

# CITY OF BILLINGS

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

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## AGENDA

**COUNCIL CHAMBERS**

**December 17, 2007**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tussing  
PLEDGE OF ALLEGIANCE – Mayor Tussing  
INVOCATION – Councilmember Clark  
ROLL CALL  
MINUTES – December 10, 2007 (Pending)  
COURTESIES  
PROCLAMATIONS  
ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 and 11 only.**

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

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

### **CONSENT AGENDA:**

**1. A. Mayor’s Appointments:**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Norm Kolpin	Aviation & Transit	01/01/08	12/31/11
2.	Souther	Board of Ethics	01/01/08	12/31/11
3.	Kathleen Walters	Community Development Board (At Large)	01/01/08	12/31/11
4.	Jim Hartung	Community Development Board (Low Mod)	01/01/08	12/31/11

5.	*J. Kip Gjerde	Energy & Conservation Commission	01/01/08	12/31/10
6.	Phyllis Crawford	Housing Authority	01/01/08	12/31/09
7.	Michael Crummett	Human Relations Commission	01/01/08	12/31/11
8.	Claudia Stephens	Human Relations Commission	01/01/08	12/31/11
9.	Ian Elliot	Human Relations Commission	01/01/08	12/31/11
10.	*Cyndi McCormick	Human Relations Commission	01/01/08	12/31/09
11.	Jean Warner	Library Board	01/01/08	12/31/11
12.	James Mariska	Public Utilities Board	01/01/08	12/31/11
13.	Steven Zeier	Traffic Control Board	01/01/08	12/31/11
14.	Brian Roberts	Yellowstone Historic Preservation Board	01/01/08	12/31/09
15.	Alex Tommerup	Yellowstone County Planning Board	01/01/08	12/31/09
16.	Edward Workman	Zoning Commission	01/01/08	12/31/11
17.	Barbara Hawkins	Zoning Commission	01/01/08	12/31/11
18.	Leonard Dailey	Zoning Commission	01/01/08	12/31/11
19.	Michael Larson	Zoning Commission	01/01/08	12/31/11

5. Unexpired term of Richard McCormish

10. Unexpired term of Skip Godfrey

[\(Corresponding Staff Memo A\)](#)

**B. Bid Awards:**

**(1) Lower Level Restrooms Remodel for Billings Logan International Airport.** (Opened 12/11/07), D.P.S. Company, \$55,457.00.

[\(Corresponding Staff Memo B\)](#)

**C. Change Order No. 1, 2007 Accessibility Ramps, CMG Construction, Inc., \$14,682.24.**

[\(Corresponding Staff Memo C\)](#)

**D. Approval** of Revolving Loan Fund loan to David L. Overturf for purchase and renovation of property located at 2517 Montana Avenue, \$85,000.00.

[\(Corresponding Staff Memo D\)](#)

**E. Approval** of Federal Projects Requests for 2008.

[\(Corresponding Staff Memo E\)](#)

**F. Approval** of two 20-year West End Hangar Ground Leases with John M. and/or Marcia A. Nash, Lots 12 and 13; revenue first year - \$975.72 each.

[\(Corresponding Staff Memo F\)](#)

**G. Approval** of Airline Operating Permit with Lynx Aviation, Inc.

[\(Corresponding Staff Memo G\)](#)

**H. Approval** of Utility Site Purchase Agreement and Quitclaim Deed, Zone 4 Reservoir Land Acquisition, GSK Partners, LLP, \$52,959.00.

[\(Corresponding Staff Memo H\)](#)

**I. Approval** of extension of Downtown Billings Partnership Development Agreement.

[\(Corresponding Staff Memo I\)](#)

**J. Agreement** with *The Billings Times* to provide City of Billings legal advertising, 1/1/08 – 12/31/11, at a cost of approximately \$27,000.00 per year.

[\(Corresponding Staff Memo J\)](#)

**K. Agreement** with Billings Housing Authority to fund one officer at no expense to the City of Billings.

[\(Corresponding Staff Memo K\)](#)

**L. Agreement** with Laurel Ford for 12-month automobile lease for HIDTA Task Force, 1/1/08 – 12/31/08, \$4,200.

[\(Corresponding Staff Memo L\)](#)

**M. Acceptance** and approval of 2008 High Intensity Drug Trafficking Area Award (HIDTA), \$151,381.00

[\(Corresponding Staff Memo M\)](#)

**N. Acceptance** and approval of Homeland Security Grant for purchase of Bomb Squad tow vehicle and accessories of up to \$70,000.00.

[\(Corresponding Staff Memo N\)](#)

**O. Amendment #1**, Rimrock Road - Shiloh Road to 54<sup>th</sup> Street West Improvement Project, General Project Development and Construction Agreement with Montana Department of Transportation.

[\(Corresponding Staff Memo O\)](#)

**P. Amendments #4 and #5**, Rimrock Road – Shiloh Road to 54<sup>th</sup> Street West Improvement Project, HKM Engineering, Inc., Amendment #4 – Water line relocations \$40,920.00; Amendment #5 – Project boundary re-design \$32,243.00.

[\(Corresponding Staff Memo P\)](#)

**Q. Amendment #5**, Briarwood Sanitary Sewer Main Extension, Morrison-Maierle, Inc. for design and right-of-way acquisition, \$79,964.00.

[\(Corresponding Staff Memo Q\)](#)

**R. Confirmation** of Probationary Police Officer, Matt Lennick.

[\(Corresponding Staff Memo R\)](#)

**S. Briarwood Sanitary Sewer Main Extension Right-of-Way Agreement and Perpetual Right-of-Way Easement** with Briarwood Country Club, \$50,000.00.

[\(Corresponding Staff Memo S\)](#)

**T. W.O. 04-33: Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition:**

(1) Parcel 27: Portion of Unit 124, a Condominium on Lot 1, Block 1, Windsor Imperial Subdivision, Gregory R. Smith and Betty Mattson-Smith, \$9,150.00.

[\(Corresponding Staff Memo T1\)](#)

(2) Parcel 63: Portion of Lot 14, Block 3, Broadmoor Subdivision, Heirs and Devisees of Donna J. Peterson, Deceased (Dorothy Waddell and Robert Bryson, Personal Representatives), \$3,200.00.

[\(Corresponding Staff Memo T2\)](#)

**U. Street Closure:** *Magic City Blues Festival*, Montana Avenue between the 2300 and 2500 blocks from 9:00 a.m. on Friday, August 8, 2008, to noon on Sunday, August 10, 2008.

[\(Corresponding Staff Memo U\)](#)

**V. Resolution of Intent** to adopt the South Side Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

[\(Corresponding Staff Memo V\)](#)

**W. Resolution** creating the Work Force Housing Ad Hoc Committee and approving composition of the committee.

[\(Corresponding Staff Memo W\)](#)

**X. Resolution** creating the joint City-County Bicycle and Pedestrian Advisory Committee.

[\(Corresponding Staff Memo X\)](#)

**Y. Preliminary Minor Plat** of Lake Hills Subdivision, 32<sup>nd</sup> Filing.

[\(Corresponding Staff Memo Y\)](#)

**Z. Final Plat** of Meadowlark Subdivision, Amended Lot 7, Block 4.

[\(Corresponding Staff Memo Z\)](#)

**(Action:** approval or disapproval of Consent Agenda.)

**REGULAR AGENDA:**

- 2. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-05: described as 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester. Staff recommends approval.

**(Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 2\)](#)



3. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward V to include recently annexed property in Annexation #07-18: described as a portion of 56<sup>th</sup> Street West and Broadwater Avenue rights-of-way; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-19: described as a 6.832-acre portion of Rimrock Road right-of-way from 62<sup>nd</sup> Street West to the city limits; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward III to include recently annexed property in Annexation #07-25: described as a 2.457-acre portion of 44<sup>th</sup> Street West right-of-way south of King Avenue West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward V to include recently annexed property in Annexation #07-11: described as a 3.74-acre portion of Broadwater Avenue right-of-way west of 30<sup>th</sup> Street West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward V to include recently annexed property in Annexation #07-12: described as a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 7\)](#)
8. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-13: described as a 0.92-acre portion of Zimmerman Trail right-of-way; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)  
[\(Corresponding Staff Memo 8\)](#)
9. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-14: described as a 4.86-acre portion of Cove Avenue right-of-way between 46<sup>th</sup>

and 50<sup>th</sup> Streets West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 9\)](#)

- 10. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation #07-16: described as a 0.359-acre portion of Grand Avenue right-of-way east of 56<sup>th</sup> Street West; City of Billings, requester. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 10\)](#)

- 11. CHANGE ORDER NO. 2,** New Baseball and Multi-Use Stadium at Athletic Park, \$79,970.00. (Delayed from 12/10/07 meeting).

[\(Corresponding Staff Memo 11\)](#)

- 12. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
*(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

## **Council Initiatives**

### **ADJOURN**

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

# A



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, DECEMBER 17, 2007**

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**SUBJECT:** Boards & Commissions –Appointments and Reappointments  
**DEPARTMENT:** City Administrator’s Office  
**PRESENTED BY:** wynnette Maddox, Administration

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**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for Board and Commission positions that are either vacant or up for re-appointment. Term expiration dates on these vacancies are December 31, 2007 and the positions must be filled.

**FINANCIAL IMPACT:** No financial impact involved.

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1.	Norm Kolpin	Aviation & Transit	01/01/08	12/31/11
2.	Souther	Board of Ethics	01/01/08	12/31/11
3.	Kathleen Walters	Community Development Board (At Large)	01/01/08	12/31/11
4.	Jim Hartung	Community Development Board (Low Mod)	01/01/08	12/31/11
5.	*J. Kip Gjerde	Energy & Conservation Commission	01/01/08	12/31/10
6.	Phyllis Crawford	Housing Authority	01/01/08	12/31/09
7.	Michael Crummett	Human Relations Commission	01/01/08	12/31/11
8.	Claudia Stephens	Human Relations Commission	01/01/08	12/31/11
9.	Ian Elliot	Human Relations Commission	01/01/08	12/31/11
10.	*Cyndi McCormick	Human Relations Commission	01/01/08	12/31/09
11.	Jean Warner	Library Board	01/01/08	12/31/11
12.	James Mariska	Public Utilities Board	01/01/08	12/31/11

13.	Steven Zeier	Traffic Control Board	01/01/08	12/31/11
14.	Brian Roberts	Yellowstone Historic Preservation Board	01/01/08	12/31/09
15.	Alex Tommerup	Yellowstone County Planning Board	01/01/08	12/31/09
16.	Edward Workman	Zoning Commission	01/01/08	12/31/11
17.	Barbara Hawkins	Zoning Commission	01/01/08	12/31/11
18.	Leonard Dailey	Zoning Commission	01/01/08	12/31/11
19.	Michael Larson	Zoning Commission	01/01/08	12/31/11

- 6. Unexpired term of Richard McCormish
- 10. Unexpired term of Skip Godfrey

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Approval of Award of the Lower Level Restrooms Remodel for Billings Logan International Airport

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT PROBLEM/ISSUE STATEMENT:** The Airport Terminal Building's lower level restrooms have not been remodeled since they were built in 1958. These restrooms still use the inefficient tank style water closets and metal privacy stalls, and the integrity of the floor and wall tiles has deteriorated over the years due to heavy use and building settling. Cracks in the tile's grout allow water to seep into the sub flooring and adjacent areas when the restrooms are cleaned. This project will provide new floor and wall tile, privacy stalls, water closets, and all associated plumbing in the men's and women's restrooms located in the lower level of the Terminal. This project was advertised in the *Billings Times*, at the Builders Exchange, and on the City's Web site. On December 11, 2007, we received the following bids for this project.

<u><b>COMPANY</b></u>	<u><b>BID AMOUNT</b></u>
D.P.S. Company	\$55,457
Fisher Construction, Inc.	\$62,981
General Contractors	\$69,273
Langlas Associates, Inc.	\$73,011
Keystone Construction	\$75,870
Hardy Construction, Co.	\$76,600
ENGINEERS ESTIMATE	\$80,000

**FINANCIAL IMPACT:** The total cost of this project is \$55,457. This project was approved in the City's Capital Improvement Program and funding is budgeted in the Airport's Capital Improvement Program to cover the cost of this project.

**RECOMMENDATION**

Staff recommends that the City Council award the Airport Terminal Building's Lower Level Restrooms Remodel to the lowest bidder D.P.S. Company, for the amount of \$55,457.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**

 Monday, December 17, 2007
 

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**TITLE:** Work Order 07-05, Contract #1, 2007 Accessibility Ramps Change Order

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Work Order 07-05, Contract #1 was awarded at the March 26, 2007, City Council Meeting. This project constructed Accessibility Ramps on 13<sup>th</sup> Street West and Parkhill Drive. The city added \$500,000 of gas tax funds to the CIP each year for the next five years to construct accessibility ramps per the agreement with the Department of Justice. The purpose of Change Order No. 1 Final is to reconcile actual construction quantities with bid quantities. In most cases, extra sidewalk needed to be removed and replaced at a different grade to meet the requirements of the American with Disabilities Act (ADA). These extra quantities were not anticipated at the bid. The total increase to the project for Change Order No. 1 Final is \$14,682.24, which exceeds 10% of the original contract amount of \$112,650.00.

**ALTERNATIVES ANALYZED:**

1. Approve Change Order No. 1 Final for a net increase of \$14,682.24;
2. Do not approve Change Order No. 1 Final.

**FINANCIAL IMPACT:** Funding for Work Order 07-05, Contract #1, 2007 Accessibility Ramps and Change Order No. 1, will be provided from Gas Tax.

CIP Project #ENG ADA

CIP Budgeted Amount	\$500,000.00
Previous Encumbrances(WO 06-13 Poly Drive ADA)	\$332,227.50
Bid Award Amount	\$112,650.00
Budget Fund Balance	\$ 55,122.50

**RECOMMENDATION**

Staff recommends that Council approve Change Order No. 1 Final with CMG for a net increase of \$14,682.24.

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

**ATTACHMENT**

A.            Change Order No. 1 Final with CMG Construction, Inc.



## CHANGE ORDER

No. One (1) Final

**PROJECT:** WO 07-05 Contract #1

**DATE OF ISSUANCE:** 12/17/07

**OWNER:** City of Billings  
(Name & Address) 510 N. Broadway, 4<sup>th</sup> Floor  
Billings, MT 59101

**OWNER'S PROJECT NO.** WO 07-05

**CONTRACTOR:** CMG Construction, Inc.  
P.O. Box 80252  
Billings, MT 59108

**ENGINEER:** Office of the City Engineer

**ENGINEER'S PROJECT NO.**  
WO 07-05 Contract #1

**CONTRACT FOR:** WO 07-05 Contract #1

**You are directed to make the following changes in the Contract Documents.**

**Purpose of Change Order:** Reconcile final quantities with actual quantities

### CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 112,650.00

Previous Change Orders  
Orders

\$ 0

Contract Price prior to this Change Order  
Order

\$ 112,650.00

Net Increase (decrease) of this Change

\$ 14,682.24

Contract Price with approved Change Order

\$ 127,332.24

### CHANGE IN CONTRACT TIME:

Original Contract Time

NA  
days or date

Net Change from previous Change

0  
days

Contract Time prior to this Change

NA  
days or date

Net Increase (decrease) of this Change

0  
days

Contract Time with approved Change Order

NA  
days or date

**APPROVED:**

By \_\_\_\_\_  
Owner

**RECOMMENDED:**

By \_\_\_\_\_  
Engineer

**APPROVED:**

By \_\_\_\_\_  
Contractor

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D

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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TITLE:                      Revolving Loan Fund Recommendations for DLO, LLC  
DEPARTMENT:          Finance Division  
PRESENTED BY:        Patrick M Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The Downtown Revolving Loan Committee met on November 19, 2007 and recommends the following loan:

DLO, LLC

\$85,000.00

**FINANCIAL IMPACT:** After awarding this loan, the loan fund will have approximately \$2,000,000.00 available on its Inter-creditor Loan Agreement balance.

**RECOMMENDATION**

Staff recommends that council approve the loan.

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

**ATTACHMENT**

A-Loan Description

## Attachment A

### Revolving Loan Fund Loan

Monday, December 17, 2007

The DLO, LLC loan, of which David L. Overturf is managing member and registered agent, will have the following terms and requirements:

Loan	The lesser of \$85,000.00 or 20% of allowed project costs.
Interest Rate	5.75% adjusted annually to Wall Street Prime less 200 basis points.
Term	Amortized over ten years with a balloon payment at maturity.
Payments	Minimum monthly payments based on a 5.75% rate and 20 years.
Personal guarantees	The City will obtain personal guarantees from David L. Overturf and Thomas A. Overturf.
Security	A trust indenture securing the real property subordinate to the primary lender and the City's UCC filing to secure equipment and furnishings which will also be subordinate to earlier filings by the company's primary lender.
Other	David L. Overturf / DLO, LLC will provide a minimum of 20% of total project costs. DLO, LLC will endeavor in good faith to obtain a bridge loan to fund the improvements and the City of Billings will provide the lender a formal take out commitment stating that once the renovation is complete, funds will be advanced to pay off the bridge loan.

This loan is for the purchase and renovation of the historically significant, Saint Louis Café Building located at 2517 Montana Avenue that will be the home of ***del Alma Gallery & Studio*** [David Overturf Photography].

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Approval of Federal Projects Requests for 2008

**DEPARTMENT:** Administration

**PRESENTED BY:** Tina Volek and Bruce Putnam

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**PROBLEM/ISSUE STATEMENT:** This is the annual action taken to approve the Federal Projects requests for the next session of Congress. Staff and City Council have prepared and reviewed these projects earlier. This action will formalize any Council revisions and final approval. This will facilitate taking these forward to the Congressional delegation for their consideration and action in the coming session of Congress. It is important to act now so that the approved projects can then be placed in the proper format for submission electronically to both Senators and the Congressman and their staffs during January and February 2008.

**FINANCIAL IMPACT:** The current projects summary contains \$45,000,000+ in requests. While there is no expectation that all or even most of these will be able to be funded, experience teaches that the City has a good chance of being granted funding for multiple projects. The projects on this list are critical infrastructure items for which there is very little hope of funding with only local dollars; hence, the importance of asking the Federal delegation to assist the City in security funding for these projects.

**RECOMMENDATION**

Staff recommends that Council approve the attached projects request after agreeing on any modifications they choose.

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

**ATTACHMENT**

A. Federal Funding Projects Requests for 2008 (5 pages)



**DRAFT #2**  
11/23/07

**CITY OF BILLINGS, MONTANA**



**2008**

FEDERAL FUNDING PROJECTS REQUESTS		
PROJECT TITLE	SCOPE	REQUEST ESTIMATE
West Billings Flood Mitigation and Groundwater Recharge Plan	This study would prepare a comprehensive mitigation plan that identifies solutions for both flooding potential and groundwater recharge needs. It would include engineering designs, but not construction plans.	\$350,000
Digital Video Cameras	This project will complete the purchase of digital in-car video equipment in 70 patrol cars. This will be a significant improvement over inadequate VHS equipment presently used. It will assist the Department in prosecuting crimes and will enhance officer safety and increase officer accountability.	\$269,000 is needed to complete this project, partially funded last year.
Tactical Armored Security Vehicle	This vehicle will provide armored protection for officers, and be used in tactical and rescue operations. It will have the capacity to carry 10-14 officers and supplies. It would also be used to conduct operations in a critical WMD situation. Our community is the hub for economic, transportation, and medical activities in a very large geographical area. Hence, the importance of this equipment to our City, State, and region.	\$200,000
		Police Department

11/23/07

**CITY OF BILLINGS, MONTANA****2008**

<b>FEDERAL FUNDING PROJECTS REQUESTS</b>			
<b>PROJECT TITLE</b>	<b>SCOPE</b>	<b>REQUEST ESTIMATE</b>	<b>PROJECT CONTACT</b>
Tactical Protective Blanket System	The tactical blanket system offers armored protection for officers involved in rescue operations. It protects officers and citizens from bullets, explosive over pressure, fragmentation and allows for nearly immediate rescue operations.	\$36,000	Police Department
Naval Reserve Center Environmental Remediation and Demolition.	These city-owned facilities, originally built and occupied by the Dept. of the Navy, have significant environmental problems. Funding is being sought to deal with these issues.	\$500,000	Finance and Administrative Services
CCTV for MET Buses	This project will allow the MET to continue the installation of closed circuit surveillance cameras on the remainder of its fleet. It will also address Homeland Security regulations.	\$51,000	Aviation and Transit Department
Replacement Paratransit Vans	The replacement of four aging vans that will meet the requirements for replacement by the time they are purchased. There is an ever increasing demand for transportation in the elderly and disabled community.	\$260,000	Aviation and Transit Department
MET Bus Replacements	The replacement of two 1998 buses soon eligible for retirement. They will soon have 250,000 miles and require much repair.	\$760,000	Aviation and Transit Department
Bus Wash Renovations	The current facility was constructed in 1983 and is obsolete and in need of replacement. A renovated facility would provide a more environmentally friendly water recovery system and more efficient cleaning.	\$300,000	Aviation and Transit Department

11/23/07

**CITY OF BILLINGS, MONTANA****2008**

<b>FEDERAL FUNDING PROJECTS REQUESTS</b>			
<b>PROJECT TITLE</b>	<b>SCOPE</b>	<b>REQUEST ESTIMATE</b>	<b>PROJECT CONTACT</b>
Business Consortium Project	The Mayor's Committee on Homelessness proposes to facilitate the purchase and/or renovation of a building located in downtown Billings with the intent to provide housing in the upper levels for homeless individuals/families, and a storefront business on the lower level. Provisions can be made to accommodate service providers in the building including healthcare, childcare, and occupational training. Locating all services to meet the needs of the homeless in a single site is a national best practice called "One Stop." The Business Consortium Project would be the first of its kind in Montana, and can be used as a model for implementation in other communities.	\$500,000	Planning Department
Regional Park Land Acquisition	To alleviate the issue of overcrowding in our community/regional parks, we propose the acquisition of a large contiguous tract of land between 80 and 100 acres to develop into a truly regional multi-use park. A tract of land this size would allow the development of large programmable open spaces and organized sports fields to help reduce the current over crowding we are experiencing in our large parks and provide the necessary amenities to meet the demands of our increases in population.	\$700,000	Parks Department
Shiloh Road Project	Staff believes this project will require additional funding to be completed in a timely manner.	\$10,000,000	Public Works



11/23/07

**CITY OF BILLINGS, MONTANA****2008**

<b>FEDERAL FUNDING PROJECTS REQUESTS</b>			
<b>PROJECT TITLE</b>	<b>SCOPE</b>	<b>REQUEST ESTIMATE</b>	<b>PROJECT CONTACT</b>
West Wicks Lane Sewer/Water Infrastructure Improvements	This funding is being requested by Harvest Community Foundation, for improvements to accommodate property owners, including the City, in the 1200 block of West Wicks Lane. The money would be used to extend 1,170 linear feet each of 8-inch sanitary sewer main and 12-inch water main; 660 linear feet of storm drain; and associated valves and manholes.	\$250,000	City Council
City/County Inner Belt Loop	In 2006, the City of Billings and Yellowstone County undertook a design study of a roadway connection from the developed East Heights area of Billings to Zimmerman Trail on the west end of Billings. The roadway was evaluated to provide the Heights area of Billings with a secondary route for transportation and emergency access. Currently, 30% of Billings' population lives with a single access to the medical and business community. The project would include a five-mile two-lane roadway and pedestrian facility. This funding will provide for design, construction administration and right-of-way acquisition costs.	\$21,000,000	Public Works Department
Rimrock Road Improvements from: A) 17th Street W to Rehberg Rd. B) Rehberg Rd. to Shiloh	This major east/west arterial connection has been reconstructed from 27th to 17th Street West. This will complete the upgrade of the last 2.5 miles of Rimrock Road.	A) \$5,000,000 B) \$4,000,000	Public Works Department

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11/23/07

**CITY OF BILLINGS, MONTANA****2008**

<b>FEDERAL FUNDING PROJECTS REQUESTS</b>			
<b>PROJECT TITLE</b>	<b>SCOPE</b>	<b>REQUEST ESTIMATE</b>	<b>PROJECT CONTACT</b>
Water Treatment Plant Backup Power	This will provide for a series of 4-5 large portable generators to provide emergency power to critical water facilities and place Billings in compliance with Federally mandated water system vulnerability standards.	\$750,000	Public Works Department
Cobb Field Renovations	Funding continues to be sought to renovate this important community asset. The voters approved funding for this project in November.	\$1,500,000 over 3 years NOTE: This will be the second year to request this funding. \$500,000 is being sought again (Currently \$330,000 remains earmarked in this budget year)	City Council
Railroad Project	Funds a long-range planning project to relocate the railroad's mainline out of downtown Billings.	\$300,000	City Council

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Approval of Two West End Hangar Ground Leases with John M. and/or Marcia A. Nash, Lots 12 and 13

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On September 25, 2006, the Council approved two Leases to John M. and/or Marcia A. Nash, on which they subsequently constructed a one hundred and twenty-foot (120') by sixty-foot (60') duplex style aircraft hangar. On May 29, 2007, the Council approved two more Leases to Mr. and Mrs. Nash, on which they subsequently constructed a second one hundred and twenty-foot (120') by sixty-foot (60') duplex style hangar. Mr. and Mrs. Nash desire to construct a third one hundred and twenty-foot (120') by sixty-foot (60') aircraft hangar in the City's West End General Aviation area located at the Billings Logan International Airport. This area was specifically developed in the early 1990's to accommodate the general aviation tenants with this type of lease and hangar construction. The proposed hangar will have a steel partition wall that separates the hangar into two separate units, similar to a duplex. Each hangar unit will have its own hangar door. This will allow Mr. and Mrs. Nash the flexibility to sell each side of the hangar in the future, as they have done with the two previous hangar structures. To simplify potential future sale and assignment transactions, staff has opted to provide Mr. and Mrs. Nash with two separate lease parcels – Lots 12 and 13, that adjoin down the center of the proposed hangar, making a sale transaction and assignment of each side of the hangar fairly straight forward. These two twenty (20) year ground Leases would be for two adjoining 5,525 square foot parcels on the south side of general aviation Taxilane "C" for a total of 11,050 square feet. The ground lease rate of \$.1766 per square foot per annum is very similar to the rate being paid by the other ground lease tenants in this area. We have compared our ground lease rates with other commercial service airports and have found that our ground lease rates are comparable. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language.

**FINANCIAL IMPACT:** Each of the two ground Leases will generate \$975.72 in the first year of the Lease, for a total of \$1,951.44. Future lease year rentals will be adjusted annually by the Consumer Price Index (CPI-U) on the anniversary date of the Lease.

**RECOMMENDATION**

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

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Airline Operating Permit with Lynx Aviation, Inc.  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** Lynx Aviation, Inc. (Lynx), is a wholly owned subsidiary of Frontier Airlines, Inc., and will provide the daily Frontier service to Billings beginning in December 2007. To ensure that specific operating requirements will be met, a Scheduled Airline Operating Permit between the City of Billings and Lynx is required. Since Lynx is providing aircraft services for Frontier and will not be signing the City's Airline Operating Agreement and Terminal Lease, the Operating Permit ensures that the airline follows certain operating parameters and procedures, including providing proof that the proper insurance coverage is in place.

**FINANCIAL IMPACT:** There will be no financial impact from this operation because the City is already receiving landing fees and Terminal fees from Frontier Airlines. Lynx will merely be replacing Frontier's aircraft with its own.

**RECOMMENDATION**

Staff recommends that Council approve and the Mayor execute the Scheduled Airline Operating Permit with Lynx Aviation, Inc.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** W.O. 04-26—Zone 4 Reservoir, Land Acquisition, Approval of Utility Site Purchase Agreement With GSK Partners, LLP (Shane Gundlach)

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The Public Works water utility has plans to construct a pumping facility and water storage tanks in Northwest Billings (near Ironwood Subdivision) to provide service to water distribution pressure Zones 4 and 5 West. The new pump station, associated site piping, and Zone 4 reservoirs are being designed to allow expansion and provide future service to Zones 6 and 7. On August 22, 2005, Council approved the purchase of 3.632 acres of fee simple acquisition, 2.328 acres of permanent easement, and 2.076 acres of temporary construction easement for this project. During the design phase of the project, it has been determined acquiring additional land will enable construction to be performed easier and less expensive and allow for better future expansion of the facilities. The original appraisal of this land, completed when the initial land was purchased in 2005, puts a value on this land of \$21,893 per acre. 2.419 acres of additional land have been deemed necessary, equating to a value of \$52,959. GSK Partners, LLP (Shane Gundlach) has verbally agreed to sell the land to the City for this price. A copy of the Utility Site Purchase Agreement, Quit Claim Deed, and preliminary plat showing the additional land acquisition are on file with the City Clerk.

**ALTERNATIVES ANALYZED:**

- Purchase 2.419 acres of additional land from GSK Partners (Shane Gundlach), based on the original 2005 appraisal, at a value of \$52,959.
- Do not purchase additional land, causing more difficult construction methods to be implemented. This would potentially result in higher construction costs in the range of \$500,000 to \$750,000 and limit the ease of expanding the facilities in the future.

**FINANCIAL IMPACT:** The cost of acquiring the desired additional land, containing approximately 2.419 acres and based on the original 2005 appraisal, is \$52,959.00. Sufficient money has been budgeted in the FY 08 CIP and adequate funds are available to purchase the additional land.

## **RECOMMENDATION**

Staff recommends that Council establish a fair market value of \$52,959.00 for a fee-simple acquisition of land from GSK Partners, LLC and authorize the Mayor to execute the respective Utility Site Purchase Agreement, Quit Claim Deed, and other associated documents.

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

## **ATTACHMENTS**

ATTACHMENT 'A': Utility Site Purchase Agreement

ATTACHMENT 'B': Quit Claim Deed

ATTACHMENT 'C': Preliminary Plat

## ATTACHMENT 'A'

### CITY OF BILLINGS

(hereinafter referred to as City)

#### UTILITY SITE PURCHASE AGREEMENT

Zone 4 Reservoir  
DESIGNATION

Work Order: 04-26  
Project No.

Yellowstone  
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
	Tract B of Certificate of Survey No 3030, Tract 1, Second Amended	19	1N	25E

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List Names & Addresses of the Grantors  
(Contract Purchaser, Contract Seller, Lessee, etc.)

GSK Partners,LLP  
4281 Cedar Wood Lane  
BILLINGS, MT 59106-9631

- 
1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a Quit Claim Deed and other documents required by the City for all real property interests agreed to be conveyed by this agreement.
  2. COMPENSATION FOR LAND (List acreage to be acquired.)  
  
2.419 acres by deed \$52,959.00
  3. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder):  
\$52,959.00.
  4. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:  
  
A warrant in the amount of \$52,959.00 to be made payable to GSK Partners, LLP and mailed to 4281 Cedar Wood Lane, Billings, MT 59106-9631
  5. IT IS UNDERSTOOD that the City is acquiring this tract of land to construct a water pumping facility, water storage tanks, all associated access and maintenance roads, underground piping, and security appurtenances.
  6. This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor.



(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN:

We understand that we are required by law to provide our correct taxpayer identification number(s) to the City of Billings and that failing to comply may subject us to civil and criminal penalties. We certify that the number(s) below is/are our **correct** taxpayer identification number(s).

Signature: SHANE GUNDLACH, GSK PARTNERS, LLP (Date) Tax ID No.

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department (Date) City Clerk (Date)

Return to:  
City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

## ATTACHMENT 'B'

### QUITCLAIM DEED

For valuable consideration, **GSK PARTNERS, LLP**, as **GRANTOR**, does hereby release and forever quitclaim their interest unto the **CITY OF BILLINGS, MONTANA**, a Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103, as **GRANTEE**, the following described real property situated in the City of Billings, Yellowstone County, Montana:

Tract B, Certificate of Survey No. 3030, Tract 1, Second Amended, recorded under Document # \_\_\_\_\_, on \_\_\_\_\_, in the official records of the Clerk & Recorder of Yellowstone County, Montana.

Said Tract B contains 2.419 acres, more or less.

**THE PURPOSE OF THIS QUITCLAIM DEED** is to create a utility site upon which the City will construct a water pumping facility, water storage tanks, all associated access and maintenance roads, underground piping, and security appurtenances, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

SHANE GUNDLACH, GSK PARTNERS, LLP

STATE OF MONTANA)

: ss.

County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, a Notary Public for the State of Montana, personally appeared **SHANE GUNDLACH**, known to me to be the \_\_\_\_\_ of GSK PARTNERS, LLP, and acknowledged to me that he executed the foregoing instrument.

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

\_\_\_\_\_  
(Signature)

(NOTARIAL SEAL)

\_\_\_\_\_  
(Printed Name)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: \_\_\_\_\_

### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

RON TUSSING, Mayor  
CITY OF BILLINGS

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF MONTANA) : ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(NOTARIAL SEAL)

\_\_\_\_\_(Signature)

\_\_\_\_\_ (Printed Name)

Notary Public for the State of Montana

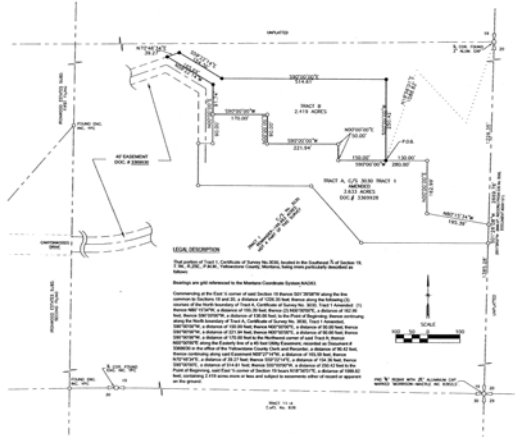
Residing in Billings, Montana

My Commission Expires: \_\_\_\_\_

ATTACHMENT 'C'

CERTIFICATE OF SURVEY No. 3030, TRACT 1, SECOND AMENDED

LOCATED IN THE SOUTHEAST ¼ OF SECTION 19,  
T.1N., R.25E., P.M.M., CITY OF BILLINGS,  
YELLOWSTONE COUNTY, MONTANA



NOTES OF SURVEY  
Surveying was performed in the Montana Coordinate System (MCS).

PURPOSE OF SURVEY  
The purpose of this survey is to create a parcel of land for a utility site (Tract 1, Second Amended) and to confirm the location of the boundary between the City of Billings and the City of Helena, Montana.

CONTINUITY OF SURVEY  
I, David E. Morrison, do hereby certify that the accompanying Certificate of Survey is a true and correct copy of the original survey as shown on the ground and as it appears on the Montana Coordinate System (MCS).

DATE OF SURVEY  
The survey was performed on the 15th day of May, 2017.

DATE OF PREPARATION  
The survey was prepared on the 15th day of May, 2017.

DATE OF RECORDING  
The survey was recorded on the 15th day of May, 2017.

DATE OF DEED  
The survey was recorded on the 15th day of May, 2017.

DATE OF DEED  
The survey was recorded on the 15th day of May, 2017.

DATE OF DEED  
The survey was recorded on the 15th day of May, 2017.

CERTIFICATE OF CITY ATTORNEY  
This document has been reviewed by the Attorney's Office of the City of Billings and is in accordance with the law.

CERTIFICATE OF RECORDS FOR RECORDING  
This document has been reviewed by the City Engineer's Office and is in accordance with the law.

COUNTY ENGINEER'S CERTIFICATION  
I, David E. Morrison, do hereby certify that the accompanying Certificate of Survey is a true and correct copy of the original survey as shown on the ground and as it appears on the Montana Coordinate System (MCS).

CITY ENGINEER'S CERTIFICATION  
I, David E. Morrison, do hereby certify that the accompanying Certificate of Survey is a true and correct copy of the original survey as shown on the ground and as it appears on the Montana Coordinate System (MCS).

CITY ENGINEER'S CERTIFICATION  
I, David E. Morrison, do hereby certify that the accompanying Certificate of Survey is a true and correct copy of the original survey as shown on the ground and as it appears on the Montana Coordinate System (MCS).

CITY ENGINEER'S CERTIFICATION  
I, David E. Morrison, do hereby certify that the accompanying Certificate of Survey is a true and correct copy of the original survey as shown on the ground and as it appears on the Montana Coordinate System (MCS).

DATE	BY	REMARKS
15 MAY 2017	DAVID E. MORRISON	INITIAL SURVEY
15 MAY 2017	DAVID E. MORRISON	REVISION 1
15 MAY 2017	DAVID E. MORRISON	REVISION 2
15 MAY 2017	DAVID E. MORRISON	REVISION 3
15 MAY 2017	DAVID E. MORRISON	REVISION 4
15 MAY 2017	DAVID E. MORRISON	REVISION 5
15 MAY 2017	DAVID E. MORRISON	REVISION 6
15 MAY 2017	DAVID E. MORRISON	REVISION 7
15 MAY 2017	DAVID E. MORRISON	REVISION 8
15 MAY 2017	DAVID E. MORRISON	REVISION 9
15 MAY 2017	DAVID E. MORRISON	REVISION 10

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

---

**TITLE:** Extension of Downtown Billings Partnership Development Agreement  
**DEPARTMENT:** City Administrator's Office  
**PRESENTED BY:** Tina Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Downtown Billings Partnership (DBP) Executive Committee requests extension of part of a Development Agreement that was approved by the City Council on Nov. 13, 2007. The agreement allows Tax Increment District funds to be used beyond sunset of the current district in the March 2008 to complete one or more of three major projects. One project, land assemblage for a Federal Courthouse and related development of replacement parking for the County, was due to be completed by Dec. 31, 2007. However, the agreement provides for mutual extension of the agreement in this area for 30 days if good faith negotiations are in process and likely to lead to binding agreements.

On Dec. 7, the DBP Executive Committee learned an agreement had been reached with a private landowner, who will provide additional land to the project in a key location for replacement of Yellowstone County parking. The Board of Commissioners is scheduled to consider a land swap for the parcel on December 10. If approved, this would result in the accrual of enough land to complete the Federal Courthouse and County replacement parking projects. An agreement of all the parties involved would be brought to the Council for approval in January.

**ALTERNATIVES ANALYZED:**

- Approve the extension for 30 days;
- Do not approve the extension, which may result in the Federal Courthouse moving to another site and the DBP completing either the Quiet Zone or the street conversion project, instead.

**FINANCIAL IMPACT:** If the Federal Courthouse is built, the City is estimated to receive \$492,000 by selling part of 26<sup>th</sup> Street to provide a Federally required buffer for the site.

**RECOMMENDATION**

Approve the extension.

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

**Attachments:**

A: Request for Extension

December 7, 2007

Tina Volek  
City of Billings  
P.O. Box 1178  
Billings, MT 59103-1178



Dear Tina:

Pursuant to the Development Agreement approved by City Council on November 13, 2007 please be informed that the DBP Executive Committee and the DDC Board in a joint meeting on December 7<sup>th</sup> voted unanimously to request that we seek mutual agreement from the City to extend the "termination date" regarding "project 1" (the Federal Courthouse Project) from December 31, 2007 to January 31, 2008 as allowed in the agreement. We believe it is in the best interest of all parties if we extend this time frame in order to present a more complete package to the Council in January regarding our latest proposal. The project is moving forward substantially.

Please forward this request to City Council for approval before December 31, 2007.  
Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg A. Krueger", is written over a horizontal line.

Greg A. Krueger  
Executive Director

CC: Steve Wahrlich



## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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TITLE: Legal Advertising Contract Award  
DEPARTMENT: Administration  
PRESENTED BY: Cari Martin, City Clerk

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**PROBLEM/ISSUE STATEMENT:** The City must publish notices of public hearings, resolutions and ordinances, requests for bids and other ads. The present legal advertising contract with The Billings Times expires on December 31, 2007. Staff requested proposals for legal advertising and received responses from The Billings Gazette and The Billings Times. Liz Kampa, Purchasing Agent for the City of Billings; Cari Martin, City Clerk; and Debi Meling, City Engineer; reviewed each proposal and unanimously chose The Billings Times for the City's legal advertising needs.

**FINANCIAL IMPACT:** The City spends an average of \$27,000 per year for legal advertising.

**RECOMMENDATION**

Staff recommends that Council approve the Agreement for legal advertising with The Billings Times for the period of January 1, 2008, to December 31, 2011.

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

**ATTACHMENT**

A. Agreement

## AGREEMENT

THIS IS AN AGREEMENT between the CITY OF BILLINGS, a municipal corporation, hereinafter referred to as “CITY”, and THE BILLINGS TIMES, hereinafter referred to as “BILLINGS TIMES” for publication of legal advertisements for the thirty-six (36) month period of January 1, 2008, through December 31, 2011.

Publications of legal advertisements for the CITY shall include the following:

- A. PICKUP AND DELIVERY OF ALL LEGAL ADVERTISEMENTS – One account representative assigned to handle the City account and to work closely with the City Clerk. Account representative will pick up (at the City Clerk’s Office) ad copy from the City Clerk between 9:00 a.m. and 10:00 a.m. each Wednesday for publication in the Thursday BILLINGS TIMES, or City Clerk will e-mail to the BILLINGS TIMES ad copy by 10:00 a.m. each Wednesday prior to publication.
- B. AFFIDAVIT OF PUBLICATION – Affidavit will be delivered (not mailed) to the City Clerk the same day as final ad publication, except Saturday and Sunday for which affidavits will be due to the City Clerk by 4:00 p.m., Monday. The Affidavit of Publication will be on pink computer paper or the City’s choice of color on commonly available computer paper. Affidavit of Publication will have an exact copy of the ad attached and will be notarized.
- C. TEAR SHEETS (copies of legal ad) – These are to be delivered (not mailed) to the City Clerk the morning of the same day as first publication, up to 100 copies included at no cost for ad copies. The tear sheet should not be the page where the publication is printed, but a reproduced and timed copy of the actual publication.
- D. BILLING FOR LEGAL ADVERTISEMENTS will be on a weekly basis. Each department or division of the City will have an account number. A statement is provided weekly for each ad specifying the department or division. The run dates and a brief description of the ad (for identification purposes) will be listed for each legal ad on the statement. The bill(s) will be mailed to the Finance Department of the City of Billings.
- E. THE CITY OF BILLINGS MAKES NO GUARANTEE as to the amount of legal advertisement that will be done in the thirty-six (36) month period.
- F. THE CITY POLICY FOR THE LEGAL ADVERTISEMENTS will be:
  - (1) CHANGES TO AD: By 11:00 a.m. the day prior to publication
  - (2) STOPPING ADS: By 11:00 a.m. the day prior to publication

(3) COPY DEADLINE: As outlined in Item A.

G. THE COST OF LEGAL ADVERTISEMENTS is as stipulated in Exhibit A, attached hereto, together with copies of sample advertisements.

H. THE COVENANTS AND AGREEMENTS herein contained shall be binding upon the parties hereto, their successors, and assigns.

IN WITNESS WHEREOF, the parties have executed this agreement on this 17th day of December 2007.

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

THE CITY OF BILLINGS

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

ATTEST:

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

APPROVED AS TO FORM:

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** Agreement with Billings Housing Authority to Fund One Officer  
From January 1, 2008, through June 30, 2008

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Since 1991, the Billings Housing Authority has funded one police officer under an agreement with the City of Billings. The funding consists of salary, benefits, and maximum of four (4) hours of overtime per month. Due to the loss of a grant, the Housing Authority is now funding this position from their office budget for a six month period. Staff is recommending City Council approve this agreement for the funding of the officer through from January 1, 2008, through June 30, 2008.

**FINANCIAL IMPACT:** The City provides a vehicle and necessary equipment. The Billings Housing Authority pays the salary and benefits for the officer, to a maximum amount of \$38,512.06 for the 6 month period of January 1 through June 30, 2008. This amount is budgeted in the current budget. If the Housing Authority is unable to fund the officer position after June 30, 2008, the position will be absorbed through attrition.

**RECOMMENDATION**

Staff recommends Council approve the agreement with Billings Housing Authority to fund one Police Officer for the period of January 1, 2008, through June 30, 2008.

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

**ATTACHMENT**

A-Billings Housing Authority Agreement



**CITY OF BILLINGS POLICE DEPARTMENT  
AND  
HOUSING AUTHORITY OF BILLINGS**

This contract is to cover the period from January 1, 2008 to June 30, 2008 by and between the City of Billings, State of Montana, herein after referred to as "City", and the Housing Authority of Billings.

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

1. The City shall provide its personnel and other resources in a Drug Elimination Policing role at the Housing Authority of Billings' complexes. A dedicated Community Policing Officer shall be provided 40 hours a week, 26 weeks a year to perform the above baseline services for the Housing Authority of Billings. The designated officer will not be available for dispatched calls except in cases of emergency.
2. The Housing Authority of Billings shall pay the City the officer's salary that shall include the officer's salary and fringe benefits of \$37,901.26. This payment shall be made monthly starting on or before January 1, 2007. This amount allows for an average of 4 hours of overtime monthly for a six-month period.
3. The Housing Authority of Billings shall pay for business only cellular phone costs for assigned officer on a monthly basis. No overage from the Housing Authority selected plan will be paid.
4. The City will have available the necessary equipment for the Police Officer to conduct his job.
5. The City shall keep detailed records regarding the date and time of contacts exclusive of investigating records. The Housing Authority of Billings may inspect these records at all reasonable times and those records shall be available for photocopying at no additional fee.
6. Indemnification – The City assumes full responsibility for the officer's performance. The City shall indemnify the Housing Authority of Billings against, and hold the Housing Authority 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, that the City, its officers and employees shall not assume any liability for acts of the Housing Authority of Billings, or any of its officers, employees or agents.

7. This agreement shall cover the period from January 1, 2008 until June 30, 2008.

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

CITY OF BILLINGS, MONTANA "CITY"

HOUSING AUTHORITY OF BILLINGS

\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Executive Director

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Vehicle Lease Agreement with Laurel Ford for HIDTA Task Force  
**DEPARTMENT:** Police Department  
**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Each year the City of Billings renews its lease agreement with Laurel Ford to provide an undercover vehicle for the HIDTA Task Force. The current agreement will expire on December 31, 2007. Attached is the new lease agreement for the period of January 1 through December 31, 2008. This vehicle lease agreement is being paid from the 2008 HIDTA Award, which is also on tonight's Council agenda for approval and acceptance. Staff is requesting Council's approval of this vehicle lease agreement and authorization for the Mayor to sign the lease document.

**FINANCIAL IMPACT:** The cost of leasing one vehicle is \$350 per month, or \$4,200 per year. This amount is budgeted in the 2008 HIDTA Award.

**RECOMMENDATION**

Staff recommends Council approval of the attached 12 month automobile lease agreement for calendar year 2008 with Laurel Ford in the amount of \$4,200.

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

**ATTACHMENT**

A – Vehicle Lease Agreement with Laurel Ford

# **AUTOMOBILE LEASE AGREEMENT**

This AGREEMENT made \_\_\_\_\_ 2008 by and between **LAUREL FORD** with its principal place of business at 500 4 S E Laurel, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT/HIDTA TASK FORCE**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of one (1) vehicle..

The terms of this agreement is for a period of 12 months from January 1, 2008 to December 31, 2008, subject to the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of THREE HUNDRED FIFTY DOLLARS (\$350.00) for the one vehicle, for a total of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200.00), paid in one lump sum payment.

2) **MAINTENANCE:** The LESSEE will bear all expense of maintaining the leased vehicle in good operating condition. The LESSEE shall provide and pay for all gasoline, oil, maintenance, washing, tire and battery replacements, and all necessary repairs other than those covered by the standard manufacturer's limited warranty, where applicable. LESSEE also agrees to pay the deductible in connection with any collision losses.

3) **LICENSING:** The LESSEE agrees to pay at its own cost and expense, State License Fees imposed against said vehicle. Each lease vehicle shall bear a license plate, and title shall be registered in the name of the LESSOR.

4) **INSURANCE:**

A) The LESSEE agrees to furnish and keep in force and effect an acceptable public liability and property damage insurance policy covering all leased vehicles, naming therein or by endorsement thereto, the LESSOR as an additional insured. The minimum limits of liability coverage shall be in the amount of \$500,000 combined single limit for all person(s) killed or injured in any one accident, for property damage or loss of use of property of third persons as a result of any one accident. Prior to delivery of possession of said vehicle hereunder, the LESSEE agrees to furnish the LESSOR with a valid certificate of an acceptable insurance company, licensed in Montana, certifying that such insurance is in force and agreeing that the same shall not be cancelled except upon ten days' prior written notice to the LESSOR.

B) **LESSEE** agrees that it will, and will cause its agents and employees and their families, to cooperate fully with LESSOR and all insurance carriers required by this lease in the investigation, prosecution, and defense of all claims arising from all hazards insured hereunder.

5) **EXCESS MILEAGE:** LESSEE agrees to pay for excess mileage at the rate of \$.10 per mile in excess of 15,000 miles per year. The payment for excess mileage shall be due at the end of the term of the lease.

6) **PERMISSION TO MOVE:** LESSEE agrees to notify and gain written permission from LESSOR should LESSEE decide to move the leased property as described above from the address stated above to another state on a permanent basis or for an extended period of time (longer than six (6) months).

7) **NOTICE:** LESSEE agrees to inform the LESSOR immediately regarding any accident, collision or other damage to the said vehicle. All other notices required to be given under the terms of this lease shall be in writing and shall be sent by United State Registered Mail or Certified Mail addressed to the party to be notified at its address as above stated.

8) **SECURITY AGREEMENT:** LESSOR shall have the right to finance any vehicle(s) now or hereafter covered by this lease by arranging for a Security Agreement thereon or by assigning LESSOR's interest under this lease or both, and LESSEE agrees that such Security Agreement placed by LESSOR shall be superior to this lease.

9) **REASONABLE CARE:** LESSEE agrees to use reasonable care in the operation of said vehicle(s) and, in good faith, to require reasonable care from users authorized by LESSEE hereunder, including the obligation to maintain the vehicle. In any event, LESSEE shall be held personally liable to LESSOR pursuant to the terms of this lease, regardless of permissive use by third parties.

10) **REPLACEMENT VEHICLES:** At any time during the initial or any renewal term of the within lease, the LESSOR may replace the above-described vehicle with a vehicle of the same make and year, such replacement vehicle being in equal or better operating condition; in such event, all the terms and conditions of the within lease shall apply to any and all such replacement vehicle for the term of this agreement or any renewal thereof.

11) **AGENTS:** LESSEE agrees to permit said vehicle to be used only by LESSEE, (its) (his) agents or employees, and by no others. No operator or driver of said vehicle, including LESSEE shall have authority to act on behalf of the LESSOR under any circumstances.

12) **NON-LIABILITY:** LESSOR shall not be liable for any loss from the interruption of, or damage to the LESSEE'S business, and shall not be liable to any of the authorized uses hereunder, in connection with any operating failure of said vehicle (or substitute vehicles provided to LESSEE during repair of the leased vehicle or its replacement), or in connection with any delay in making repairs thereon or furnishing replacement(s) therefor.

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby released and agrees to indemnify the LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any

kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by applicable insurance as otherwise herein provided.

14) **OWNERSHIP:** It is expressly understood and agreed that this Agreement is a contract for leasing only, and that the LESSEE acquires no ownership, title, or property right or interest in, of, or to the said motor vehicle and equipment, but acquires only the right to use the vehicle in accordance with the provision of this lease. Any accessories installed on said vehicle by the LESSEE may be removed upon expiration of this lease. If such removal shall, in the opinion of the LESSOR, cause damage to said vehicle, the LESSEE agrees to pay the Lessor for such damage.

15) **RETURN:** Upon the termination of this lease, the leased vehicle, at the expense of the LESSEE, shall be returned to the place of business of the LESSOR in as good condition as when received, ordinary wear and tear excepted. This return provision shall apply to all substitute vehicles which may be the subject of this contract.

16) **EARLY TERMINATION:** Early termination of this Lease may result in an early termination charge to LESSEE.

17) **ASSIGNMENT, PLEDGE, LIENS, AND ENCUMBRANCES:** This lease may not be assigned, except by the LESSOR as provided herein. The LESSEE shall not have the right to pledge or otherwise encumber this lease or any interest therein nor shall the LESSEE have the right to encumber or otherwise suffer any lien to be placed against the leased vehicle, or abandon or conceal the leased vehicle. The LESSEE shall not sublet the leased vehicle or any replacement vehicle without the written consent of the LESSOR.

18) **WAIVER:** The failure of either party in any one or more instances to insist upon the performance of any of the terms, covenants or conditions of this lease, or to exercise any right or privilege in this lease conferred, or the waiver of any breach of any of the terms, covenants, or conditions of this lease, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect, as if no such forbearance or waiver had occurred.

19) **DEFAULT:** If the LESSEE shall default in the payment in any of the installments of rent as herein provided, or breach any of the terms, conditions or provisions herein contained, or, during the term of this lease, shall file a voluntary petition in bankruptcy, shall make an assignment for the benefit of creditors or shall be adjudicated bankrupt; if a receiver shall be appointed for LESSEE'S business; or if LESSOR deems itself insecure, LESSOR may at its election terminate this Agreement without notice to LESSEE and shall thereupon be entitled to the immediate possession of any and all vehicles in LESSEE'S possession hereunder. In the event this Agreement shall be so terminated, LESSEE shall not be released from any liability to LESSOR for LESSEE'S failure to make any of the payments required by this Agreement or for

LESSEE'S failure or inability to perform the conditions of this Agreement, and LESSEE hereby waives all claims for injury suffered through or loss caused by such repossession.

Upon default, the balance of the installments of rent, to the end of this lease or any existing extension of it, shall, without notice or demand by the LESSEE, at once become due and payable; and in addition thereto, the LESSEE hereby authorizes and empowers the LESSOR to enter its premises or any other place where the leased vehicle may be found, forcibly if necessary, to take possession and carry away and remove such vehicle, with or without legal process and thereby terminate the LESSEE'S right to retention and use of such vehicle. In the event any legal proceedings shall be instituted by LESSOR against LESSEE to recover any sums due or to become due hereunder and/or for the repossession of the vehicle leased hereunder, LESSEE shall pay to LESSOR reasonable attorneys' fees sand costs of repossession.

20) **BINDING EFFECT:** This lease shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and assigns.

21) **ENTIRE AGREEMENT:** This lease together with the Vehicle Lease Disclosure Statement represents the entire Agreement between the parties. All prior negotiations have been merged into this lease, and there are no understandings, representations, or agreements, oral nor written, express or implied, other than those set forth herein. This lease shall not be modified or amended except by an agreement in writing signed by the parties.

22) **CONSTRUCTION:** This lease shall in all respects be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed the day and year first above written.

LESSEE:  
CITY OF BILLINGS  
BY \_\_\_\_\_  
RON TUSSING, MAYOR

LESSOR:  
LAUREL FORD  
BY \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST BY:  
\_\_\_\_\_  
CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

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BRENT BROOKS, CITY ATTORNEY

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


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**TITLE:** Acceptance and Approval of the 2008 High Intensity Drug Trafficking Area (HIDTA) Award #I8PRMP606 in the amount of \$151,381.00

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Montana has been designated as a High Intensity Drug Traffic Area (HIDTA), and the Office of National Drug Control Policy (ONDCP) has awarded the Eastern Montana Drug Task Force \$151,381 for the calendar year 2008. This is the seventh year the City of Billings is the recipient agency of this award. The 2008 HIDTA Award will be used to pay for an Administrative Assistant position for the HIDTA task force, task force overtime, administrative and investigative travel, an automobile lease agreement, cell phones, copier maintenance agreement, investigative/office supplies, equipment and informant costs. HIDTA does pay for all costs associated with the Task Force, except for the Task Force Officers' salary and benefits. When the award documents are received, staff asks that the Mayor be authorized to sign.

**FINANCIAL IMPACT:** The \$151,381 award will require no city match. The award has been budgeted in Fund 255 for the balance of FY 07/08.

**RECOMMENDATION**

Staff recommends that Council approve and accept the 2008 HIDTA award from the Executive Office of the President, Office of National Drug Control Policy in the amount of \$151,381 and authorize the Mayor to sign the necessary documents, when they are received.

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

## **INTRODUCTION**

Since 1999, Senator Max Baucus tried to have Montana designated as a High Intensity Drug Trafficking Area (HIDTA) in order to receive federal resources to battle the methamphetamine epidemic in Montana communities. Senator Baucus succeeded in his cause and Montana was designated as a HIDTA in 2002. This memo is to ask Council for acceptance and approval of the 2008 Award in the amount of \$151,381.

## **BACKGROUND**

For several years, Senator Baucus tried, and in 2002 finally succeeded, in designating Montana as a High Intensity Drug Trafficking Area because of the amount of methamphetamine in the State. This designation provides federal money to help address the problem of use and abuse of methamphetamine-related crimes. Since Montana has been given the HIDTA designation, Eastern Montana Drug Task Force at the Rocky Mountain High Intensity Drug Trafficking Area was created in 2002. This task force consists of personnel from the following agencies: Alcohol, Tobacco and Firearms; Border Patrol; Billings Police Department; Drug Enforcement Administration; FBI; Probation and Parole; and the Yellowstone County Sheriff's Office. The Task Force is managed by a Sergeant from the Billings Police Department and is currently housed in the U. S. Marshal's Building across from Yellowstone County Courthouse. Tonight, Council is being asked to approve and accept the 2008 HIDTA Award.

## **RECOMMENDATION**

Staff recommends Council approve and accept the 2008 HIDTA Award from the Executive Office of the President, Office of National Drug Control Policy in the amount of \$151,381 and authorize the Mayor to sign the necessary documents when they are received.

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



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


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**TITLE:** Acceptance and Approval of Homeland Security Grant in an amount up to \$70,000 for the Purchase of a Bomb Squad Tow Vehicle and Accessories

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Sheri Lanz, Homeland Security Coordinator for the State of Montana has notified the Police Department Bomb Squad that it has been granted up to \$70,000 for the purchase of a new Bomb Squad tow vehicle with step running boards, full light package, generator package, a high body utility box, front winch assembly and front push bumper. The grant period is November 20, 2007, through March 30, 2008. The current bomb vehicle, #1597, will be sold at auction. Council is being asked to accept this grant award in an amount up to \$70,000 and authorize the Mayor to sign the award documents.

**FINANCIAL IMPACT:** There is no match required from the City. All expenditures are on a reimbursement basis.

**RECOMMENDATION**

Staff recommends that Council accept the award from Homeland Security for a Bomb Squad tow vehicle up to an amount of \$70,000, and authorize the Mayor to sign the award documents.

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

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



AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** Amendment #1 with Montana Department of Transportation for the General Project Development and Construction Agreement for the Rimrock Road – Shiloh to 54<sup>th</sup> St. W. Project

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The Montana Department of Transportation (MDT) and the City of Billings entered into an agreement approved by Council on December 8, 2003 to participate in an Urban Highway Pilot Involvement Program. The Urban Highway Pilot Involvement Program is a collaboration between the City of Billings and the Montana Department of Transportation to construct an Urban System project. The project includes of Rimrock Road between Shiloh Road and 54<sup>th</sup> Street West. The scope of work includes widening and reconstruction of Rimrock Road to 3 lanes to incorporate a center turn lane and a separated pedestrian/bike path from Shiloh Road to 54<sup>th</sup> Street West. The project size may be reduced depending on available funding and the actual bids received. Construction of Rimrock Road is anticipated to start during the summer of 2008. This amendment allows for increased state and federal funding; MDT indirect costs for construction, construction engineering, and utilities; and other non monetary MDT required language since the original agreement was executed.

**ALTERNATIVES ANALYZED:**

- Approve amendment #1 between the Montana Department of Transportation and the City of Billings
- Don't approve amendment #1 between the Montana Department of Transportation and the City of Billings

**FINANCIAL IMPACT:** The total funding for this project is estimated to be \$4,264,171 using State and Federal Funds and city funds. The City of Billings will be obligated to contribute a total of approximately \$201,000 using water, arterial funds, and storm water funds. Approximately \$71,000 of this amount has been paid to date.

**RECOMMENDATION**

Staff recommends that Council approve Amendment #1 with Montana Department of Transportation for the General Project Development and Construction Agreement for the Rimrock Road – Shiloh to 54<sup>th</sup> St. W. Project.

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

**ATTACHMENT:**

A.     Amendment #1

AMENDMENT ONE  
URBAN HIGHWAY PILOT IMPROVEMENT PROGRAM  
GENERAL PROJECT DEVELOPMENT  
AND  
CONSTRUCTION AGREEMENT  
CM 1034  
RIMROCK RD-SHILOH TO 54TH-BLGS

The undersigned parties, the Montana Department of Transportation, hereinafter called the State, and the City of Billings, hereinafter called the City, hereby agree and acknowledge that the RIMROCK RD-SHILOH TO 54TH-BLGS project's General Project Development and Construction Agreement and URBAN HIGHWAY PILOT IMPROVEMENT PROGRAM MAINTENANCE AGREEMENT entered into December 19, 2003, are amended as follows:

1) Fourth WHEREAS, Page 1 of the original agreement is replaced with the following:

WHEREAS, this project is eligible for up to \$1,923,839 of federal and necessary matching funds under the Urban Highway Pilot Improvement Program and up to \$2,340,332 in federal and necessary matching funds under the Billings-MACI Guaranteed program. Total funding available from these sources for all phases of the project is \$4,264,171 unless additional funds are allocated through the local planning process in accordance with federal planning regulations; and

2) Under D. PROJECT FUNDING on page 3 of the original agreement, there are two replacements. Item 2 is replaced with the following:

The City will be responsible for 13.42% and Federal participation will be 86.58% of the federal aid eligible consultant preliminary engineering costs, Incidental Construction costs and Right-of-Way costs. The City will be responsible for all other costs in excess of the \$4,264,171 available under the Urban Highway Pilot Improvement Program (UHPIP) and the Billings-MACI Guaranteed program;

Item 3 is replaced with the following:

The State will be responsible for matching costs for MDT review and assistance during the PE phase. The State will also be responsible for matching the remaining UHPIP funds available for construction and construction engineering as reduced by preliminary engineering, right-of-way and incidental construction costs and for matching MACI-Guaranteed funds used for construction and construction engineering.

3) H. BIDS AND CONTRACT ADMINISTRATION is amended as follows:

Item 2 is replaced with the following:

Due to the capped funding amount for this project, the City will submit to the State a base bid package that is estimated to fit within the total available funding and may submit an alternate bid package for the remaining work necessary to complete the scoped project. The alternate bid will be awarded if bids for both the base and alternate fit within funding available at the time of bid opening as determined by the City in consultation with the State. If the alternate bid is not awarded, the remaining section will be constructed at a later time as funding becomes available.

Add Item 3 as follows:

The City will be billed in advance for its portion, if any, of the estimated required match (13.42%) of the total estimated construction costs, construction engineering costs, indirect costs and City-applicable costs of the project at least sixty (60) days before bid opening. Although the anticipated expenses will have been discussed with City representatives before that time, the State will provide a detailed breakdown of all estimated projects costs with the billing. The billed amount includes the required match for Preliminary Engineering (PE), Right-of Way (RW) and Utilities (IC). PE, RW or IC costs accrued after submitting the bill to the City will be included either in a change order billing or in the final billing.

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

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

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

Debi Meling, P.E., City Engineer  
City of Billings  
510 N Broadway - 4th Floor  
Billings, MT 59102

The parties understand that it is possible that the estimate may be exceeded once construction is begun. The parties intend on reserving a portion of the total project funding, if available, for potential change orders. Any change orders, increases, or unforeseen expenses applicable to the

City's portion of the project above the total available project funding will be borne by the City. The State will inform the City beforehand, and as early as possible, of anything that appears will result in a cost increase, and will discuss the need for any possible change order with the City. But it is agreed that the City does not have the ability to veto or delay, or refuse to pay for, any change orders deemed necessary by the State.

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

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

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

4) Under J. OTHER, Page 8 of the original agreement, the following is added:

8. Section 17-1-105, MCA, requires any state agency, including the Montana Department of Transportation (MDT) that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. The MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 12.25% for fiscal year 2008 (July 1, 2007 to June 30, 2008).

For this project, indirect costs (IDC) will be charged to the federal funding and the required non-federal match for all phases and applied against the total project budget for costs incurred after June 30, 2007. MDT will bill the City for IDC applicable to the locally provided match of 13.42% for the IC phase, costs exceeding the total project budget of \$4,264,171, and other locally provided costs, if any, occurring after June 30, 2007. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

The City will not be billed for IDC against the Preliminary Engineering (PE) and Right-of-Way (RW) phases since these phases were already open and active.

EXHIBIT "B" to the original agreement is replaced with the attached REVISED EXHIBIT "B".

FURTHER, the URBAN HIGHWAY PILOT IMPROVEMENT PROGRAM MAINTENANCE AGREEMENT, Item 5 is replaced with the following:

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

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

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

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

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

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these**



**requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate**

The agreement between the City and State executed December 19, 2003 and as amended herein, constitute the entire agreement between the parties and no statement, promises or inducements made by either party or agents of either part, which are not contained in the written agreement is binding or valid. All other terms, conditions, requirements, and specifications remain as stated in the original agreement.

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

**STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

BY \_\_\_\_\_  
Loran Frazier, Chief Engineer

Approved for Legal Content and Civil Rights Content:

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

**CITY OF BILLINGS**

I, \_\_\_\_\_, Clerk of the City of Billings, hereby certify that the above mentioned amendment was regularly adopted by the CITY COUNCIL at a meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, and that the COUNCIL authorized the Mayor to sign this amendment on behalf of the CITY COUNCIL.

[Official Seal]

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

APPROVED AS TO FORM

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

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

## NON-DISCRIMINATION NOTICE REVISED EXHIBIT "B"

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

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

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (b) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and

leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

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

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

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Amendment #4 and Amendment #5 to Professional Services Contract for WO 03-25 Rimrock Road

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** The Urban Highway Pilot Involvement Program is a collaboration between the City of Billings and the Montana Department of Transportation to construct an Urban System project. The project that will be constructed will be Rimrock Road between Shiloh Road and 54<sup>th</sup> Street West. HKM completed a Phase II SUE Survey to identify potential utility conflicts. There were many conflicts with the existing water main within Rimrock Road. It becomes necessary to lower the water main in the area of conflict. Amendment #4 is for the design of the water main relocation within the conflicting areas. The city is 100% responsible for the design of the water main relocation, however, will receive federal funding on 75% of the construction of the relocation. Amendment #5 is to redesign a small portion of the project to make the project fit within the established budget. Originally, the project was to widen Rimrock Road from Shiloh Road to 54<sup>th</sup> Street West. The budget only allows widening up to a certain point to be determined by the amount of funds available. The project will start at Shiloh Road and go west as far as the funds allow.

**FINANCIAL IMPACT:** The professional services contract with HKM Engineering, Inc. was approved at the July 12, 2004 City Council Meeting for the amount of \$364,986. Per the Rimrock Road Urban Highway City State Agreement, the City is obligated to pay 13.42% of the professional services contract. Amendment #1 to the contract (\$39,199.00) cost the city an additional \$5,260.50, Amendment #2 (\$33,994.00) cost the city an additional \$4,561.99, and Amendment #3 (\$29,023) cost the city an additional \$3,894.89. Amendment #4 to the contract will cost the city an additional \$40,920.00. Amendment #5 to the contract (\$32,243.00) cost the city an additional \$4,327.01. Gas tax dollars in the amount of \$174,757.00 were allocated in the FY'05 CIP to pay for the professional services contract. Construction of this project will be paid for by the MDT utilizing Federal Funds. The total amount of the amendments is over 10% of the original contract.

**RECOMMENDATION**

Staff recommends that Council approve Amendment #4 in the amount of \$40,920.00 and Amendment #5 in the amount of \$32,243.00 to the professional services contract for WO 03-25 with HKM.

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

**ATTACHMENTS**

- A.      Amendment #4 to Professional Services Contract with HKM
- B.      Amendment #5 to Professional Services Contract with HKM

**AMENDMENT NO. 4**  
**TO**  
**CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND**  
**ENGINEERING SERVICES**  
**CITY OF BILLINGS WORK ORDER 03-25**  
**RIMROCK ROAD**

THIS AGREEMENT, made and entered into on November 29, 2007 by and between the following:

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

And

**HKM Engineering Inc.**  
**222 N. 32<sup>nd</sup> Street, Suite 700**  
**Billings, Montana 59101**  
Hereinafter designated the Contractor

**WITNESSETH:**

WHEREAS, the City and Contractor have entered into a contract dated July 12, 2004, for Contractor to provide engineering services to the City for Work Order 03-25, Rimrock Road, and:

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

WHEREAS, the Contractor was selected to perform engineering services for a period determined by the Montana Department of Transportation, and;

WHEREAS, the City has need for engineering services associated with the reconstruction of Rimrock Road, and;

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

WHEREAS, the Contractor and the Contractor's Subconsultant represent that they are qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

Appendix B, Section 3 Scope of Work. Add the following:

The future reconstruction of Rimrock Road between Shiloh Road and 54<sup>th</sup> Street West by the Montana Department of Transportation (MDT) will require the relocation of several City of Billings water lines to accommodate the new roadway and storm drain system. The anticipated water line conflicts include:

- Approximately ten (10) perpendicular crossings of an existing water line and a proposed storm sewer line where the vertical separation is 6" or less, requiring the water line to be lowered. It is anticipated that in up to twenty (20) other locations where the vertical separation distance at the crossing is between 6" – 18", a low-permeability flowable fill will be placed between the two lines during future storm drain installation, which will require a deviation request through the Montana Department of Environmental Quality (DEQ).
- Approximately three (3) parallel installations of an existing water line and a proposed storm sewer line where the horizontal separation is less than 10 feet, requiring the water line to be relocated. The total length of relocated water line is approximately 375 linear feet.
- Approximately 400 linear feet of existing water line where the new roadway cut will reduce the cover depth below the City of Billings standard of 6.5 feet of bury, requiring the water line to be lowered. It is anticipated that in locations where the existing water line currently has less cover than the minimum requirement but the new roadway will not reduce the cover by more than 6", no changes will be made to the water line.

*Summary of Identified Water Line Conflicts Requiring Relocation*

Approx. Station (m)	Approx. Length (ft)	Conflict
18+85	200	parallel storm sewer line w/ < 10 ft. separation
18+98	75	parallel storm sewer line w/ < 10 ft. separation
21+40	---	storm sewer crossing that intersects water line
21+82	---	storm sewer crossing that intersects water line
23+28	---	storm sewer crossing w/ < 6" vertical separation
23+80	---	storm sewer crossing w/ < 6" vertical separation
25+00	---	storm sewer crossing that intersects water line
26+63	---	storm sewer crossing that intersects water line
27+40	---	storm sewer crossing w/ < 6" vertical separation
27+50	400	to 28+70; insufficient bury depth and cut > 6"
29+45	---	storm sewer crossing w/ < 6" vertical separation
31+25	---	storm sewer crossing w/ < 6" vertical separation
31+40	100	parallel storm sewer line w/ < 10 ft. separation
40+53	---	storm sewer crossing w/ < 6" vertical separation



HKM Engineering will provide preliminary and final design services for the general project described above. The design will be incorporated into the MDT plans using MDT drafting standards. This scope does not include any construction phase services or post construction services by the Engineer, and the bidding phase services are limited to the original contract scope.

The Engineer shall assist the City in identifying all water line conflict areas and new alignments that will best serve the needs of the project area. The Engineer will coordinate work efforts with other known improvement projects expected to be completed concurrently or subsequently in the project area. Completion of this work shall include the following tasks:

A. Preliminary Engineering Services (70% Design)

1. Survey: Field surveys acquired by the Engineer for MDT Project CM 1034(1), currently in the design phase, will be utilized to develop preliminary base mapping for this Project. A limited amount of pick-up surveys are anticipated to identify key features on the Project during design.
2. Geotechnical: No separate geotechnical engineering will be provided for this Project. The existing geotechnical data gathered by the Engineer for MDT Project CM 1034(1) will be utilized to determine groundwater conditions, trench design, subgrade treatment, and pavement section alternatives. Recommendations for specific construction materials established in this review will be included in the project plans and specifications.
3. Investigations: Research will be performed on service line records, as-built drawings, and other pertinent water line data available from City records.
4. Design & Drafting: Layout of relocated water line alignments and profiles. Work will include coordination with City staff during design development, confirming appropriate water line sizing, and coordinating with other private utilities.
5. 70% Design Submittal (City of Billings Only): Submittal will identify all conflict areas and include plan and profile sheets of the recommended improvements, along with a preliminary construction cost estimate. Up to five (5) half-size plans and two (2) preliminary project specifications will be submitted to the City for review. A design review meeting with the City will be conducted.

B. Final Engineering Services (90% & Final Design)

1. 90% Design Submittal: Submittal will incorporate City's comments on the 70% submittal, and include completed plan and profile sheets of the recommended improvements, preliminary project specifications, and all other design features. Specifications will reference the Montana Public Works Standard Specifications and City of Billings Standard Modifications, latest editions. Up to five (5) half-size plans and two (2) project specifications will be submitted to the City for review. A final design review meeting with the City will be conducted.
2. Final Design: Upon receiving City's approval of 90% submittal, the water line work will be incorporated into the final design package for MDT approval. An estimate of

construction quantities and preparation of an Engineer's opinion of probable construction cost will be completed according to the original contract.

3. Development of cost sharing agreements between the City of Billings and MDT for the utility work is not included as a part of this scope of services.
4. DEQ Submittal:  
Submittal to DEQ of two (2) copies of the project plans, specifications, bidding documents, design report, and certified water main checklist. All DEQ permit fees shall be paid by the City.

#### D. Extra Services

Extra Services of the Engineer will be paid only with written prior authorization by the City of Billings on a time and materials basis or as a separate amendment. Extra Services not included in the scope of work that may be requested and authorized by the City include:

1. Public Involvement: planning or facilitating of public information meetings or other direct coordination with adjacent property owners or the public in general.
2. Right-of-Way: negotiation and acquisition services.
3. Expert Witness: services as an expert witness for the City in connection with litigation.
4. Pre-construction and construction staking, administration, and documentation.

Appendix C, Section 1 Payments for Basic Services, item B. Add the following:

- B. For additional services related to Amendment No.4, the Engineer shall be paid an additional **Forty-Thousand Nine Hundred Twenty and No/100 Dollars (\$40,920.00)** for engineering, design, documents, and plans.

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

CONSULTANT

NAME: Karen B. Fagg

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

TITLE: President

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

CITY OF BILLINGS, MONTANA

NAME: \_\_\_\_\_

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

TITLE: \_\_\_\_\_

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

**AMENDMENT NO. 5**  
**TO**  
**CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND**  
**ENGINEERING SERVICES**  
**CITY OF BILLINGS WORK ORDER 03-25**  
**RIMROCK ROAD**

THIS AGREEMENT, made and entered into on November 29, 2007 by and between the following:

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

And

**HKM Engineering Inc.**  
**222 N. 32<sup>nd</sup> Street, Suite 700**  
**Billings, Montana 59101**  
Hereinafter designated the Contractor

**WITNESSETH:**

WHEREAS, the City and Contractor have entered into a contract dated July 12, 2004, for Contractor to provide engineering services to the City for Work Order 03-25, Rimrock Road, and:

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

WHEREAS, the Contractor was selected to perform engineering services for a period determined by the Montana Department of Transportation, and;

WHEREAS, the City has need for engineering services associated with the reconstruction of Rimrock Road, and;

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

WHEREAS, the Contractor and the Contractor's Subconsultant represent that they are qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

Appendix B, Section 3 Scope of Work. Add the following:

Provide engineering services to shorten the project length to accommodate available funding. The new project limits will continue to include an asphalt trail along Rimrock Road from Shiloh Road to 54<sup>th</sup> Street West, and roadway improvements from Shiloh Road to a point to be determined within a construction budget of \$2.7 million. A new termination point will be developed at an appropriate stopping point considering roadway geometrics, driveways, intersections, and available funding.

Services are limited to the following:

- 1) Design and draft a new connection between improvements and the existing roadway at an appropriate stopping point for the improvements.
- 2) Revise current MDT construction plans for new project termination point.
- 3) Revise current MDT utility plans for new project termination point.
- 4) Revise current construction documentation for new project termination point.
- 5) Revise current quantities and construction estimate for new termination point.
- 6) Resubmit plan documents to MDT and City of Billings
- 7) Address final MDT comments.

Appendix C, Section 1 Payments for Basic Services, item B. Add the following:

- B. For additional services related to Amendment No. 5, the Engineer shall be paid an additional **Thirty-Two Thousand Two Hundred Forty-Three and No/100 Dollars (\$32,243.00)** for engineering, design, documents, and plans.

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

CONSULTANT

NAME: Karen B. Fagg

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

TITLE: President

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

CITY OF BILLINGS, MONTANA

NAME: \_\_\_\_\_

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

TITLE: \_\_\_\_\_

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

Q

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 17, 2007

**TITLE:** W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Contract for Professional Engineering and Right-of-Way Services, Contract Amendment #5

**DEPARTMENT:** Public Works Department

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

**PROBLEM/ISSUE STATEMENT:** The Briarwood Wastewater Treatment Facility experiences many operational problems handling waste, and a sanitary sewer main will be extended to Briarwood to replace the existing plant. Staff requested the services of an engineering firm to provide design and right-of-way acquisition services for the project, and Morrison-Maierle, Inc. was selected through the RFP process. Council approved the award of a professional services contract to Morrison-Maierle, Inc. on February 28, 2005. The purpose of Contract Amendment #5 is to include work items that are outside the original scope and intent of the services contract (as amended). The several items included in this Contract Amendment #5 are as follows: (1) Additional effort necessary to design sewer jet truck access routes to existing and new sewer mains throughout the Briarwood Golf Course; (2) Additional effort necessary to design a replacement bridge over Blue Creek in order for sewer jet trucks to access the new sewer main in the Briarwood Golf Course; (3) Additional effort to design two new sanitary sewer lateral mains (one from the golf course to the Paasch/Thornton property west of the golf course and one from the lift station north to Santiago Boulevard) to be constructed in conjunction with the new trunk main; and (4) Additional review fees due to revised MDEQ fee schedule (the consultant is paying these fees). Because the above-listed items are beyond the scope and intent of the services contract as amended, Staff negotiated this proposed Contract Amendment #5 to compensate the consultant for their additional efforts. Contract Amendment #5 exceeds ten percent (10%) of the original contract amount of \$496,860, so Council must approve this amendment in order to complete these necessary tasks for the project.

**FINANCIAL IMPACT:** A summary of the professional services contract is as follows:

Original contract amount	\$496,860	Approved by Council	2/28/05
Contract Amendment #1	(\$ 12,215)	Approved by City Administrator	9/16/05

Contract Amendment #2	(\$ 36,986)	Approved by City Administrator 5/10/06
Contract Amendment #3	\$ 18,800	Approved by City Administrator 12/20/06
Contract Amendment #4	\$ 17,147	Approved by City Administrator 5/07/07
<b>Subtotal</b>	<b>\$483,606</b>	
Contract Amendment #5	\$ 79,964	(this memo)
<b>Total Amended Contract</b>	<b>\$563,570</b>	

Funding for this contract amendment is available from project funds.

## RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to execute Contract Amendment #5 to the professional services contract with Morrison-Maierle, Inc. in the amount of \$79,964.

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

## ATTACHMENT

A. Contract Amendment #5 for Professional Engineering and Right-of-Way Acquisition Services



## **INTRODUCTION**

The Preliminary Engineering Report (PER) for this project recommended that the new sanitary sewer follow a route generally along Blue Creek Road as the preferred alternative. The preferred alternative allowed the southerly portion of the sewer to drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River to the existing gravity sewer infrastructure in the South Frontage Road.

## **PROCEDURAL HISTORY**

### Completed Items

- February 28, 2005 – Award of Professional Services Contract to Morrison-Maierle, Inc.
- September 16, 2005 – Contract Amendment #1 approved by City Administrator
- October 24, 2005 – Council authorized submittal of State Revolving Fund (SRF) backed loan application for this project
- April 2006 – Appraisals completed for the necessary easements
- May 2006 – Easement negotiations began
- May 2006 – Preliminary Engineering Report (PER) accepted by SRF
- May 10, 2006 – Contract Amendment #2 approved by City Administrator
- June 26, 2006 – Council approved property purchase on Blue Creek Road
- July 25, 2006 – 85% Plans and specs submitted to the City and SRF for approval
- December 20, 2006 – Contract Amendment #3 approved by City Administrator
- May 7, 2007 – Contract Amendment #4 approved by City Administrator

### Future Items

- December 17, 2007 – Contract Amendment #5 approved (**this memo**)
- Winter 2007 – Final plans approved by the City and SRF
- Winter 2007 – City to file for right-of-entry through eminent domain
- Winter 2007 – Advertising for bids and bid opening
- Winter 2007 – Construction contract award/DNRC concurrence
- Winter 2007 – Construction begins
- Fall 2008 – Construction complete

## **BACKGROUND**

The purpose of Contract Amendment #5 is to include work items that are outside the original scope and intent of the services contract (as amended). The several items that must be included in this Contract Amendment #5 are as follows: (1) Additional effort necessary to design sewer jet truck access routes to existing and new sewer mains throughout the Briarwood Golf Course; (2) Additional effort necessary to design a replacement bridge over Blue Creek in order for sewer jet trucks to access the new sewer main in the Briarwood Golf Course; (3) Additional effort to design two new sanitary sewer lateral mains (one from the golf course to the

Paasch/Thornton property west of the golf course and one from the lift station north to Santiago Boulevard) to be constructed in conjunction with the new trunk main; and (4) Additional review fees due to revised MDEQ fee schedule (the consultant is paying these fees). Because the above-listed items are beyond the scope and intent of the services contract as amended, Staff negotiated this proposed Contract Amendment #5 to compensate the consultant for their additional efforts.

Contract Amendment #1, approved by the City Administrator on September 16, 2005, for (\$12,215), was for detailed design and right-of-way acquisition based on the preferred alignment from the Preliminary Engineering Report (PER). Contract Amendment #2, approved by the City Administrator on May 10, 2006, for (36,986), was for additional effort to perform due diligence on the purchase of the parcel of land at the southeast corner of Blue Creek Road and Santiago Boulevard and also to eliminate two alternative tasks (south lift station and multi-use path design) included in the original scope of work. Contract Amendment #3, approved by the City Administrator on December 20, 2006, for \$18,800, was to install and periodically monitor ground water wells at locations along the length of the project. Contract Amendment #4, approved by the City Administrator on May 7, 2007, for \$17, 147, was for the design of a lateral water main extension and for providing additional bridge design calculations to the MDT Bridge Bureau.

### **RECOMMENDATION**

Staff recommends that Council approve and authorize the Mayor to execute Contract Amendment #5 to the professional services contract with Morrison-Maierle, Inc. in the amount of \$79,964.

### **ATTACHMENT**

A. Contract Amendment #5 for Professional Engineering and Right-of-Way Acquisition Services

**AMENDMENT NO. 5**  
**TO**  
**PROFESSIONAL ENGINEERING AND RIGHT-OF-WAY ACQUISITION**  
**SERVICES**  
**W.O. 04-36, BRIARWOOD SANITARY SEWER MAIN EXTENSION**

THIS AGREEMENT, made and entered into on \_\_\_\_\_, 2007, by and between the following:

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

and

Morrison-Maierle, Inc.  
315 N. 25<sup>th</sup> St., Suite 102  
Billings, Montana 59101  
Hereinafter designated the Consultant

WITNESSETH:

WHEREAS, the City and Consultant have entered into a contract dated March 1, 2005, a Contract Amendment #1 dated September 16, 2005, a Contract Amendment #2 dated May 10, 2006, a Contract Amendment #3 dated December 20, 2006, and a Contract Amendment #4 dated May 7, 2007 for Consultant to provide engineering and right-of-way acquisition services to the City for Work Order 04-36 Briarwood Sanitary Sewer Main Extension, and;

WHEREAS, the City has need for additional engineering and right-of-way services, and;

WHEREAS, the City has authority to contract for consulting engineering and right-of-way services, and;

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

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

**Changes to Contract Amendment #1, Appendix A, Section 3, Design and Bidding Phases Scope of Work, as further amended by Amendments #2, #3, and #4:**

**TASK 33 – DESIGN SURVEY**

SCOPE CHANGE: Add survey for sewer lateral from Briarwood Sewer Main to Tract 12A, C/S 2544 4<sup>th</sup> Amended (Approximately 700 linear feet).

A design survey will be conducted along the new sewer route to Tract 12A, C/S 2544 4<sup>th</sup> Amended to provide topographic information, utility locations as located by One Call Locators and applicable public/private utilities, county right-of-way, property lines, structures, and all other information needed for design of the line.

SCOPE CHANGE: Add survey for sewer lateral from Briarwood Lift Station to Santiago Boulevard (Approximately 800 linear feet).

A design survey will be conducted along the existing survey corridor to pickup any features necessary to design a sewer lateral to Santiago Boulevard from the lift station site. This work has already been surveyed under the contract for another purpose on the project. This amendment only addresses minor pickup work particular to the gravity sewer lateral design.

SCOPE CHANGE: Add survey of new bridge site.

A design survey will be conducted at the site of the new bridge to provide topographic information, utility locations as located by One Call Locators and applicable public/private utilities, existing bridge structure, any other structures, and all other information needed for design of the bridge.

SCOPE CHANGE: Add survey of new cart paths.

A design survey will be conducted along the new cart path routes to develop access for City of Billings maintenance staff to the existing sewer on the Briarwood Golf Course. Survey include approximately 4,500 linear feet of cart path and will include providing topographic information, utility locations as located by One Call Locators and applicable public/private utilities, county right-of-way, property lines, structures, and all other information needed for design of the paths.

TOTAL TASK 33 CHANGE IN FEE:     \$8,748 (INCREASE)

**TASK 36 - PERMITTING**

SCOPE CHANGE: Additional permitting for bridge replacement, sewer laterals, and connection to existing sewer described below in Task 040.

Permits, including the flood plain permit, will be updated with the design changes listed above. Permitting required beyond the scope of the existing Contract (Including a detailed 404 permit) are not included in this item.

SCOPE CHANGE: Additional DEQ review fees due to updated review schedule. The pipeline review is expected to be \$0.10/lf \* Approx. 19,000lf = \$1,900, the lift station is anticipated to be \$800 and non-standard specification review due to project requirements outside those normally covered in Montana Public Works Standard Specifications = \$300 for a total review fee of \$3,000. The old review fee of \$100 for water and \$100 for sewer is included in the net contract and returned as a credit against the new fee. Net change = \$2,800.

TOTAL TASK 36 CHANGE IN FEE: \$3,732 (INCREASE)

TASK 38 – SURVEY-RIGHT-OF-WAY/EASEMENTS

SCOPE CHANGE: Revise easement descriptions and documents to reflect scope changes presented in this amendment.

TOTAL TASK 38 CHANGE IN FEE: \$860 (INCREASE)

TASK 40 – PRELIMINARY AND FINAL DESIGN

SCOPE CHANGE: Add sewer lateral from Briarwood Sewer Main to Tract 12A, C/S 2544 4<sup>th</sup> Amended (Approximately 700 linear feet); and

SCOPE CHANGE: Add sewer lateral from Briarwood Lift Station to Santiago Boulevard (Approximately 800 linear feet):

- Coordinate with permitting agencies and public/private utilities, including MDT, MDEQ and DNRC.
- Prepare erosion control plan for inclusion in the project plans and the storm water discharge permit.
- Include this work in the SWPPP for the project. Fees to be paid by construction contractor. Notices to be filed by construction contractor.
- Review preliminary plans with City staff before development of final plan documents.
- Perform field review(s) with City and other agencies.
- Develop 95% plans, specifications, quantity summaries, and estimate of probable cost for final review by City staff. Five (5) copies will be provided to the City. One copy of the 95% plans will be provided to each utility in the area.
- Seal and sign all final plans, specifications, submitted calculations, and reports with the seal of the Montana licensed Professional Engineer in responsible charge of the work.
- Incorporate into design report and plans and specifications to Montana Department of Environmental Quality for review and approval. Fee will be the responsibility of the Engineer.

SCOPE CHANGE: Design cart path for access by 60,000 lb GVW City of Billings maintenance vehicle access to existing sanitary sewer manholes and the new sewer between MH #4 and MH #6 (Approximately 4,500 linear feet).

The design for this work will consist of including an Owner-provided cross section design with a limited plan and profile design. The scope will also include incorporating the special provisions for this item in the project specifications and inclusion of this item into the appropriate bid documents. Project drawings will consist of 1,000 foot per sheet plan and profile drawings. Plan drawings will be developed from survey information, and profile drawings will show limited profile design including elevation catchment points at high points, low points, and significant centerline grade inflections. It is anticipated that minor adjustments may need to be made to the existing sewer paths in the field to accommodate field conditions and Briarwood Golf Course requests. Accordingly, the project drawings will show sufficient information to convey the intent of the construction to bidders, but are not full plan and profile drawings with the intricate level of detail traditionally associated with that level of effort.

TOTAL TASK 40 CHANGE IN FEE:     \$32,686 (INCREASE)

#### TASK 41 – BRIDGE DESIGN

SCOPE CHANGE: Add pedestrian bridge replacement on Briarwood Golf Course at Approximate station 17+00 Rt. to allow access by 60,000 lb GVW City of Billings maintenance vehicles.

The hydraulic analysis will include setting up and analyzing the project and site with a recognized flood/open channel hydraulics software package or other recognized methodology. The information generated from this task will be used to make decisions about bridge deck elevations, configuration options, and will assist in permit preparation. The results of this task will be summarized in a hydrological design report. Three (3) copies of the report will be submitted to the Owner for their use and approval.

The bridge design will incorporate the requirements resulting from the survey, geotechnical, and hydraulic analysis of the site. It is anticipated to specify a steel, pre-engineered bridge system (pre-manufactured rolled steel superstructure or pre-manufactured truss) founded on concrete spread footings. The superstructure supplier will develop the detail shop drawings and design for the superstructure. This scope does not include any effort for the superstructure design.

Based on discussions with owner, the superstructure layout will incorporate a pedestrian railing. It was assumed that the railing will be a pre-manufactured pedestrian railing. MMI will provide two railing options at the 35-percent design stage for the Owner's consideration. Based on the site and usage, it was assumed the rail would not be designed to withstand vehicle impact loading.

Morrison-Maierle will prepare three bridge plan sheets showing the size, location, and general details of the superstructure and foundation system. One plan sheet showing the general layout, cross section, general notes, and details will be submitted at the 35% design stage for development of the permits and owner's review. Final specifications, plans, and estimate will be developed once the 35-percent plans are approved. The design will be according to the AASHTO Standard Specifications for Highway Bridges 17<sup>th</sup> Edition and AASHTO Guide Specifications for Design of Pedestrian Bridges. The design live loading will be the larger of the pedestrian loading or HS20 vehicle without impact. Based on the existing structure and the site layout it was assumed the stream would be perpendicular to the road/path (no skew) and the height of the vertical walls would not exceed two feet.

TOTAL TASK 41 CHANGE IN FEE:     \$33,938 (INCREASE)

TOTAL INCREASE THIS AMENDMENT: \$79,964

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

CONSULTANT - Morrison-Maierle, Inc.

NAME: Carl J. Anderson, P.E.

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

TITLE: Vice-President, Blgs. Office Manager

DATE: November 7, 2007

CITY OF BILLINGS, MONTANA

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

Mayor, City of Billings

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

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



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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** Confirmation of Probationary Police Officer

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** On December 11, 2006, Officer Matt Lennick was hired by the Billings Police Department as a probationary Police Officer. According to MCA 7-32-4113, his probationary period is for one year from date of hire. At this time Officer Lennick has completed his one year probation, and according to state statute, his name is to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officer Lennick's performance are positive and indicate that he is doing a good job, and recommend confirmation.

**RECOMMENDATION**

City staff recommends Officer Matt Lennick be confirmed as a Billings Police Officer.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 17, 2007**

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**TITLE:** W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Approval of Right-of-Way Agreement and Perpetual Right-of-Way Easement on a Portion of Tract 1-A1 of Certificate of Survey 2544, 4<sup>th</sup> Amended and a Portion of Tract 8 of Certificate of Survey 2544, Amended, With Briarwood Country Club

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new sewer main generally follow a route along Blue Creek Road so that the southerly portion of the new sewer main will drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River then to the existing sewer in the South Frontage Road of I-90. Due to utility congestion and/or adverse slopes in most places along the Blue Creek Road (MDT) right-of-way, it is necessary to obtain easements from property owners along the proposed sewer route. There are a total of thirteen (13) easements necessary from eleven (11) different property owners; four easements were approved by Council in 2006; one easement was approved by Council on March 26, 2007; one easement was approved by Council on May 29, 2007; and two easements were approved by Council on November 26, 2007. Council approved a resolution authorizing condemnation for all of the other necessary easements, also on March 26, 2007. The cost of this easement is \$50,000.00 plus the use of sewer jet truck access routes as cart paths. It will be necessary for the City to build access routes through the golf course with adequate bearing capacity for the 30-ton Gross Vehicle Weight sewer jet trucks to the new sewer manholes for periodic maintenance (similar to the access routes through the Lake Hills and Hilands golf courses used by City sewer jet trucks). A copy of the right-of-way agreement, easement, appraisal, review appraisal, correspondence, and negotiation history for the Briarwood Country Club property is on file with the City Clerk.

**FINANCIAL IMPACT:** Funding is available from project funds. The budgeted amount for this entire project (CIP# PWB-1), including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005 and \$4,335,350 in FY 2007.

### **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and Perpetual Right-of-Way Easement for a Portion of Tract 1-A1 of Certificate of Survey 2544, 4<sup>th</sup> Amended and a Portion of Tract 8 of Certificate of Survey 2544, Amended, with Briarwood Country Club for \$50,000.00, and authorize the Mayor to execute these documents.

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

### **ATTACHMENT**

A.    Right-of-Way Agreement and Perpetual Right-of-Way Easement (14 pages)

Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

**PERPETUAL RIGHT-OF-WAY EASEMENT**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 19<sup>th</sup> day of November, 2007, the undersigned,

THE BRIARWOOD  
3429 BRIARWOOD BOULEVARD  
BILLINGS, MT 59101

hereinafter called "Grantor", hereby grants and conveys 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 temporary construction easement for the period of construction plus the one-year construction warranty period, together with an access easement and perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

**SEE ATTACHED EXHIBIT "A" (FIGURES 1 AND 2), EXHIBIT "B",  
EXHIBIT "C" (FIGURES 1 AND 2), AND EXHIBIT "D" (2 PAGES)**

This Perpetual Easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewer lines over, across, under and through the said real property, together with the right of free ingress and egress at all times upon notice to the greens superintendent of Grantor for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewers and appurtenances, and adding additional sanitary sewer lines.

Grantor 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. Grantor 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, nor any other fixed objects of any kind, shape or form, except as may be licensed by Grantee.
2. Grantor agrees not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee (grass species are acceptable). Grantee recognizes certain trees may be removed from the easement during construction and agrees that such trees may be replaced at the request of Grantor with a 2 to 3 inch diameter caliper tree of species acceptable to Grantor.
3. Grantor agrees 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, regardless of outside weather conditions, upon reasonable prior notice to Grantor's greens superintendent, unless an emergency exists. All scheduled maintenance activities

will be performed by Grantee between November 15 and April 1 so as to minimize impact to the golf season.

4. Grantor agrees to obtain the permission of the Public Works Department of Grantee prior to placing or removing any material amount of fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantor agrees 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. Grantor retains the right, without notice to Grantee, to repair, replace and maintain its irrigation system within the easement. Grantor also retains the right to replace, repair and maintain all areas in play on the golf course that may rest within the easement.
5. Grantee acknowledges the easements acquired herein will not disturb or be within 30 feet of the collars on any green complex and that manholes will not be located in areas of play. The collar is an approximately 18" wide area contiguous to the putting surface that is cut an intermediate level between the fairway and green.

6. HOLD HARMLESS AGREEMENT:

Grantor agrees to 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.

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.
8. In the event litigation is pursued under this Agreement, the parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District Court for Yellowstone County and there shall be no other venue for resolution of disputes arising from the contract or the performance of its terms.

BRIARWOOD COUNTRY CLUB

By: [Signature]  
Its: President Sec.

STATE OF MONTANA )  
: ss.  
County of Yellowstone )

On this 19th day of November, 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Peter Benson, known to me to be the President of BRIARWOOD COUNTRY CLUB, the corporation that executed the foregoing instrument and acknowledged to me that said corporation executed the same.

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

(NOTARIAL SEAL)

[Signature]  
Kathy D. Vokes (Printed Name)  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: 6/28/2011

**ACKNOWLEDGEMENT AND ACCEPTANCE OF CONVEYANCE**

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

\_\_\_\_\_  
CITY OF BILLINGS  
RON TUSSING, Mayor

ATTEST:

By: \_\_\_\_\_  
CARI MARTIN, City Clerk

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone    )

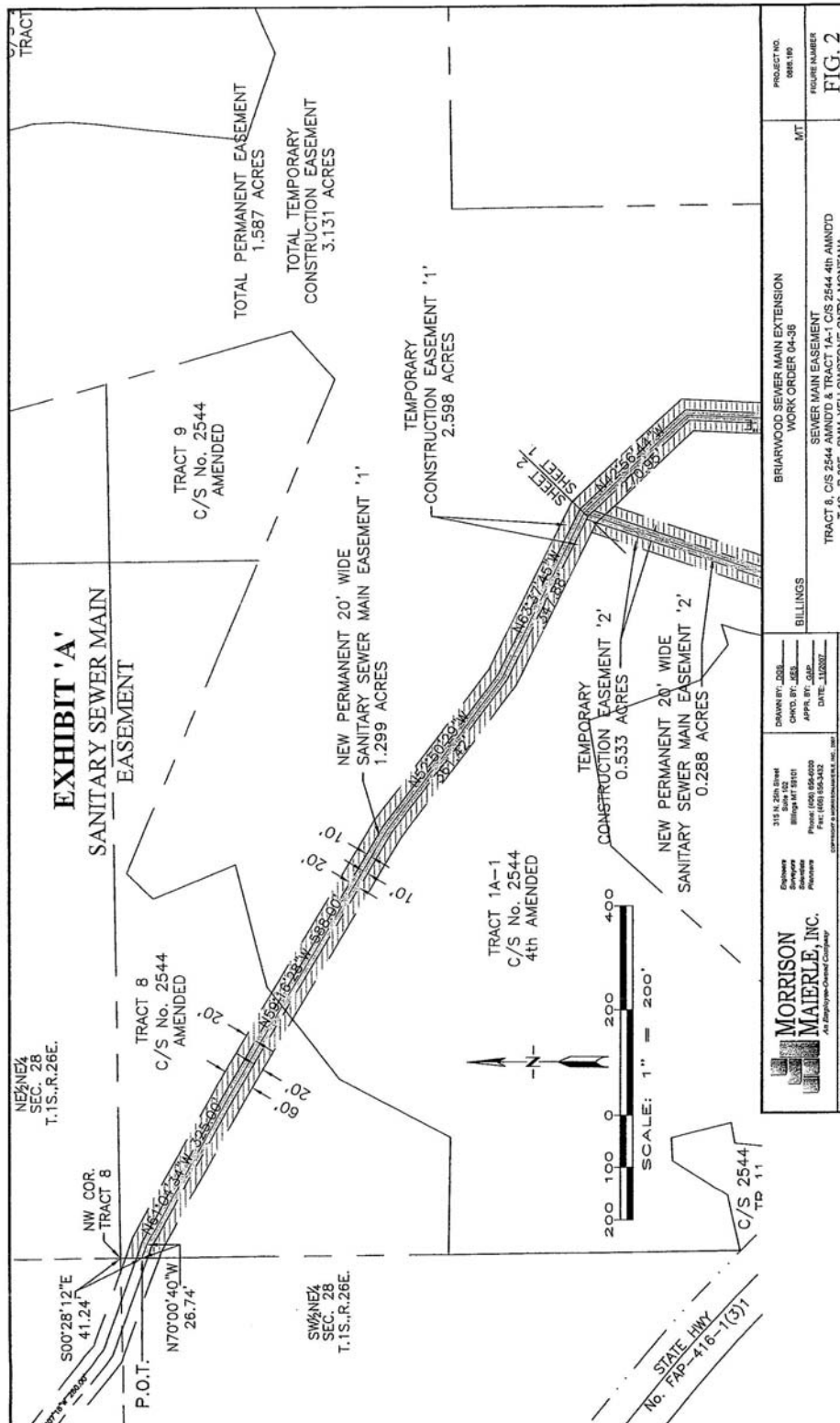
On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public for the State of Montana, personally appeared RON TUSSING and CARI MARTIN, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(NOTARIAL SEAL)

\_\_\_\_\_  
(Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires: \_\_\_\_\_





PROJECT NO. 085-180		PROJECT NAME BRIARWOOD SEWER MAIN EXTENSION WORK ORDER 04-38	
FIGURE NUMBER FIG. 2		BILLINGS	
TRACT 8, C/S 2544 AMND'D & TRACT 1A-1 C/S 2544 4th AMND'D T.1S., R.26E., PMA YELLOWSTONE CNTY, MONTANA		DRAWN BY: JDS CHECKED BY: JES APPROVED BY: JGP DATE: 11/02/07	
MORRISON MAIERLE, INC. An Employee-Owned Company		311 S. 2nd Street Billings, MT 59101 Phone: (406) 596-0209 Fax: (406) 596-5432 E-mail: morrisonmaierle@montana.net Printed in Billings, MT 59101	



## EXHIBIT 'B'

### DESCRIPTION:

Permanent 20.0 foot wide sanitary sewer easements across Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended, recorded as document No. 3133911, and Tract 8, Certificate of Survey No. 2544 Amended, recorded as document No. 1746814, located in Sections 27 and 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, being 10 feet on each side of the following described centerlines where said easements run across, adjoin or touch the aforementioned tract:

#### EASEMENT '1'

Commencing at the Southeast corner of said Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended: thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet, to the Point of Beginning; thence N40°53'57"W, a distance of 116.23 feet; thence N06°56'00"E, a distance of 410.00 feet; thence N02°26'57"E, a distance of 382.73 feet; thence N42°56'44"W, a distance of 270.95 feet; thence N63°37'45"W, a distance of 347.88 feet; thence N52°50'29"W, a distance of 361.42 feet; thence N59°16'28"W, a distance of 588.00 feet; thence N61°04'34"W, a distance of 325.00 feet thence N70°00'40"W, a distance of 26.74 feet, to the Point of Termination on the West line of said Tract 8, Certificate of Survey 2544 Amended, being S00°28'12"E, a distance of 41.24 feet from the Northwest corner of said Tract 8, containing an area of 1.299 acres, more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A (Figures 1 and 2) attached hereto.

#### EASEMENT '2'

Commencing at the Southeast corner of said Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended: thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet to the Centerline of proposed Sanitary Sewer Easement '1', thence along the Centerline of said Easement '1', N40°53'57"W, a distance of 116.23 feet; thence N06°56'00"E, a distance of 410.00 feet; thence N02°26'57"E, a distance of 382.73 feet; thence N42°56'44"W, a distance of 270.95 feet to the Point of Beginning; thence S18°37'19"W, a distance of 501.38; thence S80°01'00"W, a distance of 129.76 feet to the Point of Termination on the line common to said Tract 1A-1 and Tract 12A of Certificate of Survey No. 2544 Amended being N24°40'23"E, a distance of 648.40 feet from the Southwest corner of Tract 1A-1, Certificate of Survey No. 2544, containing 0.288 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A (Figures 1 and 2) attached hereto.

Together with a Temporary Easement for construction purposes 20.0 feet wide on each side being contiguous, adjacent and parallel to the previously described Easements '1' and '2', containing a total area of 3.131 acres, more or less, and all according to Exhibit A (Figures 1 and 2) attached hereto.





## EXHIBIT 'D'

### ACCESS EASEMENT 'A'

A strip of land 14 feet wide across Tract 11, Certificate of Survey No. 2544, and Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SE¼NE¼ Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tracts:

Commencing at the Northwest corner of said Tract 11 on the Northerly Right-of-Way of State Highway No. FAP-416-1(3)1, thence S43°16'56"E, a distance of 45.48 feet to a point on said Northerly Right-of-Way, also the True Point of Beginning; thence N76°06'39"E, a distance of 140.13 feet; thence S55°51'27"E, a distance of 22.94 feet; thence S21°28'58"E, a distance of 36.91 feet; thence S36°03'59"E, a distance of 36.34 feet; thence S40°50'09"E, a distance of 82.15 feet, to the Point of Termination on the south line of said Tract 1A-1, said Point of Termination bears N89°03'07"E, a distance of 6.16 feet, from the Southeast corner of said Tract 11. Said described Access Easement 'A' contains 0.102 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

### ACCESS EASEMENT 'B'

A strip of land 14 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the W¼W¼ of Section 27, and the E¼E¼ of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northeast corner of Tract 14A of Certificate of Survey No. 2544 5<sup>th</sup> Amended, thence N35°45'44"W, a distance of 702.24 feet to the True Point of Beginning; thence N33°30'34"E, a distance of 44.77 feet; thence N89°24'42"E, a distance of 13.08 feet; thence N78°59'37"E, a distance of 17.67 feet, thence N72°50'14"E, a distance of 67.60 feet, thence along a curve to the left with a radius of 80.90 feet, a delta angle of 71°01'43", an arc length of 100.29 feet and a chord bearing and distance of N37°19'23"E, 93.99 feet; thence N01°48'31"E, a distance of 51.75 feet; thence N28°40'11"E, a distance of 26.94 feet; thence N53°00'53"E, a distance of 63.78 feet; thence N30°08'25"E, a distance of 165.07 feet; thence N62°33'14"E, a distance of 33.09 feet; thence N78°13'07"E, a distance of 40.66 feet; thence N68°21'52"E, a distance of 163.79 feet; thence along a curve to the left with a radius of 29.39 feet, a delta angle of 137°27'16", an arc length of 70.51 feet and a chord bearing and distance of N00°12'27"W, 54.78 feet; thence along a curve to the left with a radius of 194.63 feet, a delta angle of 27°25'18", an arc length of 93.15 feet and a chord bearing and distance of N82°38'03"W, 92.26 feet; thence S84°40'04"W, a distance of 101.54 feet; thence S62°51'59"W, a distance of 27.17 feet; thence S88°39'31"W, a distance of 29.22 feet; thence N68°52'26"W, a distance of 80.00 feet; thence N38°39'13"W, a distance of 33.00 feet; thence N68°28'11"W, a distance of 42.00 feet; thence S85°37'43"W, a distance of 58.91 feet; thence S75°44'47"W, a distance of 43.54 feet; thence N63°37'45"W, a distance of 26.26 feet; thence along a curve to the right with a radius of 50.00 feet, a delta angle of 40°00'00", an arc length of 34.91 feet and a chord bearing and distance of N43°37'45"W, 34.20 feet; thence N23°37'45"W, a distance of 39.36 feet to a point on the Centerline of the Permanent Sanitary Sewer Main Easement; thence N63°37'45"W along said Sanitary Sewer Main Easement, a distance of 31.24 feet to the Point of Termination, being N26°33'34"E, a distance of 183.75 feet from the Northerly most angle point on the Southerly boundary of said Tract 1A-1. Said described Access Easement 'B' contains 0.482 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

#### ACCESS EASEMENT 'C'

A strip of land 14 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SE¼NE¼ Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described Centerline being more particularly described as follows:

Commencing at the Southeast corner of said Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended: thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet; thence N40°53'57"W, a distance of 116.23 feet; thence N06°56'00"E, a distance of 410.00 feet; thence N02°26'57"E, a distance of 382.73 feet; thence S20°45'53"W, a distance of 14.00 feet, to the Point of Beginning; thence, N20°45'53"E, a distance of 60.00 feet; thence N20°20'38"W, a distance of 96.16 feet to the Point of Termination on the Centerline of Access Easement 'B', being S52°11'14"E, a distance of 518.06 feet from the Northwest corner of Tract 15A, Certificate of Survey No. 2544, 3<sup>rd</sup> Amended. Said described Access Easement 'C' contains 0.111 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

#### ACCESS EASEMENT 'D'

A strip of land 60 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SE¼NE¼ Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement is to adjoin and extend 20 feet each side of the Permanent Sanitary Sewer Main Easement being more particularly described as follows:

Commencing from the Northerly most angle point on the Southerly boundary of said Tract 1A-1, thence N23°47'45"W, a distance of 372.01 feet to a point on the Centerline of the Permanent Sanitary Sewer Main Easement and the True Point of Beginning; thence N52°50'29"W along said Sanitary Sewer Main Easement a distance of 60.00 feet to the Point of Termination, being N82°22'27"E, a distance of 825.77 feet from the Southwest corner of Tract 8, Certificate of Survey No. 2544 Amended. Said described Access Easement 'D' contains 0.055 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

#### ACCESS EASEMENT 'E'

A strip of land 60 feet wide across Tract 8 of Certificate of Survey No. 2544 Amended, situated in the SE¼NE¼ of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement is to adjoin and extend 20 feet each side of the Permanent Sanitary Sewer Main Easement being more particularly described as follows:

Commencing at the Northwest corner of said Tract 8, thence S00°28'12"E along the West boundary of said Tract 8, a distance of 41.24 feet to the Centerline of the Permanent Sanitary Sewer Main Easement; thence S70°00'40"E along said Centerline, a distance of 26.74 feet to the Point of Beginning; thence continuing along said Centerline S61°04'34"E, a distance of 60 feet to the Point of Termination on the Permanent Sanitary Sewer Main Easement, being N07°37'51"E, a distance of 548.77 feet from the Southwest corner of said Tract 8

Said described Access Easement 'D' contains 0.055 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

**\*\*\*CITY OF BILLINGS**

(hereinafter referred to as City)

**RIGHT-OF-WAY AGREEMENT**

Briarwood Sewer Main Extension  
DESIGNATION

Work Order: 04-36  
MMI Project No. 0686.170-0211

Yellowstone  
COUNTY

Subdivision  
Tract 1A-1 of COS 2544 4<sup>th</sup> Amended,  
Tract 8 of COS 2544 Amended

Section  
27 & 28

Township  
1S

Range  
26E

List Names & Addresses of the Grantors  
(Contract Purchaser, Contract Seller, Lessee, etc.)

THE BRIARWOOD  
3429 BRIARWOOD BOULEVARD  
BILLINGS, MT 59101  
248-5153

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and upon mailing of payment as agreed below. Grantors contract that they will, on City's request, execute an easement and related documents (e.g., W-9 form) required by the City for all real property interests agreed to be conveyed by this agreement.

2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

1.587 acres permanent easement  
0.741 acres access easement  
3.131 acres temporary construction easement

TOTAL (LUMP SUM) \$50,000.00

3. OTHER COMPENSATION:

Construction of approximately 3,600 linear feet of concrete access paths  
Construction of approximately 1,300 linear feet of gravel access paths  
Construction of new bridge across Blue Creek

4. TOTAL COMPENSATION: \$50,000.00 plus installation and construction of approx. 3,600 feet of concrete access paths, new bridge across Blue Creek, and approx. 1,300 feet of gravel surface access paths.

5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$50,000.00, to be made payable to THE BRIARWOOD and mailed to 3429 BRIARWOOD BOULEVARD, BILLINGS, MT 59101

6. This agreement, upon execution by an agent of the City and presentation to the person so designated, constitutes a written offer of compensation in the full amount of the value, a summary of the property and property rights being acquired and notice that use of the easement need not be given until payment has been received by Grantors.
7. All fencing will be replaced in kind by the City. Metal gates to be placed between property owners by the City. City will remove and set aside the existing bridge along the No. 5 fairway for later use by Grantor. Access routes over the existing sewer main easement are referenced generally by the attached Exhibit A.
8. All sewer line construction and related activities will be performed by the City between November 15 and April 1 so as to minimize the impact to the golf season. The City will exercise its best judgment so that construction is completed prior to April 1. It is understood that path and bridge construction may be completed at dates later than April 1 in order to achieve best results. Dates and locations for construction activities later than April 1 shall be closely coordinated with the Golf Course Superintendent.
9. City agrees to reimburse Briarwood for all actual and reasonable costs incurred to restore future disturbance areas. City agrees to use best engineering practices to construct the easement and

access easements so as to withstand travel by its equipment over the easement in order to minimize damage to areas in play on the golf course, and so that areas of the easement remain playable.

10. The City agrees to include the following form of language in its contract for construction of the Briarwood Sewer Line Extension Project.

**Golf Course Surface Restoration Reimbursement:**

Measured and paid by Lump Sum which shall be full compensation for reimbursement to the Briarwood Golf Course for any and all damage caused during construction at the rates specified below. This item shall include all costs associated with this cash reimbursement item including interest and financing charges, processing costs, and any costs associated with carrying this item until payment is made by the City. Payment will be made when a letter from the Briarwood Golf Course certifying that all work to be performed by their crews or contractor selected by the Briarwood has been completed and invoiced.

**Golf Course Restoration**

CONTRACTOR shall reimburse Briarwood Country Club for all landscaping and golf course disturbances on the golf course property that affect the golf course irrigation system and areas in play (greens, fairways, rough, and tee boxes). Reimbursement will be made at the following rates:

Irrigation Mainline Break:	\$500/Break
Irrigation Lateral Line Break:	\$200/Break
Damaged Irrigation Heads:	\$150/Each
Wire Bundles:	\$200/Broken Bundle
Damaged Areas of Play:	\$4.75/Square Foot

If the Contractor and the golf course cannot agree on quantities, the Engineer will provide a final opinion of quantities which shall be binding on both parties. The Contractor shall bid this reimbursement under the bid item "Golf Course Surface Restoration Reimbursement." The lump sum bid for this item shall be full compensation for all Contractor caused golf course damage, regardless of quantities anticipated or included in the bid planning by the Contractor. Contractor shall make payment to the Briarwood Country Club for these repairs within 30 days of an invoice and shall not withhold payment on this item on a pay-when-paid basis.

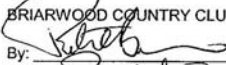
Any spoil, soil contamination, or other minor damage to areas of play that does not require grading, seeding, or sodding, shall be cleaned up and restored by the Contractor to the reasonable satisfaction of the Briarwood. If it is the opinion of the Engineer that the Contractor has not achieved this level of restoration, he shall direct the Contractor within ten (10) days written notification of this non-compliance and the Contractor shall meet the level of restoration promptly.

Work in the golf course area outside of the specific areas above shall be restored by the Contractor with materials and construction similar to those found in the pre-existing condition. Mounds shall be constructed near the bore pit area to provide visual screening from areas of play on Hole No. 7. The Contractor may be required to acquire a number of seeding mixes in order to accomplish restoration similar to the pre-existing condition. All work for this restoration will be paid under the Unimproved Trench Restoration pay item.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN:

We understand that we are required by law to provide our correct taxpayer identification number(s) to the City of Billings and that failing to comply may subject us to civil and criminal penalties. We certify that the number(s) below is/are our correct taxpayer identification number(s).

**BRIARWOOD COUNTRY CLUB**

By:   
Its: President - J.C.C.

RECOMMENDED FOR APPROVAL:

APPRC  
OF BIL

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

  
\_\_\_\_\_  
City of Billings, Public Works Department (Date) City Clerk (Date)

11/26/07

Exhibit A – Approximate Location of New Access Routes to  
Existing Sewer Manholes  
(Sheet 1 of 2)

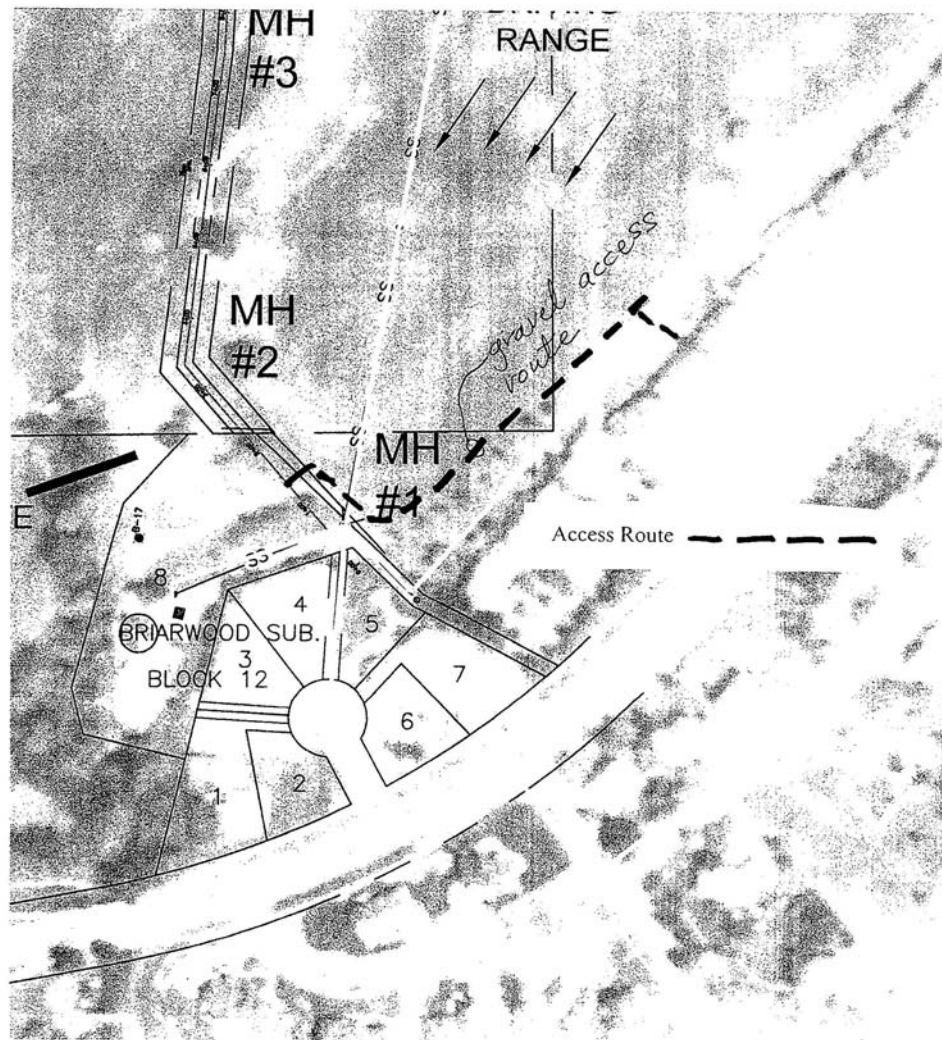
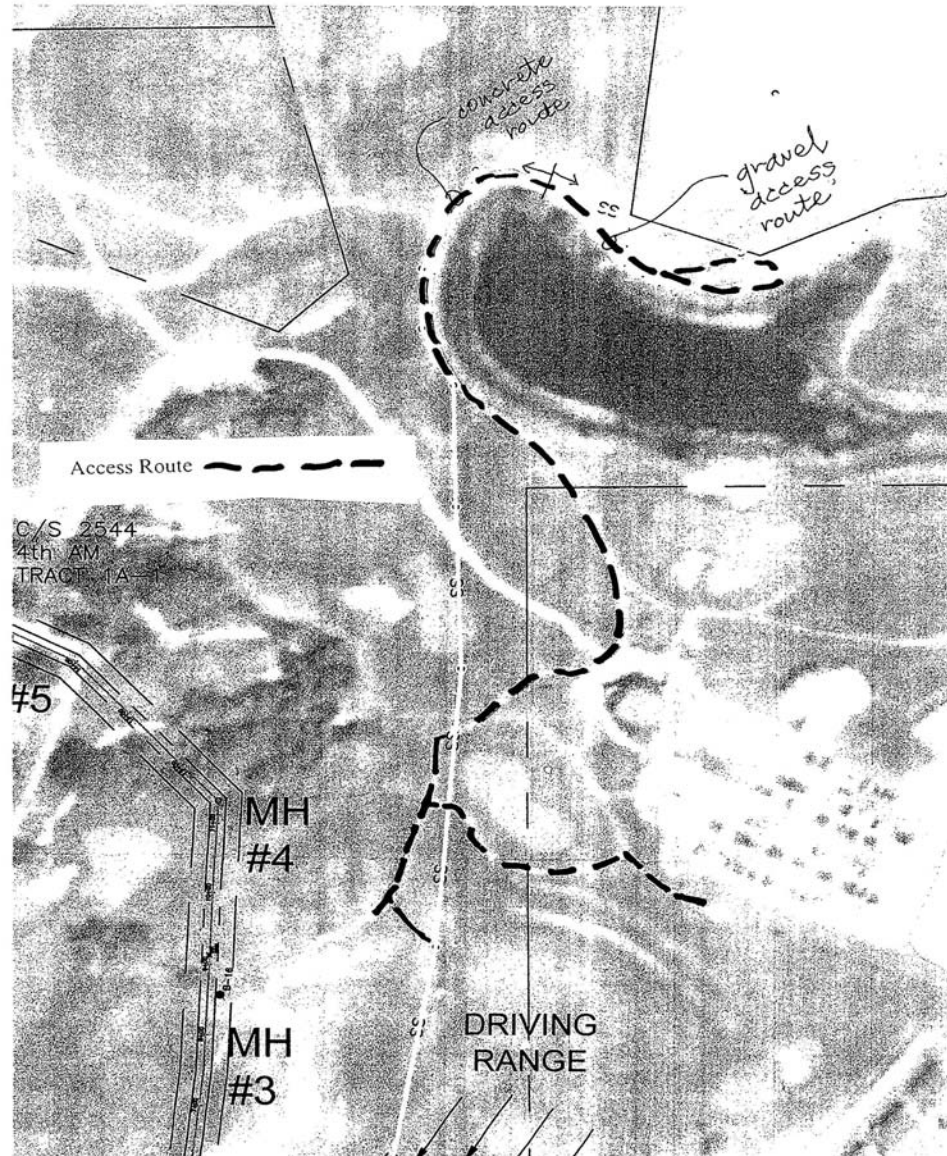




Exhibit A – Approximate Location of New Access Routes to  
Existing Sewer Manholes  
(Sheet 2 of 2)



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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 17, 2007

**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Right-of-Way Easement for Parcel #27, a Portion of Unit 124, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision With Gregory R. Smith and Betty Mattson-Smith

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #27 of the parcels to be acquired (there are some numbered parcels within the project limits from which right-of-way does not need to be acquired). The appraisal for this easement made a conclusion of value for the easement, any appurtenant features, and the construction permit at a value of \$9,150.00. A perpetual easement for right-of-way purposes has the same value as a fee simple acquisition. An easement was negotiated for this parcel because the property owner did not want the new property boundary to be too close to their existing mobile home. A copy of the right-of-way agreement; easement; appraisal; tax documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$9,150.00. The cost of this easement is equal to the sum of the appraised value of the easement, any appurtenant features, and the construction permit. Funding is available for this easement from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #27, a Portion of Unit 124, a Condominium on Lot 1, Block 1,

of Windsor Imperial Subdivision with Gregory R. Smith and Betty Mattson-Smith in the amount of \$9,150.00, and authorize the Mayor to execute these documents.

**ATTACHMENT**

A. Right-of-Way Agreement and Right-of-Way Easement (5 pages)

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

## **INTRODUCTION**

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow (typically 60 feet wide) to allow these necessary street improvements. The street improvements are anticipated to include full-depth street reconstruction, curb & gutter, sidewalks, a multi-use trail, accessibility ramps, crosswalks, and storm drain improvements. This right-of-way acquisition project will provide a new right-of-way width of 70 feet along Lake Elmo Drive. It will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street.

## **PROCEDURAL HISTORY**

### Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right-of-way acquisition to Engineering, Inc.
- February 27, 2006 – Council selection of proposed improvements street section
- March 10, 2006 – Public meeting with adjoining property owners
- June 2006 – Initial design completed using the chosen street section
- November 2006 – Appraisals completed on parcels to be acquired
- December 2006 – Right-of-way negotiations began with property owners

### Future Items

- January 2008 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

## **BACKGROUND**

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The five-phases and their improvement status are as follows:

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

The right-of-way width of 70 feet was chosen as a width that would accommodate the necessary improvements with the minimum intrusion onto existing features. A wider right-of-way width (e.g., 76 feet or 80 feet) would almost assuredly require the purchase of several entire parcels due to the proximity of the wider right-of-way to existing houses.

## **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #27, a Portion of Unit 124, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision with Gregory R. Smith and Betty Mattson-Smith in the amount of \$9,150.00, and authorize the Mayor to execute these documents.

## **ATTACHMENT**

- A. Right-of-Way Agreement and Right-of-Way Easement (5 pages)

**CITY OF BILLINGS**  
(hereinafter referred to as City)  
**RIGHT-OF-WAY AGREEMENT**

Lake Elmo Road Hilltop Road to Wicks Lane      Work Order: 04-33      Yellowstone  
DESIGNATION      Project No. 05153      COUNTY

Parcel No.	Parcel Description	Section	Township	Range
27	Unit 124, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision	22	1N	26E

List Names & Addresses of the Grantors  
(Contract Purchaser, Contract Seller, Lessee, etc.)

GREGORY R. SMITH AND BETTY MATTSON-SMITH  
12601 SE 61st STREET  
BELLEVUE, WA. 98006-3965  
(425) 643-4122

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

569 square feet by easement	\$2,987.00
Improvements (Trees, shrubs, fencing, sod)	\$5,816.00
3. OTHER COMPENSATION:

578 square feet Temporary Construction Permit	\$ 304.00
---	-----------
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$9,150.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$9,150.00, to be made payable to GREGORY R. SMITH AND BETTY MATTSON-SMITH and mailed to 12601 SE 61st STREET, BELLEVUE, WA. 98006-3965
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Right-of-Way Easement, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system, if any, affected by project.

Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN:

We understand that we are required by law to provide our correct taxpayer identification number(s) to the City of Billings and that failing to comply may subject us to civil and criminal penalties. We certify our correct taxpayer identification number(s).

Gregory R. Smith  
Signature: GREGORY R. SMITH (Date) -

Betty Mattson-Smith  
Signature: BETTY MATTSON-SMITH (Date) -

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 11-19-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

Michael D. Barber 11/26/07  
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-27.200 Smith

RETURN TO  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

**RIGHT-OF-WAY EASEMENT**

THIS INDENTURE, made and entered into this 13th day of November, 2007, by and between the following:

GREGORY R. SMITH AND BETTY MATTSON-SMITH  
12601 SE 61st STREET  
BELLEVUE, WA. 98006-3965

hereinafter referred to as **GRANTOR** and

**CITY OF BILLINGS**, a Municipal Corporation  
City Hall - 210 North 27th Street  
PO Box 1178  
Billings, Montana 59103-1178,  
hereinafter referred to as **GRANTEE**

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged;

**WITNESSETH THAT GRANTOR** does hereby grant, sell, and convey unto the **GRANTEE**, for the benefit of the public, a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, repair and improve streets, storm drainage, street lights, sidewalks, accessibility ramps, multi-use path, traffic signals, necessary fixtures and appurtenances, and public and private utilities that normally occupying public rights-of-way over, across, under, and through the real property within the boundaries of the easement area as described herein and shown on the attached Exhibit "A":

**Parcel No. 27 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Unit No. 124, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision, in the City of Billings, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 569 sq. ft..**

**Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 578 sq. ft..**

**TO HAVE AND TO HOLD** unto **GRANTEE** and to its successors and assigns forever.

**IN WITNESS WHEREOF**, the **GRANTOR** warrants that they have good right to convey, free and clear of all encumbrances; the above-described interests in the real estate described and have hereunto set their hand.



Project No. : W.O. 04-33

Parcel No. 27

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

TO HAVE AND TO HOLD all of the above-described property unto the Grantee(s), and its successors and assigns forever.

IN WITNESS WHEREOF

GREGORY R. SMITH  
GREGORY R. SMITH

BETTY MATTSON-SMITH  
BETTY MATTSON-SMITH

State of Washington )  
County of King )

This instrument was acknowledged before me on November 13, 2007  
(date)

by GREGORY R. SMITH AND BETTY MATTSON-SMITH  
(names)



Nikki Ortiz  
Notary Signature Line  
Nikki Ortiz  
Notary Printed Name:

Notary Public for State of Washington  
Residing at: Rent  
My Commission Expires: Feb 5, 2011

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

**THIS PERPETUAL EASEMENT** is hereby accepted pursuant to Billings City Council approval on \_\_\_\_\_, 2007. The Mayor and City Council of the City of Billings acknowledges receipt of this perpetual easement and hereby accepts the property interest conveyed through this instrument.

**CITY OF BILLINGS,**  
a Montana Municipal Corporation

By: \_\_\_\_\_  
**MAYOR**

ATTEST:

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

STATE OF MONTANA )  
:SS  
COUNTY OF \_\_\_\_\_ )

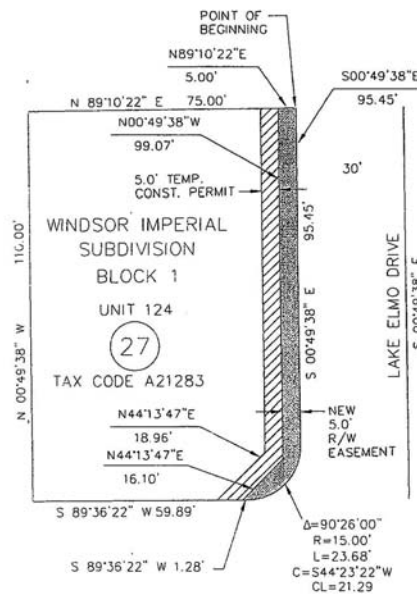
On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, \_\_\_\_\_  
a Notary Public in and for the State of Montana, personally appeared known to me to be \_\_\_\_\_  
and acknowledged to me that they executed the foregoing instrument.

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

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

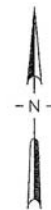
# EXHIBIT A RIGHT-OF-WAY EASEMENT AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN UNIT 124, BLOCK 1, WINDSOR IMPERIAL SUBDIVISION, YELLOWSTONE COUNTY, MONTANA

LAKE ELMO DRIVE  
 RIGHT-OF-WAY EASEMENT DESCRIPTION  
 PARCEL No. 27



A tract of land situated in Unit 124, Block 1, WINDSOR IMPERIAL SUBDIVISION, Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point on the west right-of-way line of Lake Elmo Drive, said point of beginning also being the northeast corner of Unit 124, Block 1, WINDSOR IMPERIAL SUBDIVISION; thence S 00°49'38" E for a distance of 95.45 feet; thence along a tangent curve to the right having a Radius of 15.00 feet, a Delta of 90°26'00" and a Length of 23.68 feet (said curve subtended by a chord bearing S 44°23'22" W a distance of 21.29 feet); thence S 89°36'22" W for a distance of 1.28 feet; thence N 44°13'47" E for a distance of 16.10 feet; thence N 00°49'38" W for a distance of 99.07 feet; thence N 89°10'22" E for a distance of 5.00 feet to the point of beginning, containing 569 square feet.



Not to Scale

AREA OF RIGHT-OF-WAY EASEMENT: 569 S.F.  
 AREA OF TEMPORARY CONSTRUCTION PERMIT: 578 S.F.

## LEGEND

RIGHT-OF-WAY EASEMENT  
 CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 27  
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA  
 RIGHT-OF-WAY PLAN.

UPDATED: 11/8/21 HB PARCEL 27.045

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



## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, December 17, 2007

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**TITLE:** W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #63, a Portion of Lot 14, Block 3 of Arrowhead Subdivision, With the Heirs and Devisees of Donna J. Peterson, Deceased (Dorothy Waddell and Robert Bryson as Personal Representatives)

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #63 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$3,200.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

**FINANCIAL IMPACT:** The total payment for this acquisition is \$3,200.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

### RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #63, a Portion of Lot 14, Block 3 of Arrowhead Subdivision, with the Heirs and Devisees of Donna J. Peterson, Deceased (Dorothy Waddell and Robert Bryson as Personal Representatives) in the amount of \$3,200.00, and authorize the Mayor to execute these

documents.

**ATTACHMENT**

A. Right-of-Way Agreement and Warranty Deed (5 pages)

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

## **INTRODUCTION**

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow (typically 60 feet wide) to allow these necessary street improvements. The street improvements are anticipated to include full-depth street reconstruction, curb & gutter, sidewalks, a multi-use trail, accessibility ramps, crosswalks, and storm drain improvements. This right-of-way acquisition project will provide a new right-of-way width of 70 feet along Lake Elmo Drive. It will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street.

## **PROCEDURAL HISTORY**

### Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right-of-way acquisition to Engineering, Inc.
- February 27, 2006 – Council selection of proposed improvements street section
- March 10, 2006 – Public meeting with adjoining property owners
- June 2006 – Initial design completed using the chosen street section
- November 2006 – Appraisals completed on parcels to be acquired
- December 2006 – Right-of-way negotiations began with property owners

### Future Items

- January 2008 – Estimated completion of right-of-way acquisition
- 2008-2009 – Design and construction of street improvements (in approved CIP)

## **BACKGROUND**

Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The five-phases and their improvement status are as follows:

<u>Phase</u>	<u>Status</u>
Phase I – Wicks Lane to Angel Drive	Completed in 1999.
Phase II – Main Street to Hansen Lane	Project opened bids in Sept 2005. Bids exceeded the budget. Re-scoping to re-bid in 2007.
Phase III – Sioux Lane to Wicks Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase IV – Hilltop Road to Rice Lane	Right-of-way acquisition ( <b>this memo</b> )
Phase V – Angel Drive to Pemberton Lane	Not scheduled in the 2006-2011 CIP

Current traffic counts along the section of Lake Elmo Drive between Hilltop and Wicks show approximately 6,200 vehicles per day. By 2015, 7,500 vehicles per day are expected to use this stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

The right-of-way width of 70 feet was chosen as a width that would accommodate the necessary improvements with the minimum intrusion onto existing features. A wider right-of-way width (e.g., 76 feet or 80 feet) would almost assuredly require the purchase of several entire parcels due to the proximity of the wider right-of-way to existing houses.

## **RECOMMENDATION**

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #63, a Portion of Lot 14, Block 3 of Arrowhead Subdivision, with the Heirs and Devisees of Donna J. Peterson, Deceased (Dorothy Waddell and Robert Bryson as Personal Representatives) in the amount of \$3,200.00, and authorize the Mayor to execute these documents.

## **ATTACHMENT**

A. Right-of-Way Agreement and Warranty Deed (5 pages)

**CITY OF BILLINGS**  
(hereinafter referred to as City)  
**RIGHT-OF-WAY AGREEMENT**

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u> DESIGNATION	Work Order: 04-33 Project No. 05153	<u>Yellowstone</u> COUNTY
Parcel No. 63	Parcel Description Lot 14, Block 3 of Arrowhead Subdivision	Section 22      Township 1N      Range 26E

---

List Names & Addresses of the Grantors  
(Contract Purchaser, Contract Seller, Lessee, etc.)

HEIRS AND DEVISEES OF DONNA J. PETERSON, DECEASED  
1401 LAKE ELMO DRIVE  
BILLINGS, MT. 59105  
245-9795 (Dorothy Waddell)

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a deed and other documents required by the City for all real property agreed to be conveyed by this agreement.
2. COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

340 square feet by deed	\$2,125.00
Improvements (Lawn, shrub, concrete driveway)	\$ 649.00
3. OTHER COMPENSATION:

680 square feet Temporary Construction Permit	\$ 425.00
---	-----------
4. TOTAL COMPENSATION ROUNDED PER THE APPRAISAL (includes all damages to the remainder): \$3,200.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$3,200.00, to be made payable to HEIRS AND DEVISEES OF DONNA J. PETERSON, and mailed to 640 SHRAMROCK, BILLINGS, MT. 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

Reconfigure and repair sprinkler system affected by project.

Grantors understand and agree that upon completion of the construction of this item located upon the Grantors' land, they shall be considered the sole property of the Grantors, and the maintenance and repair of said property shall be the responsibility of the Grantors.



(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES

We understand that we are required by law to provide our correct taxpayer identification number(s). We certify correct taxpayer identification number(s).

ings  
ur

*Donalby Waddell* 1-24-07  
Signature: (Date)

*V Robert Day* 1-24-07  
Signature: (Date)

Tax ID No.

Signature: (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

*Ronald E. Olson* 1-24-07  
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

\_\_\_\_\_  
Mayor, City of Billings (Date)

ATTEST:

*Nicholas Peterson* 11/28/07  
City of Billings, Public Works Department (Date)

\_\_\_\_\_  
City Clerk (Date)

LER-063.200 Peterson

Return to: City Clerk  
City of Billings  
PO Box 1178  
Billings, MT 59103

Project No. W.O. 04-33 Parcel No. 63 County of YELLOWSTONE  
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

### WARRANTY DEED

THIS INDENTURE, made this 24th day of January, 2007.

FOR VALUABLE CONSIDERATION, lawful money of the United States to them in hand paid by the CITY OF BILLINGS, THE receipt whereof is acknowledged, WITNESSTH THAT:

HEIRS AND DEVISEES OF DONNA J. PETERSON, DECEASED  
1401 LAKE ELMO DRIVE  
BILLINGS, MT. 59105

does hereby GRANT, BARGAIN, SELL CONVEY, WARRANT AND CONFIRM unto the CITY OF BILLINGS for the benefit and use of the Public the following described real property, to wit:

Parcel No. 63 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 14, Block 3 of Arrowhead Subdivision, on file under Document No. 452936, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 340 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 680 sq. ft..

PURPOSE OF ACQUISITION is to create a right-of way parcel for construction and use of public road, utility and related appurtenant structures, pursuant to 76-3-201(1)(h) M.C.A. and A.R.M. 24.183.1104 as a division of land that creates rights-of-way or utility sites.

EXCEPTING AND RESERVING, however, all gas and oil, beneath the surface of the above described and conveyed premises, together with the right to extract the same, provided that in the exercise of such right the surface thereof shall not be disturbed, interfered with, or in anyway damaged.

FURTHER EXCEPTING AND RESERVING, unto the grantors, their successors and assigns all water, water rights, ditches, canals, irrigation systems, existing or as relocated, if any, including but not limited to, water stock or shares, bonds, certificates, contracts and any and all other indicia, of water, water right and ditch ownership, or any interest therein, appurtenant to the land described herein.

TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and to its successors and assigns forever. IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 63

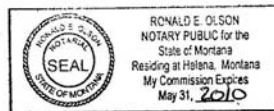
Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Dorothy Waddell Robert Bryson

State of Montana )  
County of Yellowstone )

This instrument was acknowledged before me on JANUARY 24, 2007  
(date)

by Dorothy Waddell AND Robert Bryson AS co-personal  
Representatives of the Heirs (names) and devisees of Donna S. Petersen,  
deceased



Ronald E. Olson  
Notary Signature Line  
Notary Printed Name

Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

#### ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

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

ATTEST: \_\_\_\_\_

City Clerk

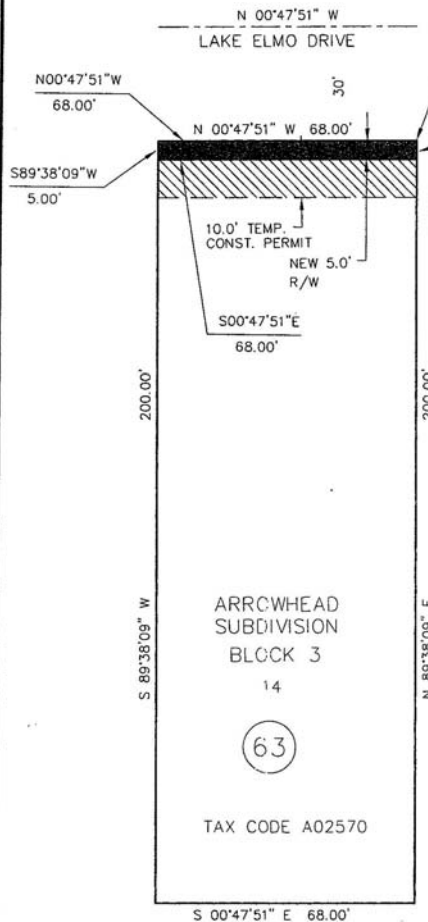
STATE OF MONTANA )  
:ss  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ as Mayor and \_\_\_\_\_ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Residing in \_\_\_\_\_  
My commission expires \_\_\_\_\_

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

# EXHIBIT A RIGHT-OF-WAY ACQUISITION AND TEMPORARY CONSTRUCTION PERMIT SITUATED IN LOT 14, BLOCK 3, ARROWHEAD SUBDIVISION, YELLOWSTONE COUNTY, MONTANA



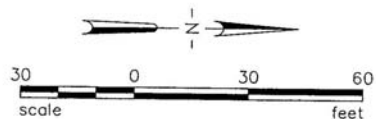
LAKE ELMO DRIVE  
RIGHT-OF-WAY ACQUISITION DESCRIPTION  
PARCEL No. 63

A tract of land situated in Lot 14,  
Block 3, ARROWHEAD SUBDIVISION,  
Yellowstone County, Montana said tract being  
more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line  
of Lake Elmo Drive, said point of beginning being  
the northwest corner of Lot 14, Block 3, ARROWHEAD  
SUBDIVISION; thence from said point of beginning  
N. 89°38'09" E. a distance of 5.00 feet; thence  
S. 00°47'51" E. a distance of 68.00 feet; thence  
S. 89°38'09" W. a distance of 5.00 feet; thence  
N. 00°47'51" W. a distance of 68.00 feet to the  
point of beginning, containing 340 square feet.

AREA TO BE ACQUIRED: 340 S.F.

AREA OF TEMPORARY CONSTRUCTION  
PERMIT: 680 S.F.



## LEGEND

- RIGHT-OF-WAY ACQUISITION
- CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 63

THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA  
RIGHT-OF-WAY PLAN.



**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors

1300 North Townsend Way  
Billings, Montana 59102  
Phone (406) 656-5255  
www.enginc.com

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

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**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** Magic City Blues Festival Street Closure request

**DEPARTMENT:** Parks, Recreation and Public Lands

**PRESENTED BY:** Mike Whitaker, Parks, Recreation and Public Lands Director

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**PROBLEM/ISSUE STATEMENT:** Tim Goodridge of the Magic City Blues Festival requests the closure of Montana Avenue between the 2300 and 2500 blocks from 9:00 am on Friday, August 8, 2008, until noon on Sunday, August 10, 2008, for the annual Magic City Blues Festival. Please see enclosed map of event layout and signatures of support from Montana Avenue business owners.

Recommended conditions of approval include Magic City Blues Festival:

1. Contact all businesses and make them aware of the event
2. Clean the area to be used following the event and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured (will be obtained at least one month prior to event)
5. Obtain the proper permit for alcohol consumption in the public right of way from the Billings Police Department
6. Provide security for the event
7. Provide and install adequate traffic barricades and signs directing motorists around closure
8. Restrict signage in the street right-of-way to traffic control and not event advertising or promotion.

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** There are no costs to the City of Billings other than administrative time to process permit. Traffic control and litter removal are to be paid for by the Magic City Blues Fest.

## **RECOMMENDATION**

Staff recommends that Council approve the closures named above for the annual Magic City Blues Festival.

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

## **ATTACHMENTS**

- A. Letter from Tim Goodridge and support letters (2 pages)
- B. Right of Way Special Activity Permit Application (2 pages)
- C. Maps outlining closure (3 pages)
- D. Insurance (2 pages)
- E. Montana Ave Business Owners Support List (3 pages)

October 22, 2007

Magic City Blues (MCB) is a two-day annual music festival planned for the second weekend in August each year. The event takes place in the Billings, Montana "Historic District". This year, 2008, will be the seventh annual.

It will be a combination of local, national and international musical acts appearing on two outdoor stages.

To accommodate the outdoor stages and provide a safe gathering place for the people attending MCB, Montana Avenue will need to be closed to all vehicle traffic. Affected blocks will be 2500–2300 block of Montana Avenue. Closures will be from 9am Friday, August 8 to 12 noon Sunday, August 10, 2008. These are the same festival closure times approved by council for the past four years.

Billings Construction Supply will handle traffic closure and diversion.

Our marketing and advertising is very strong and will make people aware of the event on Montana Ave., the dates, and the resulting street closure. In addition to our marketing campaign, major media outlets in Billings will cover the festival as a story to further the awareness. It is the intention of the organizers to make the 2008 festival as smooth and complaint free as years past to ensure continued city support for future festivals.

Traffic diversion on Montana Avenue will begin at N 29<sup>th</sup> with two signs, one in the north and one in the south lane – MONTANA AVE CLOSED AT N 25<sup>th</sup> ST. This will be repeated at N 28<sup>th</sup> and N 27<sup>th</sup>. Through traffic can divert to either 2<sup>nd</sup> Ave N or 1<sup>st</sup> Ave. S at each intersection up to 25<sup>th</sup>, where the barricade will divert remaining cars to 2<sup>nd</sup> Ave. North. Signs will include electronic arrows, cones and road closed ahead signs.

The main outdoor stage will be erected on Montana Avenue, just like last year. Having the stage in this spot provides excellent views and acoustics for the audience, which will be gathering in front of the stage and in the parking lot between the Rex and Venture Theater. This space can comfortably and safely hold the 3500 – 5000 people we expect each night.

Billings Police Association and Starplex Crowd Management Services will again act as the primary agents providing security.

The night shows will remain adult-oriented with no one under 21 allowed into the site after 4pm each day. The Rex will provide staff and license for alcohol service within the perimeter. A chain link fence perimeter will be erected with gate entries at 25<sup>th</sup>, 23<sup>rd</sup> and the north end of the Rex parking lot on 24<sup>th</sup>.



Our intention, in addition to presenting more Live Music, is to draw people downtown and develop a broad festival atmosphere over the weekend. B&B Tire launched a car show in the east parking lot of the Depot on the Saturday of the festival from noon to 4pm in 2006. Street Rods and Indy car simulators were on display and lots of folks enjoyed the event. In 2007 the event grew and B&B is already planning for 2008. We encourage businesses to develop ideas to capitalize on the crowds and attention surrounding the event to further benefit Billings. Our goal of making Billings the Live Music capital of Montana will be a tremendous boon to the city.

We are very proud of our involvement in providing community entertainment and donating \$25,000 to Billings Public Schools for music programs over the past five years. This relationship with the school district is a foundation of our business practices and we will continue to work to increase opportunities and funding for the students.

As part of our commitment to Live Music in Billings, MCB provides financial and professional support to Perfect Pitch, a 501(c)3 non-profit. Perfect Pitch presented a 10 part concert series called Montana Avenue Live in the parking lot of the McCormick Café on Friday nights throughout the course of the summer. It was very successful and Perfect Pitch will be donating \$4,000 to Billings Public School music programs and \$1,000 to the Shepherd High School Band from the proceeds.

The Magic City Blues festival has become a signature event for the City of Billings and fans come from all over the city, state and country to enjoy the hospitality and great music. We have worked hard to build the festival in a responsible manner and have gone to great lengths to develop a very good reputation with both the people who attend and the businesses we impact.

The objective of this proposal is to obtain a parks/events permit and permission to close Montana Avenue for the festival. Once this is accomplished, the festival organizers can proceed with obtaining sponsorships, booking talent and all other logistical challenges associated with the event.

All other issues needing resolution will be addressed as is deemed necessary by governing authorities.

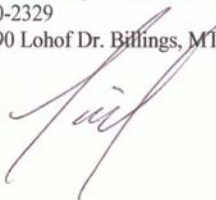
Respectfully submitted by:

Tim Goodridge – Executive producer, Magic City Blues  
Mike Schaer – partner, Magic City Blues  
Gene Burgad – partner, Magic City Blues

[tgoodridge3@bresnan.net](mailto:tgoodridge3@bresnan.net)

670-2329

2990 Lohof Dr. Billings, MT 59102





City of Billings  
RIGHT-OF-WAY ACTIVITY  
PERMIT APPLICATION



Please check the type of activity you are applying for:

☐ Parade ☐ Run/Walk/Procession ☒ Street/Alley Closure

Submit this application with a cover letter to: Events in the Central Business District are to be submitted to: Downtown Billings Association, attn: Lisa Woods, 2815 2<sup>nd</sup> Avenue North, Billings, MT 59101. Events outside the Central Business District are to be submitted to: Director of Parks, Recreation and Public Lands, 390 North 23<sup>rd</sup> Street, Billings, MT 59101. Application should be made at least 60 days in advance of the date of proposed event.

PERSON MAKING APPLICATION Tim Cardridge  
ORGANIZATION MAKING APPLICATION City Blue Productions LLP  
PHONE 670-2329  
ADDRESS 2990 Lakota Dr. Billings MT 59102  
City STATE ZIP

APPROXIMATE TIME EVENT WILL:

Assemble 9am Start 6pm Disband 12 midnight

DATE OF EVENT August 8, 9, 10 - 2008

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

Outdoor music festival, 7<sup>th</sup> Annual Blues Festival  
Magic City Blues.

EVENT ROUTE DESIRED: (Please attach map.)

Montana Ave from 25<sup>th</sup> to 23<sup>rd</sup>

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

BID and festival volunteers

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 an additional insured.

YOU OR THE ORGANIZATION YOU REPRESENT MUST SIGN THE METERS WITHIN THE EVENT ROUTE FOR NO PARKING AT LEAST TWENTY-FOUR HOURS PRIOR TO YOUR EVENT. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE. IT IS YOUR RESPONSIBILITY TO CLEAN UP ALL STREET GARBAGE AND EMPTY ALL GARBAGE CONTAINERS ON THE SIDEWALK THROUGH THE EVENT AREA.

YOU OR THE ORGANIZATION YOU REPRESENT MUST NOTIFY ALL BUSINESSES WITHIN THE EVENT ROUTE AT LEAST TWENTY-FOUR HOURS PRIOR TO YOUR EVENT.

RECEIVED  
OCT 24 2007  
Per WAP



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.

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

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

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

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

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

You will be notified if there are any concerns from any of the department heads or if there are any questions about your application and/or event.

APPLICANT SIGNATURE *[Signature]* DATE 10/22/07

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

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

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

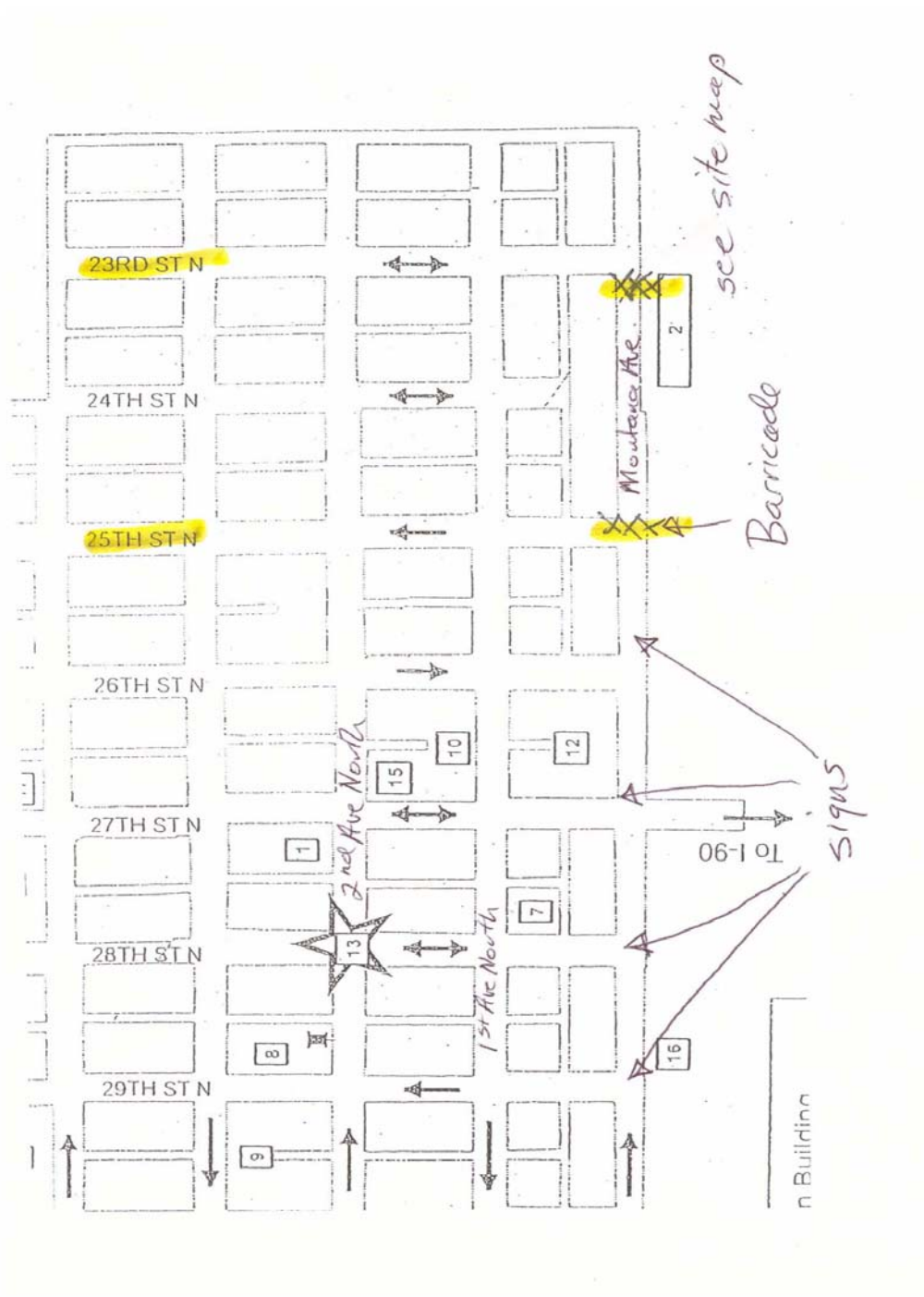
FOR CITY USE ONLY

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

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

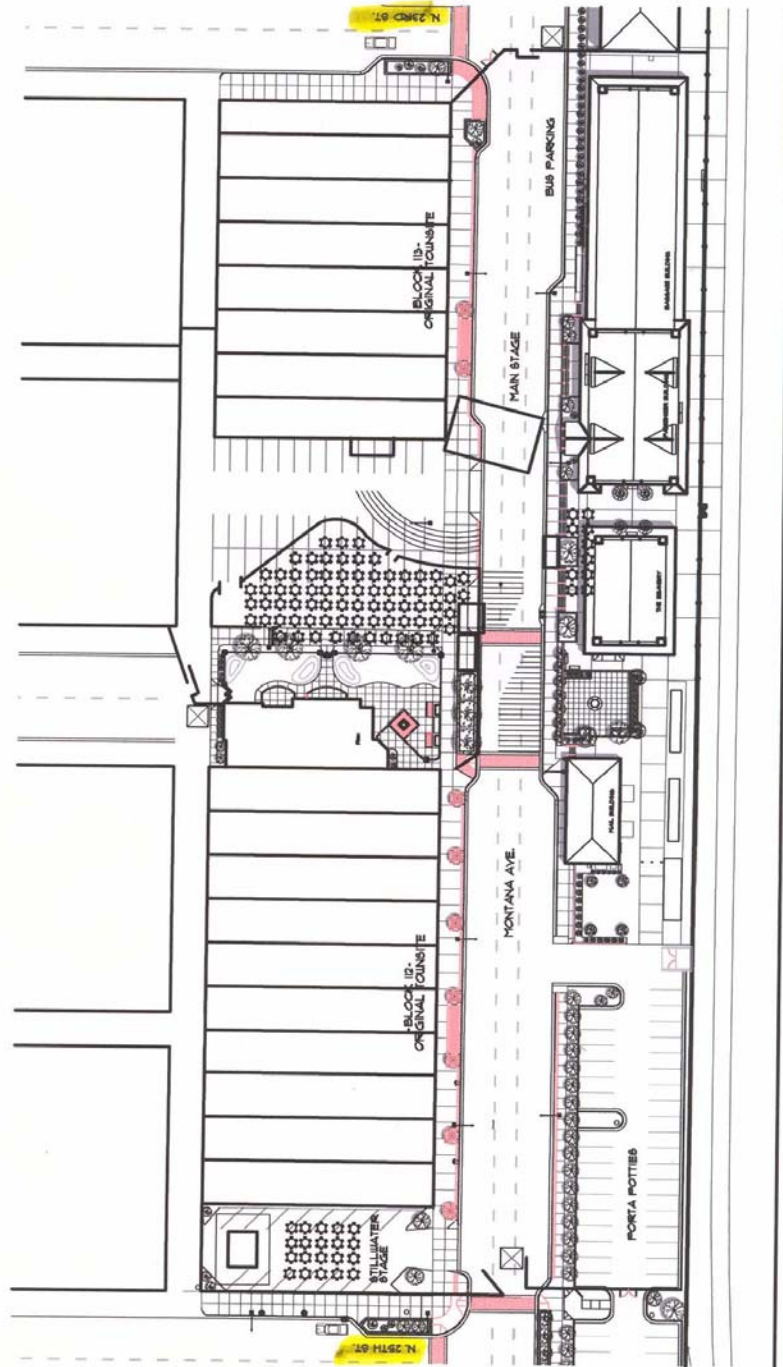
DATE: \_\_\_\_\_

COPIES TO:  
CITY ADMINISTRATOR  
POLICE CHIEF  
FIRE CHIEF  
MET MANAGER  
STREET/TRAFFIC SUPERINTENDANT  
TRAFFIC ENGINEER  
CITY ATTORNEY  
PRPL DIRECTOR  
PARKING SUPERVISOR  
DOWNTOWN BILLINGS ASSOCIATION  
CITY COUNCIL  
MAYOR





*Magic City Blues Festival site map  
2008*







2180 Overland Ave., Suite 102  
P.O. Box 80308  
Billings, MT 59108

406.656.9800  
FAX 406.656.1199

*Peace of mind from people you trust.*

[www.ws-insurance.com](http://www.ws-insurance.com)

October 24, 2007

City of Billings  
P O Box 1178  
Billings, MT 59103

Re: City Blue Productions, LLP  
Tim Goodridge

This will confirm that Tim Goodridge has made arrangements with our Insurance Agency to procure a Commercial General Liability – Special Events policy for the 2008 Blues Festival to be held August 8 & 9, 2008.

Coverage cannot be bound more than 30 days prior to the event. A Certificate of Liability insurance will be furnished to the City of Billings as soon as the coverage is in force for the 2008 event.

Sincerely,

A handwritten signature in cursive script, reading 'Caroline Williamsom'.

Caroline Williamsom, CIC  
Western States Insurance Agency

2007 Bluesfest Insurance

<b>ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE</b>						DATE (MM/DD/YYYY) 08/03/2007	
<b>PRODUCER</b> L.A. Xcess Insurance Brokers, Inc. 5990 Sepulveda Blvd., Ste. 345 Van Nuys, CA 91411				<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>			
Phone No. (818) 623-5410      Fax No. (818) 623-5510				<b>INSURERS AFFORDING COVERAGE</b>		<b>NAIC #</b>	
<b>INSURED</b> City Blue Productions, LLP 2990 Lohof Drive Billings, MT 59102				INSURER A: STP - St. Paul Fire and Marine Ins. Co.			
Phone No. (406) 670-2329      Fax No. (406) 252-5279				INSURER B:			
				INSURER C:			
				INSURER D:			
				INSURER E:			
<b>COVERAGES</b> THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR	ADD'L	LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
			GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR LIQUOR LIABILITY EXCLUDED GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC	EW06102527	08/10/2007	08/12/2007	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 1,000,000
			AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Max per Auto   Max Aggregate
			GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ EA ACC \$ OTHER THAN AUTO ONLY: AGG \$
			EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	EX06100361	08/10/2007	08/12/2007	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$ \$
			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU- TORY LIMITS   OTH- ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
STP			OTHER Third Party Property Damage	EW06102527	08/10/2007	08/12/2007	Coverage   Deductible \$ 100,000   2,500 \$   NaN
<b>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS</b> *Split Dates apply to all coverages in the specified section.							
Coverage Location: United States & Canada Event: Magic City Blues				The Certificate holder is included as Additional Insured, but only as respects to claims arising out of the negligence of the Named Insured.			
All coverages expire at 12:01 a.m. Standard Time.							
<b>CERTIFICATE HOLDER</b> City of Billings P O Box 1178 Billings, MT 59103				<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 1 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Richard D. Pette</i>			
Phone No.      Fax No.				© ACORD CORPORATION 1988			

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

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** South Side Neighborhood Plan – Resolution of Intent to Adopt and Set Date of Public Hearing

**DEPARTMENT:** Planning & Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The South Side Neighborhood Plan is a guide for land use and community development and will serve as a guiding document for making decisions that will affect the future of the South Side Neighborhood. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

The Council at its December 17, 2007, meeting will consider a Resolution of Intent to Adopt the South Side Neighborhood Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for January 14, 2008.

**FINANCIAL IMPACT:** A primary objective of community planning is to reduce the cost of services by assessing future public needs and establishing cost-effective methods to address those needs. This Neighborhood Plan sets out a rational course for managing City resources wisely. Examples of cost-effective policies and strategies include:

- Promote economic development along the South 27<sup>th</sup> Street corridor
- Encourage infill development of affordable housing

**RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the South Side Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. A copy of the plan is on file in the City Clerk's Office.

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

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 07-02
- B. Resolution of Intent to Adopt the South Side Neighborhood Plan

**INTRODUCTION** The 2003 Growth Policy states as a land use issue that the existing neighborhood plans lack sufficient detail to address neighborhood character and preferred land use patterns. To address this need, the City Council instructed the Planning and Community Services Department to initiate the neighborhood planning process for neighborhoods within the city.

The first neighborhood plan completed by the South Side Neighborhood was in 1977 and included information on land use and zoning, housing, transportation, urban design, community facilities and environmental conditions. The plan provided an official guide to new development and redevelopment of the neighborhood over a five-year period. The plan was used by the local government and the neighborhood task force to guide development. The South Side Neighborhood Plan was updated in 1994 to review changes that had occurred in the neighborhood and address new issues affecting the neighborhood and offer actions to address these changes and issues.

### **PROCEDURAL HISTORY**

- 11/17/2006 Neighborhood Plan Update announced at the South Side Neighborhood Task Force Meeting. A list of issues were generated by residents in attendance.
- 2/8/2006 Invitation letters sent to task force members announcing the date and time of the neighborhood planning steering meetings.
- 2/16/2006 First steering committee meeting held.
- 2/16/2006 - 8/16/2007 - 15 steering committee meetings held to draft neighborhood plan.
- 9/20/2007 Draft neighborhood plan presentation and review with the South Side Neighborhood Task Force.
- 10/18/2007 South Side Neighborhood Task Force votes affirmatively to approve draft neighborhood plan and to move forward with formal adoption by the City Council and Board of County Commissioners.
- 12/03/2007 The City Council at its work session received a presentation on elements included in the South Side Neighborhood Plan.
- 12/11/2007 Yellowstone County Planning Board adopted resolution 07-02 recommending adoption of the South Side Neighborhood Plan as part of the 2003 Growth Policy to the City Council and the Board of County Commissioners.
- 12/17/2007 The City Council at its regular meeting on December 17, 2007, will consider a Resolution of Intent to Adopt the South Side Neighborhood Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for January 14, 2008.

**BACKGROUND** In 2003, the Yellowstone County and City of Billings Growth Policy was adopted by the Billings City Council. As part of the Growth Policy, the governing body may include one or more neighborhood plans (76-1-601(2)(4)(a), MCA). A neighborhood plan must be consistent with the growth policy. The South Side Neighborhood Plan contains the following elements:

1. Neighborhood goals, objectives and actions
2. Information describing an inventory of the existing characteristics and features of the neighborhood, including land uses, population, housing needs, economic conditions, local services, public facilities, natural resources, other characteristics and features proposed by the neighborhood residents, planning board and adopted by the governing bodies
3. Projected trends for the life of the growth policy for each of the following elements: land use; population; housing needs; economic conditions; local services; natural resources; and other elements proposed by the neighborhood residents, planning board and adopted by the governing bodies
4. A description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives above
5. A strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges
  - a) An implementation strategy that includes a timetable for implementing the neighborhood plan;

The neighborhood planning process involved local residents to identify issues impacting the area and works towards goals, objectives and actions to address these issues. The goals and objectives, which describe desired future conditions, are implemented through policies and future capital improvement planning. Policies are commitments to the residents that the elected officials shall acknowledge and attempt to achieve those goals and objectives.

The Planning Division worked with South Side residents to develop 10 focus areas of discussion and include:

- Housing
- Economic Development
- Parks and Recreation
- Community Facilities
- Schools and Education
- Public Safety
- Transportation
- Public Facilities
- Environment
- Land Use and Growth Management

The Planning Board held a formal public hearing on the Neighborhood Plan on December 11, 2007. Taking into consideration the comments received at the public hearing, the Planning Board is forwarding a recommendation of approval to the Yellowstone County Commissioners and the Billings City Council ( See Planning Board Resolution No. 07-02).

**STAKEHOLDERS** All South Side residents, landowners and business owners have a stake in the adoption and implementation of the South Side Neighborhood Plan. All comments received

from individuals have been taken into consideration and the document was modified as appropriate.

**RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the South Side Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 07-02
- B. Resolution of Intent to Adopt the South Side Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

**ATTACHMENT A**  
**Yellowstone County Board of Planning**  
**Draft Resolution to Recommend Adoption of the South Side Neighborhood Plan**

**RESOLUTION NO. 07-\_\_\_\_\_**

**RESOLUTION TO RECOMMEND ADOPTION OF THE  
SOUTH SIDE NEIGHBORHOOD PLAN**

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Yellowstone County Board of Planning, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 11<sup>th</sup> day of December, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed South Side Neighborhood Plan:

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Yellowstone County Board of Planning recommends adoption of the South Side Neighborhood Plan.

APPROVED AND PASSED by the Yellowstone County Board of Planning this 11<sup>th</sup> day of December, 2007.

THE YELLOWSTONE COUNTY BOARD OF PLANNING:

BY: \_\_\_\_\_  
Donna Forbes, President

ATTEST:

BY: \_\_\_\_\_  
Candi Beaudry, Executive Secretary

**ATTACHMENT B**

**RESOLUTION NO. 07-\_\_\_\_\_**

**RESOLUTION OF INTENT TO ADOPT THE SOUTH SIDE NEIGHBORHOOD PLAN  
AS PART OF THE YELLOWSTONE COUNTY - CITY OF BILLINGS 2003 GROWTH  
POLICY.**

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 11<sup>th</sup> day of December, 2007, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan and on the 14<sup>th</sup> day of January, 2008, the Billings City Council held a public hearing for the same purpose:

WHEREAS, The Yellowstone County Board of Planning by Resolution 07-02, recommends the Billings City Council adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the South Side Neighborhood Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 17<sup>th</sup> day of December, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

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# W

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 17, 2007

TITLE: Resolution – Work Force Housing Ad Hoc Committee  
DEPARTMENT: Planning and Community Services Department  
PRESENTED BY: Candi Beaudry, AICP, Director

**PROBLEM/ISSUE STATEMENT:** At the request of Mr. Tom Llewellyn, City Council requested staff to create a Work Force Housing Ad Hoc Committee to address the issue of work force housing shortage in Billings. The primary purpose of the committee is to explore public and private opportunities for work force housing developer incentives. A secondary objective of the committee is to host a Housing Summit in the spring of 2008 to develop an action plan for providing work force housing. The Council was in general agreement with the composition of the committee outlined by Mr. Llewellyn and incorporated in the attached resolution. Recommended nominations for the committee will be presented to the Mayor and City Council at a future Council meeting.

#### **ALTERNATIVES ANALYZED:**

- Approve the resolution creating the committee and approve the composition of the committee;
- Delay action on the resolution; or
- Reject the resolution.

**FINANCIAL IMPACT:** None anticipated.

#### **RECOMMENDATION**

Staff recommends the Council approve the resolution creating the Work Force Housing Ad Hoc Committee and approve the composition of the committee.

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

#### **ATTACHMENT**

A. Resolution

RESOLUTION 07-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, CREATING A WORK FORCE HOUSING AD HOC COMMITTEE AND APPROVING THE COMPOSITION OF THE COMMITTEE.

WHEREAS, the Billings City Council acknowledges that a lack of affordable housing for the work force exists in Billings, Montana; and

WHEREAS, a representative of the housing industry has presented a compelling argument that the condition can be addressed through the cooperation of public and private entities working together to develop solutions to the problem, and

WHEREAS, the creation of an ad hoc committee to address the work force housing shortage has been determined to be in the interest of the City of Billings.

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

1. Ad Hoc Committee Creation: There is hereby created a Work Force Housing Ad Hoc Committee to explore public and private opportunities for work force housing developer incentives, and to host a Housing Summit in the spring of 2008 to develop an action plan for providing work force housing;
2. Membership: The Committee shall consists of 16 members from the following private and public entities:
  - a. One member from each of the 7 Neighborhood Task Forces,
  - b. Two members from the Billings Realtor Association,
  - c. Two members from local lending institutions,
  - d. Two members from the Home Builders Association
  - e. A member from the Billings Housing Authority
  - f. A member of the Community Development Board
  - g. A member of the Affordable Housing Task Force
  - h. A member from local economic development organizations

The Mayor shall appoint the individual members by a separate action upon the recommendation of City staff. Members shall serve without compensation.

3. Duration: The Work Force Housing Ad Hoc Committee will serve until it presents recommendations to the City Council or for one year, whichever is less.

PASSED by the City Council of the City of Billings, Montana and APPROVED this  
\_\_\_\_\_ day of \_\_\_\_\_, 2007.

THE CITY OF BILLINGS:

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

ATTEST:

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

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

X

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** Resolution to Create a Joint City-County Bicycle and Pedestrian Advisory Committee

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Candi Beaudry, AICP, Director

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**PROBLEM/ISSUE STATEMENT:** At a joint meeting on May 24, 2007, the Yellowstone County Board of Commissioners and the City Council agreed to form a committee for the purpose of advising the governing bodies and City and County departments on actions affecting bicycling, walking, or wheelchair facilities in the Billings Urban Area. This committee, referred to as the Bicycle and Pedestrian Advisory Committee (BPAC) will be composed of seven members: three members appointed by the Commissioners, three members appointed by the Mayor and City Council, and one member appointed by the Yellowstone County Board of Planning. The County Planning Board and the County Commissioners have reviewed and approved the creation of this Committee. The Federal Highway Administration also advised that this committee remain separate from the Technical Advisory Committee, an existing committee that provides technical transportation advice to the governing bodies. The committee will be administered in accordance with the by-laws attached to the resolution.

**ALTERNATIVES ANALYZED:** The City Council may decide to approve or deny the Resolution creating the Bicycle and Pedestrian Advisory Committee. If approved, the Mayor and Council will appoint members in accordance with the by-laws at a later date. If denied, the by-laws must either be rewritten to give the County Commissioners and Planning Board sole responsibility for Committee appointments, or the Committee would not be created.

**FINANCIAL IMPACT:** There will be no financial impact to the City resulting from the creation of this Committee.

**RECOMMENDATION**

Staff recommends that Council approve the resolution creating the joint City-County Bicycle and Pedestrian Advisory Committee.

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

**ATTACHMENT**

A. Resolution w/ By-Laws

ATTACHMENT A

RESOLUTION NO. 07-

A RESOLUTION OF THE BILLINGS MONTANA CITY COUNCIL  
CREATING A JOINT CITY-COUNTY BICYCLE AND PEDESTRIAN  
ADVISORY COMMITTEE, ESTABLISHING THE COMMITTEE  
PURPOSE AND ESTABLISHING ITS BY-LAWS.

Be It Resolved by the City Council of the City of Billings (the "City"), Montana, as follows:

Section 1. Creation: There is hereby created the Bicycle and Pedestrian Advisory Committee (the Committee).

Section 2. Purpose: The Committee's purpose is to advise the city council, mayor, the county commissioners and all departments and boards of the city and county with respect to the impact that city and/or county actions may have upon bicycling, walking, or wheelchair access in the Billings Urban Area.

Section 3. By-Laws: The Committee will be governed by its by-laws attached hereto as Exhibit A.

APPROVED AND PASSED by the City Council of the City of Billings, Montana  
this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

THE CITY OF BILLINGS:

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

ATTEST:

\_\_\_\_\_  
Cari Martin, City Clerk

**BY-LAWS  
OF THE  
BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE  
BILLINGS, MONTANA**

**URBAN TRANSPORTATION PLANNING PROCESS**

September 12, 2007

Prepared By:  
City-County Planning Department  
510 North Broadway  
Billings, Montana

## **BY-LAWS**

### **BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**

Functions, duties and responsibilities of the Bicycle and Pedestrian Advisory Committee of the Billings Urban Transportation Planning Process hereinafter referred to as the Bicycle and Pedestrian Advisory Committee are as follows:

#### **ARTICLE I – BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**

##### **SECTION 1 NAME**

The name of this committee shall be the Bicycle and Pedestrian Advisory Committee (BPAC) of the Billings Urban Transportation Planning Process.

##### **SECTION 2 ESTABLISHED**

There is hereby established a bicycle and pedestrian advisory board to advise the city council, mayor, the county commissioners, Planning Board, and all departments and boards of the city and county with respect to the impact that city and/or county actions may have upon bicycling, walking or wheelchair access in the Billings Urban Area.

##### **SECTION 3 PURPOSE**

The purpose of the Bicycle and Pedestrian Advisory Committee is to advise the city council, mayor, the county commissioners, Planning Board, and all departments and boards of the city and county with regard to non-motorized transportation matters.

##### **SECTION 4 MEMBERSHIP**

The committee shall be composed of seven members to serve three (3) year terms. The mayor, subject to confirmation by the city council, will appoint three (3) members, the county commissioners will appoint three (3) members and the Yellowstone Board of Planning will appoint one (1) member. Initially, two (2) of the committee members from the city and two (2) from the county will be appointed to a two (2) year term, the remaining members, including the



planning board-appointed member will be appointed for a three (3) year term. The committee members shall be representatives of bicycling organizations; organizations concerned with mass transit, smart growth and healthy communities; educational organizations concerned with safety such as PTA, SAFE KIDS; a representative of business organizations such as the downtown association, Billings Chamber of Commerce; interested private citizens concerned with non-motorized transportation issues such as bicyclist commuters, recreation, people with disabilities, the aging community, and high school students; a representative from the police department and the bicycle/pedestrian coordinator or a staff person from the engineering division may serve as ex-official members of the board.

## **SECTION 5 ORGANIZATION**

A Chairman shall be elected at the first scheduled meeting of the calendar year by a quorum of the Bicycle and Pedestrian Advisory Committee membership present at a duly called meeting. Term of office will be one year or until a successor is elected.

## **ARTICLE II – DUTIES**

### **SECTION 1 DUTIES OF THE BOARD**

The Bicycle and Pedestrian Advisory Board have the duties to:

1. Make recommendations on capital improvement projects, transportation improvement plans, bicycle and pedestrian programs and other city programs and projects, insofar as they relate to bicycling, walking, and wheelchair access. City and county officials shall provide appropriate plans and other materials for review by the board within a timely manner;
2. Advise in the development and implementation of city/county non-motorized transportation plans and the development of long-range transportation plans;
3. Make recommendations to the city, county, and Planning Board to improve the institutional and professional responsiveness of the city and county to promote non-motorized transportation and pedestrian safety;
4. Advise the Alternative Modes Coordinator regarding school programs to promote operator (children, youth, and adult bicyclists; pedestrians and motorists) awareness and activity through education and public information programs and enforcement;
5. Make recommendations to the city, county, and Planning Board regarding design standards for all types of bicycle and pedestrian facilities. Make recommendations regarding design improvements for existing bicycle and pedestrian facilities;

6. Make recommendations to the city, county, and Planning Board regarding bicycle and pedestrian planning as it relates to facility selection, cost and safety impacts;
7. Make recommendations regarding prioritization of bicycle and pedestrian facilities needed in the city and county;
8. Consult and advise government agencies to promote bicycling and pedestrian activity as viable forms of urban transportation and to reduce dependence on private automobiles as a primary mode of transportation;
9. Advise the city Transit Division to provide effective linkages between bicyclist and pedestrians and public transportation.

## **SECTION 2 DUTIES OF OFFICERS**

1. Chairman - The chairman will be elected by current members at the first annual meeting. The chairman shall preside at all meetings of the Bicycle and Pedestrian Advisory Committee and call special meetings as needed.
2. Vice Chairman - A vice chairman will be elected by current members at the first annual meeting to act during the absence of the elected chairman.

## **ARTICLE III - MEETINGS**

### **SECTION 1 MEETINGS**

The Bicycle and Pedestrian Advisory Committee shall hold regular meetings at a time agreed to by a majority of the committee. When a regularly scheduled meeting is cancelled, a written cancellation notice will be formulated and sent to all the members. Special meetings of the Bicycle and Pedestrian Advisory Committee may be called on ten days notice, or less time when waived by a majority of the committee.

All meetings will be noticed in a newspaper of paid general circulation at least 2 weeks and no less than 6 days prior to the meeting date of the bicycle and pedestrian advisory committee. All meetings shall be open to the public in accordance with the Montana State Open Meeting Law. Notice of the meetings shall be calculated to reach all interested and affected members of the community.

### **SECTION 2 QUORUM FOR COMMITTEE MEETINGS**

A quorum shall consist of a simple majority of the voting members listed in the regular membership section of these bylaws including the chairman or his/her designated representative. Roberts Rules of Order will be followed in all meetings.

### **SECTION 3 REPORTING ON MEETINGS**

A member of the Yellowstone County Board of Planning transportation planning staff will act as secretary to record the minutes and attendance, prepare required reports, notify members of meetings, and such other duties as required by the Bicycle and Pedestrian Advisory Committee. Only the date, time, attendance, order of business, abbreviated discussions and final decisions of the Bicycle and Pedestrian Advisory Committee will be reported in the minutes.

## **ARTICLE IV ADOPTION AND AMENDMENT OF ARTICLES**

### **SECTION 1 HOW ADOPTED**

These articles may be adopted by a majority of the Bicycle and Pedestrian Advisory Committee at a duly called BPAC meeting.

### **SECTION 2 HOW AMENDED**

These articles may be amended by a majority of the Bicycle and Pedestrian Advisory Committee at a duly called meeting in which a discussion of the By-laws is a published agenda item.

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Y

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

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**TITLE:** Preliminary Minor Plat of Lake Hills Subdivision, 32<sup>nd</sup> Filing  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** On November 16, 2007, the subdivider applied for preliminary minor plat approval of Lake Hills Subdivision, 32<sup>nd</sup> Filing, which contains five lots on approximately 89.44 acres for residential development. The subject property is located on Clubhouse Way and includes the Lake Hills Golf Course. Four of the proposed lots were recently rezoned to Residential 8000 (R-80) and the golf course is zoned Public. The owner and subdivider is the Lake Hills Golf Club and the representing agent is Blueline Engineering, LLC.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on January 7, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

**RECOMMENDATION**

The Planning Board recommends conditional approval of the preliminary minor plat of Lake Hills Subdivision, 32nd Filing, approval of the variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

- A. Preliminary Plat
- B. Variance Request and Findings from the Subdivider
- C. Findings of Fact
- D. Mayor's Approval Letter

## **INTRODUCTION**

On November 16, 2007, the subdivider applied for preliminary minor plat approval of Lake Hills Subdivision, 32nd Filing, which contains five lots on approximately 89.44 acres for residential development. The subject property is located on Clubhouse Way and includes the Lake Hills Golf Course. Four of the proposed lots were recently rezoned to R-80 and the golf course is zoned Public.

## **PROCEDURAL HISTORY**

- A pre-application meeting was conducted between the subdivider's representative and city staff on June 26, 2006.
- A second pre-application meeting was conducted between the subdivider's representative and city staff on October 4, 2007.
- The preliminary plat application for this subdivision was submitted to the Planning Department on October 15, 2007.
- The City Council will consider the preliminary plat on November 26, 2007.

## **BACKGROUND**

General location:	On Clubhouse Way, adjacent to the Lake Hills Golf Course.
Legal Description:	Lake Hills Subdivision, 32nd Filing
Subdivider/Owner:	Lake Hills Golf Club
Engineer and Surveyor:	Blueline Engineering, LLC
Existing Zoning:	R-80 and Public
Existing land use:	Vacant and Golf Course
Proposed land use:	Residential
Gross area:	89.44 acres
Net area:	89.44 acres
Proposed number of lots:	5
Lot size:	Max: 88.31 acres Min.: 10,018 square feet
Parkland requirements:	A parkland dedication is not required, as this is a minor subdivision.

### **ALTERNATIVES ANALYSIS**

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

### **RECOMMENDED CONDITIONS OF APPROVAL**

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.A of the SIA shall specify that water services will be provided by the Billings Heights Water District. The Lots shall be annexed into the district prior to final plat. Additionally, Lot 3 will require a meter pit set, which shall be specified within the SIA. *(Recommended by the County Water District of Billings Heights)*
3. To minimize effects on local services, Section VI.B of the SIA shall be revised to state that each lot shall connect to the existing 8-inch sanitary sewer main in Clubhouse Way with a separate and independent sewer service. *(Recommended by the Public Utilities Department)*
4. To comply with the Montana Subdivision and Platting Act (MSPA) and the City Subdivision Regulations, the entire golf course shall be depicted on the plat, as Lot 5. This will require that the golf course be surveyed and depicted on the final plat in its entirety. *(Required by MSPA)*
5. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

The subdivider is requesting a variance to permit curbwalks, where Section 23-406.B.13, BMCC requires boulevard walks to be constructed on both sides of the street. The applicant is requesting 5-foot wide curbwalks along the eastern side of Clubhouse Way fronting the subdivision, as this is consistent with the curbwalks on the west side of the street. The City Engineering Division is supportive of this variance in order to remain consistent with the surrounding properties, where curbwalks have already been constructed. The variance request and findings have been provided as Attachment C of this memo.

### **STAKEHOLDERS**

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

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

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

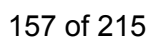
### **RECOMMENDATION**

The Planning Board recommends conditional approval of the preliminary minor plat of Lake Hills Subdivision, 32nd Filing, approval of the variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

### **ATTACHMENTS**

- A. Preliminary Plat
- B. Variance Request and Findings from the Subdivider
- C. Findings of Fact
- D. Mayor's Approval Letter



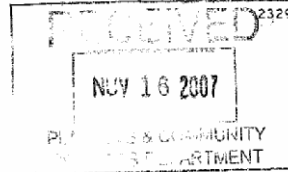
Preliminary Plat of Lake Hills Subdivision, 32<sup>nd</sup> Filing

**ATTACHMENT B**  
**Variance Findings**

**blueline**  
ENGINEERING

November 16, 2007

Aura Lindstrand  
Planning Department  
4<sup>th</sup> Floor Library  
Billings, MT 59105



2329 Alderson Avenue, Suite 1  
Billings, MT 59102  
Work: 406-294-2294  
Fax: 406-294-2295

Re: Variance for Lake Hills Sub, 32nd Filing

Dear Aura:

The owner of the Lake Hills Subdivision, 32<sup>nd</sup> Filing is requesting variance to Subdivision Regulations Section 23-406.B.13. The regulation concerns subdivision street improvements, specifically, the requirement for a sidewalk and boulevard along residential local access roads. The variance request is that the boulevard and sidewalk requirement be modified to a curbwalk along the residential local access road within the subdivision.

The requirements for residential local access include 5' width of sidewalk and a 5' width of boulevard. The variance request would effect the east side of the street along Clubhouse Way as this area is to be developed in Lake Hills Subdivision, 32<sup>nd</sup> Filing. The adjacent subdivision street improvements were constructed with 5' curbwalk along the west side of Clubhouse Way. The variance request is for the proposed development on the 32nd Filing along Clubhouse Way to be consistent with that of the existing curbwalk improvement. The variance will then allow 5' of curbwalk along either side of Clubhouse Way within the Lake Hills Subdivision.

The Lake Hills Subdivision street improvements will adhere to all required rights of way, setbacks, and specifications. There are no other variance requests for this subdivision. At the time of the development of the existing subdivision street improvements, the curbwalks were constructed to street improvement regulations. The owner would like to continue with the uniform street improvement development throughout the subdivision. As the curbwalk will border residential property, the residents would prefer consistent street improvement developments surrounding their property.

The proposed curbwalk will allow for the improvements to be built in property right-of-way, whereas the boulevard/sidewalk would encroach onto the residential property lots. The increased curbwalk setback would be beneficial to the subdivision residents and would not effect their or other taxpayers' obligations.

All other street improvements and subdivision development will conform to the zoning regulations and applicable Growth Policy.

The proposed curbwalk serves as an effective alternative design to the meeting the objectives of street improvements. The proposed curbwalk will have the same dimensions as the required sidewalk to effectively provide safe, accessible pedestrian walkways throughout the subdivision.

Sincerely,

  
Grace Bulltail, E.I.T.

www.blueline-eng.com

## **ATTACHMENT C**

### **Findings of Fact**

The Planning Board is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Lake Hills Subdivision, 32nd Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

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

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

**2. Effect on local services**

- a. **Utilities** – Water to the subject property will be provided by the County Water District of Billings Heights upon annexation into the district, as required by Condition #2. Sanitary sewer will be extended from the 8-inch main within Clubhouse Way, as specified in the SIA. Condition #3 requires that Section VI.B of the SIA be revised to reflect the size of the main and that each lot will be connected with a separate and independent sewer service.
- b. **Stormwater** – As specified in the submitted SIA, the required drainage improvements have already been constructed in the street adjacent to the property. There is an existing inlet on the northern boundary of Lot 1 that drains to an open ditch located on the golf course; this is contained within a 20-foot easement. All drainage improvements shall comply with the provisions of the Billings Stormwater Management Manual.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to lots will be from individual private driveways from Clubhouse Way. Accesses have already been provided to the Lake Hills Golf Course. There are no required street improvements along Clubhouse Way; however curbswalks will be installed by individual owners at the time of lot development. The subdivider is requesting a variance to permit curbswalks, where Section 23-406.B.13, BMCC requires boulevard walks to be constructed on both sides of the street. The applicant is requesting 5-foot wide curbswalks along the eastern side of Clubhouse Way fronting the subdivision, as this is consistent with the curbswalks on the west side of the street. The City Engineering Division is supportive of this variance in order to remain consistent with the surrounding properties, where curbswalks have already been constructed.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6).
- f. **Schools** - The subdivision is located within School District #2. Sandstone Elementary, Castle Rock Middle School and Skyview High School will serve the children in this subdivision. No responses were received from the schools.
- g. **Parks and Recreation** – A parkland dedication is not required, as this is a first minor subdivision.
- h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #5. The location of the mail boxes shall be reviewed and approved by the post office.

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

A geotechnical study was submitted with this application and was deemed sufficient by the Building Official.

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

There are no known endangered or threatened species on the property; however the property is located near open lands, where the likelihood of wildlife interaction is high. A note has been added to the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner.

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

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

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

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

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

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

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

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

*The proposed subdivision is consistent with the surrounding residential uses.*

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

*The subject property is compatible with the surrounding residential uses.*

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

*The property is located within an existing subdivision in an urbanized portion of the city and is considered infill development.*

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

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

### **3. Heritage Trail Plan**

A Heritage Trail corridor is not identified within this subdivision.

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

The proposed subdivision does not comply with the MPSA and local regulations, as submitted. The golf course needs to be depicted as a lot in its entirety. Condition #4 requires that Lot 5 be surveyed and depicted on the final plat.

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

The property is served by Heights water and city sewer, storm drain and solid waste services.

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

The subject property is located within the R-80 and Public zoning districts and shall comply with the standards set forth in Section 27-308, BMCC.

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

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

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

Access to the lots will be through private driveways from Clubhouse Way. Accesses already exist to the golf course.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Lake Hills Subdivision, 32nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- With Condition #4, the proposed subdivision will comply with state and local subdivision regulations. The subdivision complies with local zoning and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, December 17, 2007

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Ron Tussing, Mayor

**ATTACHMENT D**  
Mayor's Approval Letter

December 17, 2007

Lake Hills Golf Club  
1930 Clubhouse Way  
Billings, Montana 59105

Dear Applicant:

On December 17, 2007, the Billings City Council conditionally approved the preliminary plat of Lake Hills Subdivision, 32nd Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.A of the SIA shall specify that water services will be provided by the Billings Heights Water District. The Lots shall be annexed into the district prior to final plat. Additionally, Lot 3 will require a meter pit set, which shall be specified within the SIA. *(Recommended by the County Water District of Billings Heights)*
3. To minimize effects on local services, Section VI.B of the SIA shall be revised to state that each lot shall connect to the existing 8-inch sanitary sewer main in Clubhouse Way with a separate and independent sewer service. *(Recommended by the Public Utilities Department)*
4. To comply with the Montana Subdivision and Platting Act (MSPA) and the City Subdivision Regulations, the entire golf course shall be depicted on the plat, as Lot 5. This will require that the golf course be surveyed and depicted on the final plat in its entirety. *(Required by MSPA)*
5. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

The Billings City Council also approved the following variance from the City Subdivision Regulations with the preliminary plat approval:

- *A variance from Section 23-406.B.13, BMCC, to permit 5-foot wide curbwalks instead of boulevard sidewalks for this subdivision.*

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

Sincerely,

---

Ron Tussing, Mayor

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



Z

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 17, 2007**

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**TITLE:** Final Plat of Amended Lot 7, Block 4, Meadowlark Subdivision  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** The final plat of Amended Lot 7, Block 4, Meadowlark Subdivision is being presented to the City Council for approval. The subject property is zoned Residential-7000 (R-70) and is located between Phoebe Drive and Willet Drive south of Sharron Lane. On February 26, 2007, the City Council conditionally approved the 2-lot minor plat on 14,344 square feet of land for residential development. Mary Mahoney, owner, the representing agent is Clay Schwartz with Pinpoint Land Surveys providing engineering services.

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 will further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

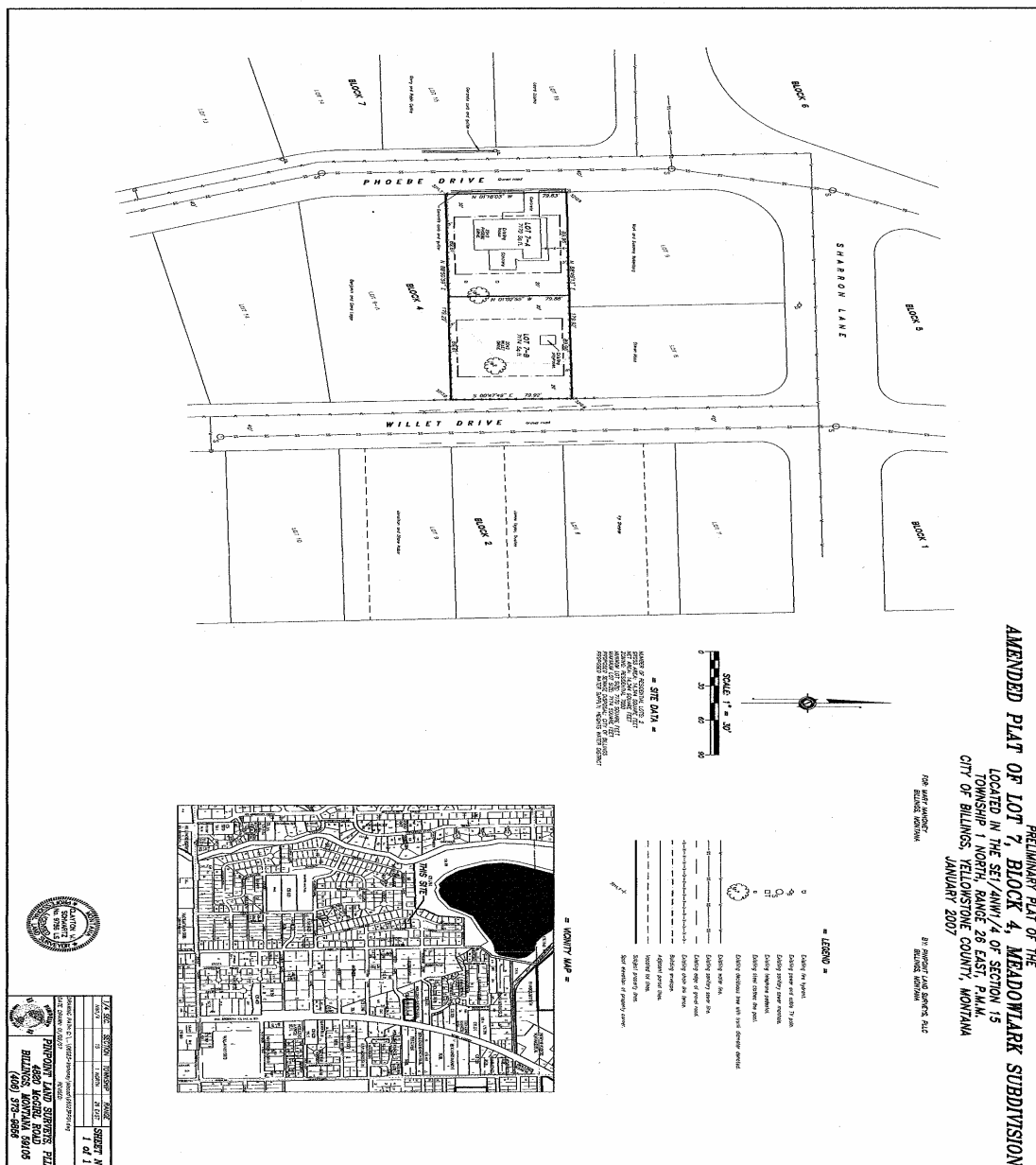
Staff recommends that the City Council approve the final plat of Amended Lot 7, Block 4, Meadowlark Subdivision.

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

**ATTACHMENT**

A: Final Plat

## Final Plat



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

---

**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV for Annexation 07-05 Property

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of park land along the Zimmerman Trail road right-of-way and a portion of the Zimmerman Trail road right-of-way (Annexation #07-05) containing 13.4 acres. The property is located along the Zimmerman Trail road corridor between Rimrock Road and Highway 3. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit J

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A tract of land situated in Section 27, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Zimmerman Trail between Rimrock Road and State Highway No. 3, as recorded in Book 342, Page 349, Recorded May 11, 1949, Under Document No. 450203, Records of Yellowstone County, also described under Quitclaim Deed, Yellowstone County to the City of Billings, Recorded December 5, 2005, Under Document No. 3359157, Records of Yellowstone County, being a strip of land 100.0 feet in width to the following described centerline:

Beginning at a point on the south line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17°28' curve right ( $\Delta=67^{\circ}28'$ ); thence Easterly 165.9 feet on a 25°43' curve right ( $\Delta=42^{\circ}40'$ ); thence South 69°52' East, 96.5 feet; thence South 69°0' East, 202.4 feet; thence Easterly 351.2 feet on an 8°18' curve left ( $\Delta=29^{\circ}09'$ ); thence North 81°51' East, 66.0 feet; thence North 85°18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6°0' curve left, ( $\Delta=22^{\circ}34'$ ); thence North 62°44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41°0' curve left ( $\Delta=75^{\circ}25'$ ); thence North 12°41' West, 219.8 feet; thence N. 19°01' West, 388.0 feet; thence Northwesterly 392 feet on a 24°0' curve left ( $\Delta=92^{\circ}21'$ ); thence S. 68°38' West, 232 feet; thence Northwesterly 450 feet on a 19°0' curve right ( $\Delta=85^{\circ}30'$ ); thence Northeasterly 371.7 feet on a 15°0' curve right ( $\Delta=55^{\circ}45'$ ); thence North 29°53' East, 93.3 feet, more or less to the intersection with the center line of the new Billings-Broadview

road (now known as State Highway No. 3), including all adjacent right-of-way of State Highway No. 3;

Also that portion of Yellowstone County Park land wholly surrounded by the previously described portion of Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5<sup>th</sup> Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6<sup>th</sup> Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

Containing 13.401 gross acres and 4.205 net acres, more or less.  
(# 07-05) See Exhibit "J" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

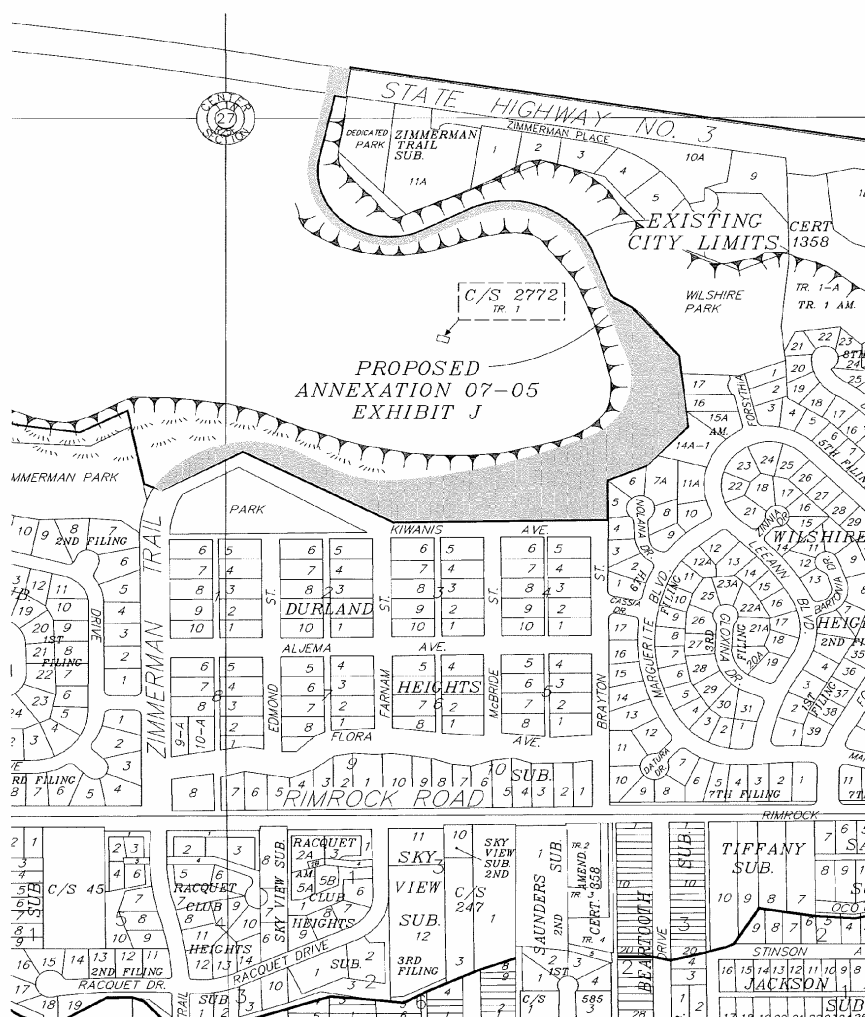
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

*EXHIBIT J*



(Back to Regular Agenda)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward V (Annexation #07-18)

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of Broadwater Avenue and 56<sup>th</sup> Street West road rights-of-way (Annexation #07-18) containing 1.825 acres. The City of Billings has an interest in the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

## **ATTACHMENT A**

### **ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No. 1322 Beginning at the east ¼ corner of Section 5, T.1S., R.25E., P.M.M.; thence 89°48'30" W along the E-W mid section line of said Section 5 for a distance of 1304.6 feet; thence S 00°05'30" for a distance of 30.00 feet; thence 89°48'30" E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence 00°04' E for a distance of 30.00 feet to the Point of Beginning. Said Tract containing 0.898 acres.

56<sup>th</sup> Street West Tract:

A portion of Yellowstone County road easement for 56<sup>th</sup> Street West also described as a portion of County Road Petition Number 19, Filed January 2, 1886, Road Established June 9, 1886, more particularly described as:

Beginning at the west ¼ corner of Section 4, T.1S., R.25E., P.M.M.; thence southerly along the west section line of said Section 4 for a distance of 30.00 feet; thence easterly for a distance of 30.00 feet on a line that is perpendicular to the west section line of said Section 4 to a point; thence northerly and 30.00 feet parallel to the west section line of said Section 4 for an approximate distance of 1347.3 feet to a point, said pint being on a line that is perpendicular to the N1/16 corner of said Section 4; thence westerly for a distance of 30.00 feet to the N1/16 corner of said Section 4; thence southerly along the west section line of said Section 4 for an approximate distance of 1317.3 feet to the Point of Beginning. Said Tract containing 0.927 acres more or less.



Containing a total of 1.825 acres, more or less.

(# 07-18 Exhibit "A" Attached)

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

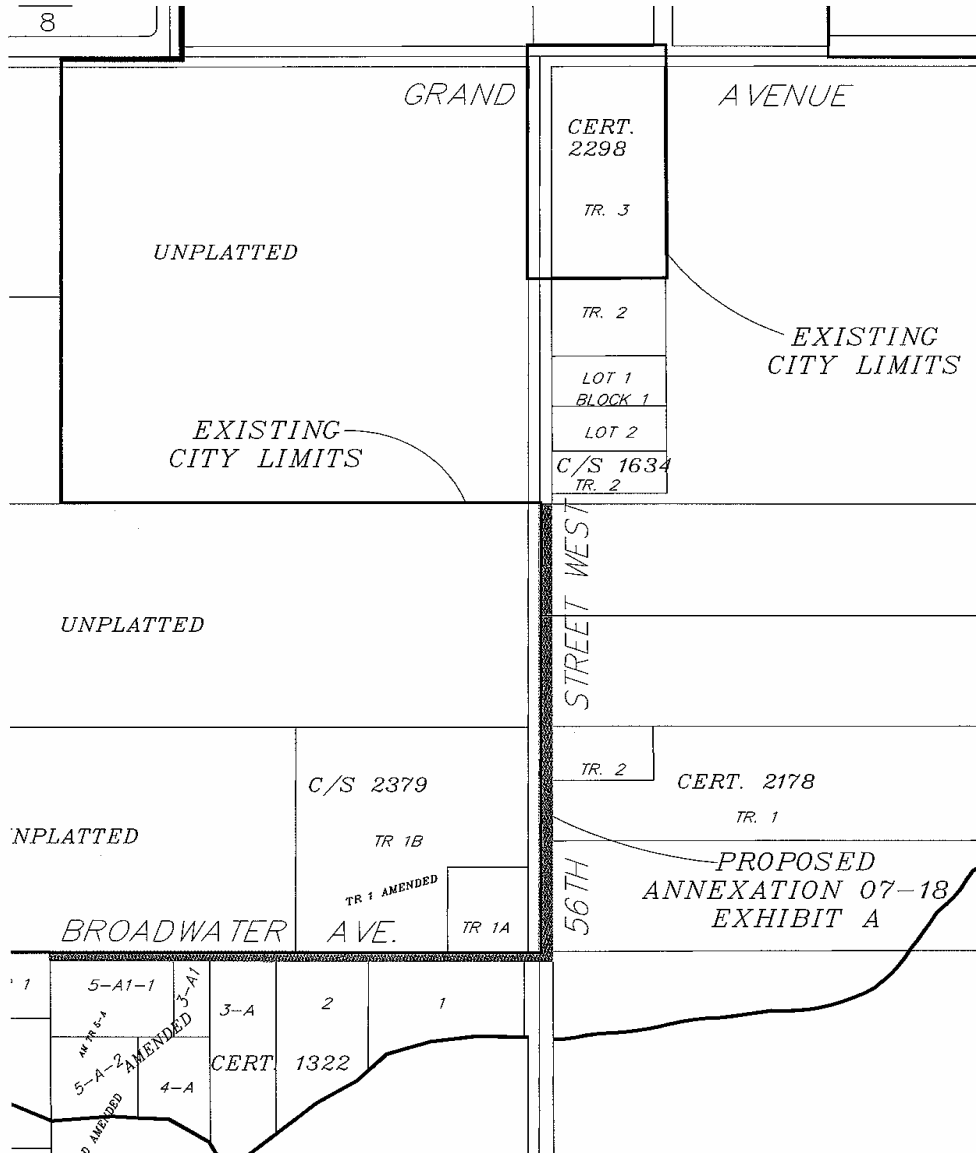
THE CITY OF BILLINGS:

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

ATTEST:

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

# EXHIBIT A



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV for Annexation 07-19 Property

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of Rimrock Road right-of-way (Annexation #07-19) containing 6.832 acres. The property is located west of 62<sup>nd</sup> Street West to just east of 70<sup>th</sup> Street West. The City requested the annexation, as it owns 6.2 acres of the property and has a beneficial interest in the remaining 0.6 acres that is a County road easement with City utilities within it. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A tract of land situated in the S1/2 of Section 25, T.1N., R.24E., the N1/2 of Section 36, T.1N., R.24E., the SW1/4 of Section 30 T.1N., R.25E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Yellowstone County road easement for Rimrock Road also described as a portion of County Road Petition Number 167, filed November 10, 1908, Declared a County Road December 29, 1908, more particularly described as:

Basis of bearings: Certificate of Survey No. 2465, Recorded October 1, 1987, Under Document No. 1458714, Records of Yellowstone County, Montana,

Commencing at the southeast corner of said Section 25; thence N 00°00'04" W a distance of 30.00 feet to the True Point of Beginning; thence S 89°29'28" W being 30.0 feet parallel to the south section line of said Section 25 for a distance of 2673.17 feet; thence S 89°44'27" W and continuing parallel to the south section line of said Section 25 for a distance of 2256.22 feet to the southeast corner of Tract 2A, Amended Tracts 2 and 3, Certificate of Survey No. 2465, Recorded September 16, 1996, Under Document No. 1845641, Records of Yellowstone County Montana; thence south for a distance of 60.00 feet to a point on a line perpendicular to the south section line of said Section 25, said south section line being also the north section line of said Section 36; thence easterly and 30.0 feet parallel to the north section line of said Section 36 for an approximate distance of 944.7 feet to the northwest corner of Lot 14, Sunny Cove Fruit Farms, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; thence easterly and continuing parallel to the north section line of said Section 36 for an approximate distance of 3985.4 feet to a point on the west

section line of said Section 31; thence easterly and 30.0 feet parallel to the north section line of said Section 31 for a distance of 30.0 feet to the northwest corner of Lot 8 of said Sunny Cove Fruit Farms; thence north for a distance of 60.00 feet to a point on a line perpendicular to the north section line of said Section 31, said north section line being also the south section line of said Section 30; thence westerly and parallel to the south section line of said Section 30 for a distance of 30.0 feet to the Point of Beginning.

Containing 6.832 gross acres, more or less.  
(# 07-19) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

## EXHIBIT A



(Back to Regular Agenda)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 17, 2007**

---

**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward III for Annexation #07-25

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion a 40-foot wide county road tract legally described as Block 5, Lot 1, Long Subdivision and contains approximately 2.457 acres. The Yellowstone County Board of County Commissioners quitclaimed the 44<sup>th</sup> Street West road tract to the City on November 27, 2007. The first reading and public hearing of the ordinance to add the property to Ward III will be conducted on December 17, 2007. The second reading of the ordinance is scheduled for the City Council on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A.     Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana, including all adjacent right-of-way of King Avenue West.

Said Tract containing 2.457 gross and net acres.

(# 07-25) See Exhibit "B" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.



PASSED by the City Council on the second reading this 14th day of January, 2008.

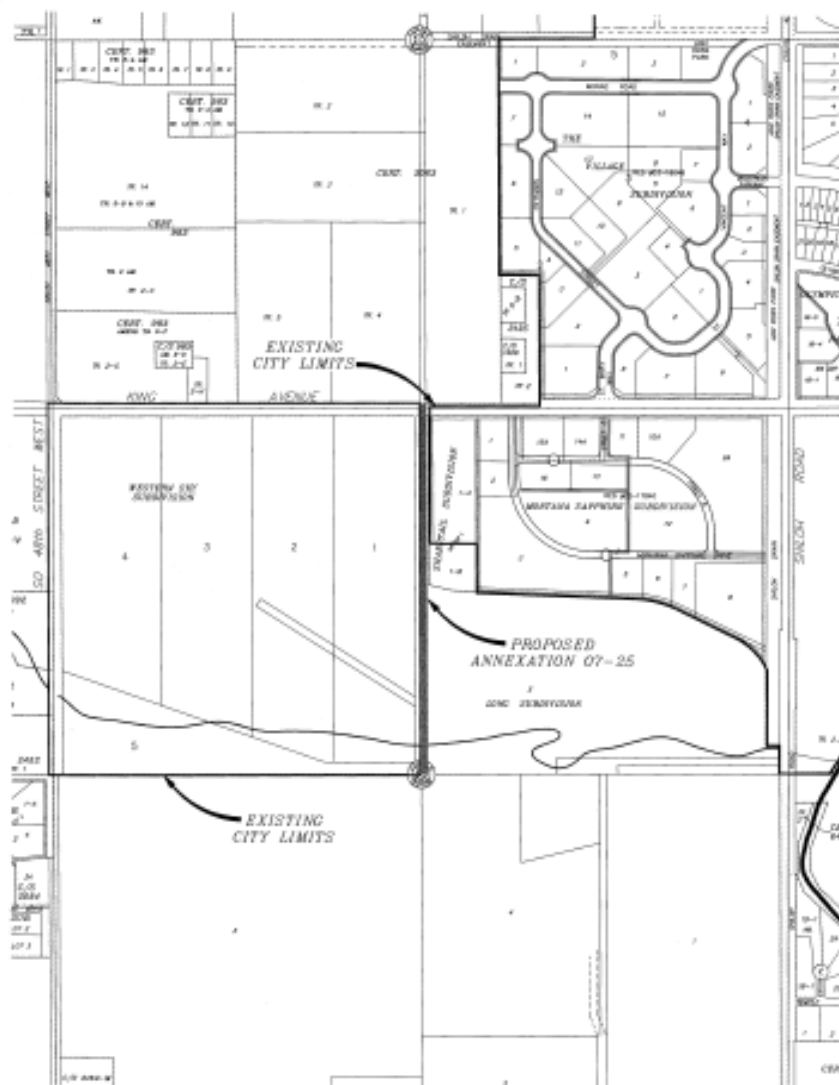
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

## EXHIBIT B



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward V for Annexation 07-11 Property

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of Broadwater Avenue road right-of-way (Annexation #07-11) containing 3.74 acres. The property is located along the Broadwater Avenue road corridor between 30<sup>th</sup> Street West and 35<sup>th</sup> Street West. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A.     Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A tract of land situated in the N1/2 of Section 2, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 10-A-2, of Amended Tracts 8-A Through 13-A of Certificate of Survey No. 2314, Recorded January 7, 1992, Under Document No. 1619771, Records of Yellowstone County, Montana, less that portion previously annexed under City of Billings Ordinance No. 4421 Passed by the City Council and Approved by the Mayor February 1, 1982.

Containing 3.741 gross acres.  
(# 07-11) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

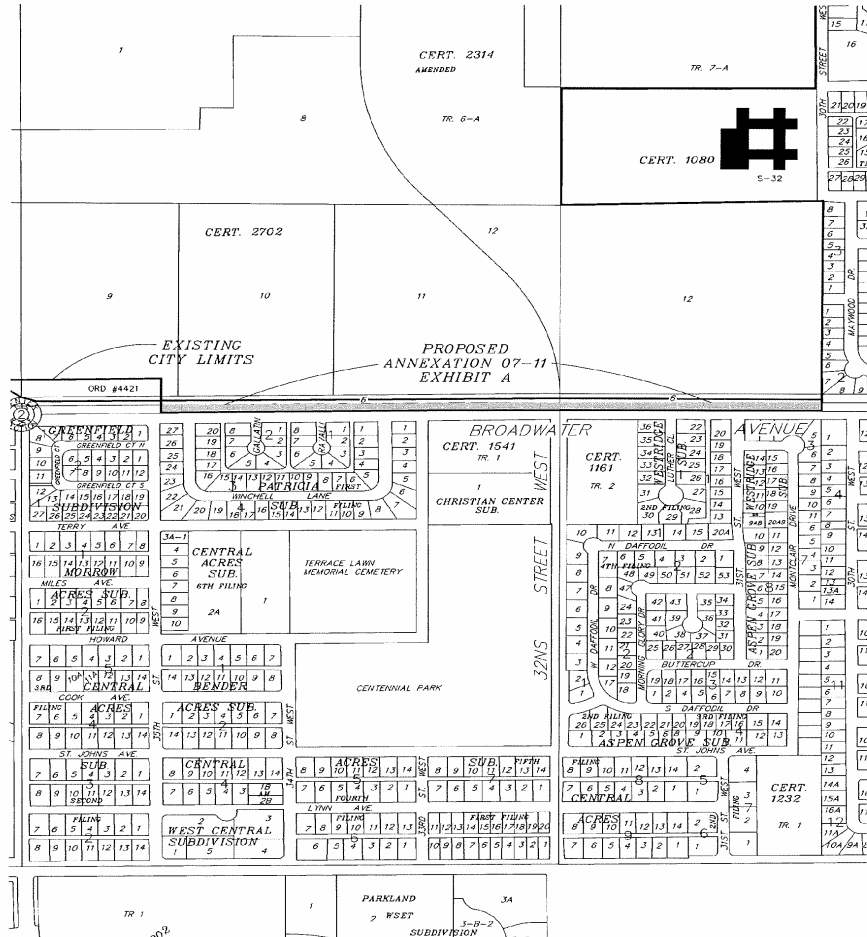
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

# EXHIBIT A



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

## AGENDA ITEM:




---

**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


---

**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward V for Annexation 07-12 Property

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

---

**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of Bell Avenue road right-of-way (Annexation #07-12) containing 1.69 acres. The property is located west of Shiloh Road along the Bell Avenue road corridor between Bell Estates and Legends West subdivisions. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A tract of land situated in the NE1/4 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, being a portion of Tract 5 (a road Tract) adjacent to the south line of Tract 1 of Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648, Recorded July 20, 1994, Under Document No. 1749237, Records of Yellowstone County, Montana, also adjacent to the south line of Legends West Subdivision, Recorded February 7, 2003, Under Document No. 3214081, Records of Yellowstone County, Montana, and Bell Avenue as shown in Bell Estates Subdivision, Recorded March 27, 2000, Under Document No. 3085059, Records of Yellowstone County, Montana, more particularly described as:

Basis of bearings: Corrected Amendment of Tracts 1 and 3, and Remainder Tract 2 to be Amendment of Tracts 1, 2 And 3 Certificate of Survey No 1648,

Beginning at the northeast corner of Tract 5, of said Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648; thence N 89°52'00" W a distance of 1248.02 feet; thence S 00°08'00" W a distance of 30.00; thence S 89°52'00" E a distance of 32.67 feet; thence S 00°08'00" W a distance of 30.00 feet to the south Right-Of-Way line of Bell Avenue as shown in said Bell Estates Subdivision; thence S 89°52'00" E a distance of 1215.78 feet to a point on the west line of the Shiloh Drain; thence N 00°16'30" W a distance of 60.00 feet to the Point of Beginning.

Containing 1.697 gross acres.  
(# 07-12) See Exhibit "A" Attached



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

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

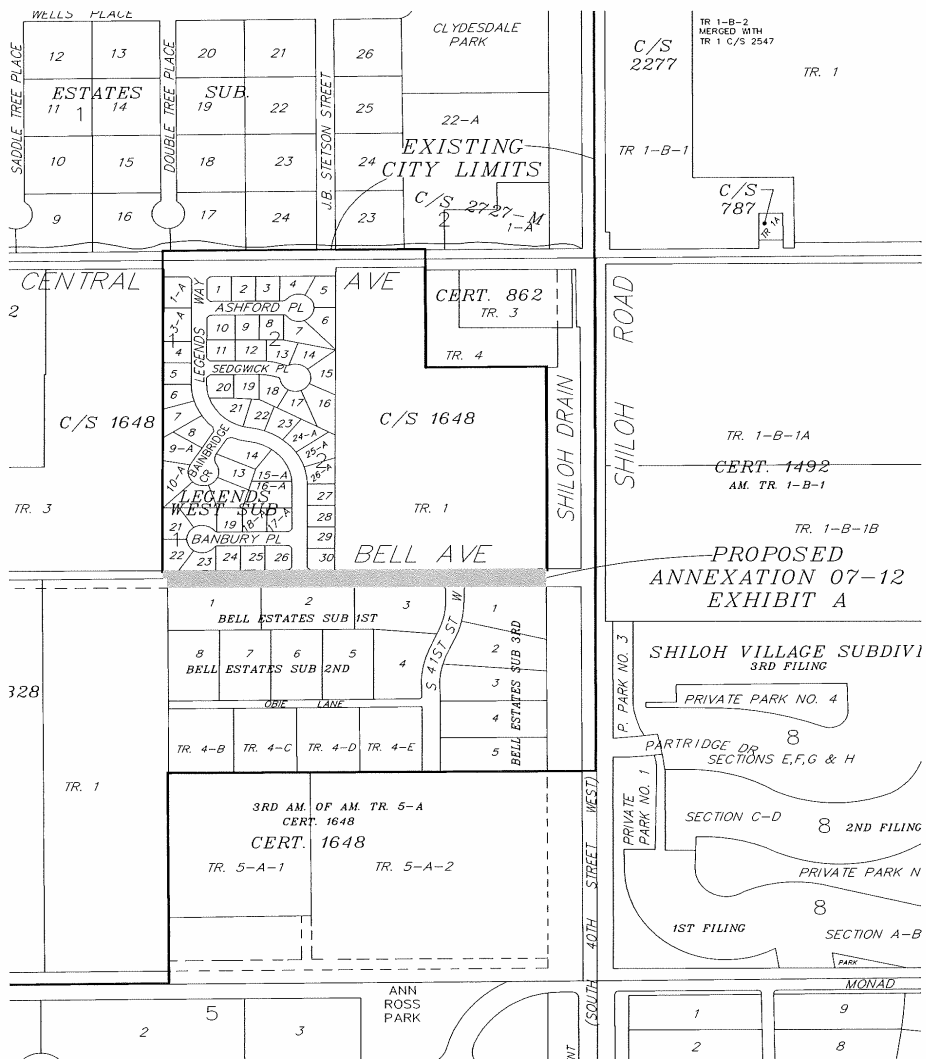
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

## EXHIBIT A



(Back to Regular Agenda)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


---

**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV for Annexation 07-13 Property

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

---

**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of Zimmerman Trail road right-of-way (Annexation #07-13) containing 0.92 acres. The property is located between Colton Boulevard and Grand Avenue along the Zimmerman Trail road corridor. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

Tracts of land situated in the SW1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1990, Recorded October 26, 2005, Under Document No. 3354258, Records of Yellowstone County, Montana;

Tract 1-B, Amended Tract 1 of Certificate of Survey No. 2974, Recorded October 26, 2005, Under Document No. 3354257, Records of Yellowstone County, Montana. Less that portion of Tract 1-B of said Amended Tract 1 of Certificate of Survey No. 2974 designated for road for Grand Avenue; and less that portion of Tract 1-B previously annexed under City Resolution No. 06-18449, Recorded October 05, 2006, Under Document No. 3395866, Records of Yellowstone County, Montana.

Containing 0.912 gross acres.  
(# 07-13) See Exhibit "A" Attached

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

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

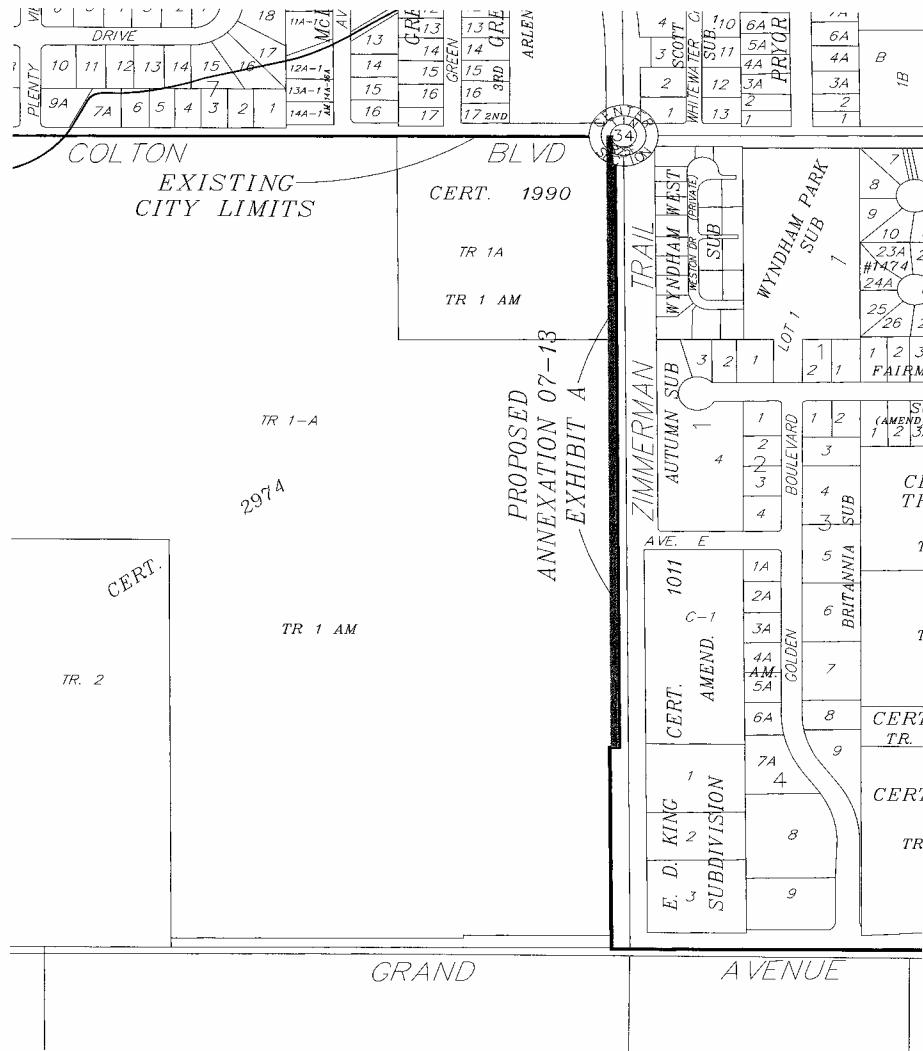
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

# EXHIBIT A



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


---

**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV for Annexation 07-14 Property

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

---

**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion of Cove Avenue road right-of-way (Annexation #07-14) containing 4.86 acres. The property is located between 46<sup>th</sup> Street West and 50<sup>th</sup> Street West along the Cove Avenue road corridor south of Rimrock Road. The City of Billings owns the property and requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A.     Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A tract of land situated in the NE1/4 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Street right-of-way of Cove Avenue, between east right-of-way line of 50<sup>th</sup> Street West running easterly to Leroy Lane as recorded with Zimmerman Subdivision 4<sup>th</sup> Filing, Recorded March 19, 1965, Under Document No. 751012, Records of Yellowstone County, Montana; also that portion of Leroy Lane right-of-way as dedicated with Zimmerman Acreage Tracts Subdivision 3<sup>rd</sup> Filing, Recorded May 1, 1963, Under Document No. 705939, Records of Yellowstone County, Montana beginning at the northeast corner of Lot 4, Block 3 of said Zimmerman Subdivision 4<sup>th</sup> Filing and extending easterly to the west right-of-way line of 46<sup>th</sup> Street West being on the existing City of Billings city limits.

Containing 4.864 gross acres.  
(# 07-14) See Exhibit "A" Attached

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



3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

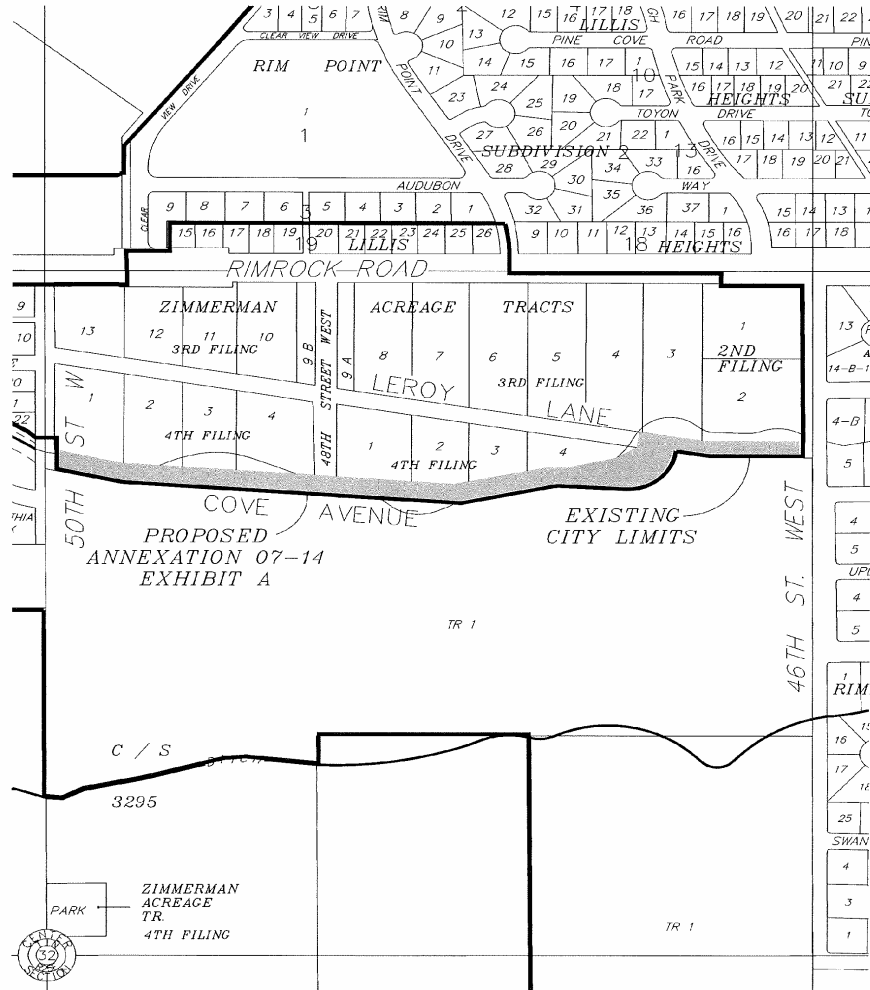
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

# EXHIBIT A



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 17, 2007**


---

**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward IV for Annexation #07-16

**DEPARTMENT:** Planning and Community Services

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

---

**PROBLEM/ISSUE STATEMENT:** On December 10, 2007, the City Council approved the annexation of a portion Grand Avenue right-of-way that contains approximately 0.359 acres. The property requested to be annexed is the southern 30-feet of the Grand Avenue right-of-way extending from the northwest corner of Vintage Estates Subdivision west to the southwest corner of Lot 65A-4, Sunny Cove Fruit Farms. The first reading and public hearing of the ordinance to add the property to Ward IV will be conducted on December 17, 2007. The second reading of the ordinance is scheduled for the City Council on January 14, 2008.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A.     Ward Ordinance and Exhibit A

**ORDINANCE NO. 08-\_\_\_\_\_**

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

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

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

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana; Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, being those portions of the E1/2E1/2NW1/4NW1/4 and the W1/2E1/2NW1/4NW1/4 of said Section 4 adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.359 acres.  
(# 07-16) See Exhibit "A"

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 14th day of January, 2008.

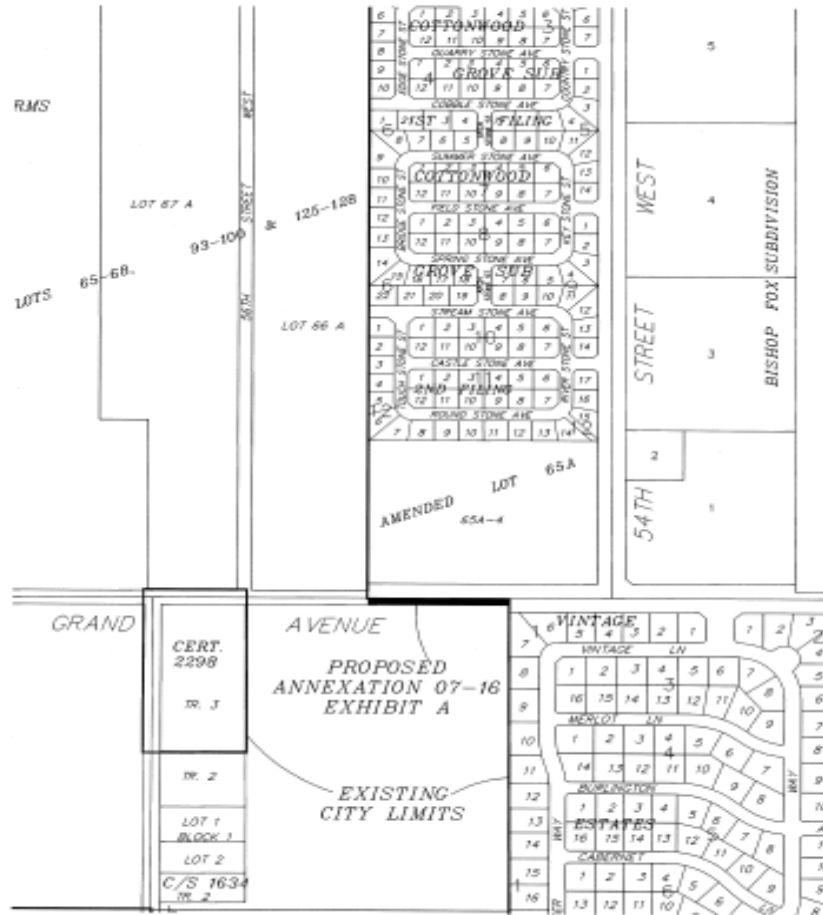
THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

# EXHIBIT A



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Monday, December 10, 2007**


---

**TITLE:** Award of Change Order #2 to Contract for the New Baseball and Multi-Use Stadium at Athletic Park

**DEPARTMENT:** Parks, Recreation, and Public Lands Department

**PRESENTED BY:** Mike Whitaker, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** Council in their December 10, 2007 meeting directed Staff and Consultant to review the Change Order costs for any additional savings. City Public Works Department analyzed the previous City Review of Plans and specifications for any opportunities for cost savings. Their recommendation is to make the improvements identified in the City Review of Plans and Specifications. Their review specifically focused on the need to replace the sidewalk along 27<sup>th</sup> Street. They reconfirmed that the entire sidewalk along 27<sup>th</sup> Street needed to be replaced to be compliant with current City sidewalk standards and ADA requirements (see Attachment (A)).

Langlas and Associates reviewed the City Review of Plans and Specifications items and the Electrical Upgrades and agreed to cost reductions in work and materials totaling \$7,144.00 (see Attachment D).

As noted in the current Stadium Project Accounting Worksheet (see Attachment B), the current project shortfall is \$19,018.88. If Change Order No. Two (2) is approved, the project shortfall will increase to \$98,988.88.

Also Steering Committee directed Staff to include a list of project Alternates and additional work with their associated cost and deadline for decision provided by Langlas and Associates. (see Attachment C) for review and consideration.

The revised costs are reflected in Change Order No. Two (2) (see Attachment D).

**FINANCIAL IMPACT:** The financial impact will be a net *increase* to the project of \$79,970.00 (Attachment D).

**Location of Work:** At Athletic Park comprising the entire block bounded by North 27<sup>th</sup> Street, North 25<sup>th</sup> Street, 9<sup>th</sup> Avenue North and 10<sup>th</sup> Avenue North.

**Funding Sources:** Increases will come from future donations.

**ALTERNATIVES ANALYZED:**

- Fund the current shortfall and Change Order No. Two (2) only, or
- Do not fund shortfall and Change Order No. Two (2), or
- Fund the current shortfall, Change Order No. Two (2) and accept some or all project alternates and additional work (see Attachments B and C).

**RECOMMENDATION:**

Staff recommends funding the current shortfall and Change Order No. Two (2).

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

**Attachments:**

A: E-mail from Public Works with photos (4 pages).

B: Stadium Project Accounting Worksheet (2 pages)

C: Letter from Langlas and Associates listing Alternates and additional work (2 pages)

D: Change Order Number Two (2 pages)



## Attachment A

Mark,

The south 300 feet of sidewalk must be removed and replaced due to the excessive cracking and differential settlement. The north 300 feet of sidewalk should be replaced due to the west edge not being ADA compliant, it's vicinity to a major arterial street, and frequent use of the sidewalk. If only the south 300 feet of sidewalk is replaced, a transition will need to be made to the existing grade of the sidewalk. It would be easier to replace all of the sidewalk now and match the grass up to the new grade instead of later and matching the sidewalk to the grade of the grass.

Chris Hertz, PE  
Staff Engineer  
City of Billings Public Works/Engineering  
510 North Broadway 4th Floor  
Billings, MT 59101  
(406) 657-3095

November 30, 2007

City of Billings  
Department of Parks, Recreation & Public Lands  
390 N. 23<sup>rd</sup> Street  
Billings, MT 59101

RE: Billings Stadium

Mike Whitaker,

The following is a list of funding/additional work items that the City of Billings has forwarded to Langlas & Associates. Shown next to each item is when Langlas & Associates would need a change order approved in order to incorporate the additional item in the project. Included is the current pricing for each item.

Ranking	Description	Date
1	Visitors batting tunnel Cost will increase. The new cost to add the visitors batting tunnel structure back will be an add of \$52,165.00	December 17, 2007
2	Provide sound system Cost will remain at an add of \$80,000.00 but the manufacture of the digital signal processor will be different than that originally specified.	January 15, 2008
3	Up grade field lighting Cost will increase. The new cost to up grade to the original lighting level will be an add of \$182,556.00	December 10, 2007
4	Protective outfield netting Cost will remain at an add of \$137,000.00	January 15, 2008
5	North parking lot and landscaping Cost will remain at an add of \$131,000.00	January 15, 2008
6	Landscaping along 27 <sup>th</sup> Cost to be determined	To be determined
7	Memorial park area sidewalk Cost to be determined	January 15, 2008
8	Landscaping alt #11, 9 <sup>th</sup> Ave, 25 <sup>th</sup> St 206 of 215	To be determined

9	Landscaping alt #12, 10 <sup>th</sup> Ave Cost to be determined	To be determined
10	Corporate Tent Area Cost to be determined	December 17, 2007
11	Barrier netting parallel to 27 <sup>th</sup> St Cost to add this item is \$97,851.00	January 15, 2008

Langlas & Associates will need to know if any of the above additional work items are to be incorporated into the project by the dates shown above in order to meet the current construction schedule.

Regards,

Brad Sinclair

CC: CTA Architects Engineers, Mike Radke

## Stadium Project

## Budget

Soft Costs		
Hard Costs		1,257,948.68
General Site Work		
Tree Removal		
Fencing Rental	\$	6,850.00
Billings Construction Supply	\$	375.00
Northwest Energy - Disconnect Power	\$	42.00
Brick Pavers & Plaques	\$	2,707.95
Northwest Energy - Relocate power pole	\$	10,000.00
Phase I - Demolition of Athletic Pool	\$	2,852.25
Magnum Contractors, LLC		
Asbestos Removal	\$	62,430.00
Signage - Magnum Contractors, LLC	\$	3,250.00
Phase II - Excavation of Pool & Practice Field Site	\$	2,520.00
CMG Construction		
Change Order #1	\$	75,971.00
Phase III - Demolition of Cobb Field		
Asbestos removal	\$	\$1,800.00
Base Bid	\$	15,000.00
Phase IV - Stadium Construction		
Base Bid		
Change Order #1		\$11,459,800
Alternate #1 Corporate Tent Area - \$496,500		(\$279,358)
Alternate #2 Future Skybox Footers - \$57,000		
Alternate #3 Shade Structures - \$14,300	\$	57,000.00
Alternate #4 Protective Outfield Netting and Supports - \$137,000	\$	85,800.00
Alternate #5 Pitching and Batting Cage Items - \$23,000		
Alternate #6 North Parking Lot and Landscaping - \$131,000		
Alternate #7 Landscaping - \$44,500		
Alternate #8 Memorial Park Area Sidewalk Addition and Lighting - \$23,000		
Alternate #9 Field Lighting Deduct Alternate: Class A/Rookie Lighting		
Design in-lieu-of specified AA Lighting Design (93,000)		
Alternate #10 Sound System - \$80,000	\$	(93,000.00)
Alternate #11 Plantings, edging, and drip irrigation for areas as shown on L300 Series Drawings (primarily along 9th Avenue and 25th Street) - \$33,000		
Alternate #12 Plantings, edging, and drip irrigation for areas as shown on L300 Series Drawings (primarily along 10th Avenue and Memorial Park) - \$20,000		

Miscellaneous		
Signage Package	\$	50,000.00
<b>Total Project Cost</b>	\$	12,920,488.88
<b>Total Project Budget</b>	\$	12,500,000.00
Possible additional interest earnings	\$	150,000.00
Fund Raising Phase II (As of 12-12-07)	\$	\$251,470.00
	<b>Project Shortfall</b>	<b>\$ (19,018.88)</b>
<b>Upcoming Change Orders</b>		
City Review	\$	62,504.00
Electrical Upgrades to Concourse	\$	24,610.00
	<b>Total</b>	<b>\$ 87,114.00</b>
<b>Unfunded Items</b>		
Construction Contingency (Needs to be at least 1.5% of construction cost)	\$	171,897.00
Scoreboard	\$	750,000.00
Stadium Sound System	\$	80,000.00
Tables & Trash Cans	\$	10,000.00
Barrier Netting Paralell to 27th (Recommended by Architect)	\$	97,851.00
Sod Farm (Requested by Garry Roller)	\$	360.00
Window at Home Club House (Requested by Garry Roller)	\$	1,410.00
Barrier Netting at Dugouts (Requested by Garry Roller)	\$	13,069.00
Playground	\$	200,000.00
	<b>Total</b>	<b>\$ 1,324,587.00</b>

**Langlas & Associates, Inc.**

-- General Contractors --

2270 Grant Road  
Billings, Montana 59102

www.langlas.com

Phone (406) 656-0629  
Fax (406) 656-1088

October 19, 2007

CTA Architects Engineers  
13 North 23<sup>rd</sup> Street  
Billings, MT 59101

RE: Billings Stadium

Mike Radke,

The following are change requests generated from the City review of the plans.

Item #1 Additional signage as shown on revised plan page ES-02.

Signage materials	\$1,956.00
Installation	<u>\$1,243.00</u>
Total	\$3,199.00

Item #2 Cut in an additional opening in the field wall.

Concrete cutting	\$316.00
Disposal	<u>\$0.00</u>
Total	\$316.00

Item #3 Furnish and install irrigation sleeves, approximately 600 LF of 4" pipe.

Material, excavation and installation	<u>\$5,031.00</u>
Total	\$5,031.00

Item #4 Modify storm drain manholes and install sumps.

Material and installation	<u>\$1,902.00</u>
Total	\$1,902.00

Item #5 Construct a 3' level area off the back of the public sidewalk, add drainage swales as shown on ES-02.

Excavation	<u>\$3,050.00</u>
Total	\$3,050.00

Item #6 Remove and replace sidewalk along 27<sup>th</sup> Street.

Traffic control	\$4,353.00
Removal, haul off and disposal	\$8,906.00
New sidewalk	<u>\$33,056.00</u>
Total	\$46,315.00

Item #7 Install extra gate valves at property line per City of Billings.

Materials	<u>\$2,691.00</u>
Total	<u>\$2,691.00</u>

Please give me a call if you have any questions regarding the above. Let me know which items are approved and please incorporate the approved items in a change order.

Regards,



Brad Sinclair



## Langlas & Associates, Inc.

-- General Contractors --

2270 Grant Road  
Billings, Montana 59102

[www.langlas.com](http://www.langlas.com)

Phone (406) 656-0629  
Fax (406) 656-1088

November 20, 2007

CTA Architects Engineers  
13 North 23<sup>rd</sup> Street  
Billings, MT 59101

RE: Billings Stadium

Mike Radke,

The following is the costs for Proposal Request #4.

A. Sheet E301, Room 207: Move the GFI receptacle shown on the south wall to behind the hydro tub and provide dedicated circuit to Panel LVe 20 amp breaker.

Add \$1,457.00 for the work described above.

B. Sheet E302, Room 116: Provide GFI duplex receptacle behind each hydro tub with dedicated circuit to Panel LHC1 spare 20 amp breaker.

Add \$1,554.00 for the work described above.

C. Sheet E101:

1) For each sheet note 7 kiosk near a canopy enclosure, mount the kiosk receptacle between the 6" canopy supports on one side, facing toward home plate.

2) For the 3rd sheet note 7 Kiosk location from home plate on the 1st base side, sawcut the concrete and mount the kiosk receptacle on the 4x4 tube steel up against the railing support post.

3) For the sheet note 7 Kiosk location north of the 3rd concourse building, mount it directly on the Feild Lighting pole base facing toward the Feild.

4) For the sheet note 7 Kiosks on the north side of the site along the fence line, mount on the 4x4 post close to the fence as possible.

5) For the sheet note 7 Kiosks across from the play area at the NE side, locate as shOvn close to the Feild as possible.

Add \$4,848.00 for the work described above.



- Page 2 -

D. Sheet E 10 I; For all sheet note 7 Kiosks, change the receptacle to a Midwest #U055COI 0 or equal with 30A2P breaker, 10-30R receptacle and 20A GFI receptacle. Upsize the serving panel breakers to a 40A2P. Upsize conductors to #8 awg for all circuits originating from the Concourse building panels. Upsize conductors from LHCI to the north side kiosk locations to #6 awg.

Add \$16,751.00 for the work described above.

Please let me know by January 15, 2007 if any of the above are approved. If we do not have a response we will proceed per the plans.

Regards,

A handwritten signature in black ink, appearing to read "Brad Sinclair", with a stylized flourish at the end.

Brad Sinclair

## Attachment D

### CHANGE ORDER

No. Two(2)

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<b>PROJECT:</b>	<b>Billings Baseball And Multi-Use Stadium</b>	<b>DATE OF ISSUANCE:</b> December 10, 2007
<b>OWNER:</b> (Name & Address)	City of Billings 510 N. Broadway, 4 <sup>th</sup> Floor Billings, MT 59101	<b>OWNER'S PROJECT NO.</b> _____
<b>CONTRACTOR:</b>	<b>Langlas and Associates, Inc.</b> 2270 Grant Road Billings, MT 59102	<b>ARCHITECT:</b> HNTB Montana <b>ARCHITECT'S PROJECT NO.</b> _____
<b>CONTRACT FOR:</b>	Construction of a new baseball and multi-use stadium at Athletic Park	

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**You are directed to make the following changes in the Contract Documents.**

**Purpose of Change Order:** To make improvements and upgrades as noted in the City Review of plans and specifications and to make Electrical Upgrades to include providing 110 power to concourse area. Note: In Exhibit A Item #3, Furnish and install irrigation sleeves, the contractor has waived that cost to do the work, realizing a savings of \$5,031.00. In Exhibit B, Item C. Sheet E101, the contractor has reduced his price from \$4,848.00 to \$2,735.00, realizing a savings of \$2,113.00. Total cost for Change order #two (2) is \$79,970.00

**Attachments:** Exhibit A: Letter from Langlas and Associates (October 19, 2007) Identifying City Review items and associated costs.  
Exhibit B: Letter from Langlas and Associates (November 20, 2007) Identifying Electrical Upgrades and associated costs.

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#### CHANGE IN CONTRACT PRICE:

Original Contract Price

\$ 11,459,800.00

Previous Change Orders No. 1 No.   

\$ (279,358.00)

#### CHANGE IN CONTRACT TIME:

Original Contract Time

June 30, 2008  
days or date

Net Change from previous Change  
Orders

None  
days

Contract Price prior to this Change Order

\$ 11,180,442.00

Net Increase of this Change Order

\$ 79,970.00

Contract Price with approved Change Order

\$ 11,260,412.00

Contract Time prior to this Change Order

June 30, 2008  
days or date

Net Increase (decrease) of this Change Order

None  
Days

Contract Time with approved Change Order

June 30, 2008  
days or date

**APPROVED:**

By \_\_\_\_\_  
Owner

**RECOMMENDED:**

By \_\_\_\_\_  
Architect

**APPROVED:**

By \_\_\_\_\_  
Contractor

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