

NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

November 10, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Pitman

ROLL CALL

MINUTES – October 27, 2008

COURTESIES

- Presentation of the International Downtown Association Merit Award for the Downtown Framework Plan – Greg Krueger
- Presentation of the American Institute of Architects (AIA) Montana 2008 Livable Communities Award – Mike Dowling, MT AIA President

PROCLAMATIONS – Salvation Army Red Kettle Week, November 24-29, 2008

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 7 ONLY.

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

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

CONSENT AGENDA:

1. A. **Bid Awards:**
(1) **W.O. 04-12, Alkali Creek Road Slope Improvements, Schedules I and**
- II. (Opened 10/28/08) Recommend delay of action to November 24, 2008.

(2) **Cascade Pump 20 MF and New 900RPM, 200HP Motor.** (Opened 10/28/08) Recommend Cascade Pump, \$ 98,300.

(3) **Landfill Scraper.** (Opened 10/28/08) Recommend Tractor & Equipment, \$399,438.

(4) **2009 Tandem Dump Truck with Plow/Sander Assembly.** (Opened 10/28/08). Recommend I-State, using Unit #1158 as a trade-in valued at \$13,000, for a net bid of \$ 142,335.

(5) **Purchase eight (8) Replacement Police Vehicles.** Recommend purchasing patrol cars from Bison Motor Company as determined per state bid. \$189,262.88.

(6) **Community-wide Citizen's Survey Request for Proposals.** Recommend National Research Center, \$14,250.

B. Approval of building lease with Transportation Security Administration (TSA), March 1, 2008 - February 28, 2009, \$65,370.68 total revenue.

C. Annual Agreement with Yellowstone County for City-County Special Investigations Unit (CCSIU), with no additional cost to the City.

D. Memorandum of Understanding between City and Billings Business Improvement District for Downtown Beat Officer, January 1, 2009-December 31, 2010, and **release** of tax increment funds in the amount of \$184,722.

E. Perpetual Right-of-Way Easement to install a public water and sanitary sewer main in Lot 1, Block 1 of Miller Crossing Subdivision, at no financial impact to the City.

F. Quarterly Report for Pledged Collateral for First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit.

G. Street Closure: Capitol Christmas Tree Visit, November 11, 2008, 10:00 a.m. to 1:00 p.m., North 28th Street from 1st Avenue North to 2nd Avenue North and 2nd Avenue North from North 29th to North 28th.

H. Authorize Mayor to sign agreement with the State of Montana for acceptance of Preserve America Funds for the Old Town Neighbors, Inc., \$11,750.

I. Acceptance of Montana Department of Transportation Highway Safety Grant on behalf of the Billings Municipal Court to establish an adult DUI court, \$152,250.

J. Resolution on Expanded N. 27th Street Urban Renewal Area, declaring blight, intent to expand the district, and setting a public hearing date for November 24, 2008.

K. Resolution on South Billings Boulevard Urban Renewal District, declaring blight, intent to expand the district, and setting a public hearing date for November 24, 2008.

L. Second/Final reading ordinance for Zone Change #849: A text amendment to the Unified Zoning Regulations, regulating the review and approval of condominium and multi-unit developments within the Unified Zoning Jurisdiction; amending Section 27-201, Section 27-310(b), and Section 27-622 BMCC.

M. Exempt Plat of Southgate Subdivision, 1st Filing, approving the boundary line relocation for Amended Lots 1A and 15A, Block 2.

N. Final Plat Approval

- (1) Emma Jean Heights Subdivision, 1st Filing.
- (2) William D. Pierce Subdivision, Amended Lot 3, Block 2

O. Final Plat of Romero Subdivision (delayed from 10/27/08). Recommend delay of action indefinitely.

P. Bills and Payroll

- (1) October 10, 2008
- (2) October 17, 2008

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION ADOPTING FIRST QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2009.** Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).
3. **PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR BIG SKY ECONOMIC DEVELOPMENT AUTHORITY/GENERAL ELECTRIC CAPITAL CORPORATION** for a new building at 3333 Hesper Road. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).
4. **PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR DALCO INDUSTRIES DBA TETON STEEL** for property improvements at Gabel Road and South 29th Street. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).
5. **CONTINUED PUBLIC HEARING AND RESOLUTION LEVYING ANNUAL WEED ASSESSMENTS FOR FY 2009.** Continued from 10/14/08. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).

6. **PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #CC-08-03:** A variance for First Interstate Bank Operations Center to allow a right-turn exit only curb cut on North 18th Street, approximately 30 feet south of 6th Avenue North with the final design and signage subject to approval by City Engineer. The Management Group, Inc., owner, Engineering, Inc., agent. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).
7. **SECOND/FINAL READING ORDINANCE FOR ZONE CHANGE #850:** A text amendment to the Unified Zoning Regulations, regulating the location of Sexually-Oriented Businesses within the City of Billings; amending Section 27-201, Section 27-405(g), and Section 27-611 BMCC. Staff recommends indefinite postponement based on testimony received at the first reading public hearing. **(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.)

(Action: approval or disapproval of Consent Agenda.)

Council Initiatives

ADJOURN

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

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: W.O. 04-12—Alkali Creek Road Slope Improvements, Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The original plan for W.O 04-12 was to reconstruct Alkali Creek Road between Senators Blvd. and Airport Road. In addition to a reconstructed street section, the project was also to include storm drainage, water and sewer mains, a multi-use path, sidewalk and curb & gutter improvements. The first two phases of the project were started in the summer of 2005 and completed in the summer of 2006. These phases encompassed the stretch between Senators and the BBWA Canal siphon crossing near Black Pine Street. The multi-use path constructed during these phases stretches from Alkali Creek Elementary School to Black Pine Street.

During a preliminary design field review in July 2007 for phase 3 (Black Pine to Airport Rd.), a major slope failure was discovered. This failure was quickly corrected, but the failure caused Staff to re-examine the conclusion of a previous geotechnical report done for the affected area. A “second opinion” was received from a different geotechnical firm. The second report, dated December 17, 2007, determined that 385 linear feet of actual failed slopes exist along this stretch of road, which represents over one-fourth of the total stretch (approximately 1,350 linear feet). The recommendation was to fix these failed areas as soon as possible, as they could have a very negative impact to the integrity of Alkali Creek Road.

Amendment No. 6 to the Professional Services Agreement with Kadomas, Lee & Jackson (KLJ), approved July 28, 2008, includes the design and bidding services for the slope stability improvements. The design was completed for the entire stretch of roadway between Black Pine Street and Airport Road. Due to budget constraints, only those areas that represent the greatest and most imminent danger have been bid at this time to be constructed in 2009. All remaining portions will be constructed in the future when funding is available. The current phase of the project includes improvements to four critical areas and generally consists of the construction of a soldier pile retaining wall system with lagging and grouted tiebacks, replacement of guardrail, installation of storm water piping, revegetation of affected areas, and all related work.

This phase of the project has been designed by KLJ, with whom the City has a contract for these professional services. Bids were opened October 28, 2008, and by law, Council must act on the bids at this meeting.

FINANCIAL IMPACT: The project is being funded by Arterial fees and Storm Water funds. The associated FY 2009 CIP has been approved by the Mayor and City Council.

Funding Sources: Arterial Road Improvements (account #845-3186-431-9310)
Storm Water Funds

Approved Dollar Amount:

Arterial Road Improvements:	\$ 1,000,000.00
Storm Water Funds:	\$ 600,000.00
Spent (and obligated) to date:	(\$ 156,700.00)
Remaining Funding:	\$ 1,443,300.00

Bids were opened October 28, 2008, with the following results:

Firm(s)	Schedule I	Schedule II
Coleman Construction	\$1,897,835.73	\$740,063.75
COP Construction	\$1,762,687.50	\$460,650.00
Western Municipal Construction	\$1,850,330.50	\$560,548.50
Engineer's Estimate	\$1,056,624.50	\$365,913.00

Schedule I includes slope stability improvements in three areas west of Morningside Lane. Schedule II includes slope stability improvements in one area east of Morningside Lane.

RECOMMENDATION

Staff recommends that Council delay action until November 24, 2008, on the bids opened for W.O. 04-12—Alkali Creek Road Slope Improvements, due to the bids greatly exceeding the amount of funding currently available. Staff will evaluate and discuss the bids with the respective contractors.

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

A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Bid Award - Cascade Pump 20 MF and a New 900RPM, 200 HP Motor – Wastewater Plant

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: In order to move primary treated wastewater to the secondary treatment process, large pumps are required. This pump has been identified as being in need of replacement to ensure uninterrupted operation at the wastewater plant. This pump station is a critical part of the treatment process and reliable service is important. The pump is approximately 30 years old and the last of three aging pumps to be replaced with more efficient models.

FINANCIAL IMPACT: Bids were publicly advertised for the replacement of this pump on October 16 and 23, 2008. Bids were opened on October 28, 2008. This replacement is part of the approved CIP and there is adequate funding the in the wastewater plant budget for this expenditure. The bid results are:

Cascade Pump Company \$98,300.00

The bidder is able to supply equipment matching the existing pumping equipment, which is deemed desirable for standardization.

RECOMMENDATION

Staff recommends that Council award the bid for the replacement of the Cascade Pump 20 MF and a New 900RPM, 200 HP Motor to Cascade Pump Company in the amount of \$98,300.00.

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

A3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Approval of Award to Purchase Landfill Scraper/Sale of Used Landfill Scraper

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: Replacement of the existing Unit #0239, landfill scraper, was approved in the FY 2009 Budget under the guidelines of the Equipment Replacement Plan. Specifications were developed by Solid Waste Division staff and distributed to nine vendors that have requested to be on our bid list. A Call for Sealed bids was published October 16th and 23rd, with bids opened October 28, 2008. The bid was structured to allow us to trade the used scraper in on purchase of the new machine or sell the used scraper separately.

FINANCIAL IMPACT: The Solid Waste Division's FY 2009 budget includes adequate funds to replace the current landfill scraper. We received three bids; however one of the bidders did not include the required bid bond, so their bid was non-responsive and not read by the City Clerk. The bids are summarized as follows:

	Tractor & <u>Equipment</u>	Evans <u>Equipment</u>	Montana <u>Waste Systems</u>
<u>Provide New Unit</u>			
Base Bid	\$639,438	No Bid Bond	No Bid
Trade Credit	(240,000)		
Net Bid	\$399,438		
 <u>Purchase Used Unit #0239</u>	 \$240,000	 No Bid Bond	 \$186,860.86

Because the trade credit offered by Tractor & Equipment exceeds the bid to purchase our used scraper, staff recommends that it be traded in towards purchase of the new scraper

RECOMMENDATION

Staff recommends that Council award the contract for purchase of a new landfill scraper for the Solid Waste Division to Tractor & Equipment in the amount of \$399,438.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: Bid Award for a 2009 Model Tandem Dump Truck with Plow

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: The Street/Traffic Division intends to purchase a 2009 model tandem dump truck with a plow. This purchase was approved by the City Council in the FY09 budget process for replacement of an existing tandem dump truck to be purchased in the Equipment Replacement Plan (ERP).

FINANCIAL IMPACT: Bids were opened on October 28th, 2008 at 2:00 PM. 3 bids were received as shown below:

<u>Vendor</u>	<u>Bid</u>	<u>Trade In</u>	<u>Net Bid</u>	<u>Warranty</u>
I-State	\$155,335	\$13,000	\$142,335	\$475
Motor Power	\$158,427	\$13,000	\$145,427	\$3100
Tri-State Equip	\$163,000	\$14,000	\$149,000	\$2100

RECOMMENDATION

Staff recommends awarding the low bid for the purchase of a 2009 model tandem dump truck with a plow in the amount of \$142,335 plus the 5 year warranty of \$475 to I-State. Staff also recommends trading the existing tandem dump truck (Unit #1158) in the amount of \$13,000.

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

A5

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: Approval to Purchase Eight (8) Police Vehicles

DEPARTMENT: Police Department and Fleet Services Division

PRESENTED BY: Rich St. John, Chief of Police

Larry Deschene, Fleet Services Manager

PROBLEM/ISSUE STATEMENT: The Police Department has seven (7) patrol vehicles to replace and one (1) additional unit from the Mill Levy funding in the FY09 Equipment Replacement Plan (ERP). The State of Montana does an RFP for law enforcement vehicles annually. Local government agencies are allowed to use the same vendor that the State chooses for its highway patrol cars. Bison Ford Motor Company, of Great Falls, Montana, was selected as the vendor to provide the State of Montana with the Ford Crown Victoria patrol vehicles. Therefore, staff is requesting Council approval to purchase 8 patrol vehicles from Bison Ford Motor Company of Great Falls for the price of \$23,657.86 each, or a total cost of \$189,262.88.

FINANCIAL IMPACT: As per State bid the vehicle replacement will be through Bison Motor Company at \$23,657.86 per Crown Victoria. The total cost will be \$189,262.88. This expense has been budgeted for FY09 in the Equipment Replacement Fund for seven (7) vehicles and also new capital transportation equipment in the Public Safety Fund for one (1) vehicle.

RECOMMENDATION

Staff recommends that City Council give approval to purchase the eight (8) Police patrol vehicles from Bison Motor Company for \$189,262.88 as determined per State bid.

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

A6

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Contract for Citizen Survey

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: One of the City Council's goals is to periodically complete a citizen survey to gauge citizens' views about City services. The Council approved a FY 2009 budget item for \$20,000 to conduct the survey. A Request for Qualifications/Proposals was prepared and distributed in October. Five (5) firms submitted responses. A City Council and staff committee selected two finalists and interviewed them. The committee recommends that the City Council approve a contract with the National Research Center (NRC) for \$14,250 \$12,000 to conduct a 2009 citizen survey. The contract amount anticipates that the City will participate in the National Citizen Survey (NCS) and will not conduct a fully customized survey.

FINANCIAL IMPACT: The City Council authorized \$20,000 for this activity. This is a general fund expense. The City Council could alter the contract amount after the NRC conducts initial interviews with Council and staff and it is determined that a custom survey would better fit Billings' needs. If the recommended contract amount is approved, the remaining funding may be used to assist with the proposed follow-up meetings with citizens who will help refine the survey results.

RECOMMENDATION

Staff recommends that Council approve a contract with National Research Center for \$12,000 to complete a 2009 National Citizen Survey.

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

ATTACHMENTS

A: Contract

B: NCS questionnaires and reports are available in the City Clerk's office

INTRODUCTION

One of the City Council's goals is to periodically complete a citizen survey to gauge citizens' views about City services. The Council approved a FY 2009 budget item for \$20,000 to conduct the survey. A Request for Qualifications/Proposals was prepared and distributed in October. Five (5) firms submitted responses. A City Council and staff committee selected two finalists and interviewed them. The committee recommends that the City Council approve a contract with the National Research Center (NRC) for \$12,000 to conduct a 2009 citizen survey. The contract amount anticipates that the City will participate in the National Citizen Survey (NCS) and will not conduct a fully customized survey.

BACKGROUND

Citizen surveys are used for many purposes, including gauging citizen use and satisfaction with government services, to help determine and improve service quality and to prioritize services. They may be broad, city-wide surveys or they may seek citizen reactions to a specific quality of life issue or city service. In 2007, the City Council adopted a goal to investigate, budget for and to periodically conduct a city-wide citizen survey. The Council approved funding in the FY 2009 budget. Many local governments conduct citizen surveys every other year.

A Request for Qualifications/Proposals (RFP) was prepared and advertised in September. Fifteen (15) firms requested the full RFP and five (5) submitted responses. A selection committee was formed to review the responses. The committee members are Council members Clark, McCall and Ruegamer and the staff members are Liz Kampa-Weatherwax, Lisa Posada-Griffin and Bruce McCandless. The committee reviewed the five responses and selected two as finalists. The two firms, nVision Research from Denver and the National Research Center from Boulder, CO, were interviewed by telephone on Thursday, October 23rd. The Committee recommends that the City contract with the National Research Center (NRC) to conduct the 2009 citizen survey.

The NRC is a nationally known expert on citizen surveys. The company principals wrote what has become the broadly accepted local government text on conducting citizen surveys in 1991. In 2001, in cooperation with the International City/County Management Association, it created the National Citizen Survey (NCS). Since 2005, the NCS has been conducted over 230 times in 40 states in cities with populations ranging from 4,000 to over one million. Bozeman is the NRC's only other Montana client.

The NCS is usually a five (5) page survey, takes about 15 minutes to complete and has standardized questions that assess citizens' quality of life, service usage and satisfaction and civic engagement. Unless the client insists on a phone survey, the NCS is a mailed survey because a truly random sample can be selected to respond and responses tend to be more representative of the entire population. The basic service includes at least three mailings to the randomly selected survey population of 1,200 residents. The NCS averages a 39% response rate, which is enough to ensure that the responses are representative of the entire population, with a 5% margin of error.

Because the questions are standard on every NCS, the company has assembled normative scores for services. Those scores can be compared with Billings' scores. That element's value is in

helping to identify services that may be receiving too many resources and services that may be deficient and need improvement. The standardization also allows a city to compare citizen perceptions across time, so that when a city changes the resources that are committed to a service, the effects can be compared with past survey results.

The NCS also allows up to three (3) policy questions (a 4th one for an extra fee). The committee discussed the Council and Administration goal to prioritize services in the event that revenues are insufficient to balance expenses. Members are confident that if questions are properly structured, the NRC and the City can capture that information and can do so within the NCS policy issue limitation.

While the committee recommends the NCS, it made sure that the NRC understands that more customization may be desired. The company will work with the City from the beginning to help determine if the NCS will produce the desired results or whether the City needs a customized survey. In most cases, a customized survey contains 70% - 80% of the standardized questions, so in the NRC's opinion, customized surveys produce results that are similar to the NCS. Fully customized surveys are more expensive to develop, so if the Council decides that one is needed, the contract amount would need to be adjusted. The NRC staff stated that cities rarely ask for customized surveys after conducting the NCS, but many cities that start with a customized survey use the NCS for subsequent surveys.

If the contract is approved at the recommended dollar amount, a postcard will be mailed to 1,200 randomly selected households to inform them that they have been selected to respond and to request their cooperation. The survey will be mailed to those households about one week later with an invitation letter from the Mayor. To boost the response rate, a second survey will be mailed to the households about a week after the first one. The contract amount also includes an ~~in-person presentation of the survey results~~, customized normative values so that Billings can select the cities that it wants to compare to, demographic crosstabs and ~~geographic crosstabs~~ a fourth, open-ended policy question. Other services are available but the committee does not recommend them at this time. As long as survey development starts in early November, the NRC has committed to present the survey results at the Council's February 20, 2009 work session.

ALTERNATIVES ANALYSIS

The selection committee recommends adoption of the attached contract. An option that the Council may consider is to approve the contract but change the services and costs, as explained above. The Council can also decline to contract with the NRC. If that occurs, staff requests that the City Council provide guidance for an alternative desired outcome.

RECOMMENDATION

Staff recommends that Council approve a contract with National Research Center for \$12,000 to complete a 2009 National Citizen Survey.

ATTACHMENTS

- A: Contract
- B: NCS questionnaires and reports are available in the City Clerk's office

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Building Lease with Transportation Security Administration

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Transportation Security Administration (TSA) wishes to continue to lease space in the Airport's office building located at the west end of the Airport near the water tower. A Lessee, Realty Ventures, constructed the office building on a twenty-year ground lease it had with the City. The office building currently has two occupants, the TSA and Valley Bible Church. The ground lease with Realty Ventures expired on February 28, 2008, and contained a reversion of improvements clause, which provided for the reversion of ownership of the office building to the City at the expiration of the ground lease. Realty Ventures opted not to enter into a new lease with the City. The TSA leased space in the office building from Realty Ventures and was in the process of negotiating a new lease when the building ownership reverted to the City. The TSA has continued to occupy this office space while it evaluates other potential office space locations and has subsequently requested a one-year lease on this office space to provide additional time to complete its evaluation of the other space. The Lease is for 4,342 square feet of office space, includes utilities and garbage service, and would be effective for a term beginning March 1, 2008, and ending February 28, 2009.

FINANCIAL IMPACT: The Lease will generate \$65,370.68 of revenue for the City's Airport.

RECOMMENDATION

Staff recommends that Council approve the one-year Lease with the U.S. Government for the benefit of the Transportation Security Administration (TSA). The term begins March 1, 2008 and ends February 28, 2009.

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: City-County Special Investigations Unit (CCSIU) Agreement
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Each calendar year the CCSIU Agreement with Yellowstone County needs to be approved. The current agreement will expire on December 31, 2008. It is now time to approve the agreement for the year 2009. This agreement has been reviewed with Undersheriff Jay Bell of the Yellowstone County Sheriffs Office. When the Council approves this agreement, it will then be sent over to Yellowstone County for the Commissioners' approval.

FINANCIAL IMPACT: There will be no additional financial impact to the City since the officers involved are currently included in the Police Department budget and Fund 718 is where all expenditures are budgeted for CCSIU.

RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to sign the CCSIU agreement with Yellowstone County.

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

ATTACHMENT

A-CCSIU Agreement w/Yellowstone County – 4 pages

AGREEMENT

CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)

This Agreement establishes and governs the operation of the **CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)**:

The undersigned public agencies are charged with enforcing the law and protecting their citizens from illegal activity. Recognizing that resources are limited and that such limitations are detrimental to combating crime within Yellowstone County and the City of Billings, and recognizing that the problem can be most effectively resolved by pooling of resources and the joint exercise of respective authorities, a joint CCSIU is established.

PARTIES: This Agreement is between:

- (1) Billings Police Department
- (2) Yellowstone County Sheriff's Office

DURATION: This Agreement is in effect from January 1, 2009 through December 31, 2009.

PROJECT DESCRIPTION:

It is proposed that a joint City-County Special Investigations Unit be established. This Unit will be comprised of personnel assigned from the Yellowstone County Sheriff's Office and the Billings Police Department. It is agreed that full-time investigative personnel will be assigned to the Unit. The CCSIU will be a component of the Rocky Mountain High Intensity Drug Traffic Area (RMHIDTA). Either agency may withdraw from the Unit at any time with 30 days notice.

STRUCTURE AND ORGANIZATION:

The Unit Supervisor and Unit members will be determined by mutual agreement between both agencies. The Unit Supervisor shall be responsible to keep both agencies informed on all matters relating to the operations, including expenditures, accomplishments, problems and all other issues involving the CCSIU.

All persons assigned to the Unit shall work under the immediate supervision and direction of the Unit Supervisor. City Detectives will be indirectly supervised and evaluated by the Captain of Investigations or his designee. All persons assigned to the Unit shall adhere to the rules and regulations as set forth in the Unit's Policy and Procedures Manual, as well as their individual departmental rules, policies and procedures.

For the purpose of indemnification of participating jurisdictions against losses, damages, or liabilities arising out of the services and activities of the Unit, the personnel so assigned by any jurisdiction shall be deemed to be continuing under the employment of that jurisdiction and its police department.

Each agency contributing personnel to the Unit will continue that employee as an employee of the contributing agency and will be solely responsible for that employee, including wages and benefits.

Any duly sworn peace officer, while assigned to duty with the Unit as herein provided and working at the direction of the Unit Supervisor, shall have the same powers, duties, privileges, protections and immunities as are conferred upon him/her as a peace officer in his/her own jurisdiction. Billings Police Officers will be deputized as Yellowstone County Sheriff's Deputies while assigned, even on a temporary basis, to the CCSIU.

CONTEMPLATED UNIT TASKS:

At the direction of the Unit Supervisor, the CCSIU will concentrate efforts on local cases. Investigations will center around narcotics trafficking and organized criminal activities. In circumstances where a determination of specific priorities of these investigations must be made, the Unit Supervisor will make the determination in consultation with the Sheriff and Police Chief, or their designees.

UNIT OBJECTIVES:

This section identifies specific targeted objectives to be attained by the CCSIU during the program year. Objectives will be reviewed and revised as necessary by December 1, 2009.

- 1) Disrupt illegal drugs, drug/gang and organized criminal activities within the City, County and State.
- 2) Gather and report intelligence data relating to illegal drugs, drug/gang and organized criminal activities within the City, County and State.
- 3) Make arrests that will impact all levels of drug and organized criminal activities.
- 4) Effectively prosecute drug traffickers and organized criminal activity participants.
- 5) Promote law enforcement cooperation through joint investigations and close coordination with other police agencies and task forces.

PETTY CASH AND FORFEITURE FUND:

Agencies involved in the City-County Special Investigations Unit will each place **SIX THOUSAND DOLLARS** (\$6,000.00) into the Petty Cash Fund. The monies will be utilized by the Unit for buys and informants. As financial transactions take place, an equal amount of

monies will be deducted from each agency's monies. The Supervisor of the Unit will be responsible for administering the monies as needed and keeping a running log of all expenditures, to include incident numbers and reason for purchase(s). The money log will be audited by the Yellowstone County Auditor or his/her representative, on a quarterly basis. A copy of the audit will be submitted to the Captain of Investigations or his designee.

Replacement of the Petty Cash Fund will be accomplished by the following procedures:

CITY OF BILLINGS:

The Unit Supervisor will make a written request through the Captain in charge of Investigations or his designee, who, in turn, will approve the request and submit it to the City Finance & Administrative Services Department. The City Financial Services Manager will direct monies to the Unit Supervisor, who will deposit the reimbursement back to the Petty Cash Fund.

YELLOWSTONE COUNTY:

The Unit Supervisor will make a written request to the Yellowstone County purchasing department to replenish their portion of the fund.

Forfeiture vehicles that are to be sold at auction will be sold at either the Yellowstone County Sheriff's Sale or at auction by the Billings Police Department. Any forfeiture monies acquired by the Unit from any source will be split equally between the agencies. All forfeiture procedures will be handled by the Unit Supervisor and the Yellowstone County Attorney's Office, at no cost to the City.

INDEMNITY CLAUSE:

The City shall have the duty to defend Yellowstone County and shall indemnify and hold harmless Yellowstone County and its agents and employees from and against all claims, liabilities, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claims, liability, damage, loss, judgment or expense is caused in whole or in part, by a negligent act, error or omission of the City, its employees or agents.

Yellowstone County shall have the duty to defend the City and shall indemnify and hold harmless the City and its agents and employees from and against all claims, liabilities, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claim, liability, damage, loss or expense is caused in whole or in part by any negligent act, error, or omission of Yellowstone County, its employees, officials or agents.

RESOURCES:

All available resources that are currently available in the City of Billings Investigations Division and in the Yellowstone County Investigations Division will be made available to the CCSIU.

Any specialized equipment that is not being kept at the location of the CCSIU office will need to be borrowed by an assigned CCSIU detective from that agency.

THIS AGREEMENT IS EXECUTED THIS ____ DAY OF _____, 2008.

SIGNED:

MAYOR, CITY OF BILLINGS

DATE _____

COUNTY COMMISSIONER

DATE _____

COUNTY COMMISSIONER

DATE _____

COUNTY COMMISSIONER

DATE _____

ATTEST:

*CARI MARTIN, CITY CLERK
CITY OF BILLINGS*

*TONY NAVÉ
CLERK AND RECORDER
YELLOWSTONE COUNTY*

APPROVED AS TO FORM:

*BRENT BROOKS, CITY ATTORNEY
CITY OF BILLINGS*

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: Memorandum of Understanding between the City of Billings and the Billings Business Improvement District 001 for a Dedicated Center Beat Officer - January 1, 2009, to December 31, 2010

DEPARTMENT: Billings Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: In an effort to work closely with the City of Billings and downtown businesses to reduce crime and improve the safety of employees, clientele, residents, and visitors, the Billings Business Improvement District (BID) will provide one uniformed patrol officer to work as a downtown resource officer. The officer will be stationed at the offices of the BID and perform the service of Dedicated Center Beat Officer (DCBO). This DCBO shall be provided on a full time basis to the BID. The designated officer, when available, will be the primary officer on any dispatched calls in the center beat area. The DCBO is not designed to replace any of the existing normal downtown patrol officers, but only to enhance what is already being provided by the Billings Police Department. The Center Beat is the primary area of responsibility, but, it is understood that the DCBO will be dispatched to calls outside of the Center Beat in emergency situations.

ALTERNATIVES ANALYZED:

- Approve the Memorandum of Understanding; or
- Do not approve the Memorandum of Understanding

FINANCIAL IMPACT: \$184,722.00 in tax increment funds has been allocated and approved by City Council from the encumbered Fund 202. In order to receive these funds, the attached Memorandum of Understanding valid from January 1, 2009, through December 31, 2010, will need to be approved before the tax increment funds can be released. These tax increment funds will pay for the following:

- \$113,457.76 (\$56,728.88 per year) for the officer
- \$6,373.74 for officer's first year initial equipment
- \$53,196 for new police vehicle and related equipment

The balance of the tax increment funds will be applied to the annual renewal of this program.

RECOMMENDATION

Staff recommends City Council (1) approve the attached Memorandum of Understanding (January 1, 2009, through December 31, 2010) between the City of Billings and the Billings Business Improvement District, and (2) release tax increment funds in the amount of \$184,722.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A: Memorandum of Understanding (3 pages)

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE CITY OF BILLINGS POLICE DEPARTMENT

AND

DOWNTOWN BILLINGS BUSINESS IMPROVEMENT DISTRICT, INC.

This agreement is to cover the period from January 1, 2009 to December 31, 2010 by and between the City of Billings, hereinafter referred to as "City" and the Downtown Billings Business Improvement District, a Montana Not-for-Profit Corporation, hereinafter referred to at "BID."

In receipt of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The City shall provide one uniform patrol officer to work as a Downtown resource officer. The officer will be stationed at the offices of the BID and perform the service of Dedicated Center Beat Officer (DCBO.) This DCBO shall be provided on a full time basis, minus training, vacation, sick time, and overtime, to the BID. The designated officer will, when he or she is available on the beat, be responsible to be the primary officer, on any dispatch calls in the designated Center Beat. The DCBO is not designed to replace any of the existing normal downtown patrol officers, but only to enhance what is already being provided by the Billings Police Department. The Center Beat is the primary area of responsibility but, it is understood that the DCBO will be dispatched to calls outside of the Center Beat in emergency situations.
2. The BID shall pay the City the DCBO's salary that shall include the officer's salary and fringe benefits at the annual established rate. This payment shall be made annually starting on or before the start of the calendar year.
3. The City will have available the necessary equipment for the DCBO to conduct his or her job. The BID agrees to pay the City a one-time fee not exceed \$54,000.00 to assist in equipment purchases for this DCBO.
4. The City agrees that the patrol car assigned to this DCBO be designated to this DCBO and be identified in a decal on the car as "Downtown Patrol"
5. Indemnification – The City assumes full responsibility for the DCBO's performance. The City shall indemnify the BID against, and hold the BID harmless from any liability costs, damages, claims or causes of action which may arise as a result of performance by the City of its responsibilities under the terms of this agreement; provided, however, the City,

its officers and employees shall not assume any liability for acts of the BID or any of its officers, employees or agents.

6. The City agrees that the basic patrol area, center beat or “resource footprint” shall be identified in Exhibit A, hereto attached, and that patrol area may be modified from time to time by mutual consent of the City and the BID.
7. This agreement shall cover the period from January 1, 2009 until December 31, 2010.
8. This agreement will be extended for additional one-year periods unless terminated on the anniversary date by either party. Such termination may be with or without cause and be effective upon issuance of at least sixty (60) days notice in advance of the end of a one-year period that the agreement will be terminated. The terms and conditions of the agreement may be amended upon the anniversary date as mutually agreed to by the parties.

In Witness whereof, the parties hereto have caused this agreement to be executed the day and year fires herein above written.

CITY OF BILLINGS,
MONTANA “CITY”

DOWNTOWN BILLINGS BUSINESS
IMPROVEMENT DISTRICT, INC., “BID”

Ron Tussing, Mayor

Steve Wahrlich, President

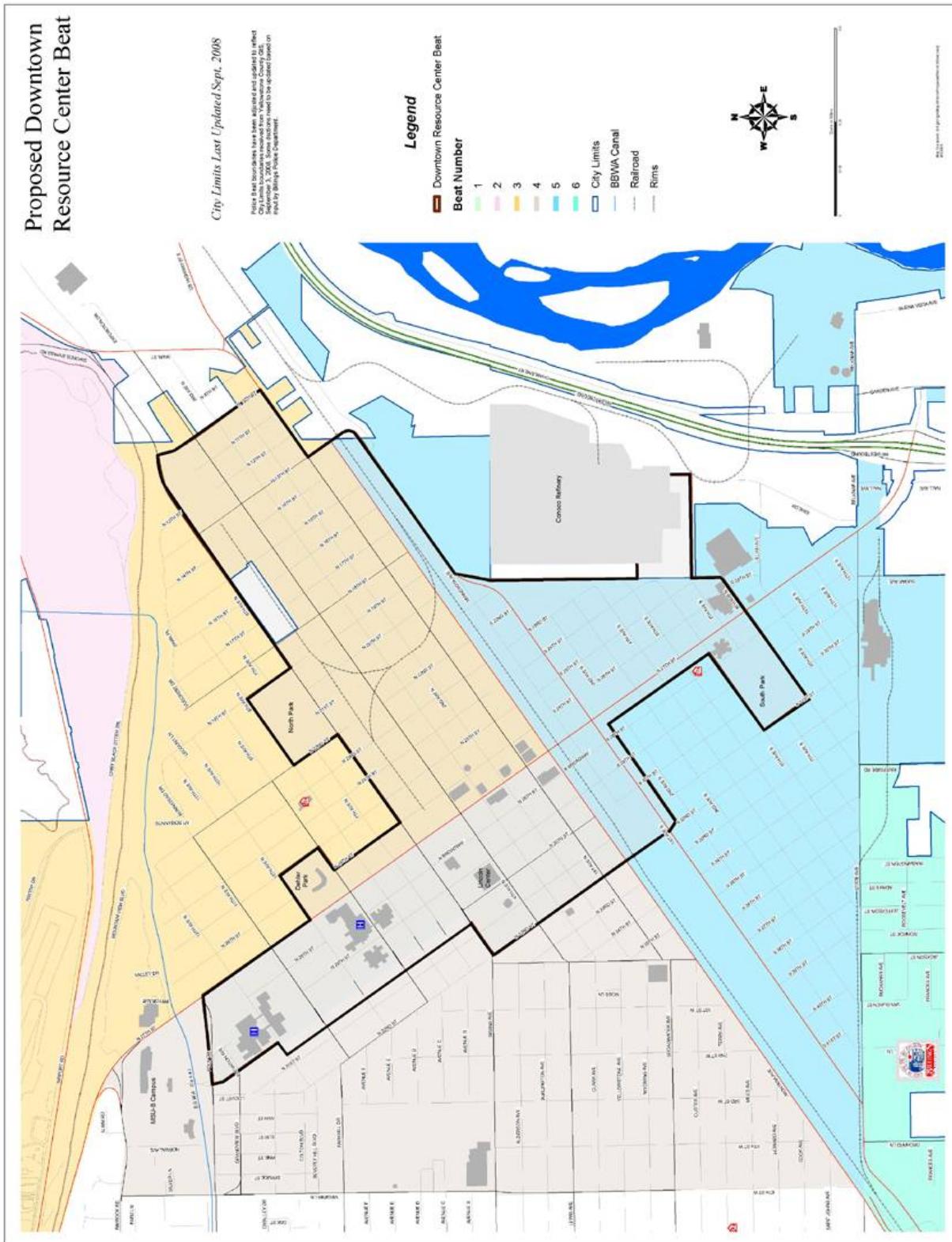
Attest:

City Clerk

Approve as to form:

Brent Brooks, City Attorney

EXHIBIT A – CENTER BEAT



AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, November 10, 2008**

TITLE: Perpetual Right-of-Way Easement for the City of Billings to Install a Public Water Main in Miller Crossing Subdivision.

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: It has been determined that Miller Crossing Subdivision will be served by public water and sanitary sewer mains located within easements inside the subdivision. Under consideration is a 40-foot wide easement located within Lot 1, Block 1 of Miller Crossing Subdivision.

ALTERNATIVES ANALYZED:

- Approve the Perpetual Right-of-Way Easement intended to contain a new public water main.
- Do not approve the Perpetual Right-of-Way Easement.

FINANCIAL IMPACT: There is no financial impact to obtaining this easement.

RECOMMENDATION

Staff recommends that Council approve this Perpetual Right-of-Way Easement to install a public water main in Lot 1, Block 1 of Miller Crossing Subdivision.

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

ATTACHMENTS

A. Perpetual Right-of-Way Easement

Return to:
Engineering, Inc.
1300 North Transtech Way
Billings, MT 59102

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, on this 27 day of MARCH, 2008, the undersigned, **BK RE 11036, LLC**, of the address of 2038 Overland Avenue, Billings, Montana 59102, hereinafter called "Grantors," hereby grant and convey unto the **CITY OF BILLINGS**, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee," a perpetual easement and right-of-way over, across, under, and through the following described tract of real property in Yellowstone County, Montana:

That portion of Lot 1, Block 1 of Miller Crossing Subdivision as shown and described on the attached Exhibit "A" as "40' wide public utility easement".

This perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing sanitary sewers and/or water lines over, across, under, and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing said sanitary sewers and/or water lines and appurtenances, and adding additional sanitary sewer and/or water lines.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantors and their successors agree not to construct, nor cause to be constructed within the easement right-of-way, any type of building or structure such as, but not limited to, houses, garages, sheds, kennels, fences, or any other fixed objects of any kind, shape or form, except as may be licensed by Grantee.

2. Grantors agree that all landscaping and landscaping facilities installed by the Grantors within the easement right-of-way, such as irrigation, berms, trees, bushes, shrubs, hedges, grass, or any other facilities or plantings of a similar nature, shall be approved by Grantee prior to installation of such facilities, and shall be operated and maintained by Grantors. Grantors agree that replacement of any landscaping facilities within the easement right-of-way due to any construction, replacement, repair, or service work to the sanitary sewer and/or water lines by the City of Billings shall be the responsibility of the Grantors.
3. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
4. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.
5. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair, or service work to the sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.
6. HOLD HARMLESS AGREEMENT
 - a. Grantors agree that the owner or owners of the above-described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked, split or otherwise damaged, irrigation piping and appurtenances; and any other damage to any other type of object, material, or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time

period, be removed from the easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.

- b. Grantors agree that the owners of the above-described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations, or responsibilities contained in this Agreement.
 - c. Grantors agree that the owner or owners of the above-described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within Miller Crossing Subdivision due to possible failure of and or maintenance of the public water and sanitary sewer mains within said easement.
7. The Restrictions, Covenants, and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

Grantors warrant and covenant that there are no liens or other encumbrance on the described tract or tracts.

"GRANTORS"

BK RE 11036, LLC

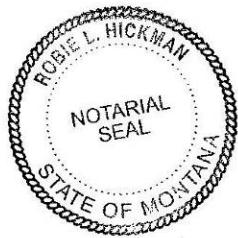
By: William O. Ryan

Its: President / Owner

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 27 day of MARCH, 2008, before me, a Notary Public in and for the State of Montana, personally appeared WILLIAM O. RYAN, known to me to be the person who signed the foregoing instrument as the PRESIDENT / OWNER of BK RE 11036, LLC, and who acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.



Robie L. Hickman
Notary Public in and for the State of Montana
Printed name: Robie L. Hickman
Residing at: Billings, MT
My commission expires: 4-4-2009

“CITY”

CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
County of Yellowstone)

On this _____ day of _____, 2008, before me, a Notary Public for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana. Witness my hand and seal the day and year herein above written.

Notary Public for the State of Montana

Printed name:

Residing at: _____

My commission expires: _____

Exhibit A

**40' Wide Public Utility Easement
within
Lot 1, Block 1, Miller Crossing Subdivision**

A tract of land situated in the NW1/4 of Section 16, T. 1 S., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, being more particularly described as follows, to-wit:

Commencing at a point being the northeast corner of Lot 1, Block 1 of Miller Crossing Subdivision; thence, along the north line of said Lot 1, S 89°54'26" W a distance of 76.57 feet to the true Point of Beginning; thence, from said Point of Beginning, leaving said north line, S 00°05'34" E a distance of 171.98 feet to a point on the south line of said Lot 1; thence, along said south line, S 89°54'26" W a distance of 40.00 feet to the southeasterly corner of said Lot 1; thence, leaving said south line, N 00°05'34" W a distance of 171.98 feet to a point on the north line of said Lot 1; thence, along said north line, N 89°54'26" E a distance of 40.00 feet to the Point of Beginning; said described tract having an area of 6,879 square feet and being as shown on attached Exhibit "B".

F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
November 10, 2008

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

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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

On September 30, 2008, the City had a certificate of deposit at First Interstate Bank for \$1,514,795; also \$16,354,452 invested in the U.S. Bank Municipal Investor Accounts; and \$6,015,757 in the US Bank Repurchase Account. The City has \$3,500,000 in two certificates of deposit at US Bank, Billings.

Because First Interstate Bank and US Bank's net worth ratio to total assets ratio is over 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. First Interstate Bank has collateralized the City's deposits with 99% in pledged securities. US Bank has collateralized the City's Municipal Investor Account (MIA) and two certificates of deposit with 175% in pledged securities. The Repurchase Account is collateralized with 102% in pledged securities.

RECOMMENDATION

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

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

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: Capitol Christmas Tree Visit

DEPARTMENT: Public Works – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The USFS Custer National Forest requests a temporary street closure for a Tree Caravan to pass through on its way to Helena comprised of two semi trucks on Tuesday, November 11, 2008, from 10:00 am 1:00 pm.

Recommended conditions of approval include the USFS Custer National Forest:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the tree caravan as described above on Tuesday, November 11, 2008.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Letter from USFS Custer National Forest
- B. Right of Way Special Activity Permit

- C. Parade specifications
- D. Certificate of insurance



CAPITOL CHRISTMAS TREE - 2008

"A Gift from Big Sky Country"

Phone (406) 821-1210 Fax (406) 821-1211 6735 West Fork Road, Darby, MT 59829

August 21, 2008

Dear Community Leaders:

Thank you for accepting the invitation to plan and host an event as the Tree Caravan passes through your community. We have enclosed a preliminary agenda with tentative dates and times that our caravan plans to arrive in your community. Please remember that this schedule is subject to change and we will keep you informed as the time draws near. The nature of your community celebration is entirely up to you. It is an exciting opportunity that could bring inspiration and holiday spirit to your community during this upcoming Christmas season.

We have some additional information that needs to be considered when planning your event:

- The group traveling with the tree is comprised of two semi trucks – one with the 2008 Capitol Christmas Tree and the other carrying the 80 companion trees, two law enforcement vehicles, and a minimum of 4 additional support vehicles; there will be approximately 12 to 15 individuals accompanying the tree.
- The main truck and trailer hauling the tree is approximately 110 feet long. This truck is unable to navigate around 90° corners easily due to an extremely large turning radius. Please take both length and turning radius into consideration when planning your community activities.
- Police or Fire Escorts for the Capitol Christmas Tree as it enters the Community Celebration site. This will provide a great focus on the celebration and the tree's arrival. It will provide easy and safe access to the site for the truck drivers who may be unfamiliar with your community. Please assure that local law enforcement is involved to assist in the movement of the Holiday Tree truck as it travels around your community – especially at locations and intersections where turning may require using both lanes or shoulders of the roadway, or where the truck may need to travel on narrow roads. This will expedite movement of the truck and possibly allow for more time at the celebration site.
- Communities where we will be stopping overnight will need to assist in providing security personnel through the night with a secure location for the trucks to be parked; preferably in a well lighted area that is behind a locked gate. Please inform us of the exact location address in order that we might coordinate with local law enforcement by September 15, 2008.
- Any assistance that you can give the team in locating overnight lodging in the following locations will be greatly appreciated:
 - Missoula – 2 truck drivers (only)
 - Kalispell – 15 individuals
 - Havre – 15 individuals
 - Helena – 15 to 18 individuals
 - Miles City – 15 individuals
 - Glendive – 15 individuals

"and the State of Montana"

CAPITOL CHRISTMAS TREE 2008

- Town House Inns has graciously donated rooms for overnight lodging in the following communities:
 - Shelby
 - Great Falls
 - Butte
 - Big Timber
- Special Events Coordinator Marilyn Wildey has already contacted several of you concerning the plans for your community. If you have not spoken to Marilyn she can be reached at 406-363-7101.

As the time draws near for our Holiday season and this wonderful event, we will be in close contact with you and the community on the final plans. If you have any immediate questions please contact Joe Butsick or Roylene Gaul at the following:

Joe Butsick
2008 Capitol Christmas Tree Transportation Committee Chair
West Fork Ranger Station
Darby, MT 59829
Phone: (406) 821-3269

Roylene Gaul
2008 Capitol Christmas Tree Logistics Section Chief
Bitterroot National Forest
1801 N. 1st
Hamilton, MT 59840
Phone: (406) 363-7157

Also, realizing that organizing a tour takes precious time and effort by many people, we have provided some tools to help with planning and decision-making. Visit the Vermont Capitol Tree site <http://www.capitolchristmastree2007.org/index.html> for information about the 2007 events that were scheduled or visit the 2008 Capitol Tree site at <http://www.capitolchristmastree2008.org> which will give you and your community leader's additional information about Montana's Capitol Christmas Tree Project.

Thank you for joining us in Sharing Montana's Treasures!

Sincerely,

Nan C

Nan Christianson
Capitol Christmas Tree Project Manager

"and the State of Montana"



CAPITOL CHRISTMAS TREE - 2008

"A Gift from Big Sky Country"

Phone (406) 821-1210 Fax (406) 821-1211 6735 West Fork Road, Darby, MT 59829

MONTANA AND CROSS-COUNTRY CELEBRATION ROUTE

November 1 - Saturday -- Cutting Day - Cutting Day Celebration

November 2 and 3 - Packaging Days

November 4 - Tuesday -- Bitterroot Valley Celebrations - Hamilton and Stevensville

The trip will begin from the Bitterroot Valley on November 4, 2008. We will park the tree in Missoula, Montana the night of the 4th leaving from the Northern Region Aerial Fire Depot on November 5, 2008.

<u>Date</u>	<u>Celebration Location</u>			<u>Travel Time</u>	<u>ETA of Tree</u>
11/5	Missoula		Morning Celebration and Sendoff		10 AM
	Pablo	Lunchtime Celebration		2 Hours	1 PM
	Kalispell	Evening Celebration		2 Hours	5 PM
SPEND NIGHT IN KALISPELL					
11/6	Browning	Lunchtime Celebration		4 Hours	12 PM
	Cut Bank			1 Hour	3 PM
	Shelby	Evening Celebration		1 Hour	5 PM
SPEND NIGHT IN SHELBY					
11/7	Havre	Lunchtime Celebration		3 Hours	11 AM
	Great Falls	Evening Celebration		3 Hours	4 PM
	SPEND NIGHT IN GREAT FALLS				
11/8	Choteau			2 Hours	10 AM
	Augusta	Lunchtime Celebration		1 Hour	12 PM
	Helena	Evening Celebration		3 Hours	5 PM
SPEND NIGHT IN HELENA					
11/9	Church and Mid Morning/Noon Celebration in Helena				
	Butte	Evening Celebration		2 Hours	6 PM
	SPEND NIGHT IN BUTTE				
11/10	White Sulphur Springs	Lunchtime Celebration		4 Hours	12 PM
	Harlowton			2 Hours	3 PM
	Big Timber	Evening Celebration		1 Hour	5 PM
SPEND NIGHT IN BIG TIMBER					

"and the State of Montana"

RX Date/Time SEP-11-2008(THB) 15:00
09/11/2008 15:48 FAX 406 657 6222 Custer National Forest

P.002
002/004



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Public Works office, 510 N. Broadway, Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Babete Anderson

ORGANIZATION MAKING APPLICATION USFS Custer National Forest

PHONE 406-657-6205 ext 239

ADDRESS 1310 Main Street Billings, MT

CITY STATE

59105 ZIP

EMAIL ADDRESS branderson@fs.fed.us

APPROXIMATE TIME EVENT WILL:

Assemble _____ Start 10:00 am Disband _____

1:00 pm

DATE OF EVENT November 11, 2008

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

Capitol Christmas Tree Visit (on its way to Washington DC)

Forest Service will have Smokey Bear and will staff a table with Smokey bear items/handouts.

If folks bring decorations for the tree they can be dropped off there as well.

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

See attached

Close N. 28th Street from 1ST to 2ND and 2nd Avenue N.
From N 29th to N 28th. Diagonal closure at intersection.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

Not Applicable

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

Rx Date/Time OCT-22-2008(WED) 06:56 406 657 6222 P. 001
10/22/2008 07:44 FAX 406 657 6222 Custer National Forest 001/001
OCT-21-2008(TUE) 08:07 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 002/002

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE Babette Anderson DATE 10/21/08

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FILE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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

Rx Date/Time SEP-11-2008 (THU) 15:00
09/11/2008 15:49 FAX 406 657 6222

406 657 6222
Custer National Forest

P. 004
004/004



Babete R
Anderson/R1/USDAFS -
09/09/2008 02:54 PM

To Joe Butsick/R1/USDAFS@FSNOTES
cc
bcc- Babete R Anderson/R1/USDAFS
Subject Route for Christmas Tree in Billings

Good afternoon,

Here is the route: (this came from the city engineer)

Coming in: From the east on I-90 to Billings, take Exit 446 (City Center) go left (north) under overpass to Montana Avenue. Follow Montana Ave, over overpass to Division Street. Turn left (north) on Division to 2nd Street. Turn right (east) on 2nd Street (few curbs to go over). Truck will be parked on the block of 2800 and 2nd street (heading east) for the event.

To leave - continue on 2nd street to 27th (the plan is to cover meters at this intersection so no vehicles will be parked on the left hand side of the street). Turn right (south) onto 27th Street - follow it to the interstate.

Please let me know what you think. Thanks much!

Babete Anderson
Executive Assistant/Public Affairs Specialist
Custer National Forest
Phone 406-657-6205 ext 239
Cell 406-698-0740

Downtown Billings Street Direction Map



Rx Date/Time SEP-11-2008 (THU) 15:00
09/11/2008 15:48 FAX 406 657 6222

406 657 6222
Custer National Forest

P.003
003/004

Certification of Insurance:

The USDA Forest Service is self insured.

Tort Claims are handled under the Tort Claims Act – 28 USC Section 1346.

If you have questions please contact Alan Campbell, Office of General Council for Region One at 406-329-3072.

Thank you.

H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Preserve America Grant Contract with the State Historic Preservation Office

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The State of Montana Historic Preservation Office has granted the Old Town Neighbors, Inc. a Preserve America Grant in the amount of \$11,750. An additional \$15,750 will be matched by the Old Town Neighbors, Inc. and by funding through the redefined Downtown Tax Increment Finance District for a total project amount of \$27,500. The Old Town Neighbors, Inc., is a non-profit organization composed of property owners along Minnesota Avenue who have a desire to create the Old Town Historic District (See Attachment A). To create the historic district, a National Register Nomination must be completed and submitted to the Montana State Historic Preservation Office (MT SHPO). On September 8, 2008, the City of Billings approved the submittal of a grant application to the MT SHPO and authorized the Mayor to sign the grant application. On October 14, 2008, the Planning Division received 2 original contracts for the Authorized Representative (Mayor) to sign.

ALTERNATIVES ANALYZED: Agree or decline to participate in State Preserve America program and accept Preserve America grant funding to assist the Old Town Neighbors, Inc. in documenting and preparing a National Register Nomination for a historic district known as the Old Town Historic District.

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

RECOMMENDATION

Staff recommends that the City Council authorize the Mayor to sign the State of Montana Agreement for Preserve America funds in the amount of \$11,750.

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

ATTACHMENTS

- A. Map of the proposed Old Town Historic District
- B. 2 original contract agreements to be signed by the Mayor

Attachment A
Proposed Old Town Historic District



**I
PROPOSED OLD TOWN HISTORIC DISTRICT**

A

1" = 130'-0"



**HIGH PLAINS
ARCHITECTS**

300 10th Street, Suite 200
Billings, MT 59102-3000
(406) 248-2250 • Fax: (406) 248-2250
E-mail: info@highplainsarch.com
www.highplainsarch.com

MAP

DRAWING: **PROPOSED OLD TOWN HISTORIC DISTRICT - BUILDINGS**
PROJECT: **PRESERVE AMERICA GRANT FUNDING**
OWNER: **OLD TOWN NEIGHBORS, INC. & CITY OF BILLINGS**

Agreement Number: PA III-09-005
October 15, 2008 – March 1, 2010

STATE OF MONTANA AGREEMENT

This agreement is hereby made between the Old Town Neighbors, Inc., 2 South Broadway, Billings, Montana 59101 (The "Sub-grantee") and the Montana Historic Preservation Office, Montana Historical Society, 1410 8th Ave, PO Box 201202 Helena, Montana 59620-1202 (The "Grantee"). The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I: SERVICES

The Sub-grantee shall:

1. Conduct class III architectural survey of approximately forty-three (43) buildings defining the Old Town Historic District boundary.
2. Complete Montana Property Record site forms for approximately forty-three (43) buildings involved in the survey. Site forms are available online at www.mhs.mt.gov/shpo/register/HistoricPropertyRecord.doc.
3. Complete National Register nomination for the newly defined Old Town Historic District. The nomination shall meet the requirements of Bulletins 15, 16A, 16B, and the most recent photography requirements.
4. Provide a presentation concerning the National Register nomination to the Montana Preservation Review Board. Make any changes to the nomination required by the Board.
5. Gather three (3) or more survey estimates from qualified preservation professionals. Follow state and federal procurement requirements outlined in Section VI. Assignment and Procurement Procedures of this contract.
6. Hire preservation professionals that meet the Secretary of the Interior's Professional Qualifications, and have recent survey experience, preferably with Montana's survey methods and site forms.
7. Be responsible for the accuracy, legibility, high quality, and clarity of the work completed by the preservation professional contracted to conduct the survey.
8. Submit the first 10 completed site forms and digital photos to SHPO for approval prior to completion of additional site forms.
9. Provide a final survey report that meets the requirements outlined in Montana Preserve America Documentation Grant Policies.
10. All press releases or news articles shall state "... project made possible by a National Park Service Preserve America grant administered through the State Historic Preservation Office, Montana Historical Society."

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantee. Final products or services that do not fulfill the requirements of this Agreement and do not comply with the appropriate Secretary of the Interior's Standards will not be reimbursed and any advance payments made in connection with such products or services must be repaid to the Grantee.

SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

The Agreement shall take effect as of October 15, 2008 and shall terminate March 1, 2010 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantee" for all purposes under this contract shall not exceed: \$11,750.00. Payment shall be made on a reimbursement basis by request of Sub-grantee to the SHPO.

SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantee agrees to pay the Sub-grantee as follows:

1. The Sub-grantee agrees to submit Progress Reports and Requests for Reimbursement on a minimum quarterly basis. Reports will be accompanied by the following documentation:
 - a. The Sub-grantee's name, address and agreement number PA III-09-005;
 - b. Report discussing work completed during the period;
 - c. An itemized listing of cash or in-kind donations of \$11,750.00 that comprise the non-federal match;
 - d. An itemized listing of project expenses that are charged to the federal grant;
 - e. The net request for payment; and
 - f. Products produced during the quarter.
2. All Requests for Reimbursement must be approved by the Grantee prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Sub-grantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Sub-grantee may request a copy of the CLG Manual from the SHPO and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Grantee may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

SECTION IV: TERMINATION

1. The Sub-grantee understands and agrees the Grantee, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude

funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantee may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the Sub-grantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Sub-grantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS and the Sub-grantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Sub-grantee will not be relieved of liability to the Grantee for damage sustained by the Grantee by virtue of any breach of the Agreement by the Sub-grantee and the Grantee may withhold any reimbursement to the Sub-grantee for the purpose of off-set until such time as the exact amount of damages due the Grantee from the Sub-grantee is agreed upon or otherwise determined.
3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the other party.
4. The MHS may terminate this Agreement for failure of the Sub-grantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantee will provide the Sub-grantee with written notification of the reasons for the Sub-grantee's performance failure and allow the Sub-grantee a period of not less than ten (10) days nor more than thirty (30) days after receipt of said notification to rectify the identified failure to perform.

SECTION V: GENERAL AND SPECIFIC CONDITIONS

The Sub-grantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Sub-grantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of OMB Circular A-102, (as further amended, 8/29/97) and Chapter 17 of the Historic Preservation Grants Manual.
2. The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.
3. Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other

sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Sub-grantee shall document in writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantee prior to the initiation of the project.

4. Noncompetitive negotiation may be used with prior written approval from the Grantee when, after the solicitation, in accordance with Section VI. 3., competition is determined inadequate.

5. The Sub-grantee will notify the SHPO upon the selection of a subcontractor. Sub-grantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the SHPO for review and written approval prior to its execution.

6. Prior to the beginning of project work or any grant payment, the Sub-grantee must submit to the SHPO the below listed items to demonstrate that the federal procurement requirements have been met in full:

- a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
- b. Copy of the Sub-grantee documentation of the selection criteria and process;
- c. A copy of the successful proposal and a description of the Sub-grantee reasons for selection;
- d. Listing of the unsuccessful offerors;
- e. Copy of the proposed contract between the Sub-grantee and the subcontractor.

Note: SHPO must review and approve all contracts between the Sub-grantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Sub-grantee 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Sub-grantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.

2. The Sub-grantee will comply with Section 504 of the Rehabilitation Act of 1973 which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied

the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

3. The Sub-grantee will comply with The Age Discrimination Act of 1975 prohibit discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

SECTION VIII: FAIR LABOR STANDARDS

The Sub-grantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the sub-grantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the MHS, SHPO and the Sub-grantee.

SECTION IX: PROHIBITION AGAINST LOBBYING

The Sub-grantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

SECTION X: INDEMNIFICATION

The Sub-grantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantee because of negligence on the part of the Sub-grantee, its agents, representatives, or employees. The Sub-grantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Sub-grantee's actions.

SECTION XI: WORKERS' COMPENSATION

The Sub-grantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

1. This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.
2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. SHPO will be consulted to review the change to determine if it substantially alters the scope of work or the cost of the approved project. If the change is determined to be substantial, the SHPO will process the amendment through NPS. Failure to notify the SHPO of any such changes may be construed as just cause for revocation and/or recovery of the grant funds.

SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Preservation Review Board and no member of the Sub-grantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his personal or pecuniary interest. The Sub-grantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Sub-grantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantee and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.
2. Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with federal funds from the National Park Service, U. S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

Publications must include the nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis

of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office for Equal Opportunity
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

2. The Sub-grantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

SECTION XV: AUDITING

The Sub-grantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post-audit and analysis purposes in determining compliance with the terms of this Agreement. The Sub-grantee shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantee to the Sub-grantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Sub-grantee to allow access to records necessary to carry out the legislative post-audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in OMB Circular A-102, as amended.

SECTION XVI: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SECTION XVII: EXECUTION

This Contract consists of this eight (8) page Agreement; the original copy is to be retained by SHPO. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the date set out below:

Chief Elected Official Sub-grantee

Date

Administrator, Centralized Services Division
Montana Historical Society

Date

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

November 10, 2008

TITLE: Montana Department of Transportation Highway Safety Grant
DEPARTMENT: Municipal Court
PRESENTED BY: Mary Jane Knisely, Municipal Court Judge

PROBLEM/ISSUE STATEMENT: In 2006 and 2007, a total of 1,213 Driving Under the Influence of Alcohol arrests were charged in Billings Municipal Court—an average of more than 50 each month. Of these arrests, 232 were 2nd offenses and 44 were 3rd offenses. The community faces an astronomical risk in terms of potential injury or loss of life from these individuals who drive while under the influence of alcohol. The City and its residents likewise face substantial financial losses because of these drivers.

The overall goal is to develop the Billings Adult Misdemeanor DUI Court (BAMDUI) in response to the needs of persons with an alcohol addiction within the criminal justice system, thus furthering the mission of increased public safety. Furthermore, with the Billings Adult Misdemeanor Drug Court program's infrastructure already in place, this will essentially act to expand the treatment court to include DUI specific offenders. The proposed DUI court links offenders with therapeutic intervention using a trained multi-disciplinary team tightening accountability through frequent court appearance, intensive supervised probation, evidence based alcohol and drug treatment, case management, frequent and random drug testing, and advanced alcohol testing and monitoring equipment. BAMDUI will proactively address the relicensing and reinsuring of DUI offenders, seatbelt education, victim notification and payment of restitution. Therapeutic jurisprudence uses the power of judges to promote compliance with court orders, immediately respond to relapse and evaluate the program with empirically verifiable results.

ALTERNATIVES ANALYZED: Council may choose to ACCEPT the Montana Department of Transportation Highway Safety Grant for the establishment of the adult misdemeanor DUI court, or Council may choose to DECLINE the Montana Department of Transportation Highway Safety Grant.

FINANCIAL IMPACT: ACCEPT DOT Grant Offer – MINOR FINANCIAL IMPACT. The City will receive \$152,250 over a period of one year. The City's soft match contribution would include the hours on which team members, (i.e. prosecutor, judge, public defender, law enforcement) spend in Court. One .5 FTE coordinator will be employed by the City of Billings,

however salary and benefits are completely paid for through the grant. The evaluator, treatment professionals, probation officer would be secured through contract.

DECLINE DOT Grant Offer – CONSIDERABLE FINANCIAL IMPACT ON COMMUNITY.

Most offenders do not have private insurance and cannot afford treatment. Untreated DUI offenders consistently re-offend and re-victimize the community.

RECOMMENDATION

Staff recommends that Council approve the request to allow Mayor Tussing to accept the Montana Department of Transportation Highway Safety Grant in the amount of \$152,250 on behalf of the Billings Municipal Court for the establishment of an adult misdemeanor DUI court.

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

Billings Municipal Court
Specialty Courts Grants Summary
\$1,125,310.00
November 10, 2008

Billings Municipal Court handles in excess of 30,000 misdemeanor cases per year. The Billings Misdemeanor Drug Court (BAMDC) has been in operation for four years with the capacity of handling fifty participants annually. Under the original **\$450,000** three year Bureau of Justice Assistance funding, twelve or 25% of the clients were admitted for a DUI. The current **\$255,000** Drug Court funding is now through the Montana Supreme Court Administrator's Office. The docket has approximately sixty five participants during each year of the legislative state biennium.

While some of these Drug Court participants have DUI offenses, there are no designated slots for DUI offenders. Therefore, the current Drug Court team seeks to expand the specialty treatment court. Through the Department of Transportation grant of **\$170,895** a one year pilot program for fifty offenders convicted of first through third misdemeanor DUI will be added to the treatment court docket.

In addition, the Team determined that numerous misdemeanor cases are filed involving individuals with mental illness or co-occurring chemical dependency issues. These cases are currently expensively and ineffectively handled on the traditional docket. Under the Bureau of Justice Assistance, three year planning and implementation grant for **\$249,415**, fourteen clients will be added to the treatment court docket in the first year. The subsequent 2 years provide for treatment of 40 and 50 clients respectively.

After careful evaluation, the team has determined with efficient data management and staggered status hearing placement, all three tracks can be handled on a one day treatment court docket. Currently the team spends approximately 5 hours a week on treatment court. Team staffing will continue to be approximately two hours as each client will not be assigned to court every week. Trainings and team planning meetings occur once a month for 1 ½ hours over a lunch hour following treatment court. Each team member also has prep time which can not be discounted however it offsets the time otherwise spent on these individuals in the traditional court system.

Judge Mary Jane Knisely presides over Municipal Court and will handle all three specialty tracks. She is committed to the Treatment Court concept as it adheres to the correctional sentencing policy contained in MCA 46-18-101. Montana's sentencing policies are codified to provide restitution, reparation and restoration to victims, while protecting the public and reducing crime by encouraging opportunity for self improvement, rehabilitation and reintegration of offenders. The DUI grant provides for 100 additional judicial hours or approximately 2 hours weekly for an appointed Judge to preside over traffic offenses, allowing Judge Knisely to expand the Treatment Court.

In conclusion, these cases are not new but simply diverted from the traditional court docket to one where individual needs are the focus. Our program research has shown that proper placement criteria with court structure, intensive case management and probation, corrective treatment applied to each defendant will halt the expensive revolving door. The City soft match thru personnel compared to **\$1,125,310.00** of Federal and State funding is a cost effective way to address clients who have historically drained city resources thru repeated contacts with law enforcement, the medical community, and municipal court.

Section 2. Project Budget

Grant Application for Montana Department of Transportation State Highway Traffic Safety Bureau

A. Personal Services & Benefits	SHTSO/Fed.	Local Match	TOTAL
Additional Judicial Time (\$37.33/hour x 100 hrs/year + fringe benefits \$1,045)	\$ 3,733.00		\$ 4,778.00
Court Coordinator - .5 FTE (\$16.17/hour x 20 hrs/week x 1040 hrs/year + fringe benefits \$6,950)	\$16,817.00		\$23,767.00
Two Police Officers (\$38.93 x 192 hrs/year + fringe benefits \$876.00)	\$ 8,350.00		\$ 8,350.00
Municipal Court Judge Mary Jane Knisely 10% in kind (salary \$92,872 + fringe benefits \$23,992)		\$11,686.00	\$11,686.00
Court Administrator Scott Dobbs 10% in kind (salary \$43,618 + fringe benefits \$15,100)		\$ 5,872.00	\$ 5,872.00
Prosecuting Attorney Melanie Pfeifer 10% in kind (salary \$72,904 + fringe benefits \$20,387)		\$ 9,329.00	\$9,329.00
Law Enforcement Captain T.J. Vladic 10% in kind (salary \$82,825 + fringe benefits \$23,234)		\$10,606.00	\$10,606.00
Law Enforcement Lieutenant Mark Cady 10% in kind (salary \$74,984 + fringe benefits \$21,719)		\$ 9,670.00	\$ 9,670.00
Public Defender Elizabeth Stuckey 10% in kind (salary \$45,835 + fringe benefits \$7,080)		\$ 5,292.00	\$ 5,292.00
<i>Employee Fringe Benefits</i>			
TOTAL	\$28,900.00	\$52,455.00	89,350.00
B. Contracted Services	SHTSO/Fed.	Local Match	TOTAL
Program Evaluator Cary E. Heck, Ph.D. (\$1,000 x 12 mths for 50 clients)	\$12,000.00		\$12,000.00
Probation Officer (\$14.42 x 2080 hrs)	\$30,000.00		\$30,000.00
Licensed Addictions Counselor (\$18.26 x 2080 hrs)	\$38,000.00		\$38,000.00
TOTAL	\$80,000.00		\$80,000.00
C. Paid Media	SHTSO/Fed.	Local Match	TOTAL

We are not requesting paid media	\$0		
TOTAL	\$0		
D. Operating Expenses:			
a) Supplies & Materials	SHTSO/Fed.	Local Match	TOTAL
Scram Unit	\$ 3,800.00		\$ 3,800.00
(\$4.75/day x 20 days x 40 clients)			
EtG Testing	\$31,200.00		\$31,200.00
(\$26.00/day x 2 test/mth for 50 clients)			
UA/BA/BAC and other drug testing		\$30,000.00	\$30,000.00
(Generated participant fees)			
TOTAL	\$35,000.00	\$30,000.00	\$65,000.00
b) Maintenance Supplies & Materials	SHTSO/Fed.	Local Match	TOTAL
Office equipment, postage, supplies	\$2,000.00		\$2,000.00
Rent		\$3,000.00	\$3,000.00
(\$250/mth x 12 mths)			
Telephone, computer, copier, printer, video access		\$5,000.00	\$5,000.00
TOTAL	\$2,000.00	\$8,000.00	\$10,000.00
E. Other Direct Costs:			
a) Travel Expenses	SHTSO/Fed.	Local Match	TOTAL
Team Travel for Training	\$4,000.00		\$4,000.00
(4 members of the team x \$1,000/member)			
Cary E. Heck, Ph.D.	\$2,400.00		\$2,400.00
(airfare/mileage, lodging, per diem)			
Bus tickets		\$4,500.00	\$4,500.00
(\$15/ticket x 12 mths x 25 clients)			

	TOTAL	\$6,400.00	\$4,500.00
b) Equipment Purchases	SHTSO/Fed.	Local Match	TOTAL
We are not requesting equipment purchases	\$0		
	TOTAL	\$0	
F. Indirect Costs	SHTSO/Fed.	Local Match	TOTAL
We are not requesting indirect costs	\$0		
	TOTAL	\$0	
Total Project Budget -- <i>Combined totals for all columns</i>	\$152,300.00	\$94,955.00	\$255,250.00
SHTSO Share of Project Budget <u>62</u> %	62%	38%	100%

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Resolution Expanding the N. 27th Street Urban Renewal Area - 2008, Declaring Blight, Intent to Expand the Area and Setting a Public Hearing

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council will consider adopting a resolution that is the first step toward expanding the present N. 27th Street Urban Renewal Area (District). The resolution declares the Council's intention to expand the district, describes the property involved and the blighting conditions, sets a public hearing for November 24, 2008, and directs staff to make the necessary public notifications. It is important that the district be expanded this calendar year in order to take advantage of the property improvements that have taken place in 2008 and the resulting higher taxable value. It is that increase in taxable value that produces the tax increment that is needed to complete the public improvement projects anticipated by the modified plan. The Council must act at this meeting because, in order to comply with new Department of Revenue (DOR) Rules, the expansion and all documentation must be reported and submitted to the DOR by February 1, 2009.

ALTERNATIVES ANALYZED: Expanding this district is discretionary. The City Council may:

- adopt the resolution as the first step toward creating the proposed expanded district
- modify the resolution and proposed boundary
- not approve the resolution

FINANCIAL IMPACT: The financial impact is unknown. However, the taxable value is approximately \$3.5 million. All of the expansion area was in the 1976 Downtown Urban Renewal Area that expired in 2008. The taxable value in that district doubled between 1976 and 2008, despite numerous statewide reappraisals and the Legislature's objective to flatten or reduce local government property tax collections. The purpose of an urban renewal and tax increment district is for the city to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private

investment would not occur, thus there is no “loss” of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value and that value would not increase without the investments in public facilities.

RECOMMENDATION

Staff recommends that Council adopt the resolution that declares the Council’s intention to expand the N. 27th Street Urban Renewal Area, including tax increment authority, describes the property involved and the blighting conditions, sets a public hearing for November 24, 2008 and directs staff to make the necessary public notifications.

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

ATTACHMENTS

A: Resolution

INTRODUCTION

The Council will consider adopting a resolution that is the first step toward expanding the present N. 27th Street Urban Renewal Area (District). The resolution declares the Council's intention to expand the district, describes the property involved and the blighting conditions, sets a public hearing for November 24, 2008, and directs staff to make the necessary public notifications. It is important that the district be expanded this calendar year in order to take advantage of the property improvements that have taken place in 2008 and the resulting higher taxable value. It is that increase in taxable value that produces the tax increment that is needed to complete the public improvement projects anticipated by the modified plan. The Council must act at this meeting because, in order to comply with new Department of Revenue (DOR) Rules, the expansion and all documentation must be reported and submitted to the DOR by February 1, 2009.

PROCEDURAL HISTORY

- Downtown Billings Partnership makes two presentations about the expansion at Council work sessions
- Resolution of Intent and statement of blight – November 10, 2008
- Public Hearing and Ordinance adoption – November 24, 2008
- 2nd reading Ordinance – December 15, 2008
- Notice and document submittal to DOR – January 16, 2009
-

BACKGROUND

Twice this year, the Council heard presentations on expanding the existing N. 27th Street tax increment district. The Downtown Billings Partnership (DBP) took the lead and wrote an urban renewal plan amendment for this area of the central downtown that expands the existing N. 27th Street district that was created in 2005 and amended in 2006. The area is roughly bounded by N. 22nd Street, 6th Avenue North, N. 31st Street and 1st Avenue South. A more exact boundary description is included in the plan and the attached resolution.

In order to create an urban renewal district and use tax increment financing for some or all of the public improvements, cities must adopt a resolution that describes the area, identifies the conditions that create blight, state its intention to create a new district or expand one and set a public hearing on the plan. The attached resolution satisfies that requirement. If the resolution is approved, staff will publish the notice of public hearing and send it to all property owners in the proposed district expansion. On November 24 the Council will conduct a public hearing and consider the ordinance that adopts the plan, expands the boundary and allows the City to use tax increment financing for public improvements.

ALTERNATIVES ANALYSIS

The City Council may approve or disapprove the resolution and it may alter the proposed boundaries. Approving the resolution is the first step toward expanding the N. 27th Street district. It will be created only after a public hearing and the Council's approval of the urban renewal plan by ordinance.

STAKEHOLDERS

- The DBP initiated this project and endorses it.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy is one requirement for adopting an urban renewal plan. Growth Policy compliance is outlined in the body of the urban renewal plan. The Yellowstone County Board of Planning will review the plan and comment on its conformance to the growth policy. That statement is a requirement of law and the DOR rules.

RECOMMENDATION

Staff recommends that Council adopt the resolution that declares the Council's intention to expand the N. 27th Street Urban Renewal Area, including tax increment authority, describes the property involved and the blighting conditions, sets a public hearing for November 24, 2008 and directs staff to make the necessary public notifications.

ATTACHMENTS

A: Resolution

ATTACMENT A

RESOLUTION NO. 08 _____

A RESOLUTION RELATING TO THE MODIFICATION OF THE URBAN RENEWAL PLAN OF THE NORTH 27TH STREET URBAN RENEWAL AREA; CALLING A PUBLIC HEARING ON THE PROPOSED EXPANSION OF THE NORTH 27TH STREET URBAN RENEWAL AREA AND THE PROPOSED ADOPTION OF A MODIFIED URBAN RENEWAL PLAN INCLUDING A TAX INCREMENT PROVISION.

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), the City of Billings, Montana (the “City”) is authorized, among other things, to create urban renewal areas; to prepare, adopt and modify urban renewal plans; to undertake urban renewal projects therein; to provide in such plans for the segregation and collection of tax increment with respect to property taxes collected in such areas; to issue its bonds to pay all or a portion of the costs of such projects; and to pledge to repayment of the bonds the tax increment and other revenues derived from the urban renewal projects.

WHEREAS, this Council desires to conduct a public hearing on a proposal to modify the North 27th Street Plan by adopting the Urban Renewal Plan of the Expanded North 27th Street District Urban Renewal Area - 2008 (“Modified Plan”), and amending the boundaries of the North 27th Street District Urban Renewal Area (hereinafter the “2008 Expansion Property”) and adding said 2008 Expansion Property to the North 27th Street District, thereby establishing a modified urban renewal area to be designated as the Expanded North 27th Street District Urban Renewal Area – 2008 (hereafter the “Expanded North 27th Street District - 2008” or “the District”), and to undertake urban renewal projects therein, all as authorized by the Act.

WHEREAS, an opportunity has been presented to the City that makes it desirable for the City to consider urban renewal projects within the Expanded North 27th Street District - 2008 consisting of demolishing certain blighted structures within the district; improving such properties with new construction, landscaping, utilities, and other similar improvements; and making the properties so improved available for private redevelopment in accordance with the Act (the “Projects”). Development proposals to be considered for funding will include mixed-use facilities. The Projects could also include building renovations and the construction or expansion of City owned parking structures within the District. The Projects may be financed in part from the proceeds of tax increment urban renewal bonds (the “Bonds”).

WHEREAS, the District is legally described on the attached Exhibit A (which is hereby incorporated in this resolution and made a part hereof). In order to provide the public support deemed necessary to encourage the redevelopment of the District by private enterprise through the undertaking of Projects, which are proposed to be financed in part through tax increment generated from the District, it is necessary to add the 2008 Expansion Property to the North 27th Street District to establish a modified urban renewal area under the Act.

WHEREAS, as a condition to approving an Ordinance to add the 2008 Expansion Property to the North 27th Street District, the Act requires that a public hearing be held after appropriate notice to consider the proposed Ordinance, and this Council wishes to provide such notice by virtue of the present Resolution.

WHEREAS, the Modified Plan contains a tax increment provision and it is proposed that the tax increment derived from the District be segregated and applied to pay costs of Projects or be pledged to secure the Bonds that the City will issue to finance a portion of the costs of the Projects, as provided in Sections 7-15-4282 through 7-15-4293 of the Act.

NOW, THEREFORE, the City Council of the City of Billings, Montana, declares and resolves as follows:

1. Public Hearing. A public hearing is hereby called and shall be held on November 24, 2008 at 6:30 p.m. in the Council Chambers at 220 N. 27th Street, on the expansion and modification of the North 27th Street District to establish the Expanded North 27th Street District - 2008, the adoption of the Modified Plan, the undertaking of the Projects, and the issuance of the Bonds to finance a portion of the costs thereof.

2. Determination of blight. A requirement of the Act is to justify creating an urban renewal area through the determination of *blight*. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

- a) the substantial physical dilapidation, deterioration, age obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or nonresidential;
- (b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- (c) inappropriate or mixed uses of land or buildings;
- (d) high density of population and overcrowding;
- (e) defective or inadequate street layout;
- (f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (g) excessive land coverage;

- (h) unsanitary or unsafe conditions;
- (i) deterioration of site;
- (j) diversity of ownership;
- (k) tax or special assessment delinquency exceeding the fair value of the land;
- (l) defective or unusual conditions of title;
- (m) improper subdivision or obsolete platting;
- (n) the existence of conditions that endanger life or property by fire or other causes; or
- (o) any combination of the factors listed above

Much of the 2008 Expansion Property is blighted or contributes to blight in the area. Within the proposed District there is substantial building and public improvement deterioration, land vacancy or underutilization and obsolete platting. Some of the commercial buildings are vacant and/or deteriorated. Sidewalks and curbs need replacement and alleys are deteriorated. Public parking in areas that are most appropriate for redevelopment is inadequate. Most of the lots are 25' by 140' and are undersized for modern buildings. Diversity of ownership prevents cohesive and comprehensive redevelopment.

3. Intent to Create an Urban Renewal Area with Tax Increment Authority. Pursuant to the Act and considering the blighted conditions cited above, the City Council declares its intention to expand the N. 27th Street Tax Increment District and that public improvements that will stimulate private investment in the area may be financed in part through tax increment generated from the District, subject to a public hearing and adoption of the draft urban renewal plan by ordinance.

4. Form of Notice. The notice of the public hearing shall be in substantially the following form:

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of the City of Billings, Montana (the "City") will hold a public hearing on November 24, at 6:30 p.m., M.S.T., at the City Council Chambers in the City Hall/Police Facility, 220 N. 27th Street, Billings, Montana, on the proposed addition of property to the existing North 27th Street District Urban Renewal Area to form the Expanded North 27th Street District Urban Renewal Area - 2008 (hereafter the "Expanded North 27th Street District - 2008"); the adoption of a modified urban renewal plan containing a tax increment provision; and the approval of urban renewal projects to encourage the private redevelopment of such property, to be financed in part by the issuance of urban renewal bonds of the City, all in accordance with Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

In general terms the proposed Expanded North 27th Street District - 2008 would include downtown property and the district would have the following legal description:

Beginning at a point at the intersection of the centerlines of 6th Avenue North and North 31st St. proceeding east along the centerline of 6th Ave. North to a point at the intersection of the centerlines of 6th Avenue North and N. 22nd Street proceeding south along the centerline of North 22nd Street, crossing the centrally assessed Burlington Northern Railroad property, to a point at the intersection of South 22nd Street and Minnesota Avenue proceeding west along the centerline of Minnesota Avenue to a point at the intersection of Minnesota Avenue and South 23rd Street proceeding south along the centerline of South 23rd Street to a point at the intersection of South 23rd Street and 1st Avenue South proceeding west along the centerline of 1st Avenue South to a point at the intersection of the centerlines of 1st Avenue South and South 31st Street proceeding north along the centerline of South 31st Street, crossing the centrally assessed Burlington Northern Railroad property, to the starting point at the intersection North 31st Street and 6th Avenue North encompassing all parcels and tax codes therein.

Interested persons may appear and will be heard at the public hearing at the time and place stated above or they may file written comments with the City Clerk prior to the date of such hearing. Further information regarding the proposal, including a draft of the modified urban renewal plan and the proposed adopting ordinance, is on file and available for public inspection in the office of the City Clerk at City Hall. Further information regarding the proposal may also be obtained from Assistant City Administrator Bruce McCandless by calling 406-657-8222 or emailing mccandlessb@ci.billings.mt.us.

Dated: November 10, 2008

Publication Dates: November 13, 2008
 November 20, 2008

5. Publication and Mailing of Notice. The City Clerk is hereby authorized and directed to cause notice of the public hearing, substantially in the form set forth in Section 2, to be published in the *Billings Times* at least once a week for two consecutive weeks prior to the date set for the hearing, the first such notice being given at least ten (10) days before the date of the hearing, excluding the date of publication, and to mail notice of such hearing not less than 10 days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contract for the deed of the Property, at the addresses shown on the tax roll.

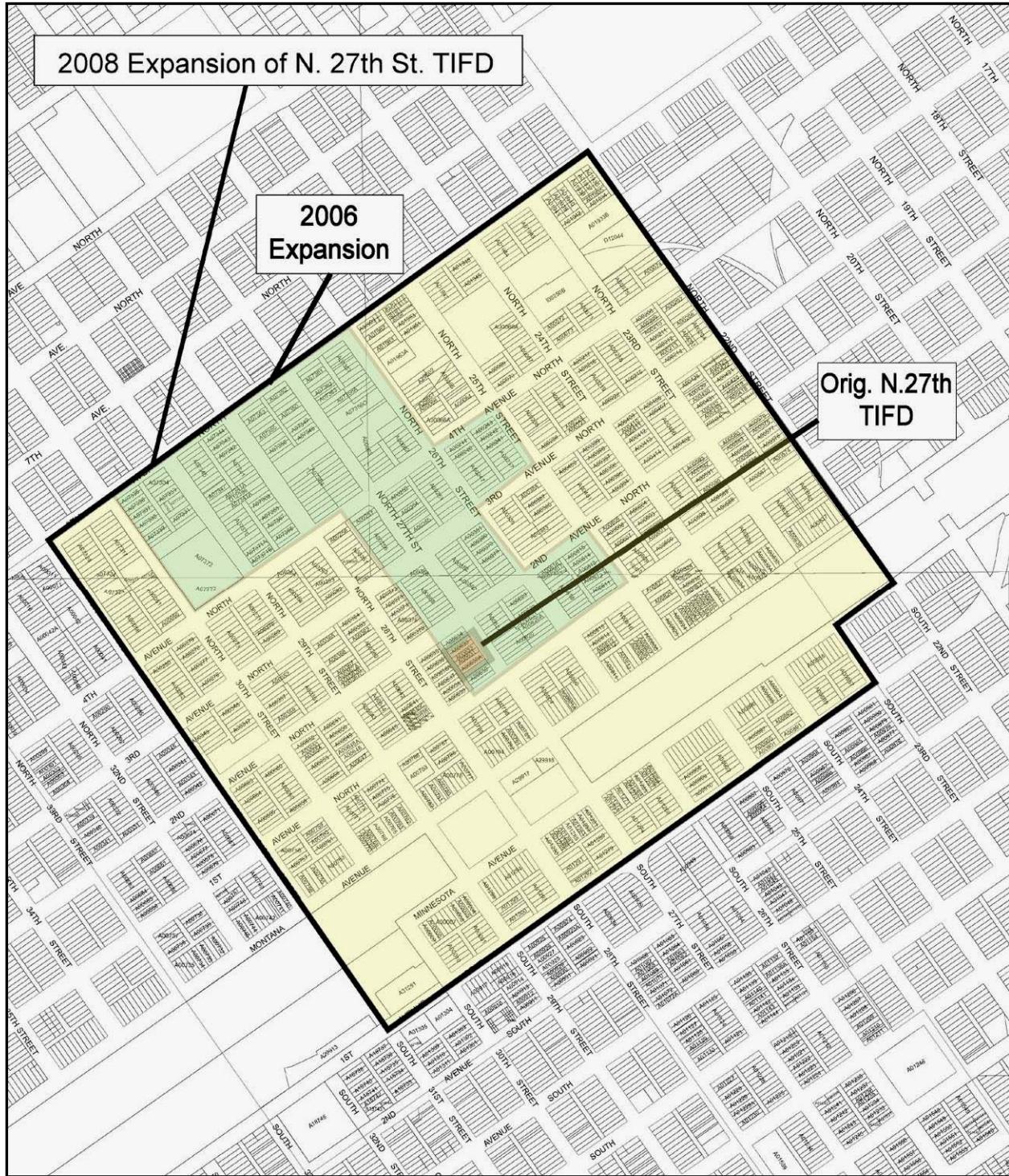
APPROVED AND PASSED by the City Council of the City of Billings this 10th day of November, 2008.

CITY OF BILLINGS:

BY: _____
Cari Martin, City Clerk

BY: _____
Ron Tussing, Mayor

Exhibit A



K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Modify the District, and Setting a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The Council will consider adopting a resolution to modify the South Billings Boulevard Urban Renewal District created on May 12, 2008. The resolution declares the Council's intention to modify the district, including tax increment authority, describes the property involved and the blighted conditions, sets a public hearing for November 24, 2008, and directs staff to make the necessary public notifications.

ALTERNATIVES ANALYZED: Modifying this district is discretionary. The City Council may:

- not approve the resolution
- modify the proposed boundary
- adopt the resolution as the first step toward modifying the proposed district

FINANCIAL IMPACT: The financial impact is unknown. However, the 2008 taxable market value of the three properties to be included in the modified TIFD is approximately \$207,500. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

RECOMMENDATION

Staff recommends that Council adopt the resolution that declares the Council's intention to modify the South Billings Boulevard Urban Renewal District, including tax increment authority, describes the properties involved and the blighted conditions, sets a public hearing for November 24, 2008, and directs staff to make the necessary public notifications.

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

ATTACHMENTS:

A: Resolution

INTRODUCTION

The Council will consider adopting a resolution to modify the South Billings Boulevard Urban Renewal District created on May 12, 2008. The resolution declares the Council's intention to modify the district, including tax increment authority, describes the property involved and the blighted conditions, sets a public hearing for November 24, 2008, and directs staff to make the necessary public notifications.

PROCEDURAL HISTORY

- On April 26, 2007, Planning Division staff attended the Southwest Corridor Task Force to discuss and answer questions on urban renewal districts and tax increment financing.
- May through August, 2007, Planning Division staff attended monthly Southwest Corridor Task Force meetings to continue discussions on the urban renewal district and to gather input from residents on potential public improvement projects.
- On August 30, 2007, Planning Division staff mailed 2,032 letters of invitation to property owners to two public meetings on the urban renewal district.
- On September 13, 2007, the first public meeting was held to discuss the urban renewal district and tax increment financing to property owners. In addition, property owners identified potential public improvement projects within the district.
- On October 11, 2007, the second public meeting was held to review the draft urban renewal plan for the district.
- On October 23, 2007, Yellowstone Planning Board voted on a 6-0 vote to recommend approval of the South Billings Urban Renewal Plan with corrections to the Billings City Council.
- On November 5, 2007, City Council at its work session heard a presentation and discussion on the South Billings Boulevard Urban Renewal Plan and District.
- On November 13, 2007, City Council considered and passed a Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Create the District and Setting a Public Hearing.
- On November 26, 2007, City Council conducted a public hearing and first reading of an ordinance to create the district.
- On December 10, 2007, City Council adopted on the ordinance on second and final reading. The ordinance became effective 30 days.
- On March 10, 2008, City Council adopted a resolution that corrected the legal description of the South Billings Boulevard Urban Renewal District Area. This resolution amended Resolution 07-18687.
- On or around March 20, 2008, the Planning Division realized an error in the public notification process.
- On March 25, 2008, the Yellowstone County Planning Board on a 7-0 vote reaffirmed its recommendation of approval of the South Billings Urban Renewal Plan to the Billings City Council.
- On April 14, 2008, City Council considered and passed a Resolution on the South Billings Boulevard Urban Renewal District Area, Declaring Blight, Intent to Create the District and Setting a Public Hearing.

- On April 28, 2008, City Council conducted a public hearing and first reading of an ordinance to create the district.
- On May 12, 2008, City Council considered the ordinance on second and final reading. If approved, the ordinance will become effective in 30 days.
- On November 12, 2008, the Yellowstone Board of Planning will act on a recommendation to the City Council as to the modified Urban Renewal Plan's consistency with the Growth Policy.

BACKGROUND

The South Billings Boulevard Urban Renewal District Area was created on May 12, 2008. Since its creation, a 4.3-acre parcel along King Avenue East, and a 54-acre property along the South Frontage Road were annexed to the City. These properties, and a vacant residential property on Washington Street, are adjacent to the existing District. The property located east of Washington meets the statutory definition of blight because it is not served by municipal water and may be considered in a condition that endangers life or property. The properties along King Avenue East and South Frontage Road contain an inappropriate mix of land uses for the zoning districts in which they are located. The City desires to improve the quality of land use and economic development potential of these properties by including them in the South Billings Boulevard Urban Renewal District Area.

ALTERNATIVES ANALYSIS

The City Council may approve or disapprove the resolution and it may modify the boundaries. The district will be modified only after a public hearing and the Council's approval of the urban renewal plan by ordinance.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy is one requirement for adopting an urban renewal plan. Growth Policy compliance is outlined in the body of the urban renewal plan.

STAKEHOLDERS

The owners of the properties to be included in the modified South Billings Boulevard Urban Renewal District Area were contacted about the modifications to the District. None of the owners objected. The owners will be officially notified in accordance with 7-15-4215, MCA, of the public hearing on the modified Urban Renewal Plan to be held November 24, 2008.

RECOMMENDATION

Staff recommends that Council adopt the resolution that declares the Council's intention to modify the South Billings Boulevard Urban Renewal District, including tax increment authority, describes the properties involved and the blighted conditions, sets a public hearing for November 24, 2008, and directs staff to make the necessary public notifications.

ATTACHMENTS:

A: Resolution

ATTACHMENT A

RESOLUTION NO: 08-

A RESOLUTION DECLARING THE CITY COUNCIL INTENT TO MODIFY THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT WITH TAX INCREMENT AUTHORITY; DECLARING THE EXISTENCE OF BLIGHT WITHIN THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; SETTING A PUBLIC HEARING DATE; AND REQUIRING PUBLICATION AND MAILING OF THE NOTICE OF HEARING

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), the City of Billings, Montana (the "City") is authorized, among other things, to identify and declare an area as containing blight with the intention of eliminating it through urban renewal; and

WHEREAS, the City is authorized by the Act to modify urban renewal areas with tax increment provisions by adopting a revised urban renewal plan by ordinance; and

WHEREAS, a revised urban renewal plan has been prepared for the proposed South Billings Boulevard Urban Renewal District; and

WHEREAS, the City Council desires to conduct a public hearing on the draft modified urban renewal plan for the proposed South Billings Boulevard Urban Renewal District to determine if it is desirable to modify the district.

NOW, THEREFORE, the City Council of the City of Billings, Montana, declares and resolves as follows:

1. Description of Proposed Modified District The area being considered for inclusion in the proposed modified urban renewal area is described as:

Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to the intersection of the centerline of Washington Street and the extension of the northern boundary of Lot 7, Willis Subdivision, extending east along said boundary to the eastern boundary of said lot, extending south along said boundary to the southern boundary of said lot,

extending westerly along said boundary and its extension to the centerline of Washington Street, extending north to the existing City of Billings city limit boundary, extending southerly and westerly along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street and its projection across the Interstate 90 right-of-way, to its intersection with South Frontage Road, thence in a westerly direction following the south right-of-way boundary of the South Frontage Road to the intersection of an extension of the east boundary of Riverfront Business Park Subdivision , extending south along eastern boundary of said subdivision to the south boundary of said subdivision, extending southerly and westerly along said boundary to the west boundary of said subdivision, extending northerly and easterly along said boundary and its extension to the south right-of-way boundary of South Frontage Road, extending westerly to the northeast corner of Lot 1, Block 1, Willowbrook Subdivision, thence in a southerly and westerly direction following the existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of Block 4 of Weil Subdivision to the intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to its intersection with State Avenue, extending northeast and east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary. A map of the modified South Billings Boulevard Urban Renewal District is included in Exhibit A.

2. Determination of blight. A requirement of Montana Annotated Code 2005 is to justify an urban renewal plan through the determination of *blight*. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

- the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
- inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- inappropriate or mixed uses of land or buildings;
- defective or inadequate street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

- unsanitary or unsafe conditions;
- deterioration of site;
- improper subdivision or obsolete platting;
- the existence of conditions that endanger life or property by fire or other causes;

The properties in the proposed modified district may be considered blighted. At this time, one of the properties is located within The Entryway General Commercial Zoning District, a district that provides for harmonious land design and quality site planning, which will produce a more desirable and attractive environment. Furthermore, the intent of the Entryway District is to promote attractive, high quality development, to provide an appealing image of the City of Billings, to the traveling public and also the community. The single structure currently located on the property is a small residence and was built in 1925. The property is large enough and zoned to accommodate a more appropriate land use. Another property is located in the Controlled Industrial Zoning District. This zone is intended for a variety of business, warehouse and light industrial uses. The property has been vacant, is very large, and is situated near the Interstate highway. While initial construction on a portion of the property is underway, the past land use has not been appropriate for the zoning and the property is expected to be improved and further developed if it is included in the district. The last property is located in a residential zone and because of its size has potential for multi-family dwelling units or multiple, single family dwelling units. The development potential cannot be realized because this property is not served by City water. The lack of municipal water is both a health and safety concern because it contributes to a substandard, unsanitary condition.

3. Intent to Modify an Urban Renewal Area with Tax Increment Authority.

Pursuant to the Act and considering the blighted conditions cited above, the City Council declares its intention to modify the South Billings Boulevard Urban Renewal Area and that public improvements that will stimulate private investment in the area may be financed in part through tax increment generated from the District, subject to a public hearing and adoption of the draft modified urban renewal plan by ordinance.

4. Public Hearing. A public hearing is hereby called and shall be held on November 24, 2008 at 6:30 p.m. in the Council Chambers at 220 N. 27th Street, on whether to adopt the draft modified urban renewal plan for the proposed South Billings Boulevard Urban Renewal Area.

5. Publication and Mailing of Notice. The City Clerk is hereby authorized and directed to cause notice of the public hearing to be published in the *Billings Times* at least once a week for two consecutive weeks prior to the date set for the hearing and to mail notice of such hearing not less than 10 days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contract for the deed of the Property, at the addresses shown on the tax roll.

APPROVED AND PASSED by the City Council of the City of Billings this 10th day of November, 2008.

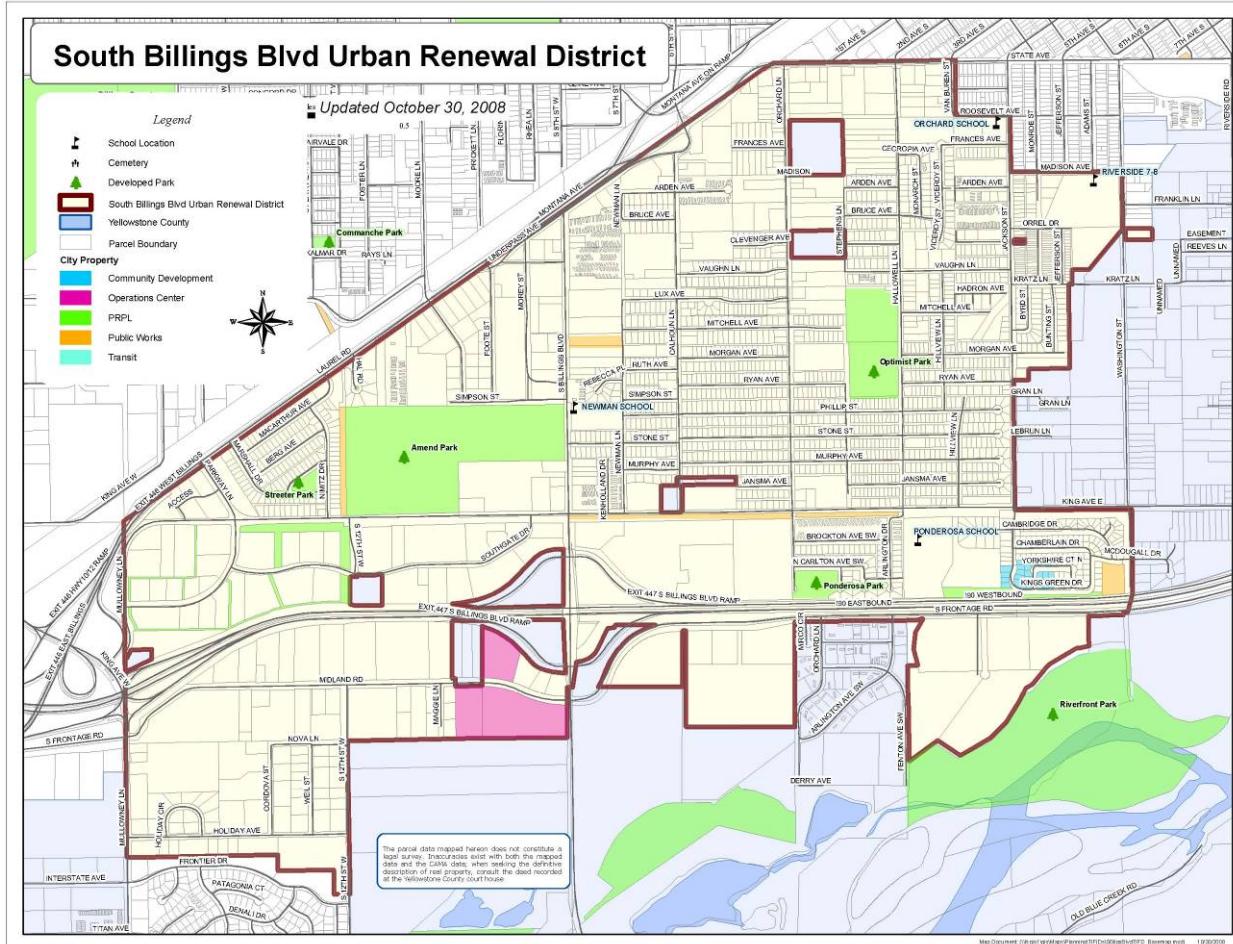
CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

EXHIBIT A





AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Second Reading for Zone Change #849: Master Site Plan Review Process for Condominiums and Multi-Unit Developments – Amending Section 27-201, Section 27-310 (b), and Section 27-622 BMCC

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Section 27-622 of the Unified Zoning Regulations specifies how condominium developments are reviewed and approved within the Unified Zoning Jurisdiction. The main intent of this section of the code is to ensure that condominium developments are in compliance with the zoning regulations in place on the property where the condominium project is proposed. However, condominium developments also must meet all applicable site development, building code, and fire safety regulations as per Sections 6-1200 and 14-300 of the Billings Municipal Code, and coordination for compliance must occur between all City departments. This same department coordination issue occurs with new multi-unit developments in the City. Multi-unit developments may be commercial or residential condominium developments, or large commercial or residential projects on a single lot that include common, private facilities shared by buildings or lots. This text amendment aims to coordinate City review of these multi-unit projects to make the review and permitting process more efficient. The City Zoning Commission held a public hearing on the amendment on October 7, 2008, and voted 5-0 to recommend approval to the City Council. The City Council held a public hearing on October 27, 2008, and approved the zone change on first reading.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on October 7, 2008. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendment.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the new zoning regulation.

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #849.

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

ATTACHMENTS:

A: Ordinance

Attachment A – Ordinance ZC #849

ORDINANCE NO. 08-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 27-201, 27-310 (b), and 27-622; AMENDMENTS TO CHAPTER, MASTER SITE PLAN REVIEW PROCESS FOR CONDOMINIUMS AND MULTI-UNIT DEVELOPMENTS, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Sections 27-201, 27-310 (b), and 27-622 to add new language to read as follows:

SEC. 27-201. AMENDMENTS TO CHAPTER.

MULTI-UNIT DEVELOPMENTS:

- Condominium or Commercial development projects that include common, private facilities shared by buildings or lots.
- Residential developments that have more than two dwelling units and include common, private facilities shared by buildings or lots.

SEC. 27-310 (b). AMENDMENTS TO CHAPTER.

Section 27-310. Supplemental Area, Yard and Height Restrictions

- (a) **Building Groups.** In any residential or agricultural district, more than one (1) principal structure housing a permitted use may be located on a single lot or combination of lots provided that:
- (1) Area requirements are met for each structure as though it were on an individual lot;
 - (2) A minimum of ten (10) feet is maintained between principal structures;
 - (3) Side yard setbacks are provided between adjacent properties as required in the district;
 - (4) Principal structures are setback from alleys a minimum of twenty (20) feet; and
 - (5) Front yard setbacks as required in the district are provided on side streets when a side street frontage exceeds one hundred and fifty (150) feet.
 - (6) The requirements of Section 27-622 are met where applicable for condominium and multi-unit developments.

SEC. 27-622. AMENDMENTS TO CHAPTER.

Sec. 27-622. New Condominiums and Multi-Unit Developments.

New Condominiums and Multi-Unit Developments are allowed in all zoning districts if they meet all applicable zoning district requirements, and supplementary general provisions, site development, building and fire safety regulations as per Sections 6-1200, 14-300, 27-622 and 27-623 of the Billings Municipal Code, and supplementary general provisions. Projects subject to these regulations include condominium or commercial development projects that include common, private facilities shared by buildings or lots, and residential developments that have more than two dwelling units and include common, private facilities shared by buildings or lots.

Prior to filing a condominium Declaration of Unit Ownership with the County Clerk and Recorder, or applying for building permits for the multi-unit development, the owner(s) shall submit to the Zoning Coordinator zoning coordinator Planning Division:

- (1) A City approved master site plan showing the dimensions of the lot(s) containing the condominium units or multiple commercial units and the location and dimensions of all buildings containing the units. ~~or an approved building permit.~~
- (2) ~~A master landscape plan or approved building permit.~~ (2) A master landscape plan or an approved building permit.

| (3) (2) A copy of the Declaration of Unit Ownership if creating a condominium.

Only after determining that the condominium or multi-unit development project has a City approved master site plan, as required in Section 1 above, that complies with the applicable zoning district requirements, and supplementary general provisions, site development, building and fire safety regulations as per Sections 6-1200, 14-300, 27-622, and 27-623 of the Billings Municipal Code and supplementary general provisions will the zoning coordinator Planning Division issue a condominium Certificate of Compliance or approve a building permit.

For condominiums, the The Certificate of Compliance will be filed with the County Clerk and Recorder prior to recording the Declaration of Unit Ownership. The Certificate shall state:

1. The legal description of the property.
2. The condominium units are exempt from 76-3-203, MCA because they comply with zoning, or in the case of new development, comply with zoning based on the City approved master site plan and landscaping plans.
3. Any changes to the City approved Master Site site or landscaping pPlans or landscaping plans must be reviewed by the City through the Planning Division Department.

Section 4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 6. 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, October 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading, November 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk
(ZC #849 – Text Amendment Master Site Plan Review Section 27-201, 27-310(b) and 27-622)

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, November 10, 2008

TITLE: Exempt Plat for Amended Lots 1-A and 15-A, Block 2, Southgate Subdivision, 1st Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On September 29, 2008, Engineering, Inc, on behalf of Mark Rite Holding Company, LLC, submitted an exempt plat for a boundary line relocation for Amended Lots 1-A and 15-A, Block 2, Southgate Subdivision, 1st Filing. The subject property is located on the northeast corner of Parkway Lane and Southgate Drive. The subject property is zoned Planned Development (PD) with an underlying zoning of Highway Commercial (HC).

ALTERNATIVES ANALYZED: Pursuant to Section 76-3-207(1)(d), MCA, certain divisions of land, which would otherwise constitute a subdivision, are exempt from local subdivision review, provided that they meet the criteria of the exemption being requested. In this case, a boundary line adjustment is being requested in order to combine the original parcel with the recently rezoned parkland parcel owned by the city. The plat requires the mayor's signature and is therefore, on the Council agenda.

FINANCIAL IMPACT: The business on the adjacent property will most likely expand and may increase revenues for the city.

RECOMMENDATION

Pursuant to Section 76-3-207(1)(d), staff recommends that the City Council approve the exempt plat for a boundary line relocation.

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

On September 29, 2008, Engineering, Inc, on behalf of Mark Rite Holding Company, LLC, submitted an exempt plat for a boundary line relocation for Amended Lots 1-A and 15-A, Block 2, Southgate Subdivision, 1st Filing. The subject property is located on the northeast corner of Parkway Lane and Southgate Drive. The subject property is zoned Planned Development (PD) with an underlying zoning of Highway Commercial (HC).

BACKGROUND

On May 27, 2008, the City Council approved a zone change from PD-Public to PD-HC for the subject property. The property proposed for the boundary line adjustment was originally set-aside as parkland to buffer the residential property north of King Avenue East and provide a park walking area between lots. The property that runs along King Avenue East has been landscaped and is owned and maintained by the city through a Parks Maintenance District. The piece of parkland that was subject to the zone change runs north and south between two commercial properties and has never been developed as a park. MRL Equipment Company owns the property that is located immediately west of this city owned parcel. MRL Equipment Company is a pavement striping machine assembly company and would like to purchase this parcel of land for future expansion of its parking lot or building.

RECOMMENDATION

Pursuant to Section 76-3-207(1)(d), staff recommends that the City Council approve the exempt plat for a boundary line relocation.



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Final Plat of Emma Jean Heights Subdivision, 1st Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Emma Jean Heights Subdivision, 1st Filing, is being presented to Council for approval. On July 23, 2007, the City Council conditionally approved 37 lots on approximately 13.2 acres for single-family residential development. The subject property is located on the west side of Bitterroot Drive, south of Wicks Lane in the Heights. The property is zoned R-7000. The owner and subdivider is Charlie Felton of Felton Associates, Inc., and the representing agent is HKM Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Emma Jean Heights Subdivision, 1st Filing.

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

ATTACHMENT

A: Plat

N2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 10, 2008

TITLE: Final Plat of Amended Lot 3, Block 2, William D. Pierce Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 3, Block 2, William D. Pierce Subdivision is being presented to Council for approval. On September 8, 2008, the City Council conditionally approved three lots on approximately 15.35 acres for commercial and industrial development. The subject property is zoned Entryway Light Industrial and is located on the southeast corner of the intersection of Shiloh Road and Pierce Parkway. The owner is Pierce Buildings, LLP and Engineering, Inc. is the agent.

The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Lot 3, Block 2, William D. Pierce Subdivision.

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

ATTACHMENT

A: Final Plat

Attachment A -- Subdivision Plat

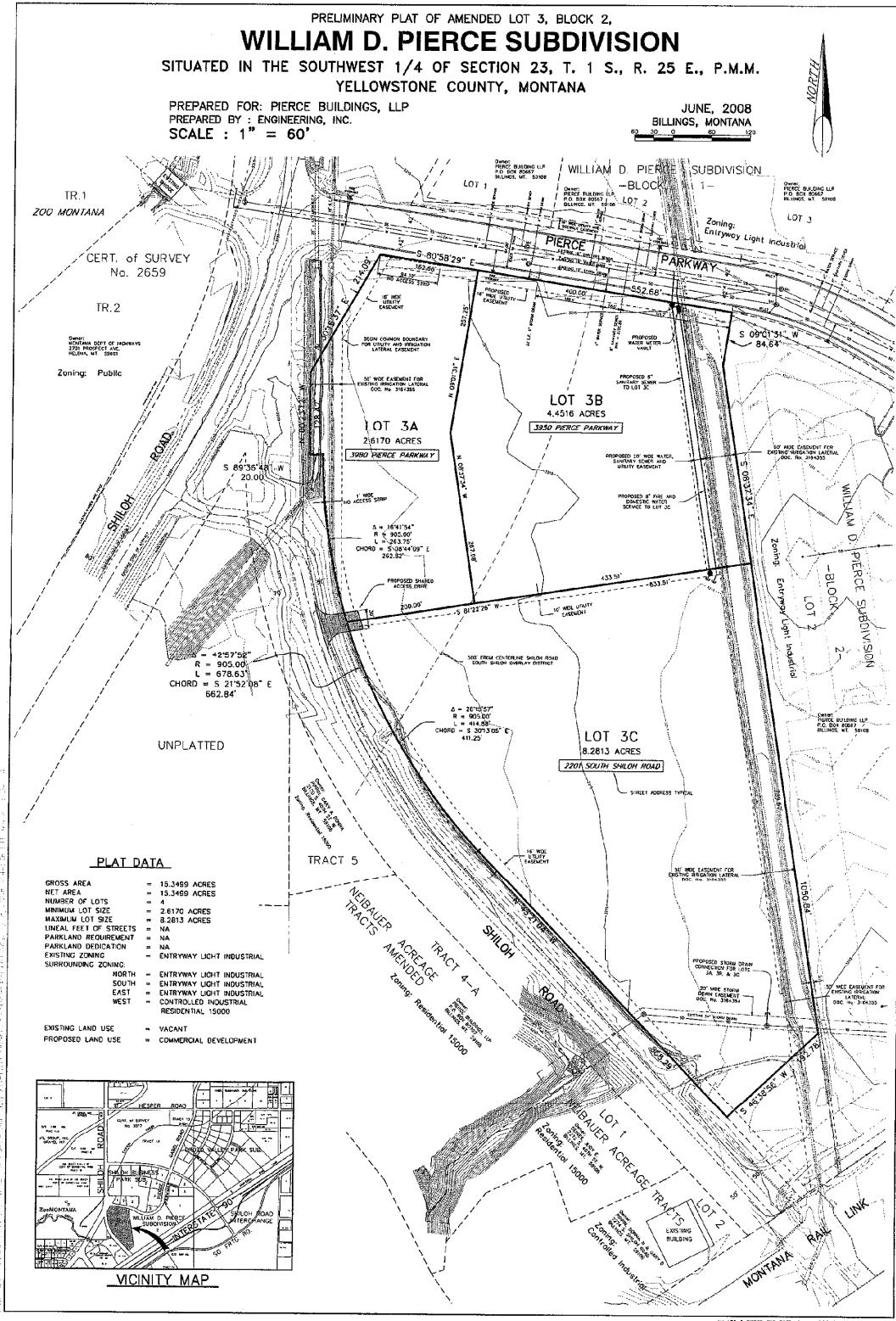
PRELIMINARY PLAT OF AMENDED LOT 3, BLOCK 2,
WILLIAM D. PIERCE SUBDIVISION

SITUATED IN THE SOUTHWEST 1/4 OF SECTION 23, T. 1 S., R. 25 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: PIERCE BUILDINGS, LLP
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 60'

JUNE, 2008
BILLINGS, MONTANA

NORTH



AGENDA ITEM: **O**



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Final Plat of Romero Subdivision—Request to Delay Action
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: It is recommended that the Council delay action on the final plat for Romero Subdivision. On October 27, 2008, City Council voted to approve a 2-week delay on Council action for this proposed subdivision plat to allow for final paperwork to be submitted. Since that time, staff has been informed by the subdivider's agent that a longer delay will be necessary. No "date certain" is known at this time.

This subdivision will create 2 lots at the southwest corner of State Avenue and Van Buren Street. The property currently has a single-family home and a Mexican restaurant located on it. The subdivision will split the two uses. The property is zoned R-9600 and Neighborhood Commercial. The subdivider is Guy and Lloyd Romero and the representing agent is Harlan Lund.

FINANCIAL IMPACT: There are no known financial impacts to the City should the City Council delay action on the final plat as recommended.

RECOMMENDATION

Staff recommends that the City Council delay action on the final plat of Romero Subdivision until a future date unknown.

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

ATTACHMENT

A: Plat

P1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 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 \$1,466,114.10 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 10, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

P2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 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 \$2,936,131.95 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 17, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, NOVEMBER 10, 2008

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting First Quarter Budget Amendments for Fiscal Year 2008/2009

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: First Quarter Budget amendments are requested for the following:

1. The Development Services Grant Writing Fund expenditure budget will increase \$5,000. There is \$5,000 cash from FY08 to pay for these expenditures.
2. The Parking Fund's budget will increase \$394,500 for re-budgeted garage painting. There were no bids received in FY08, so the process was repeated in FY09 and a contract awarded. Unencumbered cash balance will be used to pay for the painting.
3. Facilities Management Fund had an FY08 project that was not bid. Concrete aprons for the BOC will need to be re-budgeted in FY09. Unencumbered cash balance will be used to pay for the aprons.
4. Aquatic Fund had an FY08 study that was not started. The Aquatics Study needs to be re-budgeted in FY09. Unencumbered cash balance will be used to pay for the study.
5. The Storm Sewer Fund has two projects from FY08 that require budget amendments because they were not able to be bid until FY09 - Milton Road \$50,000 and Alkali Creek Road stabilization \$600,000. The following three are new projects which were not in the FY09 CIP that require budget amendments – additional \$100,000 for the \$400,000 Inner Beltloop design study, \$100,000 for design of Rimrock Road from 17th to Shiloh, and \$50,000 for a future SID contribution. Total budget amendments for the Storm Sewer Fund are \$900,000 and revenue will not increase as the Fund has sufficient unencumbered cash to pay for these projects.
6. The Water Replacement Fund requires a budget amendment of \$2,702,000 for the FY08 water main replacement project that was not completed in FY08. This project will be partially paid for from a loan from DNRC and the remaining funds are available from unencumbered cash.

7. The Wastewater Replacement Fund requires a budget amendment of \$2,885,000 for the FY08 wastewater main replacement project that was not completed in FY08. This project will be funded with a loan from DNRC.
8. The Wastewater Construction Fund requires an amendment for Briarwood sanitary sewer completion of (\$4,650,000). The engine generator control upgrade project of \$135,000 was an FY08 project that was not bid. This project will need to be re-budgeted in FY09. The Briarwood project is being funded with a loan from the DNRC and there is sufficient unencumbered cash to pay for the generator project.

The \$2,702,000 and \$2,885,000 are new DNRC loans. The \$4,650,000 is for budget authority in FY09 for the remainder of the \$7,400,000 DNRC loan approved in FY08. The revenue from this loan was budgeted in the FY08 budget. The debt service payments will be made from revenues generated by fees and these loans were included in the latest rate increase.

9. The Arterial and Solid Waste funds budgets should be amended to facilitate a reclassification in the City's accounting software of the loan approved from Solid Waste to Arterial in FY08 for the King Avenue West project. The reclassification will change the reporting from a Due To and Due From to a Transfer In and Transfer Out. This will be a journal entry only and will not require the use of cash or debt.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2008/2009 per attached.

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

ATTACHMENT

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

Attachment A

RESOLUTION 08-

A RESOLUTION TO MAKE **FISCAL YEAR 2009** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT, AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a **Quarterly Budget Review (FY 2008/2009)**, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 10th day of November, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

Revenue Expenditure

The cash from grant writing revenue \$5,000 from FY08 has been carried over to FY09. These budget amendments will allow Development Services to spend the cash on various office expenditures.

278-6761-465	2190	1,250	Office Supplies
278-6761-465	3824	1,250	Training
278-6762-465	2190	2,500	Office Supplies

Parking is requesting an amendment for painting the parking garages. This amount was budgeted in the FY08 budget and an RFP was done but no bids were received. The process was repeated in FY09 and a contractor was selected. Reserves will be used.

521-1591-493	2450	110,000	Garage Maintenance
521-1592-493	2450	74,500	Garage Maintenance
521-1593-493	2450	100,000	Garage Maintenance
521-1594-493	2450	110,000	Garage Maintenance

The Concrete Aprons for the BOC was a line item budget in FY08 Facilities Management but did not get bid by year end. The project will be paid for from unencumbered cash.

650-1599-487	9250	40,208	Building Capital
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The Aquatic Fund needs an amendment for an aquatics study which was in the FY08 budget but didn't get completed. The study will be paid for using unencumbered cash.

491-5162-451	3590	20,000	Other Professional Services
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The Storm Sewer Fund has three new projects and two FY08 projects that require a budget amendment. Current revenues and reserves will be used to pay for these expenditures.

840-3184-431	9310	900,000	Roads/Streets
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The Water Replacement Fund requires a budget amendment for FY08 replacement projects.

503-7591-609	9340	2,702,000	Water
503-7591-381	6950	2,702,000	Loan

The Wastewater Replacement Fund requires a budget amendment for FY08 replacement projects. This expense will be paid for using a DNRC loan.

513-8493-623	9340	2,885,000	Sanitary Sewer
513-8291-381	6950	2,885,000	Loan

Wastewater Construction Fund requires an amendment for Briarwood and an engine generator control upgrade. This expense will be paid for using a DNRC loan and cash.

421-9493-623	9340	4,785,000	Sanitary Sewer
421-9493-391	6950	4,785,000	Loan

The loan that was approved in FY08 from the Solid Waste Fund to the Arterial Fund must be reclassified in the City's accounting system from a Due To and Due From to a Transfer In and Transfer Out. This will be a journal entry only and will not require th

845-3186-383	8261	3,144,882	Transfer In
541-3121-383	7523	3,144,882	Transfer Out

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November, 10, 2008

TITLE: Public Hearing and Resolution for General Electric Capital Corporation Tax Abatement

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: Big Sky Economic Development Authority (BSEDA) is constructing a new building at 3333 Hesper Road for occupancy by the General Electric Capital Corporation, GE Capital Solutions (GE). BSEDA/GE have applied for a property tax abatement that would apply to the increased valuation of the property and new structure, estimated to be almost \$9.3 million. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria are identical to those that are established by the State and codified at 15-24-1401 MCA. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants, conditionally grants or denies the tax incentive.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the application for tax abatement
- Deny the application for tax abatement
- Conditionally approve the application for tax abatement

FINANCIAL IMPACT: The estimated property value is almost \$9.3 million. If approved, 50% of the taxable value would be subject to school and city taxation for five (5) years and starting in the 6th year, 10% of the taxable value is added to the previous year's value until full taxable value is achieved in the 10th and subsequent years following building permit issuance. Predicting the amount of tax "loss" from the incentive is difficult for many reasons, including that the Dept. of Revenue will assign a market value that may have little relationship to the owners' stated market value, the long term effect of property reappraisal is unknown and the number of mills applied to the taxable value may change dramatically over a span of ten years. However, assuming that none of those factors will influence the estimated financial impact to the City, the estimated annual incentive is \$48,950 for each of the first five (5) years (\$9,288,000 X 50% X 85% X 3.01% X 410 mills = \$48,950). The incentive will decline each year thereafter by

approximately 20% of the previous year's abated tax. The City's present share of the abated tax is about 30% of the total.

RECOMMENDATION

Staff recommends that Council conduct a public hearing and approve the resolution granting new or expanding industry tax incentives to BSEDA/GE Capital Corporation for their new building at 3333 Hesper Road.

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

ATTACHMENTS

- A: GE Capital application
- B: Resolution approving tax incentive
- C: Resolution No. 05-18376

INTRODUCTION

Big Sky Economic Development Authority (BSEDA) is constructing a new building at 3333 Hesper Road for occupancy by the General Electric Capital Corporation, GE Capital Solutions (GE). BSEDA/GE have applied for a property tax abatement that would apply to the increased valuation of the property and new structure, estimated to be almost \$9.3 million. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria are identical to those that are established by the State and codified at 15-24-1401 MCA. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants, conditionally grants or denies the tax incentive.

BACKGROUND

In 2005 the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria are identical to those that are established by the State and codified at 15-24-1401 MCA. The program was established to encourage economic development and new investment in Billings, Yellowstone County and the State of Montana. Yellowstone County has a similar tax abatement program. BSEDA and GE submitted an application for tax abatement under this incentive program.

BSEDA owns the land on which the new building is being built for GE Capital Corporation and it will lease the building and land to GE. GE plans to operate an office that tracks assets and manages the paperwork for GE's leasing and financing operations. The property value is estimated to be almost \$9.3 million. The company is operating in temporary quarters at this time with about 60 employees. The company will expand employment to about 150 when the new building is completed by the end of the year. The company reports that it will pay wages of \$17.44 - \$130.85 per hour. BSEDA and the company appear to have met all application requirements.

The incentive established by state law and City resolution applies to new and existing industries. Existing industries must invest at least \$50,000 in buildings or equipment and new industries must invest at least \$125,000. In addition, the business must meet the definition of "industry" that is found in 15-24-1401 MCA, which is:

"Industry" means, but is not limited to, a firm that a) engages in mechanical or chemical transformation of materials into products, b) engages in the extraction or harvesting of minerals, ore or forestry products, c) engages in processing Montana raw materials such as minerals, ore, agricultural products and forestry products, d) engages in transportation, warehousing or distribution of commercial products or materials if 50% or more of the industry's gross sales are from outside the state, or e) earns 50% or more of its annual gross income from out of state sales.

The only criterion that the Council could reasonably apply to GE is "... e) earns 50% or more of its annual gross income from out of state sales." GE Capital Corporation reports leasing and lending revenue of \$43 billion and generates only .06% of that within Montana.

The incentive applies only to the mills levied by the local school districts and the City of Billings. If granted, the incentive could save the company up to \$48,950 per year for the first five years and a lesser amount each subsequent year until full taxes are paid in the 10th year following start of construction. GE has applied or is expected to apply to Yellowstone County for abatement under the County mills, which would increase the amount of abated taxes.

ALTERNATIVES

The City Council may:

- Approve the application for tax abatement
- Deny the application for tax abatement
- Conditionally approve the application for tax abatement

RECOMMENDATION

Staff recommends that Council conduct a public hearing and approve the resolution granting new or expanding industry tax incentives to BSEDA/GE Capital Corporation for their new building at 3333 Hesper Road.

ATTACHMENTS

- A: GE Capital application
- B: Resolution approving tax incentive
- C: Resolution No. 05-18376

ATTACHMENT A

GE TAX ABATEMENT APPLICATION

APPLICATION FORM FOR NEW OR EXPANDING INDUSTRY TAX REDUCTION

(As allowed under City of Billings Resolution 05-18376, Yellowstone County
Resolution 94-92 and 15-24-1401 and 15-24-1402 MCA)

1. Name of Business: General Electric Capital Corporation
2. X New Business: Start of construction (date) 3-17-2008
End of construction (date) 12-31-2008
3. Expanding Business: Start of construction (date) _____
End of construction (date) _____
4. Address of business: 3333 Hesper Road, Billings, MT 59102
Actual location of business: same as above
Tax Code: Commercial land and buildings
Within city limits of Billings YES NO
5. Person representing business and responsible for application:
Name: Mark Chernauskas Title: Global Operations Leader
Address: 10 Riverview Drive, Danbury, CT 06810 Telephone: (203) 749-2123
6. Amount of capital investment for new or expanded industry in Billings / Yellowstone County: \$ 9,287,865 (Attach detailed costs of new construction or expansion including land, materials, labor, equipment, and dates of construction. The County Commissioners and/or City Council may request further information, such as financial statements, business references, or other documents, prior to acting on this request.): GMP #1 \$1,836,276, GMP #2 \$6,096,658, Onsites \$1,354,931
7. Describe the project relating to the capital investment: Capital Solutions is creating a Center of Excellence (COE) for tracking and filing collateral assets in Billings, Montana. Collateral processes are those used to track and record GE assets. These processes include Uniform Commercial Code (UCC) (filing, re-filing and release), insurance and title tracking.
8. Explain business activities - what business does?
GE Capital Solutions provides leasing; lending and access to capital solutions that help customers grow and be more efficient

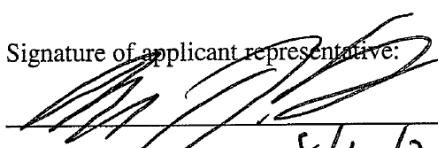
9. How long has this business been located in Billings and/or Yellowstone County:
New Business in Billings, temporary facility April 2008
10. At the time of application, how many employees does the business have?
57 Full-time; 0 Part-time.
11. How many employees will the applicant have after completion of construction?
150 plus Full-time; 0 Part-time.
12. Describe job skills required for all new employees, both full and part time.
GE looks for demonstrated abilities to work with teams and ability encompass the positive attitude found within GE businesses while providing accurate and completed work
13. What is hourly pay scale of both full and part-time employees to include benefits (new employees only): \$17.44 to \$130.85
14. Economic impact of capital investment:
See attached study done by Scott Rickard, Ph.D., Center for Applied Economic Research, MSU-Billings
15. Planned hiring schedule:
Human Resource Leader was hired in October 2007, followed by a Senior Operations Leader in December 2007. Hiring began for additional management staff and associates in May 2008 and will continue well into 2009
16. List other property tax benefits business currently receives or has applied for:
None
17. If applicant is transporting, wholesaling, providing services, warehousing, or distributing commercial products or materials, proof must be provided that fifty percent or more of the applicant's gross sales or receipts are earned from outside the State, or that fifty percent or more of applicant's annual gross income is from out-of state sales. (Include as attachment)
18. Building permit (attach copy or explain absence): BSEDA currently does not have permit for the parking lot, although all reviews have been performed by the city. BSEDA is waiting on funds from USEDA before they can select General Contractor. BSEDA is unable to pull permit until contractor is in place.
19. City/County Planning Department or Laurel-Yellowstone City/County Planning Board certifies that the business conforms to zoning regulations: As part of the permitting process, Nicole Cromwell, Zoning Coordinator for the City of Billings/Yellowstone County Planning Department has certified that this business conforms to zoning regulations. This information is provided per Rebekah Wales, Community Development Specialist, Big Sky Economic Development Authority
-
20. City/County Health Department certifies that if a non-public water or sewer system is used (i.e., septic tank and water well) that system conforms to acceptable standard, or

will do so on the completion of construction: This site will utilize public water, waste water and storm water systems through the City of Billings Public Utilities Division of the Public Works Department. This information is provided per Rebekah Wales, Community Development Specialist, Big Sky Economic Development Authority

21. County Treasure's Office certifies that City and County taxes have been paid in full or otherwise satisfied:
A copy taken from the County's website is attached to this application indicating the taxes are paid in full.

22. A non-refundable fee of \$500.00 must accompany this application to cover the cost of application administration. Make checks payable to the Big Sky Economic Development Authority.
23. All items on this application must be addressed. Upon completion and accompanied by the application fee, the original can be submitted to the Big Sky Economic Development Authority, Attn: Brandon Berger, 222 North 32nd Street, Suite 200, Billings, MT 59101 (Telephone 256-6871). If application is complete, a duly advertised public hearing will be scheduled, after which the County Commissioners and/or City Council will decide whether to approve, conditionally approve or deny the application. The applicant, or a representative of the applicant, must appear in person at the public hearing.
24. The application to Department of Revenue form, which is part of the application, must also be completed and signed by the applicant.
25. The Board of County Commissioners and/or City Council may review this applicant's tax incentive at any time and terminate further reductions at its discretion if it finds the provisions of County Resolution 94-92, City Resolutions or State Code are not being met.
26. In order for this incentive program to apply to the applicant's current year taxes, the application must be approved by the City Council and/or the County Commissioners by the second Wednesday in May of the year in which the reduction is desired.

27. Signature of applicant representative:

 (Mark Chernavskas, CS Global Operations)

28. Date of application:

8/14/2008

Recommendation by the Big Sky Economic Development Authority:

Approve

Deny

Action by Board of County Commissioners:

Approve

Deny

Date: _____

Chairman

Commissioner

Commissioner

ATTACHMENT B
RESOLUTION APPROVING TAX ABATEMENT

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA, APPROVING TAX BENEFITS FOR GE CAPITAL CORPORATION**

WHEREAS, Resolution 05-18376 provides for granting tax incentives for new or expanding industries pursuant to Section 15-24-1401, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, GE Capital Corporation has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of GE Capital Corporation and has determined that said application meets all qualifications for the tax incentive and should be approved

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

That the application for tax benefits made by GE Capital Corporation dated August 14, 2008 is APPROVED. The tax benefits approved are those provided in Resolution 05-18376. The property receiving the tax benefits is described as follows:

Tax Code #A29208, Lot 6, Block 1 Gabel Subdivision, 2nd Filing

PASSED AND APPROVED by the City Council this 10th day of November, 2008.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

ATTACHMENT C

RESOLUTION 05-18376

**A RESOLUTION CREATING A CITY OF BILLINGS
TAX INCENTIVE PROGRAM FOR NEW AND EXPANDING INDUSTRY**

WHEREAS, the City Council of the City of Billings believes that it is in the public interest for new industries to locate in Billings and for existing industries to expand in Billings; and

WHEREAS, the Montana Legislature has approved, in Sections 15-24-1401 and 15-24-1402, MCA, a means for Montana cities to provide incentives for certain types of new or expanding industries in the form of property tax reductions over a period of ten (10) years; and

WHEREAS, the City Council desires to offer those property tax incentives to qualified industries and for qualified improvements or modernized processes.

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

1. That it is in the public interest to encourage economic development in the city of Billings through property tax incentives for new and expanding industries.
2. A tax incentive program is hereby established that meets the requirements set forth in 15-24-1401 and 15-24-1402 MCA and applicable Administrative Rules of Montana.
3. Each applicant shall meet the following minimum criteria:
 - a. is an industry as defined in 15-24-1401 MCA;
 - b. if expanding, the industry has invested at least \$50,000 of qualifying improvements or modernized processes within this or the preceding tax year;
 - c. if new to the city, the industry has invested at least \$125,000 in qualifying improvements or modernized processes within this or the preceding tax year;
 - d. provide an estimate of the number of new jobs that will be created by the new or expanding industry, the hiring schedule and the salary ranges for the new employees;
 - e. provide proof from the Yellowstone County Treasurer's office that all of the applicant's taxes have been paid. Taxes paid under protest do not preclude application approval; and
 - f. the applicant has completed the application procedures outlined in attached Exhibit A.
4. Benefits conferred by Billings' new or expanding industry tax incentive program are as follows:
 - a. In the first five (5) years after a construction permit is issued, the qualifying improvements or modernized processes that represent a new or expanding industry must be taxed at fifty percent (50%) of their taxable value;

- b. Each year thereafter, the percentage will increase by equal percentages until the full taxable value is attained in the tenth (10th) year;
5. The tax incentive is limited to the number of mills levied and assessed by the local high school district, the local elementary school district and the City of Billings.
6. The City Council must authorize the granting of the tax incentive to any applicant by passing a resolution approving the application of the schedule of tax incentives set forth above in Paragraph 4 or some other schedule, for each existing building or structure as to which the tax incentive is granted.

BE IT FURTHER RESOLVED that property owners are hereby encouraged to apply to the City of Billings for consideration of tax incentives authorized pursuant to Section 15-24-1401 and Section 15-24-1402, M.C.A. for new industries or expanding existing industries or modernized processes.

PASSED AND APPROVED by the City Council this 12th day of December, 2005.

CITY OF BILLINGS

By: _____
Charles F. Tooley, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE, City Clerk

EXHIBIT A

APPLICATION PROCEDURES FOR CITY OF BILLINGS, MONTANA TAX INCENTIVE PROGRAM FOR NEW AND EXPANDING INDUSTRIES

- Prospective clients contact Big Sky Economic Development Authority (BSEDA) who acts as the intermediary in the application process, and an initial meeting is scheduled.
- At the initial meeting, prospective client project is discussed to determine if the project meets the tax incentive application criteria. If the project appears to qualify for an incentive, the client is given tax incentive applications, copies of the tax incentive program cited in the *Montana Code Annotated* and copies of the adopting resolutions.
- Clients then complete and return applications and supporting documentation and the applicable processing fee to BSEDA. BSEDA reviews the application for completeness.
- An appointment is then scheduled with the designated City staff to review the project documentation and perform a site visit if needed. This leads to either staff endorsement of the project or a determination that the project does not meet the program criteria.
- City staff will prepare and submit a staff report, accompanied by the application documentation, and schedule a public hearing with the City Council. The staff report will advise the Council why the application should be approved, conditionally approved, including recommended conditions, or denied.
- City staff will prepare a resolution for Council consideration that contains the elements required by state law and administrative rules.
- City staff shall notify by certified mail, all taxing jurisdictions that may be affected by the proposed tax benefit.
- The City Council will conduct a public hearing on the application at its next available regular meeting and will approve, conditionally approve or disapprove the application.
- BSEDA will send a letter to the applicant regarding the Council's decision, including any conditions of approval.
- When the construction reaches substantial completion, the client contacts BSEDA and schedules a final inspection to determine if the project meets tax incentive requirements and any conditions of approval.
- If the project meets all City and State requirements, BSEDA will work with City staff to prepare and submit a final approval letter and appropriate documentation to the Montana Department of Revenue.

The following definitions and terms apply to the new and expanding industry tax incentive program:

- “Expansion” means an industry that invests at least \$50,000 in qualifying improvements or modernized processes within this or the previous tax year
- “New” means an industry that is new to the city of Billings and has invested at least \$125,000 in qualifying improvements or modernized processes within this or the preceding tax year. New industry does not include property treated as new industrial property under Section 15-6-135 MCA (class 5 industrial property)

- “Industry” means, but is not limited to, a firm that a) engages in mechanical or chemical transformation of materials into products, b) engages in the extraction or harvesting of minerals, ore or forestry products, c) engages in processing Montana raw materials such as minerals, ore, agricultural products and forestry products, d) engages in transportation, warehousing or distribution of commercial products or materials if 50% or more of the industry’s gross sales are from outside the state, or e) earns 50% or more of its annual gross income from out of state sales
- “Qualifying” means meeting all of the terms, conditions and requirements for a reduction in taxable value under this program

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Public Hearing and Resolution for Dalco Industries, DBA Teton Steel, Tax Abatement

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: In 2007, Dalco Industries, DBA Teton Steel, built new office buildings and installed equipment at the intersection of Gabel Road and S. 29th Street. Teton Steel applied for property tax abatement on the new facilities, having an estimated value of \$1,500,000. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria comply with state law that is codified at 15-24-1401 MCA. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants or conditionally grants the tax incentive. If approved, the incentive applies only to the mills levied by the local high school and elementary school districts and the City of Billings. Teton Steel has applied or is expected to apply to Yellowstone County for county tax abatement.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the tax incentive
- Conditionally approve the tax incentive
- Deny the tax incentive

FINANCIAL IMPACT: If the City Council approves the incentive, 50% of the improvement value will be exempt from City and school taxes for five (5) years following building permit issuance. In years 6-10, 10% of taxable value will be added to the previous year's total and the full value will be taxable in the 10th and subsequent years. Predicting the amount of tax "loss" from the incentive is difficult for many reasons, including that the Dept. of Revenue will assign a market value that may have little relationship to the owners' stated market value, the long term effect of property reappraisal is unknown and the number of mills applied to the taxable value may change dramatically over a span of ten years. However, assuming that none of those factors will influence the estimated financial impact to the City, the estimated annual incentive is \$7,870 for each of the first five (5) years (\$1,500,000 X 50% X 85% X 3.01% X 410 mills = \$7,867).

The incentive will decline each year thereafter by approximately 20% of the previous year's abated tax. Since this building permit was issued in 2007, the abatement period may be less than 10 years. The City's mills presently produce about 30% of the estimated annual abatement.

RECOMMENDATION

Staff recommends that Council conduct a public hearing and approve the Resolution granting new or expanding industry tax incentives to Dalco Industries/DBA Teton Steel for their improvements at Gabel Rd and S. 29th Street.

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

ATTACHMENTS

- A: Dalco Industries application
- B: Resolution approving tax incentive
- C: Resolution No. 05-18376

INTRODUCTION

In 2007, Dalco Industries, DBA Teton Steel, built new office buildings and installed equipment at the intersection of Gabel Road and S. 29th Street. Teton Steel applied for property tax abatement on the new facilities, having an estimated value of \$1,500,000. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria comply with state law that is codified at 15-24-1401 MCA. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants or conditionally grants the tax incentive. If approved, the incentive applies only to the mills levied by the local high school and elementary school districts and the City of Billings. Teton Steel has applied or is expected to apply to Yellowstone County for county tax abatement.

BACKGROUND

In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria are identical to those that are established by the State and codified at 15-24-1401 MCA. The program was established to encourage economic development and new investment in Billings, Yellowstone County and the State of Montana. Yellowstone County has a similar tax abatement program. Under state law and city resolution, the value of the property improvement will be taxed at 50% of its taxable value for the first five (5) years following building permit issuance and in years 6-10 the taxable value will increase by 10% over the previous year's value until the full value becomes taxable in the 10th and subsequent years.

Dalco Industries, DBA Teton Steel, applied for this tax incentive. Teton Steel fabricates reinforcing steel. It has been a two person business in Billings for nine (9) years. In 2007 it leased land from Tony Creek, LLC., on the southeast corner of Gabel Road and S. 29th Street West. It built two office buildings and a yard with reinforcing steel fabrication equipment and overhead cranes. With the expansion, up to ten (10) employees will be hired at an average hourly rate of \$15. In 2006 the property owner applied for and received approval for Special Review #827 that permits this operation in a Controlled Industrial zone. Teton Steel meets the statute's definition of "industry" because it "engages in mechanical or chemical transformation of materials into products...."

RECOMMENDATION

Staff recommends that Council conduct a public hearing and approve the Resolution granting new or expanding industry tax incentives to Dalco Industries/DBA Teton Steel for their new improvements at Gabel Rd and S. 29th Street.

ATTACHMENTS

- A: Dalco Industries application
- B: Resolution approving tax incentive
- C: Resolution No. 05-18376

ATTACHMENT A

TETON STEEL TAX INCENTIVE APPLICATION

APPLICATION FORM FOR NEW OR EXPANDING INDUSTRY TAX REDUCTION

(As allowed under City of Billings Resolution 05-18376, Yellowstone County
Resolution 94-92 and 15-24-1401 and 15-24-1402 MCA)

1. Name of Business: DALCO INDUSTRIES DBA TETON STEEL
2. New Business: Start of construction (date) APRIL 2007
End of construction (date) JUNE 2007
3. Expanding Business: Start of construction (date) _____
End of construction (date) _____
4. Address of business: NOT ASSIGNED YET
Actual location of business: SE CORNER OF 29TH ST. W. / GABEL RD.
Tax Code: C1009 C11009
Within city limits of Billings YES NO
5. Person representing business and responsible for application:
Name: TAYLOR RANKER Title: GENERAL MANAGER
Address: 5008 PAIGE ST., CASPER, WY 82604 Telephone: 307-234-0715
6. Amount of capital investment for new or expanded industry in Billings / Yellowstone County: \$ 1,500,000.00 (Attach detailed costs of new construction or expansion including land, materials, labor, equipment, and dates of construction. The County Commissioners and/or City Council may request further information, such as financial statements, business references, or other documents, prior to acting on this request.):

7. Describe the project relating to the capital investment: PROJECT WILL INCLUDE TWO NEW OFFICE BUILDINGS, WATER AND SEWER MAIN EXTENSIONS, REINFORCING STEEL FABRICATION EQUIPMENT AND OVERHEAD CRANES.
THE SITE IS ON LAND LEASED FROM TONY CREEK LLC

8. Explain business activity - what business does: REINFORCING STEEL FABRICATOR

9. How long has this business been located in Billings and/or Yellowstone County: A TWO PERSON OFFICE FOR 9 YEARS

10. At the time of application, how many employees does the business have: 2 Full-time; _____ Part-time.

11. How many employees will the applicant have after completion of construction: 10 Full-time; _____ Part-time.

12. Describe job skills required for all new employees, both full and part time.

REINFORCING STEEL ESTIMATOR AND DETAILER,
RECEPTIONIST AND GENERAL CLERICAL,
STEEL FABRICATION SHOP WORKERS, TRUCK DRIVER

13. What is hourly pay scale of both full and part-time employees to include benefits (new employees only): 15.00

14. Economic impact of capital investment:

WILL PROVIDE APPROXIMATELY 10 FULL TIME
JOBS PAYING JOBS AND WILL PROVIDE
AN INCREASE IN THE TAX BASE FOR
THE CITY OF BILLINGS.

15. Planned hiring schedule:

UPON COMPLETION OF FACILITY

16. List other property tax benefits business currently receives or has applied for:

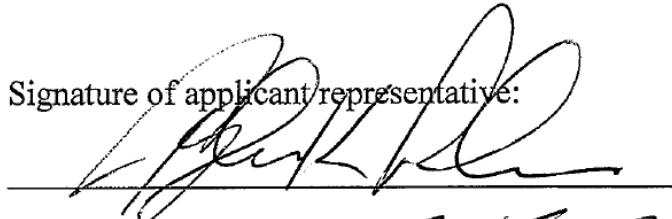
None

17. If applicant is transporting, wholesaling, providing services, warehousing, or distributing commercial products or materials, proof must be provided that fifty percent or more of the applicant's gross sales or receipts are earned from outside the State, or that fifty percent or more of applicant's annual gross income is from out-of state sales. (Include as attachment)

18. Building permit (attach copy or explain absence): BUILDING PERMIT
WILL BE APPLIED FOR IN APRIL 2007

19. City/County Planning Department or Laurel-Yellowstone City/County Planning Board certifies that the business conforms with zoning regulations: *BUSINESS CONFORMS
IN CONTROLLED INDUSTRIAL ZONING REGULATIONS
SPECIAL REVIEW FOR FACILITY WAS APPROVED IN SEPT. 2006*
20. City/County Health Department certifies that if a non-public water or sewer system is used (i.e., septic tank and water well) that system conforms to acceptable standard, or will do so on the completion of construction: *WATER AND SEWER ARE PUBLIC*
21. County Treasure's Office certifies that City and County taxes have been paid in full or otherwise satisfied: *TAXES CURRENT THROUGH 2006*
22. A non-refundable fee of \$500.00 must accompany this application to cover the cost of application administration. Make checks payable to the Big Sky Economic Development Authority.
23. All items on this application must be addressed. Upon completion and accompanied by the application fee, the original can be submitted to the Big Sky Economic Development Authority, Attn: Brandon Berger, 222 North 32nd Street, Suite 200, Billings, MT 59101 (Telephone 256-6871). If application is complete, a duly advertised public hearing will be scheduled, after which the County Commissioners and/or City Council will decide whether to approve, conditionally approve or deny the application. The applicant, or a representative of the applicant, must appear in person at the public hearing.
24. The application to Department of Revenue form, which is part of the application, must also be completed and signed by the applicant.
25. The Board of County Commissioners and/or City Council may review this applicant's tax incentive at any time and terminate further reductions at its discretion if it finds the provisions of County Resolution 94-92, City Resolutions or State Code are not being met.
26. In order for this incentive program to apply to the applicant's current year taxes, the application must be approved by the City Council and/or the County Commissioners by the second Wednesday in May of the year in which the reduction is desired.

27. Signature of applicant/representative:



28. Date of application: 2-15-07

Recommendation by the Big Sky Economic Development Authority:

Approve Deny

Action by Board of County Commissioners:

Approve Deny

Date: _____

Chairman

Commissioner

Commissioner

APPLICATION TO DEPARTMENT OF REVENUE

New or Expanding Industry Program-Property Improvements or Modernized Process
(Title 15-24-1401&1402 MCA)

To: Yellowstone County Assessor

Applicant Name: DALCO INDUSTRIES DBA TETON STEEL
Mailing Address: 500 B PAGE ST.
CASPER, WY 82604

Legal description of affected property: LOT 3, BLOCK 5, TIERRA IND. PARK SUBDIVISION,
Date Construction Permit Issued: APRIL 2007, SECTION 13, T1S R2SE
(If no permit required, specify date when certificate in lieu of building permit was issued) YELLOWSTONE COUNTY

This application covers the (expansion/new) construction of the REINFORCING STEEL PROJECT, MT P.M.M.

A public hearing on the matter of "New & Expanding Industry" resolution for
facility

Was held at the Yellowstone County Courthouse at _____ am on the _____ day of
_____, 20____.

Due notice as defined in 76-15-103 was given. True and exact copies of said notices are on file. Yes _____ No _____

The statutory investments requirement for expansion/modernization has been met. Yes _____ No _____

The qualifying property consists of the following:

Complete this section only if the application is for a firm that

- 1) Engages in transportation, warehousing or distribution of commercial products if 50% or more of the gross receipts are earned from outside the state, or
- 2) Earns 50% of its annual gross income from out-of-state sales or sales to out of state clientele.

Type of business:

Total Gross Sales or Receipts _____
Sales or Receipts from outside of Montana _____
Percentage out of state _____
(Attach Income Statement for last complete year of operation)

This application is made under the provisions of 15-24-1401 and 15-24-1402 MCA, by resolution adopted
by the Yellowstone County Commissioners on the 26th day of March, 1992.

Signature: _____
(Owner/Agent)

We, the undersigned Commissioners of Yellowstone County (approve/disapprove) this application for

We find that it (does/does not) conform to the criteria as set forth in the resolution adopted by this Board on
the 26th day of March, 1992.

Chairman

Commissioner

Commissioner

ATTACHMENT B

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA, APPROVING TAX BENEFITS FOR DALCO INDUSTRIES,
DBA TETON STEEL

WHEREAS, Resolution 05-18376 provides for granting tax incentives for new or expanding industries pursuant to Section 15-24-1401, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, Dalco Industries, DBA Teton Steel, has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of Teton Steel and has determined that said application meets all qualifications for the tax incentive and should be approved

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

That the application for tax benefits made by Dalco Industries, DBA Teton Steel, dated February 15, 2007 is APPROVED. The tax benefits approved are those provided in Resolution 05-18376. The property receiving the tax benefits is described as follows:

Tax Code #C11009, Lot 3, Block 5 Tierra Yellowstone Industrial Subdivision

PASSED AND APPROVED by the City Council this 10th day of November, 2008.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

ATTACHMENT C

RESOLUTION 05-18376

**A RESOLUTION CREATING A CITY OF BILLINGS
TAX INCENTIVE PROGRAM FOR NEW AND EXPANDING INDUSTRY**

WHEREAS, the City Council of the City of Billings believes that it is in the public interest for new industries to locate in Billings and for existing industries to expand in Billings; and

WHEREAS, the Montana Legislature has approved, in Sections 15-24-1401 and 15-24-1402, MCA, a means for Montana cities to provide incentives for certain types of new or expanding industries in the form of property tax reductions over a period of ten (10) years; and

WHEREAS, the City Council desires to offer those property tax incentives to qualified industries and for qualified improvements or modernized processes.

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

1. That it is in the public interest to encourage economic development in the city of Billings through property tax incentives for new and expanding industries.
2. A tax incentive program is hereby established that meets the requirements set forth in 15-24-1401 and 15-24-1402 MCA and applicable Administrative Rules of Montana.
3. Each applicant shall meet the following minimum criteria:
 - a. is an industry as defined in 15-24-1401 MCA;
 - b. if expanding, the industry has invested at least \$50,000 of qualifying improvements or modernized processes within this or the preceding tax year;
 - c. if new to the city, the industry has invested at least \$125,000 in qualifying improvements or modernized processes within this or the preceding tax year;
 - d. provide an estimate of the number of new jobs that will be created by the new or expanding industry, the hiring schedule and the salary ranges for the new employees;
 - e. provide proof from the Yellowstone County Treasurer's office that all of the applicant's taxes have been paid. Taxes paid under protest do not preclude application approval; and
 - f. the applicant has completed the application procedures outlined in attached Exhibit A.
4. Benefits conferred by Billings' new or expanding industry tax incentive program are as follows:
 - a. In the first five (5) years after a construction permit is issued, the qualifying improvements or modernized processes that represent a new or expanding industry must be taxed at fifty percent (50%) of their taxable value;

- b. Each year thereafter, the percentage will increase by equal percentages until the full taxable value is attained in the tenth (10th) year;
5. The tax incentive is limited to the number of mills levied and assessed by the local high school district, the local elementary school district and the City of Billings.
6. The City Council must authorize the granting of the tax incentive to any applicant by passing a resolution approving the application of the schedule of tax incentives set forth above in Paragraph 4 or some other schedule, for each existing building or structure as to which the tax incentive is granted.

BE IT FURTHER RESOLVED that property owners are hereby encouraged to apply to the City of Billings for consideration of tax incentives authorized pursuant to Section 15-24-1401 and Section 15-24-1402, M.C.A. for new industries or expanding existing industries or modernized processes.

PASSED AND APPROVED by the City Council this 12th day of December, 2005.

CITY OF BILLINGS

By: _____
Charles F. Tooley, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE, City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

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

DEPARTMENT: Planning and Community Services and Administration

PRESENTED BY: Candi Beaudry, AICP, Director, PCSD

PROBLEM/ISSUE STATEMENT: The annual weed assessment resolution has been completed by the Finance Division and is ready to spread on the tax rolls. Notice was sent to property owners subject to these assessments on October 1, 2008, and indicated the scheduled public hearing was to be held on *Monday*, October 14, 2008. The notice was incorrect because the scheduled public hearing was held on *Tuesday*, October 14, 2008. Because of the error, Council approved a continuation of the public hearing to give property owners adequate notice of a public hearing. A second notice was mailed to the affected property owners on October 20 and 21, explaining that the initial public hearing would be continued and they would be given the opportunity to submit comments or testify at the Council meeting on November 10.

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 remove the nuisance vegetation. Upon failure to comply to the written notification the City may by its own work forces or by contract cause the nuisance vegetation to be exterminated, removed or cut, and the cost would 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 the public hearing from October 14, 2008 be continued and that Council approve the resolution on November 10, 2008.

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

ATTACHMENTS

- A. Weed Cutting & Removal Annual Assessment Resolution
- B. Weed Removal Properties, protest properties highlighted

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 14th , 2008** at 6:30 o'clock p.m and continued to Monday, **November 10th, 2008**, a public hearing was held and the matter was considered on the agenda in the Council chambers of the City Hall, Billings, Montana, and the City Council heard the 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 10th day of **November, 2008**.

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

2007 Assessments

First Name	Last Name	Company Name	Address Cut	Cost to be Assessed
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
Robert	Pentecost		Glenfinnan Rd	\$ 1,045.00
Angelica	Shepard		516 S 35th St	\$ 381.25
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	830 Wicks Ln	\$ 523.75
Travis	Nelson		141 Annandale Rd	\$ 391.25
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
Daniel	McQuinn		1603 Gleneagles Blvd	\$ 623.75
Ronald	Broadbent		Keel Dr	\$ 511.25
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
		Felton Associates LLC	Bitterroot Dr	\$ 5113.00

Heather	Pugh		105 Hilltop Rd	\$ 573.75
		Wal-Mart Real Estate Business	1701 Main St	\$ 1,180.00
George	Schneiter		682 Lakehills Place	\$ 511.25
Cheri	Asay		353 Prospectors Ln	\$ 323.75
Rachel	Bradley		2522 Custer Ave	\$ 323.75
William	Schutz		146 Jackson St	\$ 357.50
John	Burns		4434 Frances Ave	\$ 357.50
		New Southside Properties LLC	Orchard Ln	\$ 1,411.25
Robert	Pratsch		2691 Gable Rd	\$ 886.25
		Sibar LLC	2701 Gable Rd	\$ 993.75
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
Kay	Stewart		1115 Yale Ave	\$ 408.75
William	McEuin		2626 Lillis Ln	\$ 408.75
Iris	Tyre		1732 Ave C	\$ 485.00
Greg	Nelson		409 S 32nd St	\$ 323.75
Carolee	Bathurst		4223 Stone St	\$ 323.75
Margaret	Johnson		4249 Vaughn	\$ 323.75
Randall	Swenson		4045 Ave B	\$ 886.25
Charles	Danhof		429 Hallowell Ln	\$ 357.50
Aaron	Healy		417 Byrd St	\$ 323.75
TOTAL				\$ 35,677.37

2008 Assessments

First Name	Last Name	Business Name	Address Cut	Cost to be Assessed
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
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 LDS		3585 Rachelle Cir	\$1,367.50
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
	Carmike Cinemas Inc		925 Broadwater Ave	\$617.50
Mike	Kelly		Bitterroot 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 Properts 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
	LDS Church Tax Adm RD 531-6227		1065 Siesta Ave	\$511.25
	Ron S. Hill Living Trust		200 Gleaneagles B.	\$545.00
	Shay Picard Homes Inc		3237 Jack Burke Ln	\$511.25
Daniela	Madriz		483 Indian Trl	\$546.25
Steven	Oels		2050 Constellation Trl	\$485.00
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
Amelia	Robinson		Joyce St	\$443.75
		Hobs c/o Summers McNea	1415 Main St	\$511.25
Barbara G.	Nicholas		1035 Dorothy Lane	\$323.75
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
Rex	Shinazy		3501 Miles Ave	\$357.50
Scott L.	Grant		237 Jackson Street	\$323.75
Joel & Carol	Johnson		1732 Natalie Street	\$293.12
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
Bill A.	Johnson		305 Jefferson Street	\$323.75
		Keller Billings LLC	4211 1st Ave South	\$323.75
		Novastar Mortgage Services Inc	1870 High Sierra Blvd	\$475.00
TOTAL				\$ 31,158.34

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Public Hearing for Site Development Ordinance Variance # CC-08-03

DEPARTMENT: Public Works/Engineering

PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Management Group, Inc., requests a variance from Section 1208 (i) (4) of the site development ordinance pertaining to the location of driveways near a signalized intersection. The Management Group, Inc. is currently constructing a new First Interstate Bank Operations Center Facility. The building is located at 1800 6th Avenue North, between 6th Avenue North and Railroad Right-of-Way (5th Avenue North) and between North 18th Street and North 20th Street (see Attachment C for site location). The Management Group, Inc. is requesting approval of a right turn exit only curb cut on North 18th Street approximately 30 feet south of 6th Avenue North. City Code requires curb cuts to be one hundred (100) feet from the corner along arterial streets or streets intersecting an arterial at a signalized intersection.

ALTERNATIVES ANALYZED:

1. Approve the variance to allow the curb cut at the proposed location.
2. Do not approve the variance to allow the curb cut at the proposed location.

FINANCIAL IMPACT: There is no direct financial impact to the City. Advertising costs for the public hearing are offset by the variance application fee.

RECOMMENDATION:

Staff recommends that Council approve the variance for a right turn exit only curb cut on (North 18th Street) approximately 30 feet south of 6th Avenue North with the final design and signage of the curb cut subject to approval by the City Engineer.

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

ATTACHMENTS

- A. Variance Application
- B. Letter from Engineering, Inc.
- C. Site Plan Showing Proposed Curb Cut Location

INTRODUCTION

The Management Group, Inc., requests a variance from Section 1208 (i) (4) of the site development ordinance pertaining to the location of driveways near a signalized intersection. The Management Group, Inc. is currently constructing a new First Interstate Bank Operations Center Facility. The building is located at 1800 6th Avenue North, on Lots 2 - 23, Block 260 & Block 261 of Billings Original Townsite and the vacated alley of Block 261 of Billings Original Townsite and a vacated section of North 19th Street between 6th Avenue North and the Railroad Right-Of-Way (5th Avenue North), West 1/2 of Section 33, T1N, Range 26 East, Billings, Montana. This property is located between 6th Avenue North and Railroad Right-Of-Way (5th Avenue North) between North 18th Street and North 20th Street (see Attachment C for site location). The Management Group, Inc. is requesting approval of a right turn exit only curb cut on to an arterial street North 18th Street approximately 30 feet south of an intersecting arterial street 6th Avenue North which is a signalized arterial intersection (see Attachment C for approach locations). City Code requires curb cuts to be one hundred (100) feet from the corner along arterial streets or streets intersecting an arterial at a signalized intersection.

BACKGROUND

Engineering Inc., consultant for the design of the First Interstate Bank Operations Center, has provided a Application for Variance (Attachment A), a letter requesting a variance from City Codes Section 1208 (i) (4) and general information for the request (Attachment B) and a Site Plan of the Project Including Proposed Curb Cut Location (Attachment C) for the variance showing the location of the proposed curb cut on an arterial streets or streets intersecting an arterial at a signalized intersection.

The location for curb cuts for the proposed site in accordance with the city codes based on Section 6-1208 Curb Cut Regulations is as follows:

Section 6-1208 (i) **General regulations.** Every curb cut and driveway apron constructed or altered in the street right-of-way shall conform to the following regulations:

(4) No curb cut shall be made between the points of curvature of any curb radius at intersections, nor closer than ten (10) feet from the point of curvature except along arterial streets or streets intersecting an arterial at a signalized intersection any curb cut shall be one hundred (100) feet from the corner. The location of the curb cuts for lots or parcels along arterial streets having less than 100 feet of frontage shall be approved by the City Engineer or their designee.

The new First Interstate Bank Operations Center has two main entrances into the proposed project. The main entrance is located on 6th Avenue North and is located approximately where North 19th Street was previously located and has been recently vacated. The other entrance is located on North 20th Street. The Management Group, Inc., is requesting variance for a right

turn exit only curb cut on to an arterial street (North 18th Street) approximately 30 feet south of (6th Avenue North). The intersection of these two arterial streets is a signalized arterial intersection. The City code requires curb cuts along arterial streets or streets intersecting an arterial at a signalized intersection any curb cut shall be one hundred (100) feet from the corner. The property frontage along North 18th Street is over a one hundred (100) feet in property frontage. Therefore, a curb cut could be located the required distance from the corner. The applicant is requesting the variance to allow trucks, such as garbage trucks to exit directly onto North 18th street without making additional turning maneuvers within the parking lot or having to turn around to use one of the other driveways entrances. The most recently provided proposed site plans now shows that the location of the proposed curb cut requiring a variance (Attachment C).

ALTERNATIVES ANALYSIS

1. Approve the variance. Approval of the variance will allow for the construction of the curb cut at the proposed location of less than one hundred (100) feet from the corner along arterial streets at a signalized intersection on to North 18th Street.
2. Do not approve the variance. If the variance is denied, the owner's options will require relocating the curb cut one hundred (100) feet from the corner or eliminate the curb cut.

SUMMARY

The applicant and owner of the property is The Management Group, Inc., Engineering, Inc. agent is requesting a variance and approval of a right turn exit only curb cut on North 18th Street approximately 30 feet south of 6th Avenue North. City Code requires curb cuts to be one hundred (100) feet from the corner along arterial streets or streets intersecting an arterial at a signalized intersection. The City Traffic Engineer recommends approval conditional and with the restriction that the curb cut be maintained and signed as a right turn exit only curb cut.

RECOMMENDATION

Staff recommends that Council approve the variance for a right turn exit only curb cut on (North 18th Street) approximately 30 feet south of 6th Avenue North with the final design and signage of the curb cut subject to approval by the City Engineer.

ATTACHMENTS

- A. Variance Application
- B. Letter from Engineering, Inc.
- C. Site Plan Showing Proposed Curb Cut Location

ATTACHMENT A

Application # CC-08-03

APPLICATION FOR VARIANCE

1. Legal description of property: Lots 2-23, Block 260, Billings
Original Townsite
2. Address (if unknown, contact the City Engineer's office) or general location: 1800, 67th Ave North, Billings, MT 59101
3. Owner(s): The Management Group, Inc.
(Recorded Owner)
P.O. Box 1942, Billings, MT 59103
(Address)
(406) 672-6001
(Phone Number)
4. Agent(s): Engineering, Inc.
(Name)
1300 North Transtech Way, Billings, MT 59102
(Address)
(406) 656-5255
(Phone Number)
5. Section of the Site Development Ordinance that this request for variance applies to: Section 23-406(11), City of Billings Subdivision Regulations
6. Reason for request: To provide site circulation for the First Interstate Bank operations center, while still providing flexibility for future building expansion
7. Covenants for deed restrictions on the property: Yes No X
(if yes, please include a copy)

I understand that the filing fee accompanying this application is not refundable, and that the fee does not constitute a payment for variance requested. Also, that all the information presented is true and correct.

Signature: 

Date: 9/11/08

Fee: 100.00

Receipt #: 46951

Hearing Date: _____

ATTACHMENT B
CC - 08 - 03



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

September 4, 2008

Mr. H. Terry Smith
City Traffic Engineer
510 North Broadway, 4th Floor
Billings, MT 59101

Reference: First Interstate Bank Operations Center Variance Request
E.I. No. 08001

Dear Mr. Smith:

As part of the First Interstate Bank Operations Center site plan review, the developers of the property are requesting a variance of Section 23-406(11) of the City of Billings subdivision regulations, which states any street intersection involving an arterial and/or collector street shall intersect at 90 degrees and shall be retained for at least 100 feet back from the intersection. The developers are asking for relief from the 100-foot intersection spacing requirement for the approach on North 18th Street. As is required by Section 23-1101(A) of the City of Billings subdivision regulations, I offer the following responses to the request of the variance:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties.

The requested variance would not detrimentally affect public health, safety, or general welfare of the public. The access on North 18th Street would be designed to be a right-out, exit-only approach. This exit-only access would eliminate the safety concern of slowing vehicles and queuing traffic from entering vehicles from 6th Avenue North at the approach. In addition, the relatively low traffic volumes on North 18th Street would likely not produce queues that would block the exiting vehicles from this approach.

In addition, the exit only approach allows for adequate, safe site circulation along the north side of the building. If the variance were not granted, delivery trucks and service vehicles needing to access the north side of the building would be forced to make difficult, potentially unsafe turning movements in the drive aisle in order to exit the site at one of the other two approaches to the west. These movements could potentially be dangerous for both the vehicles themselves and pedestrians within the site.

ATTACHMENT B

September 4, 2008

CC-08-03

2. **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.**

In order to accommodate its growing employee base, it is expected that the building will be expanded to the east in the future. This expansion would result in the elimination of the parking lot along the east side of the building and would also limit any access points on North 18th Street south of the proposed exit-only access point. If the regulation was enforced to the strict letter, it would essentially eliminate future building expansion (if an access was located more than 100 feet south of 6th Avenue North) or create substantial site circulation problems on site (if the access was eliminated all together).

3. **The variance will not result in an increase in taxpayer burden.**

By granting the variance, there would be no increase in taxpayer burden. In fact, granting the variance would allow for future building expansion, which could allow for a higher tax base to the City of Billings from the property.

4. **The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations of growth policy.**

The variance would not place the development in nonconformance with any adopted zoning regulations of the growth policy. In fact, one of the goals of the growth policy is to build new developments that are sensitive to and compatible with the character of adjacent city neighborhoods and county townsites. The objective of this goal is to maintain a high quality of life for new and existing residents, to reduce conflicts between neighbors, and to improve the appearance of land uses.

Granting the variance will only help the development of this site. It is a site that is a substantial improvement over past developments. Also, the site will likely reduce conflicts between neighbors because the low-income residential manufactured homes are being eliminated and replaced with an aesthetically pleasing site development.

5. **The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.**

The alternative design of the access on North 18th Street would be equally effective as moving the access to the south. It would eliminate the potential vehicle slowing and vehicle queuing problems for vehicles turning into the site from 6th Avenue North. In addition, it would allow for adequate site circulation and would allow for future expansion of the building without eliminating access on North 18th Street.

ATTACHMENT B

September 4, 2008
Page 3

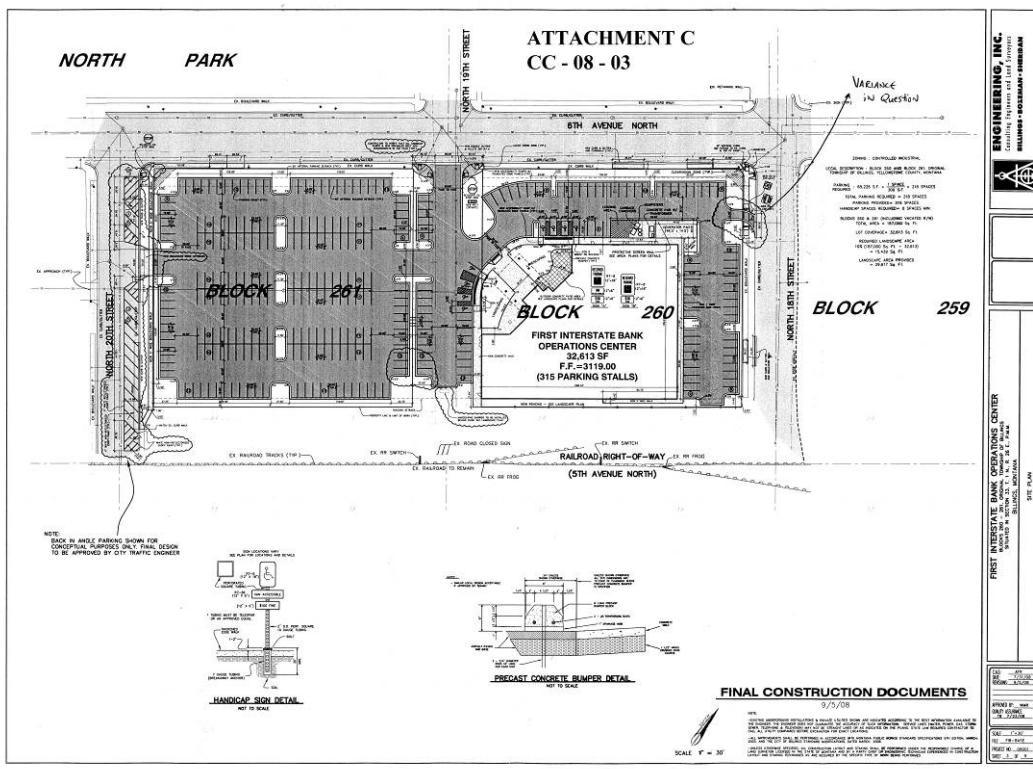
I appreciate the dialogue on this issue between the City and the developers of this property. I believe working through this issue can be of benefit to both the City of Billings and the developers. I appreciate the opportunity to submit this variance, and hope the City of Billings considers its merits.

Sincerely,



Will Ralph, PE
Associate/Project Manager

WR/dml
P:08001_Smith_Variance_Rqst_Ltr_090408



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 10, 2008

TITLE: Zone Change #850, 2nd Reading of Ordinance – Sexually Oriented Businesses (SOB) – Amending Sections 27-201, 27-405(g) and 27-611 BMCC

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: Section 27-611 of the Unified Zoning Regulations regulates where Sexually Oriented Businesses (SOBs) may locate within the City of Billings. The existing regulations are intended to diminish the negative secondary effects of SOBs throughout the city. In June 2008, a deficiency in the existing regulations allowed an SOB to locate in the Central Business District zone at 222 N Broadway. This location is within 1,000 feet of a school, a park, three churches and the Parmly Billings Public Library. Section 27-611 does not currently regulate commercial establishments that offer or provide live adult nude or semi-nude performances. The City does prohibit this activity only where alcoholic beverages are served (Section 3-304 BMCC). The City Zoning Commission held a public hearing on the amendment to the zoning regulation on October 7, 2008, and voted 5-0 to recommend approval to the City Council. The City Council held a public hearing on October 27, 2008, and approved the zone change on first reading.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on October 7, 2008. No members of the public spoke at the Zoning Commission Public Hearing. The City Zoning Commission is forwarding a recommendation of approval.

At the public hearing on 1st reading on October 27, 2008, the Council received testimony from owners at two existing Adult Book Stores. The owners were concerned with the provision to eliminate this use from the Central Business District zone and the Highway Commercial zone and the would requirement that their businesses to relocate within 4 years to the proper zoning district. The Planning Division consulted with the City Administrator and the City Attorney after the 1st reading public hearing and determined there are several ways to modify the proposed ordinance to accommodate the existing Adult Book Stores. These proposed modifications will

require additional time for review and another public hearing and recommendation from the Zoning Commission. The interim zoning ordinance expires on December 23, 2008.

The Planning Division is recommending, based on the testimony at 1st reading, and after consultation with the City Attorney and City Administrator, that the Council indefinitely postpone the adoption of this ordinance. In addition, the Planning Division is recommending the Council set a public hearing for December 8, 2008 to extend the interim zoning ordinance for 1 year to allow additional time to modify the proposed ordinance and conduct a public hearing before the Zoning Commission.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the new zoning regulation. It is possible, if the ordinance is adopted as proposed, the City will be subject to future litigation from current business owners that will place an unknown financial burden on the City.

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #850. The Planning Division is recommending indefinite postponement of Zone Change #850 based on testimony received at the 1st reading public hearing.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A
ORDINANCE NO. 08-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING, SECTION 27-201, SECTION 27-611(a) THROUGH SECTION 27-611(f) AND SECTION 27-405(g) SETTING DEFINITIONS FOR SEXUALLY ORIENTED BUSINESS AND SETTING AN AMORTIZATION PERIOD FOR NONCONFORMING SEXUALLY ORIENTED BUSINESS AS A RESULT OF THESE AMENDMENTS AND ADOPT THE REVISIONS AS AN AMENDMENT TO ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-201 to add new language as follows:

SEC. 27-201. DEFINITIONS.

SEXUALLY ORIENTED BUSINESS: An "adult" arcade, "adult" bookstore, "adult" cabaret, "adult" video store, "adult" motel or "adult" motion picture theater, as those terms are defined in BMCC Section 27-611.

Section 4. That the Billings, Montana City Code be amended by revising Section 27-611 to delete certain language and add new language to read as follows:

SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.

(a) FINDINGS OF FACT. The City Council hereby finds:

1. There are a substantial number of adult businesses in the Billings area that require special supervision from the public safety agencies in order to protect and

preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the area.

2. Adult businesses are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaisons of a casual nature.

3. The concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens.

4. There is convincing documented evidence that adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas, causing increased crime and the downgrading of property values.

5. It is recognized that adult businesses, due to their nature, have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.

6. The City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight.

7. The City Council has previously acted to regulate the location and operation of other types of businesses that cause secondary effects, such as casinos and taverns or drinking establishments. This ordinance is part of an overall plan to improve and protect the quality of life from the secondary effects of a variety of activities through reasonable regulation and land use controls.

8. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult businesses.

9. It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state law prohibits the distribution of obscene materials and expects and encourages law enforcement officials to enforce anti-obscenity laws against any such illegal activities that are now occurring or may occur in the future within the City.

(a) (b) Purpose and Intent. It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, ~~morals~~, and the general welfare of the citizens of the City of Billings ~~and Yellowstone County~~, and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City ~~and County jurisdictions~~. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly it is not the intent or effect of these regulations to restrict or deny access by adults to distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.

~~(b) (c) Findings and Determinations.~~ The Billings City Council and Yellowstone County Commission hereby ~~finds and~~ determines that:

The establishment of adult uses in the downtown business area and in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.

The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.

The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.

Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.

~~(c) (d) Definitions.~~ Terms used in this section, that are not specifically defined below, may be found in Section 27-201 BMCC. Where other definitions are necessary and are not defined in this Section or Section 27-201, the dictionary may define such terms.

(1) Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) Adult Book Store or Adult Video Store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(3) Adult Cabaret means a commercial establishment which regularly features:

- (a) Persons who appear nude or in a state of nudity or semi-nudity; or
- (b) Live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities;

(3)-(4) Adult Motel means a hotel, motel, or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(4)-(5) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(5)-(6) Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.

(6)-(7) City means the City of Billings, Montana.

(7)-(8) County means Yellowstone County, Montana.

(8) Establishment means and includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. The additions of any sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of any sexually oriented business.

(9) Nudity or a state of nudity means (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or areola or nipple of the female breast, or (b) a state of dress which fails to opaque and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

(9)-(10) Sexually Oriented Business means an "adult" arcade, "adult" book store, "adult" cabaret, "adult" video store, "adult" motel, or "adult" motion picture theater.

(10)-(11) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals. Specified Sexual

(11)-(12) Activities means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).

(12)(13) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(d) (e) Classification. Sexually oriented businesses are classified as follows:

- (1) Adult Arcades;
- (2) Adult Book Stores or Adult Video Stores;
- (3) Adult Cabarets
- ~~(3) (4) Adult Motels; and~~
- ~~(4) (5) Adult Motion Picture Theaters.~~

(e) (f) Location of Sexually Oriented Business.

- (1) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following residential zones:
 - a. Agricultural Suburban (A-S) Zone;
 - b. Agriculture Open-Space (A-1) Zone;
 - c. Residential 15,000 (R-150) Zone;
 - d. Residential 9,600 (R-96) Zone;
 - e. Residential 8,000 (R-80) Zone;
 - f. Residential 7,000 Restricted (R-70R) Zone;
 - g. Residential 7,000 (R-70) Zone;
 - h. Residential 6,000 Restricted (R-60R) Zone;
 - i. Residential 6,000 (R-60) Zone;
 - j. Residential 5,000 (R-50) Zone;
 - k. Residential Multi-Family (RMF) Zone;
 - l. Residential Multi-Family - Restricted (RMF-R) Zone;

- m. Residential Manufactured Home (RMH) Zone; or
 - n. Entryway Mixed Use (EMU) Zone; or
 - o. Any Planned Development Zone
- (2) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following land uses:
- a. Public library;
 - b. Public playground or park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
 - c. Public or private school and its grounds, from pre-school kindergarten through twelfth grade;
 - d. A state licensed community residential facility, family day care home, group day care home, or day care center; or
 - e. Church or other place of worship; or
 - f. A cemetery.
- (3) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any sexually oriented business within six hundred (600) feet of another sexually oriented business.
- (4) For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures, from the property line of the sexually oriented business to the property line of the preceding land uses or zoning districts.
- (5) In addition to the preceding requirements, sexually oriented businesses are permitted in the following zones only:
- a. Central Business District (CBD) Zone;
 - b. Highway Commercial (HC) Zone;
 - c. a. Controlled Industrial (CI) Zone; or
 - d. b. Heavy Industrial (HI) Zone.
- (f) Nonconforming Use - Amortization period established. (Refer to BMCC Section 27-405(G))

Section 5. That the Billings, Montana City Code be amended by revising Section 27-405(g) to delete certain language and add new language to read as follows:

SEC. 27-405. NONCONFORMING USES OF STRUCTURES.

- (g) Any sexually oriented business, located within the limits of the City of Billings, existing upon passage of this chapter and Section 27-611 which does not comply with the requirements established herein shall be deemed a legal nonconforming use. All existing legal nonconforming sexually oriented businesses, as of the effective date of this chapter

and Section 27-611, or any amendment hereto, shall comply with the provisions of this chapter and Section 27-611 within four (4) years from the date of the enactment of this section or any amendment thereto. (Refer also to BMCC Section 27-611)

Section 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 8. 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 October 27, 2008.

PASSED, ADOPTED AND APPROVED on second reading November 10, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

Cari Martin, City Clerk