONTANA AVE	BLG	112 001		A00817	ENCH	50.00
REX HOTEL PARTNERSHIP	668	10081700	RE			
2413 MONTANA AVE	BLG	112 007		A00822	ENCH	114.00
SAHALEE LLC	674	10082200	RE			
2415 MONTANA AVE	BLG	112 008		A00823	ENCH	25.00
COMPUTERS UNLIMITED	675	10082300	RE			
2501 MONTANA AVE	BLG	111 001-2		A00806	ENCH	1261.00
COMPUTER UNLIMITED	657	10080600	RE			
2505 MONTANA AVE	BLG	111 003		A00807	ENCH	53.00

RPS, LLC	658	10080700	RE		
2705 MONTANA AVE	BLG	109 001-4	A00789	ENCH	66.00
TG & F PROPERTIES INC	646	10078900	RE		
2713 MONTANA AVE	BLG	109 005-7	A00792	ENCH	16.00
T G & F PROPERTIES INC	648	10079300	RE		
	BLG	108 008			
2817 MONTANA AVE		W2/3 &	A00781	ENCH	126.00
NELSON, BERT A & ANDREW	640	10078100	RE		
2911 MONTANA AVE	BLG	107 006A	A00765	ENCH	224.34
MIGNONE, FRANCIS J	627	10076500	RE		
	BLG	104 009-12			
3217 MONTANA AVE	101		A00735A	ENCH	25.00
MONTANA AVE LOFTS LLC	41297	12144	RE		
3517 MONTANA AVE	BLG	101 008-12	A00708	ENCH	5.00
RIMROCK II LLC	578	10070800	RE		
1159 MOON VALLEY RD	MVA	000 034	A11091	ENCH	50.00
BERRY GALE	10570	11109100	RE		
533 PARK LN	MV2	001 001	A11193	ENCH	5.00
EREKSON, MATTHEW L	10660	11119300	RE		
1918 PARKHILL DR	HLI	005 001	A09085	ENCH	3.00
DEAVER, FRANKLIN KENNEDY JR	8540	10908500	RE		
4015 POLY DR	3209	000 002	D04718	ENCH	20.00
ELLIS, SHELLEY M	36278	40471800	RE		
127 REGAL ST	KNG	000 003	A20357	ENCH	30.00
JONES, JAMES W & JOHN T TRUS	19803	12035700	RE		
	T1N R26E SEC 30 E				
801 RIMROCK RD	75'		D05641	ENCH	5.00
LE BAR, JAMES H & ELINOR J	36662	40564100	RE		
2953 ROCKRIM LN	VLV	000 007C	A17196	ENCH	25.00
RUDE, KARL J	16717	11719600	RE		
2901 SHADOW OAKS PL	OKS	004 001	A24268	ENCH	25.00
COLLETT, GORDON C & SIV D	23671	1207	RE		
2902 SILVERWOOD ST	SLW	001 022	A21196	ENCH	10.00
KOCH, BRENT D	20570	12119600	RE		
1490 SOURDOUGH LN	GOL	003 021	A20913	ENCH	5.00
KUNKEL, CAL N	20307	12091300	RE		
2706 TREASURE DR	PVT	004 029	A12971A	ENCH	25.00
POPP, GREGORY A & SHELLY	12401	11297101	RE		
	SHI	008 000			
UNASSIGNED		PARK#2	C08660	ENCH	1.00
EGGEBRECHT FAMILY LIMITED PT	33842	30866000	RE		
2010 VIRGINIA LN	CCA	004 039-43	A04983A	ENCH	25.00
WILGUS, MARK A & JOSI D	4688	2207	RE		
3815 WAR BONNET TRL	WBS	003 011A	C03210	ENCH	25.00
DAVIES, WILLIAM L & NANCY A	32172	30321000	RE		
230 WYOMING AVE	WID	015 031	A17942	ENCH	9.00
HUSCHKA, MICHAEL J & LISA J	17470	11794200	RE		
1105 1 AVE N	1758	000 001	D05903	ENCH	100.00
ROOKHUIZEN, EDWARD J & DIANN	36904	40590300	RE		
1123 1 AVE N	0384	000 000	D05900	ENCH	1440.00

FRAC					
B WHO U R, LLC	36901	40590000	RE		
1617 1 AVE N	BLG	081 001-24	A00537	ENCH	220.00
J & S PROPERTIES INC	432	10053700	RE		
2442 1 AVE N	BLG	112 018	A00827	ENCH	17.00
FOXLEY, SANDRA M TRUSTEE	679	10082700	RE		
2511 1 AVE N	BLG	090 015-24	A00618	ENCH	362.00
GIBB, CLYDE R (50%)	499	90015300	RE		
	BLG	109 019-20			
2708 1 AVE N BSMT	BSMT		A00796A	ENCH	4.50
SECURITIES BUILDING LLC	41306	20420	RE		
	BLG	109 019-20			
2708 1 AVE N 004A	004A		A00796H	ENCH	0.69
SECURITIES BUILDING LLC	41313	20427	RE		
	BLG	109 019-20			
2708 1 AVE N 004B	004B		A00796I	ENCH	0.67
SECURITIES BUILDING LLC	41314	20428	RE		
	BLG	109 019-20			
2708 1 AVE N 004C	004C		A00796J	ENCH	0.70
SECURITIES BUILDING LLC	41315	20429	RE		
	BLG	109 019-20			
2708 1 AVE N 004D	004D		A00796K	ENCH	0.45
SECURITIES BUILDING LLC	41316	20430	RE		
	BLG	109 019-20			
2708 1 AVE N 004E	004E		A00796L	ENCH	0.63
SECURITIES BUILDING LLC	41317	20431	RE		
	BLG	109 019-20			
2708 1 AVE N 004F	004F		A00796N	ENCH	0.61
SECURITIES BUILDING LLC	41318	20432	RE		
	BLG	109 019-20			
2708 1 AVE N 005A	005A		A00796O	ENCH	0.69
SECURITIES BUILDING LLC	41319	20433	RE		
	BLG	109 019-20			
2708 1 AVE N 005B	005B		A00796P	ENCH	0.67
SECURITIES BUILDING LLC	41320	20434	RE		
	BLG	109 019-20			
2708 1 AVE N 005C	005C		A00796Q	ENCH	0.70
SECURITIES BUILDING	41321	20435	RE		
	BLG	109 019-20			
2708 1 AVE N 005D	005D		A00796R	ENCH	0.45
SECURITIES BUILDING LLC	41322	20436	RE		
	BLG	109 019-20			
2708 1 AVE N 005E	005E		A00796S	ENCH	0.63
SECURITIES BUILDING LLC	41323	20437	RE		
	BLG	109 019-20			
2708 1 AVE N 005F	005F		A00796T	ENCH	0.61
SECURITIES BUILDING LLC	41324	20438	RE		
	BLG	109 019-20			
2708 1 AVE N 101	101		A00796B	ENCH	3.17
SECURITIES BUILDING LLC	41307	20421	RE		
	BLG	109 019-20			
2708 1 AVE N 102	102		A00796C	ENCH	1.33

SECURITIES BUILDING LLC	41308	20422	RE		
	BLG	109 019-20			
2708 1 AVE N 200	200		A00796D	ENCH	2.39
SECURITIES BUILDING LLC	41309	20423	RE		
	BLG	109 019-20			
2708 1 AVE N 201	201		A00796E	ENCH	1.35
SECURITIES BUILDING LLC	41310	20424	RE		
	BLG	109 019-20			
2708 1 AVE N 300	300		A00796F	ENCH	2.22
WEBHEN LLC	41311	20425	RE		
	BLG	109 019-20			
2708 1 AVE N 301	301		A00796G	ENCH	1.54
SECURITIES BUILDING LLC	41312	20426	RE		
2902 1 AVE N	BLG	107 019-20	A00774	ENCH	1720.00
LAFEVER, NEAL C & DIANNE M	634	10077400	RE		
2925 1 AVE N	BLG	094 021-24	A00656	ENCH	59.58
FINK, TED G TRUSTEE	534	10065600	RE		
	BLG	104 014 N6"			
3220 1 AVE N	&		A00737	ENCH	10.00
RIDER, THEODORE J & MARIAN C	605	10073700	RE		
3303 1 AVE N	BLG	098 001-9	A00687	ENCH	3.00
HOLIDAY FURNATURE CO INC	556	10068700	RE		
3520 1 AVE N	BLG	101 013-18	A00710	ENCH	5.00
RIMROCK II LLC	579	10071000	RE		
2921 1 AVE S	BLG	00A 019-24	A00010	ENCH	16.00
SEAL, LAVERN AKA LEVERN	8	10001000	RE		
2800 10 AVE N	DMC	001 001-3 &	A05968	ENCH	80.00
DEACONESS MEDICAL CNTR OF BL	5664	457	RE		
1340 15 ST W	LIQ	000 001	A19570	ENCH	56.00
SIEMENS FAMILY LP	19032	11957000	RE		
1201 2 AVE N	BLG	073 001-12	A00510	ENCH	960.00
FRANK FAMILY LIMITED PARTNER	409	10051000	RE		
2513 2 AVE N	BLG	060 001-5 &	A00383	ENCH	5.00
CITY OF BILLINGS	300	10038300	RE		
2520 2 AVE N	BLG	090 013	A00616	ENCH	24.00
BAD OSPREY INC	497	10061600	RE		
	BLG	093 013-17			
2814 2 AVE N	E50' &		A00644	ENCH	154.00
ROYER PROPERTY LLC	522	5968	RE		
	WID	016 001-4			
810 2 ST W	N54'		A17949	ENCH	12.00
NEYRINCK, ORVILLE L & JEAN M	17478	11794900	RE		
302 S 23 ST	BLG	173 011-12	A01174	ENCH	320.00
CONOCOPHILLIPS COMPANY	969	10117400	RE		
1108 24 ST W	LS2	001 001	A10202	ENCH	2813.00
LUTHERAN CHURCH OF THE GOOD	9688	11020200	RE		
	A2S	000 006,7			
1211 24 ST W	N277.3		A02434A	ENCH	15.00
BIG SKY FLORAL SUPPLY LLC	2116	10243401	RE		
124 N 24 ST	BLG	089 011-12	A00604	ENCH	7.00
LEE, DONALD R 37% INT	486	10060400	RE		
		174			

420 N 24 ST	BLG	011	007-12	A00068A	ENCH	10.00
B L M TIRE CO	39	10006801	RE			
124 S 24 ST	BLG	143	001-3 &	A00964	ENCH	40.00
HATZELL, PAUL H	782	10096400	RE			
322 N 25 ST	BLG	042	011-12	A00243	ENCH	120.00
BLGS U S EMPLOYEES FED CR UN	196	10024300	RE			
219 N 26 ST	BLG	090	014	A00617	ENCH	24.00
BAD OSPREY INC	498	10061700	RE			
10 S 26 ST	BLG	189	007	A01264	ENCH	42.00
CITY OF BILLINGS	1052	10126400	RE			
24 S 26 ST	BLG	189	001-6	A01259	ENCH	6.00
CITY OF BILLINGS	1047	10125900	RE			
724 S 26 ST	BLG	227	001-24 &	A01699	ENCH	25.00
STATE OF MT DEPARTMENT OF AD	1454	10169900	RE			
27 N 27 ST	BLG	110	007-18	A00804	ENCH	130.00
MAKENNA HOTEL INVESTMENTS LL	656	4323	RE			
210 N 27 ST	BLG	058	001-12	A00368	ENCH	28.00
CITY OF BILLINGS	289	1602	RE			
515 N 27 ST	FOA	051	018	A07362	ENCH	47.26
SOUTH CENTRAL MONTANA REGION	6904	10736200	RE			
802 N 27 ST	FOA	025	001	A07120	ENCH	100.00
BILLINGS CLINIC	6743	10712000	RE			
	SDS	021	002			
1315 N 27 ST	N100'			A16557	ENCH	15.00
MORSE, RODNEY L	16204	11655700	RE			
13 S 27 ST	BLG	189	019-24	A01274	ENCH	134.00
CITY OF BILLINGS	1062	10127400	RE			
101 S 27 ST	BLG	141	001-12 &	A00949	ENCH	10.00
YELLOWSTONE HEALTH PARTNERSH	772	10094900	RE			
8 N 28 ST	BLG	108	001-2	A00777	ENCH	602.00
CITY OF BILLINGS	637	8571	RE			
11 N 28 ST	BLG	108	023-24	A00788	ENCH	160.00
FIRST CITIZENS BANK	645	10078800	RE			
101 N 28 ST	BLG	092	023-24	A00639	ENCH	48.00
DAVIDSON, LARRY	517	4330	RE			
111 N 28 ST	BLG	092	020 &	A00637	ENCH	388.00
ACME LIMITED PARTNERSHIP	515	3181	RE			
117 N 28 ST	BLG	092	015-16	A00636	ENCH	351.00
ROBERTSON, JEFF	513	10063600	RE			
124 N 28 ST	BLG	093	006-12	A00642	ENCH	162.00
BABCOCK BUILDING CO	520	10064200	RE			
213 N 28 ST	BLG	058	017-18	A00374	ENCH	48.00
LO, CHIA WEI	292	10037400	RE			
222 N 28 ST	BLG	057	009-10	A00363	ENCH	500.00
CORMIER, PATRICK C-TRSTE	281	2487	RE			
	FOA	056	019,20			
313 N 28 ST		W62.72		A00260	ENCH	273.00
RUFF, BILLIE		210	10026000	RE		

20 S 28 ST	BLG	191	001-6	A01293	ENCH	30.00
YELLOWSTONE PAPER COMPANY	1079	4402	RE			
101 S 28 ST	BLG	140	001-24	A00939	ENCH	126.00
SOUTHERN FOODS GROUP LP	770	6306	RE			
14 N 29 ST	BLG	107	023-24	A00776	ENCH	105.00
BARBAZON APARTMENTS LP	636	10077600	RE			
15 N 29 ST	BLG	108	014A	A00783	ENCH	108.00
LAFEVER, NEAL C & DIANNE M	642	10078300	RE			
223 N 29 ST	BLG	057	013-15	A00365	ENCH	20.00
TWO VALLEYS REALTY INC	283	10036500	RE			
415 N 29 ST	FOA	053	013-20	A07370	ENCH	17.00
KARLSEN, VIRGINIA G	6911	10737000	RE			
716 N 29 ST	FOA	035	007-9	A07194	ENCH	20.00
BILLINGS CLINIC	6792	13240	RE			
1002 N 29 ST	NS3	006	001-2 &	A12194	ENCH	57.14
DEACONESS MEDICAL CNTR OF BL	11532	11219400	RE			
1006 N 29 ST	NS3	006	003-4 &	A12195	ENCH	57.14
BILLINGS DEACONESS HOSPITAL	11533	13256	RE			
1010 N 29 ST	NS3	006	005-6 &	A12196	ENCH	57.14
DEACONESS MEDICAL CENTER OF	11534	11219600	RE			
1014 N 29 ST	NS3	006	007-8 &	A12197	ENCH	57.14
DEACONESS MEDICAL CNTR OF BL	11535	11219700	RE			
1020 N 29 ST	NS3	006	009-10 &	A12198	ENCH	57.14
DEACONESS MEDICAL CENTER	11536	11219800	RE			
1024 N 29 ST	NS3	006	011-12 &	A12199	ENCH	57.14
BILLINGS DEACONESS HOSPITAL	11537	11219900	RE			
1028 N 29 ST	NS3	006	013-14 &	A12200	ENCH	57.14
BILLINGS DEACONESS HOSPITAL	11538	11220000	RE			
1245 N 29 ST	NML	002	032	A11354	ENCH	9.00
STATE OF MT - DEPT OF INSTIT	10801	11135400	RE			
24 S 29 ST	BLG	00A	001-6	A00001	ENCH	11.00
SEAL, LEVERN D	1	10000100	RE			
1190 S 29 ST W	PIS	001	005B	C10469A	ENCH	10.00
WEBER PROPERTIES LLC	34980	31046901	RE			
2812 3 AVE N	BLG	057	011-12	A00364	ENCH	334.00
GRAY, MICHAEL J	282	10036400	RE			
2825 3 AVE N	BLG	045	013-24 &	A00264	ENCH	125.00
MILLER TROIS LLC	214	2852	RE			
2922 3 AVE N	BLG	056	007-17 &	A00352	ENCH	18.00
BILLINGS MONTANA PARKING COM	276	4454	RE			
804 N 30 ST	FOA	028	001-3	A07152	ENCH	120.00
DEACONESS MEDICAL CENTER OF	6752	10715200	RE			
810 N 30 ST	FOA	028	004,5	A07153	ENCH	80.00
BILLINGS CLINIC	6753	10715300	RE			
814 N 30 ST	FOA	028	006-8	A07154	ENCH	120.00
DEACONESS BILLINGS CLINIC	6754	10715400	RE			
1145 N 30 ST	NEL	006	022	A11592	ENCH	15.00
SISTERS OF CHARITY OF LVNWRT	11003	11159200	RE			
1233 N 30 ST	NEL	004	025-48 &	A11565	ENCH	33.34

SISTERS OF CHARITH OF LEAVEN 217 N 31 ST	10979	11156500	RE		
ROMAN CATHOLIC BISHOP OF GRT 924 S 31 ST	BLG	055 013-18	A00349	ENCH	137.00
COMMUNITY LEADERSHIP DEVELOP	274	10034900	RE		
1305 4 AVE N	BLG	239 001-4	A01809	ENCH	50.00
W B Y -LLC	1536	10180900	RE		
3000 7 AVE N	BLG	022 001-6	A00096	ENCH	213.32
MILLER LAND CO	70	10009600	RE		
2323 7 ST W	FOA	044 010	A07297	ENCH	60.00
ARAGON, KATHLEEN J	6854	10729700	RE		
	CDN	006 001	A05812	ENCH	25.00
		5513	10581200	RE	

Attachment B

RESOLUTION NO. 08-_____

A RESOLUTION LEVYING A SPECIAL TAX UPON PROPERTY WITHIN
THE CITY OF BILLINGS, MONTANA, TO DEFRAY THE COST OF
CUTTING AND/OR EXTERMINATING WEEDS.

WHEREAS, Billings, Montana City Code, Section 25-307, provides that the City Clerk shall prepare and present a resolution containing a list of all parcels of land in the City, from which and adjacent to which, the weeds were cut, exterminated and/or removed, and such list shall contain opposite the number of such lots or description of such parcels of land, the name of the owner, if known, and the amount of cost for cutting and removing such weeds.

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

1. LEVYING OF SPECIAL TAX. That for the purpose of collecting funds to defray the cost of cutting and removing of weeds, there is hereby levied and assessed a special tax upon the owners and the lots or parcels described on the list attached hereto.
2. ASSESSMENT AND COLLECTION. Said tax shall be placed upon the assessment rolls and collected in the same manner as other taxes.
3. DISPOSITION OF COLLECTIONS. All monies collected from taxes shall be paid to the General Fund of the City of Billings.
4. NOTICE OF HEARING. On Tuesday, **October 14, 2008** at 6:30 o'clock 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.
5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.
5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **14th day of October, 2008.**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit B

2007 Assessments

First Name	Last Name	Company Name	Address Cut	Cost to be Assessed
Daniel	Dimich		308 S 28th St	\$ 323.75
Victoria	Moreno		818 S 28th St W	\$ 357.50
Victoria	Moreno		818 S 28th St	\$ 511.25
	Yellowstone County		Bazaar Exchange	\$ 511.25
	Yellowstone County		4102 Clevenger Ave	\$ 439.37
Jefery	Essmann		765 Antelope Pl	\$ 511.25
Joni	Kunkel		1137 N 26th St	\$ 323.75
	BNSF Railway Company		Misc	\$ 511.25
	Y-V Fertilizer		525 Daniel St	\$ 853.75
Kelly	Burney		814 S 28th St W	\$ 323.75
John Martin & Tracy	Kangas		120 Lakewood Ln	\$ 511.25
Nathan & Maurine	Richards		2920 Kincaid Rd	\$ 381.25
Robert	Pentecost		Glenfinnan Rd	\$ 1,045.00
Donna	Bliss		944 Tierra Dr	\$ 511.25
Angelica	Shepard		516 S 35th St	\$ 381.25
Daniel	Stockton		Wicks Ln	\$ 511.25
Benjamin	Boyd		904 S 29th St	\$ 357.50
Ronald	Gerber		2818 8th Ave S	\$ 323.75
Victor	Reichenbach		2610 3 Ave S	\$ 323.75
	Schneiter Enterprises		Club House Way	\$ 436.25
	Schneiter Enterprises		650 Pinehurst Rd	\$ 436.25
	Schneiter Enterprises		1880 Gleneagles Blvd	\$ 248.75
	Schneiter Enterprises		St Andrews Pl	\$ 436.25
	Schneiter Enterprises		2264 Greenbriar Rd	\$ 436.25
	Schneiter Enterprises		St Andrews Pl	\$ 436.25
	Schneiter Enterprises		408 Tamarisk Dr	\$ 436.25
	Schneiter Enterprises		Clubhouse Way	\$ 436.25
	Schneiter Enterprises		780 Pinehurst	\$ 436.25
	Schneiter Enterprises		308 Eastlake Cir	\$ 436.25
	Schneiter Enterprises		220 Westlake Circle	\$ 436.25
	Schneiter Enterprises		Skyview Dr	\$ 436.25
	Schneiter Enterprises		2131 Club House Way	\$ 436.25
	Schneiter Enterprises		1944 Lakehills Dr	\$ 516.25
Vincent	Gutierrez		912 S 28th St	\$ 357.50
	King Place LLC		810 Wicks Ln	\$ 753.75
	King Place LLC		830 Wicks Ln	\$ 523.75
Travis	Nelson		141 Annandale Rd	\$ 391.25
Travis	Nelson		2282 Greenbriar Road	\$ 511.25
James & Kathy	Jones		339 Jefferson St	\$ 323.75
Gary & Brian	Wilson		3 Jefferson St	\$ 485.00
Donald	Hanser		4293 Smohawk Trl	\$ 340.62

Donald	Hanser		4293 Smohawk Trl	\$ 323.75
Donald	Hanser		4305 Smohawk Trl	\$ 323.75
Jennifer & Lavern	Miller		3237 Aljema Ave	\$ 550.62
Daniel	McQuinn		1603 Glenegales Blvd	\$ 623.75
Ronald	Broadbent		Keel Dr	\$ 511.25
	Taunus LLC		526 Judith Ln	\$ 323.75
	NTC Ventures Inc.		4137 Morgan Ave	\$ 323.75
Stephen	Zimmerer		324 S 34th St	\$ 323.75
Loretta	Giacomini		205 S 39th St	\$ 273.75
Dennis	Masbruch		Stillwater Ln	\$ 511.25
Dennis	Masbruch		Stillwater Ln	\$ 511.25
Jacqueline	Scott		3310 1st Ave S	\$ 357.50
Sam	Sanchez		1654 Brewington Dr	\$ 403.75
William Richard III	Saunders		Misc	\$ 511.25
William Richard III	Saunders		Misc	\$ 511.25
William Richard III	Saunders		Misc	\$ 511.25
William Richard III	Saunders		4155 Mitchell Ave	\$ 511.25
William Richard III	Saunders		Misc	\$ 511.25
	Felton Associates LLC		Bitterroot Dr	\$ 8,691.25
Heather	Pugh		105 Hilltop Rd	\$ 573.75
John	Clark		1935 Main St	\$ 666.25
Timothy	Hert		23 Rhea Ln	\$ 458.75
	Wal-Mart Real Estate Business		1701 Main St	\$ 1,180.00
Curt	Kellum		1860 High Sierra Blvd	\$ 443.75
John	Wagner		4142 Clevenger Ave	\$ 323.75
Cheri	Asay		353 Prospectors Ln	\$ 323.75
	CMYL Inc		5420 Summerstone	\$ 323.75
	Shawn Nelson Construction Inc.		5428 Cobblestone Ave	\$ 290.00
Rachel	Bradley		2522 Custer Ave	\$ 323.75
William	Schutz		146 Jackson St	\$ 357.50
John	Burns		4434 Frances Ave	\$ 357.50
	Barrett Partnership		149 Calhoun Ln	\$ 725.00
	New Southside Properties LLC		Orchard Ln	\$ 1,411.25
Robert	Pratsch		2691 Gable Rd	\$ 886.25
	Sibar LLC		2701 Gable Rd	\$ 993.75
Joan	Benson		438 Josephine Dr	\$ 323.75
Edith	Firman		517 Kuhlman Dr	\$ 688.75
	BHG Billings Midland LP		4819 Midland Rd	\$ 1,071.25
	BHG Billings Midland LP		4841 Midland Rd	\$ 1,508.75
Edward	Badura		3109 Central Ave	\$ 511.25
Jerome	Dernbach		309 N 17th St	\$ 511.25

Kay	Stewart		1115 Yale Ave	\$ 408.75
Ronald & Jean	Smith		2605 Park Ridge Ln N	\$ 511.25
		New Hope Enterprises Inc.	3250 Rosebud Dr	\$ 546.25
William	McEuin		2626 Lillis Ln	\$ 408.75
Iris	Tyre		1732 Ave C	\$ 485.00
		Brumar Corporation	Weil St	\$ 511.25
Alice	Egan		413 S 32nd St	\$ 408.75
Greg	Nelson		409 S 32nd St	\$ 323.75
Larry	Thiel		124 Foster Ln	\$ 408.75
Larry & Marlene	Thiel		112 S 35th St	\$ 323.75
		Jim Caroll Family LLC	1016 S 28th St	\$ 357.50
Carolee	Bathurst		4223 Stone St	\$ 323.75
Ludmilla	Tallmadge		408 Kuhlman Dr	\$ 323.75
Margaret	Johnson		4249 Vaughn	\$ 323.75
Sandra	Abel		312 Monroe St	\$ 323.75
Randall	Swenson		4045 Ave B	\$ 886.25
Charles	Danhof		429 Hallowell Ln	\$ 357.50
Aaron	Healy		417 Byrd St	\$ 323.75
George	Schnieter		682 Lakehills Place	\$ 511.25
		Total to Assess for 2007		\$ 57,630.61

2008 Assessments

First Name	Last Name	Business Name	Address Cut	Cost to be Assessed
		Yellowstone County	Bazaar Exchange	\$511.25
Odelta	Thomsen		1302 Wicks Ln	\$752.50
Odelta A.	Thomsen		1302 Wicks Lane	\$628.75
Robert	Pulver		3340 Tahoe Dr	\$511.25
Eugene	Glenn		146 Monroe St	\$617.50
Robert E.	Pentecost		Glenfinnan Road	\$688.75
Angelica	Shepard		516 S 35th St W	\$340.62
Vicki D.	Thomas		2223 9th Ave N.	\$199.00
		Schneiter Enterprises	1880 Gleneagles Blvd	\$511.25
		Schneiter Enterprises	Skyview Dr	\$511.25
		Schneiter Enterprises	11 West Wicks Lane	\$439.37
John	McCormick		914 S 28th St	\$546.25
Carol	Stevenson		1943 Lakehills Dr	\$538.75
Carol	Stevenson		2001 Lakehills Dr	\$486.25
Ralph	Giacomini		3714 5th Ave S	\$511.25
		Creative Real Estate Solutions	338 Monroe St	\$323.75
Brenda	Barrow		919 S 29th St	\$403.75
Gary W & Brian S	Wilson		3 Jefferson St	\$323.75
Sean	Brady		40 Jackson St	\$323.75
		Church of Jesus Christ of	3585 Rachelle Cir	\$1,367.50

LDS				
Jacqueline A.	Scott		3310 1st Ave South	\$323.75
Heather	Pugh		105 W Hilltop Rd	\$403.75
George M.	Schneiter		682 Lakehills Place	\$545.00
Evelena	Wehonig		4538 Lux Ave	\$323.75
Victor	Ybarra		818 S 28th St	\$511.25
		Carmike Cinemas Inc	925 Broadwater Ave	\$617.50
Mike	Kelly		Bitterroot Dr	\$511.25
Ann	Boucher		2118 Lakehills Dr	\$511.25
Lana & Richard	Johnson		1106 6th St W	\$617.50
Eric	Hennen		1426 Wicks Ln	\$581.87
Joshua	Grant		225 Jackson St	\$332.50
Christine	Van Valkenburgh		4142 Buchanan Ave	\$323.75
Jerry	Lattin		408 S 37th St	\$323.75
Jack	Webb		4124 Murphy Ln	\$323.75
		Viking Props LLC	Orchard Ln	\$1,836.25
		JP Morgan Chase Bank	295 Westchester Sq	\$323.75
		JP Morgan Chase Bank	297 Westchester Sq	\$323.75
		Galt Acquisitions and Holdings	4819 Midland Rd	\$917.50
		Rocky Mountain District of the Christian	262 Wicks Ln	\$323.75
		LDS Church Tax Adm RD 531-6227	1065 Siesta Ave	\$511.25
Ron S.	Hill	Living Trust	200 Gleaneagles B.	\$545.00
		Shay Pichard Homes Inc	3237 Jack Burke Ln	\$511.25
Daniela	Madriz		483 Indian Trl	\$546.25
Steven	Oels		2050 Constellation Trl	\$485.00
Glenn	Timmerman		1936 Bitterroot Dr	\$713.75
Marguerite	Boyd-Hernandez		904 S 29 St	\$323.75
Gregory D.	D'Antonio		5124 Laurel Rd	\$940.00
Bert	Sternal III		15 N Crestwood Dr	\$572.50
		CountryWide Home Loans	6150 Sam Snead Trl	\$724.37
Victoria J.	Popiel		1706 Elaine St	\$439.37
		Mooring Tax Asset Group	139 Terry Ave	\$357.50
Sam E.	McDonald Jr.		1052 Judith Lane	\$511.25
Amelia	Robinson		Joyce St	\$443.75
		Hobs c/o Summers McNea	1423 Main St	\$511.25
		Hobs c/o Summers McNea	1415 Main St	\$511.25
Barbara G.	Nicholas		1035 Dorothy Lane	\$323.75
Rhonda J.	Reisdorph		323 Covert Lane	\$511.25
Paul	Kercher		515 Tumbleweed Drive	\$475.00
Paul	Kercher		505 Tumbleweed Drive	\$475.00
Eric	Logen		575 Tumbleweed Drive	\$403.75

Ryan A.	Dunster		3315 4 Ave South	\$323.75
Harold & Marcia	Klinker		311 Calhoun Ln	\$511.25
	Bank of New York		511 11th St W	\$201.88
	Bank of New York		1042 Custer Ave	\$201.87
Arthur D.	Jenness		719 Ave B	\$323.75
Michael & Lorrie	Castellano		N.Wagner Ln	\$511.25
Rex	Shinazy		3501 Miles Ave	\$357.50
Scott L.	Grant		237 Jackson Street	\$323.75
Rick A.	Eastman		310 Jefferson Street	\$323.75
Joel & Carol	Johnson		1732 Natalie Street	\$293.12
Joseph	Erickson		1827 Ave C	\$323.75
Scott	Hicks		641 Antelope Circle	\$357.50
Kathleen Rae	Hansen		1025 Shinn Road	\$323.75
Lila C.	San Juan		642 Hillcrest Drive	\$511.25
	Baker Enterprises Inc.		18 Orchard Lane	\$510.62
Mark	Dawson		5408 Stream Stone Ave	\$374.37
Tawny Dale	Massey		1732 Lewis Ave	\$323.75
June V.	Hartman		3414 3rd Ave South	\$323.75
Bill A.	Johnson		305 Jefferson Street	\$323.75
	Keller Billings LLC		4211 1st Ave South	\$323.75
Gary A. & Diana	Gray		820 Arlington Drive	\$528.75
	Novastar Mortgage Services Inc		1870 High Sierra Blvd	\$475.00
			Total to Assess for 2008	\$39,420.21

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, October 14, 2008**

TITLE: Public Hearing and Resolutions to Create Light Maintenance District
SILMD 305 – King Avenue West from 31st to Shiloh
DEPARTMENT: Public Works Department
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: At the September 22, 2008, City Council meeting, Council passed the Resolution of Intent to Create a new lighting district and established a public hearing for creation of the proposed district for the October 14, 2008, Council meeting. Legal notices and a letter explaining the district and all protest procedures were mailed to each of the landowners in the proposed new district on September 25, 2008. Information on the number and percentage of property owner protests received will be presented at the public hearing. SILMD 305 was created on a square foot basis with an average lot depth of 260-feet. Only properties fronting King Avenue West will be assessed. There are 113 properties within the district, with an average assessment of \$158.02. The largest assessment of \$4,652.33 is assessed to Golden Meadows Mobile Home Park and the smallest assessment of \$12.41 is assessed to individual condo owners on the north side of King Avenue West.

ALTERNATIVES ANALYZED:

1. Create SILMD 305 to provide a source of funding for operation and maintenance of the street lights
2. Do not create SILMD 305 and either discontinue power to the currently operational lights, or continue to have the City of Billings pay all SILMD costs.

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 down about 3.8% from last year. Included in the district are 5 parks. Assessments to the Parks Department are estimated to be \$1,076.25 or about 6.0% of the overall SILMD assessment.

RECOMMENDATION

Staff recommends that Council pass Resolution Creating SILMD 305.

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

ATTACHMENTS

- A. District Boundary Map SILMD 305
- B. Resolution Creating SILMD 305

INTRODUCTION

At the September 22, 2008, City Council meeting, Council passed the Resolution of Intent to Create a new lighting district and established a public hearing for creation of the proposed district for the October 14, 2008, Council meeting. Legal notices and a letter explaining the district and all protest procedures were mailed to each of the landowners in the proposed new district on September 25, 2008. Information on the number and percentage of property owner protests received will be presented at the public hearing. SILMD 305 was created on a square foot basis with an average lot depth of 260-feet with only properties fronting King Avenue West being assessed. There are 113 properties within the district, with an average assessment of \$158.02. The largest assessment of \$4,652.33 is assessed to Golden Meadows Mobile Home Park and the smallest assessment of \$12.41 is assessed to individual condo owners on the north side of King Avenue West.

PROCEDURAL HISTORY BACKGROUND

- October 9, 2007, SILMD 303 created
- September 22nd, Resolution of Intent to create SILMD 305 and repeal SILMD 303 passed by Council
- September 25th, legal notices mailed to all affected property owners, 15-day protest period begins
- September 25th and October 2nd, legal notices published in the *Billings Times*
- October 10th, 15-day protest period ends
- October 14th (this 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. SILMD 303 was repealed by Council at its September 22nd meeting. The next step is to create 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. These expenses are not recoverable.

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 down about 3.8% from last year. The reduction in estimated assessment from 2007 to 2008 is due to an increase in assessable area and a slight decrease in the energy calculation costs from last year. 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

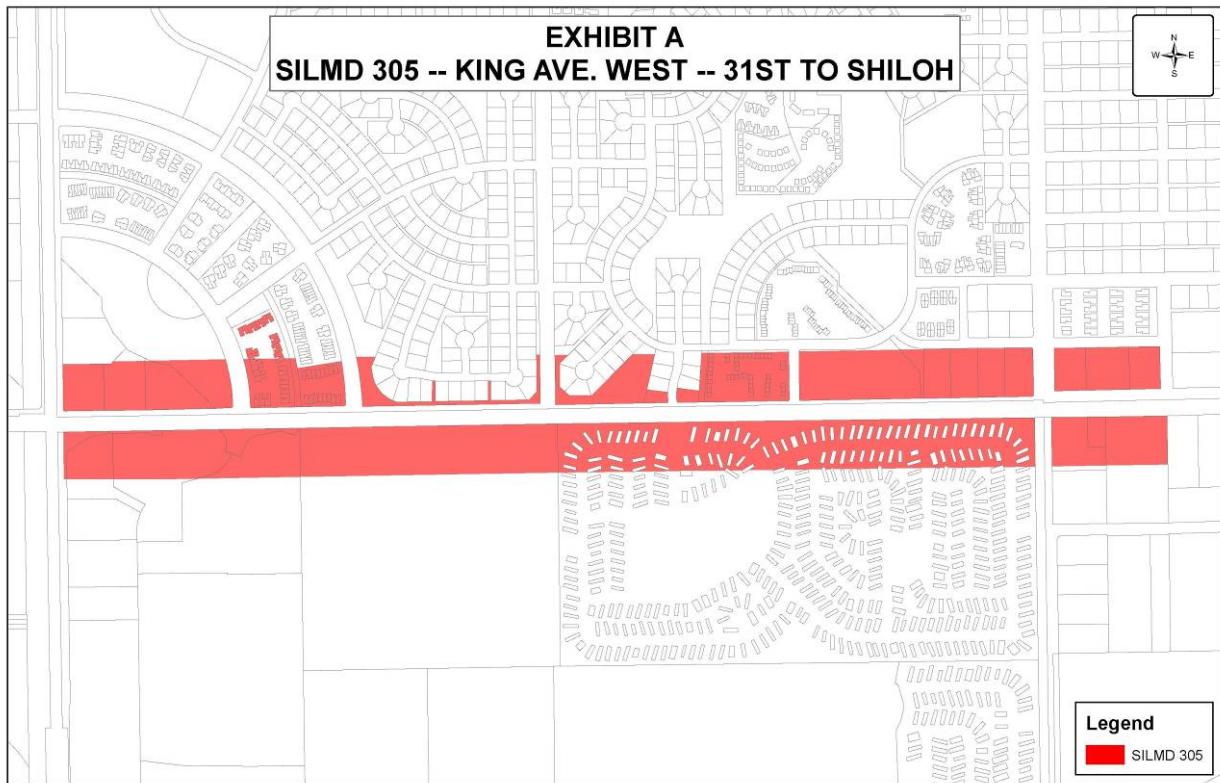
1. Create SILMD 305 to provide a source of funding for operation and maintenance of the street lights
2. Do not create SILMD 305 and either discontinue power to the currently operational lights, or continue to have the City of Billings pay all SILMD costs.

RECOMMENDATION

Staff recommends that Council pass Resolution Creating SILMD 305.

ATTACHMENTS

- A. District Boundary Map SILMD 305
- B. Resolution Creating SILMD 305



RESOLUTION NO. 08-_____

A RESOLUTION CREATING SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 305 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF SECURING AND PROVIDING ENERGY AND MAINTENANCE FOR NEW HIGH PRESSURE SODIUM VAPOR LIGHTS, SETTING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATED RATE FOR ENERGY AND MAINTENANCE THEREOF, AN APPROXIMATE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFORE FOR THE FIRST YEAR, AND THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COSTS.

WHEREAS, the City Council of the City of Billings, Montana, on the 22nd day of September, 2008, passed Resolution 08-18754, a Resolution of Intention to Create a Special Improvement Lighting Maintenance District designated as No. 305, setting the hearing on the creation of said District and hearing of protests against the extent and creation of said District, or any matter pertaining thereto, and thereafter gave notice by publication and mailing, all as required by law, and at said hearing which was held at the time and place specified in said Notice, all protests were heard and considered; and

WHEREAS, the City Council finds that the protests are insufficient to stop the creation of said district, and the protests are overruled and denied.

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

SECTION 1:

That the City Council of the City of Billings, Montana does hereby create a District, to be known and designated as Special Improvement Lighting Maintenance District No. 305, hereinafter called the District, for the purpose of securing and providing energy and maintenance for new street lights for lighting said District.

SECTION 2:

That the boundaries of the District are as set forth in Resolution of Intention No. 08-18754, hereinafter called the Resolution, on file in the office of the City Clerk of Billings, Montana, and by this reference is incorporated herein and made a part hereof.

SECTION 3:

That the City Council hereby finds and determines that each of the lots, blocks, pieces and parcels of land, situated within the boundaries of the District, are especially benefited and affected by said improvements, and each and all of the lots, blocks, pieces and parcels, more particularly described in the Resolution are hereby declared to be the property to be assessed for the cost and expense of the electrical energy for and maintenance of said District.

SECTION 4:

That the general character of the improvements to be made is hereby declared to be as described in the Resolution and is by this reference incorporated herein and made a part hereof.

SECTION 5:

That the City of Billings intends to establish the approximate contract rate for supplying electrical energy as \$10.27 per 250 watt unit in accordance with the appropriate rate schedule approved by the Montana Public Service Commission. That NorthWestern Energy shall provide energy to the lighting fixtures. The City shall provide normal maintenance to lighting fixtures, poles, cables and

other incidental equipment, and at all times own said lighting fixtures, poles, cables and other incidental equipment. Property owners within said district shall be assessed for the costs thereof.

SECTION 6:

That based upon the above figures, the estimate of the cost of the District for one year is the sum of \$17,856.76, and that the entire cost of said District shall be paid by the owners of property within said District. The estimated cost of the District per year for the property owners is on the basis of approximately \$0.00685772 per square foot per year. 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. All of such costs of said District shall be paid by the owners of the property within the District with each lot, parcel or piece of land within said District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys, and public places.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District. That all monies derived from the collection of such assessments shall be paid into a fund to be known as the "Special Improvement Lighting Maintenance District No. 305 Maintenance Fund", and warrants shall be drawn on said fund for the payment of such cost of maintaining said lights and supplying electrical current therefore.

SECTION 8:

That reference is hereby made to the Resolution, the maps, specifications, boundaries, perimeter and data pertaining to the District, on file in the offices of the City Clerk and City Engineer, for further particulars, all of which are made a part hereof.

PASSED by the City Council of the City of Billings, Montana and approved this 14th day of October, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 14, 2008

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward V:
Annexation #08-08

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On September 22, 2008, the City Council approved the annexation of a 55.45-acre parcel located on the south side of Grand Avenue from 30th St. West to just west of Zimmerman Trail and all of Zimmerman Trail from Grand Ave. to Broadwater Ave. (see Attachment A). The request for annexation was submitted by Yegen Grand Avenue Farms, the owner of the property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be conducted at this meeting. The second reading of the ordinance will be conducted on October 27, 2008.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds property to City Ward V.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD V PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

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. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 14th day of October, 2008.

PASSED by the City Council on the second reading this 27th day of October, 2008.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

(AN 08-08)

EXHIBIT A

