

**NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA**

# **CITY OF BILLINGS**

## **CITY OF BILLINGS' VISION STATEMENT:**

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

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## **AGENDA**

**COUNCIL CHAMBERS**

**December 8, 2008**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tussing**

**PLEDGE OF ALLEGIANCE – Mayor Tussing**

**INVOCATION – Councilmember McCall**

**ROLL CALL**

**MINUTES – November 13, 2008, Special Meeting**

**November 24, 2008**

**COURTESIES** – Presentation to Al Winegardner and family in appreciation of donation in memory of Jayne Winegardner

**PROCLAMATIONS**

**ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 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. **Change Order #3**, W.O. 08-09, Waste Water Treatment Plant Primary Effluent Pipe Replacement and Sludge Drying Bed Expansion, Western Municipal, \$20,468.65, and **increase** the City Administrator's change order authority by \$50,000.

B. **Approval** of compensation agreement for Private Contract No. 599, Emmanuel Baptist Church Sanitary Sewer Extension project, \$325,360.

**C. Approval** of amended Purchase and Sale Agreement with School District Two for ten acres within Cottonwood Park for \$200,000, and **authorization** for the Mayor to execute associated documents to consummate the sale and transfer of ownership of the property.

**D. Approval** of grant application submittal to Safe Route to School Program for the Elementary School Traffic Plan, \$50,000.

**E. Resolution** relating to financing of proposed Zone 3 Storage, Zone 4 Reservoir project and Water Rehabilitation project; establishing compliance with reimbursement bond regulations under the Internal Revenue Code for the purpose of reimbursing the City with bond sale proceeds for financing water projects prior to the availability of funds.

**F. Resolution** relating to financing of a proposed Wastewater treatment plant disinfection system project; establishing compliance with reimbursement bond regulations under the Internal Revenue Code for the purpose of reimbursing the City with bond sale proceeds for financing sewer projects prior to the availability of funds.

**G. Second/Final reading** ordinance expanding the North 27<sup>th</sup> Street Urban Renewal Area – 2008.

**H. Second/Final reading** ordinance modifying the South Billings Boulevard Urban Renewal District.

**I. Exempt Amended Plat** of Tract 1 of Certificate of Survey 1815.

**J. Bills and Payroll**

- (1) November 7, 2008
- (2) November 14, 2008

(Action: approval or disapproval of Consent Agenda.)

## **REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR BIG SKY ECONOMIC DEVELOPMENT AUTHORITY/GENERAL ELECTRIC CAPITAL CORPORATION** for a new building at 3333 Hesper Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation).
3. **PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR DALCO INDUSTRIES DBA TETON STEEL** for property improvements at Gabel Road and South 29<sup>th</sup> Street. Staff

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

4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR REVISIONS TO BOARDS AND COMMISSIONS:** Revisions that provide consistency in procedural areas for advisory boards, commissions and committees, and reorganizes ordinances into one Article of the Code. Staff recommends approval. (Action: approval or disapproval of staff recommendation).
5. **PUBLIC HEARING FOR EXTENSION OF INTERIM ZONING ORDINANCE:** A proposed one-year extension of the Interim Zoning Ordinance that amends Section 27-611, Sexually Oriented Businesses, and allows the interim zoning ordinance to be effective until December 23, 2009. Staff recommends approval. (Action: approval or disapproval of staff recommendation).
6. **DOWNTOWN BILLINGS PARKING STUDY.** Delayed from 11/24/08. Staff recommends approval of contract with Rich and Associates, Inc. for \$68,500. (Action: approval or disapproval of staff recommendation).
7. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
*(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

(Action: approval or disapproval of Consent Agenda.)

## ADJOURN

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

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

# A

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday, December 8, 2008

**TITLE:** WO 08-09 Waste Water Treatment Plant Primary Effluent Pipe Replacement and Sludge Drying Bed Expansion

**DEPARTMENT:** Public Works - Engineering

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

**PROBLEM/ISSUE STATEMENT:** The purpose of this project is to replace aging piping from the primary clarifiers and to create redundancy in the effluent piping system from the primary clarifiers. In order to complete the work, all four of the primary clarifiers need to be working. One of the four primary clarifiers recently had the concrete floor heave and crack. The primary effluent piping replacement can only be constructed in the fall and winter months due to the volume of sewage in other times of the year and groundwater.

Work under this change order would repair the primary clarifier floor, install pressure relief valves in primary clarifier floor. The amount of Change Order No. 3 for the City's contract with Western Municipal Construction is not to exceed \$20,468.65.

It is recommended that the primary clarifier be repaired at the present time under W.O. 08-09 that was approved at the June 23, 2008 City Council Meeting in the amount of \$823,000.00. This contractor is well positioned to complete the work required by this change order. All necessary dewatering facilities and construction equipment are on-site and in close proximity to the project area under consideration.

Although it is now necessary to repair the damaged clarifier under this project, its inclusion within this project was unforeseen and staff is requesting that Council grant the City Administrator extra change order authority since this project has an aggressive construction schedule and decisions and approvals for change orders often need to happen the same day that problems are identified. In addition to staff's request to approve the above change in work, staff is also requesting that Council increase the City Administrator's change order authority by \$50,000 above what would be approved for Change Orders 1-3.

**FINANCIAL IMPACT:** Funding for the additional work on Change Order No. 3 will come from Waste Water funds. The total amount of Change Order No. 3 is not to exceed \$20,468.65.

Change Orders 1 through 3 results in an increase to the original contract price of \$90,093.44 or 10.9% of the original contract price.

## **RECOMMENDATION**

Staff recommends that Council approve Change Order No. 3 for the City's contract with Western Municipal in the amount of \$20,468.65 and increase the City Administrator's change order authority by \$50,000.00.

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

## ATTACHMENT

## W.O. 08-09 Change Order No. 3

**CHANGE ORDER**No. Three (3)DATE OF ISSUANCE November 24, 2008EFFECTIVE DATE November 24, 2008OWNER City of Billings Montana  
CONTRACTOR Western MunicipalContract: N/AProject: WWTP Primary Effluent Replacement and Sludge Drying Bed ExpansionOWNER's Contract No. W.O. 08-09 ENGINEER's Contract No. 80173ENGINEER HDR Engineering, Inc.

You are directed to make the following changes in the Contract Documents:

Description:

See attached CPR (Change Proposal Request) No. 6

Reason for Change Order:

See attached CPR (Change Proposal Request) No. 6

Attachments: (List documents supporting change)

See attached CPR (Change Proposal Request) No. 6

CHANGE IN CONTRACT PRICE:	
Original Contract Price	\$ <u>823,000.00</u>
Net Increase (Decrease) from previous Change Orders No. <u>1</u> to <u>2</u> :	\$ <u>69,624.79</u>
Contract Price prior to this Change Order:	\$ <u>892,624.79</u>
Net increase (decrease) of this Change Order:	\$ <u>20,468.65</u>
Contract Price with all approved Change Orders:	\$ <u>913,093.44</u>

CHANGE IN CONTRACT TIMES:	
Original Contract Times:	Substantial Completion: <u>250 Calendar Days</u> Ready for final payment: _____ (days or dates)
Net change from previous Change Orders No. <u>1</u> to <u>2</u> :	Substantial Completion: <u>0 Calendar Days</u> Ready for final payment: _____ (days)
Contract Times prior to this Change Order:	Substantial Completion: <u>250 Calendar Days</u> Ready for final payment: _____ (days or dates)
Net increase (decrease) this Change Order:	Substantial Completion: <u>30 Calendar Days</u> Ready for final payment: _____ (days)
Contract Times with all approved Change Orders:	Substantial Completion: <u>280 Calendar Days</u> Ready for final payment: _____ (days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By (ENGINEER - Signature)

OWNER (Authorized Signature)

CONTRACTOR(Authorized Signature)

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

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

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

EJCDC 1910-8-B

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

**Change Proposal  
Request No. 6  
(Not a Change Order)**

Project Name:	WWTP Primary Effluent Replacement and Sludge Drying Beds Expansion	Owner's Project No. (if applicable): W.O. 08-09
Project Owner:	City of Billings Public Works Department	Regulatory Agency Project No. (if applicable):
HDR Project No.	80173	Initiated by: <input checked="" type="checkbox"/> Engineer <input type="checkbox"/> Contractor
Contractor:	Western Municipal	Date: October 31, 2008

**Attention:** The following change in the contracton this project is proposed.

Description of the Proposed Change:

Replace Primary Clarifier No. 4 floor slab that was removed. Slab to be placed in two pours to accommodate dewatering. Lower slab should be poured first and must reach 4000 psi design strength before removing dewatering and preparing for second pour. Pressure relief valves must be in place and verified operational before the dewatering is removed.

See attached breakdown of costs.

No additional calendar days to the Contract with approval of CPR 2.

By Craig Habben

All work shall be in accordance with the terms, stipulations, and conditions of the original Contract Documents. If the work herein provided for is Approved by Change Order, the time of completion will be:

Increased  Decreased  Unchanged

by 0 calendar days.

This change will:  Add  Deduct  No Change

\$ 20,468.65

HDR Recommendation:

Recommend Acceptance  
 Do Not Recommend Acceptance

By: HDR Engineering, Inc.

Date \_\_\_\_\_

Owner's Action:

Accepted  Not Accepted

General Contractor

By: Owner

Date \_\_\_\_\_

Date \_\_\_\_\_

ATTACHMENT A

Doweling and Reinforcement

LABOR

Superintendent	103.00/ hr X 30 hrs	=	\$3,090.00
Foreman	47.50/ hr X 36 hrs	=	\$1,710.00
Laborer	37.70/ hr X 72 hrs	=	\$2,714.40
Operator	42.90/ hr X 10 hrs	=	<u>\$429.00</u>
			\$7,943.40
		15% =	\$9,134.91

EQUIPMENT

Excavator	152.00/ hr X 6 hrs	=	\$912.00
Loader	64.00/ hr X 4 hrs	=	\$256.00
Pick up	32.00/ hr X 36 hrs	=	\$1,152.00
Compressor	22.00/ hr X 30 hrs	=	\$660.00
Roto Hammer	18.00/ hr X 30 hrs	=	<u>\$540.00</u>
			\$3,520.00
		15% =	\$4,048.00

MATERIALS

Dowels Rebar			\$1,988.00
Adhesive			<u>\$1,055.00</u>
			\$3,043.00
		5% =	<u>\$3,499.45</u>
Subtotal			\$16,682.36
plus 3%			
Total			<u>\$17,182.83</u>

Pour Slab / Two Separate Pours

LABORS

Superintendent	103.00/ hr X 32 hrs	=	\$3,296.00
Foreman	47.50/ hr X 32 hrs	=	\$1,520.00
Laborer	37.70/ hr X 96 hrs	=	<u>\$3,619.20</u>
			\$8,435.20
		15% =	\$9,700.48

EQUIPMENT

2 Propane Heaters	10.00/ hr X 168 hrs	=	\$1,680.00
		15% =	\$1,932.00

MATERIALS

Concrete	87.00/ CY X 36 CY	=	\$3,132.00
Water Stop	140 L.F. 5 Rolls	=	\$990.00
Propane for Heating	7 days	=	<u>\$1,400.00</u>
			\$5,522.00
		5% =	<u>\$6,350.30</u>
Subtotal			\$19,872.48
plus 3%			
Total			<u>\$20,468.65</u>

None of the above prices include any of Western Municipal's overhead, general conditions costs, and project delay costs. Due to clarifier #4 being out of service, these costs and expenses will be submittal at a future date.

# B

## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

#### CITY OF BILLINGS, MONTANA

#### Monday, December 8, 2008

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**TITLE:** Compensation Agreement for Private Contract No. 599--  
Emmanuel Baptist Church Sanitary Sewer Extension

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** In order to obtain city sanitary sewer service for its property, the Developer, Emmanuel Baptist Church, is extending a 24-inch sanitary sewer main approximately 1000 feet west in Monad Road across Shiloh Road. This sanitary sewer extension is not a scheduled City Capital Improvements Project, so the Developer is paying the entire cost of the project. Since it is currently City policy to pay for the entire cost of constructing water and sewer mains over 12 inches in size (local mains), the Developer desires to be compensated for the construction costs; and, the Public Works Department (PWD) proposes that such compensation be accomplished through the attached Agreement.

**FINANCIAL IMPACT:** Based on review of the bid tabulation received for P-599, the PWD has determined that the entire cost of the \$325,360.00 contract is eligible to be recovered by the Developer. The extent and timing of the City's participation in the project costs is determined in conformance with the CIP approved by City Council.

#### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Compensation shall be based on final water and sewer utility construction costs.

**Approved By:** City Administrator        City Attorney       

#### **ATTACHMENT**

Attachment A--Compensation Agreement (5 pp.)

**COMPENSATION AGREEMENT**

THIS AGREEMENT entered into this 15 day of July, 2008, between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the "CITY", and Emmanuel Baptist Church of Billings, Montana, hereinafter referred to as "DEVELOPER".

**WITNESSETH**

WHEREAS, the CITY'S Water/Wastewater Extension Policy outlines the procedure and criteria the CITY uses in approving extensions of the public water and wastewater systems; and

WHEREAS, the CITY'S Utilities Fees Practice outlines how the CITY participates in construction of various water and wastewater facilities and applies water and wastewater construction fees and system development fees to developments; and

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement; and

WHEREAS, DEVELOPER has agreed to extend or replace water and/or wastewater facilities for the purpose of providing service through plans and specifications approved by the City on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Said plans and specifications generally provide for the construction of water and/or wastewater facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining compensation for a portion of the water and/or wastewater facilities hereinafter described; and

WHEREAS, the CITY is desirous of compensating the DEVELOPER for a portion of such water and/or wastewater facilities.

NOW, THEREFORE, CITY and DEVELOPER, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The water and/or wastewater facilities which are eligible for compensation to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER'S entitlement to compensation, the CITY and DEVELOPER agree that the conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any compensation. Said conditions are:

- (a) The extent, timing, and manner of the CITY'S participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the CITY'S Water/Wastewater Extension Policy and the CITY'S Utilities Fees Practice. Extensions or replacements not eligible for compensation according to these CITY policies and practices must be constructed by the DEVELOPER at his expense.
- (b) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
- (c) DEVELOPER shall enter into a compensation agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of water and/or wastewater facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the DEVELOPER.
- (d) Upon completion of the extension or replacement of the water and/or wastewater facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
- (e) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.

(f) Extension or replacement of water and/or wastewater facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the CITY, including but not limited to standards for design and construction of the facilities.

DEVELOPER agrees that it will not be entitled to any compensation whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein may, at the option of the CITY, result in denial of any and all compensation to the DEVELOPER.

3. In addition, it is expressly agreed that any compensation is conditioned upon the following:

(a) Compensation is limited to costs attributable to water and/or wastewater facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will compensation exceed the actual cost to the DEVELOPER of extending or replacing the water and/or wastewater facilities.

(b) Compensation shall not include any interest charges.

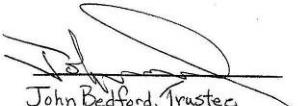
Acceptance of the water and/or wastewater facilities for purposes of compensation as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the CITY and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY, by this agreement, is not guaranteeing that full compensation by the CITY to the DEVELOPER will be made. The CITY is only agreeing that it will develop a plan under its Water/Wastewater Extension Policy and Utilities Fees Practice that will recommend that compensation for water and/or wastewater facilities which have been extended or replaced at the DEVELOPER'S expense will be made as set forth herein. Compensation does not apply to additional extensions or replacements of the water and/or wastewater facilities. Compensation shall be based upon the final total project costs.

5. The address for mailing compensation to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER shall be sent to the Public Works Director of the City of Billings at P.O. Box 1178, Billings, MT 59103. The designation of a new address shall be accompanied by a copy of this agreement.

6. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

DATED this 15 day of July, 2008.

  
John Bedford, Trustee

  
D. Paul Jones, Trustee

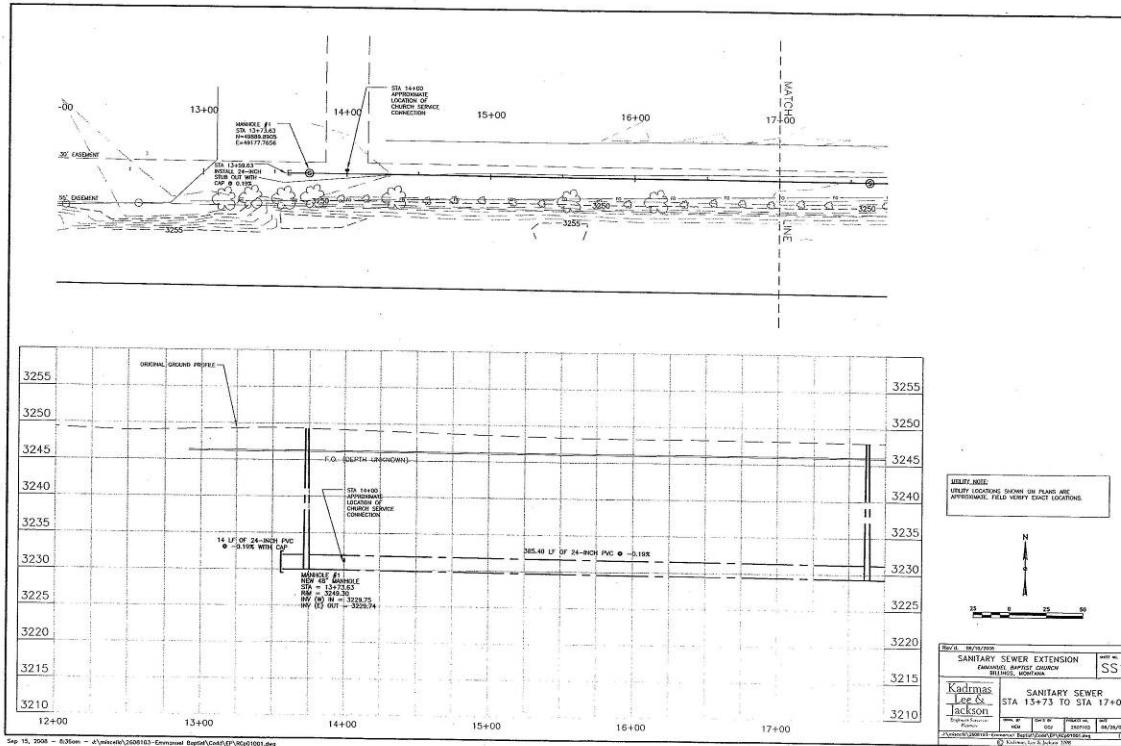
CITY OF BILLINGS

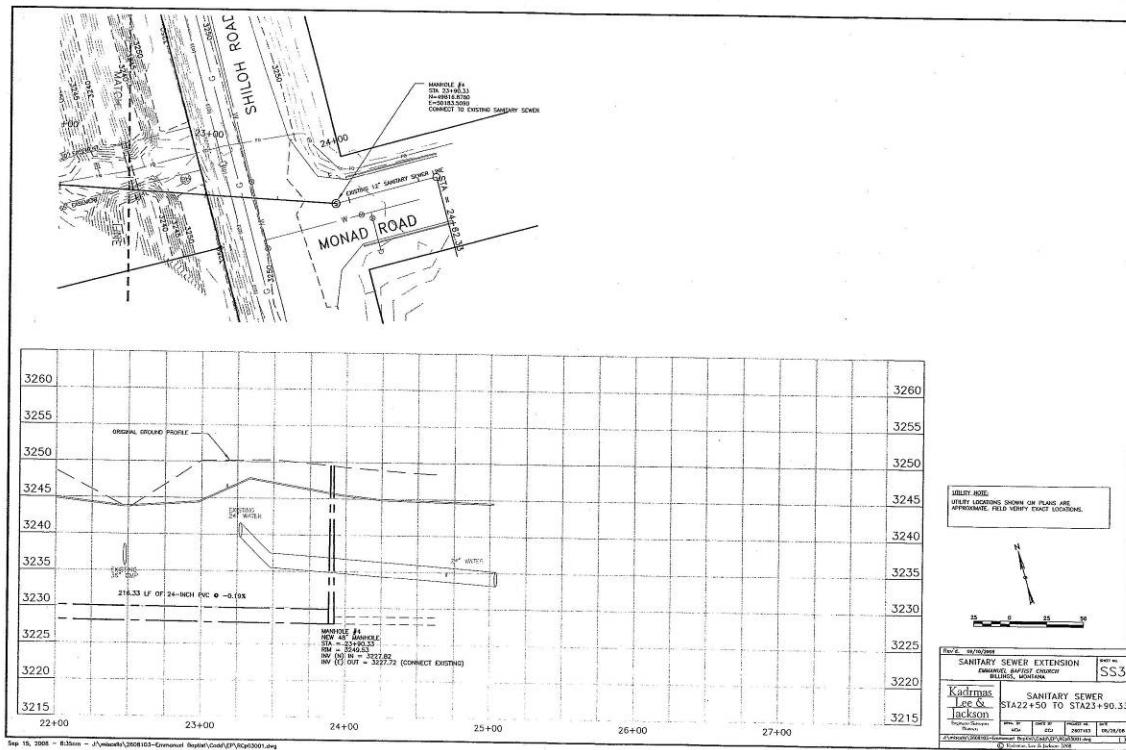
By \_\_\_\_\_ Mayor

ATTEST:

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







# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Monday December 8, 2008

**TITLE:** Approval or Disapproval of Amended Purchase and Sale Agreement-Ten (10) Acres within Cottonwood Park

**DEPARTMENT:** Planning, Parks, Recreation and Public Lands, City Attorney

**PRESENTED BY:** Brent Brooks, City Attorney

**PROBLEM/ISSUE STATEMENT:** The Mayor and City Council have previously conducted a public hearing and approved a resolution on May 12, 2008, authorizing the sale of approximately ten (10) acres of land within Cottonwood Park to School District Two for the amount of Two Hundred Thousand Dollars (\$200,000). This sale was contemplated as part of the original Charitable Gift and Cottonwood Park Development Agreement entered into by the City Council, Westward Ho, Inc, School District Two and Yellowstone County, Montana, in 2002.

During the May 12, 2008, City Council meeting CM Veis proposed and the Council approved an amendment to Section 1 (b) of the Purchase and Sale Agreement which clarified School District Two's indemnification of the City for any necessary environmental remediation should the property being sold to the District revert back to the City under a deed restriction provided in the original 2002 Agreement. The approved amended language is reflected by underlines in the last paragraph of Section 1(b), page three, of the Purchase and Sale Agreement.

Additional proposed amendments to the Purchase and Sale Agreement have been made to reflect recent additional work in creating the ten (10) acre parcel on a certificate of survey; and, reserving a public access and utility easement in favor of the City on the north side of the ten (10) acre parcel. These minor but necessary changes are noted by underlines and strikethroughs in Section 1(a), page one, and Section 1(c), page two, of the Purchase and Sale Agreement.

**ALTERNATIVES ANALYZED:** No alternatives have been analyzed since the sale of the ten (10) acres in Cottonwood Park has been previously approved by City Council resolution. The Purchase and Sale Agreement as modified will consummate the transaction together with the necessary deed and related documents required for the transfer of ownership from the City to School District Two.

**FINANCIAL IMPACT:** The financial impact to the City is the receipt of the purchase amount of Two Hundred Thousand Dollars (\$200,000) from School District Two. These funds are required to be expended specifically for improvements to Cottonwood Park pursuant to the original 2002 Charitable Gift and Cottonwood Park Development Agreement.

**RECOMMENDATION**

Staff recommends that the Mayor and Council consider and approve the amended Purchase and Sale Agreement with School District Two; and to authorize the Mayor to execute any associated documents necessary to consummate the sale and transfer of ownership of the property to School District Two.

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

**ATTACHMENTS**

Attachment A: Amended Purchase and Sale Agreement

**COTTONWOOD PARK SCHOOL SITE  
PURCHASE AND SALE AGREEMENT**

This **COTTONWOOD PARK SCHOOL SITE PURCHASE AND SALE AGREEMENT** (the "Purchase Agreement") is made between **THE CITY OF BILLINGS, MONTANA** ("the City" or "Seller") and **BILLINGS ELEMENTARY SCHOOL DISTRICT 2, YELLOWSTONE COUNTY** (also known as Billings Public Schools or Billings School District No. 2 and hereinafter referred to as "the District" or "Buyer"). The effective date of this Purchase Agreement (the "Effective Date") shall be the later date of the dates this Purchase Agreement is executed by Seller and Buyer below.

**RECITALS**

A. In 2002, the City, the District, Westward Ho, Inc., and Yellowstone County entered into a contract entitled "Charitable Gift and Cottonwood Park Development Agreement" (the "Development Agreement"). The Development Agreement is recorded in the records of the Yellowstone County Clerk and Recorder under Document No. 3210655.

B. Through the Development Agreement, the City received at no cost approximately 38.16 acres of land commonly referred to Cottonwood Park, which is generally located north of Colton Boulevard and west of 54<sup>th</sup> Street West and is more particularly located in the SE ¼ of the NE ¼ of Section 31, Township 1 North, Range 25 East, PMM in Yellowstone County (the "Development Agreement Property").

C. In the Development Agreement, the City granted to the District the option to purchase up to ten contiguous acres of the Development Agreement Property. The real property subject to the District's option to purchase is referred to in the Development Agreement as the "Designated Property" and shall be referred to as the same herein. The parties to the Development Agreement intend that the Designated Property be used for a public school. Although the Designated Property has not been formally surveyed from the Development Agreement Property, the parties to the Development Agreement identified the proposed location in the conceptual land use plan attached to the Development Agreement as Exhibit E.

D. The District's Board of Trustees exercised its option to purchase in 2007 (see the minutes of the Board's meetings on January 17, 2005, January 16, 2006, July 16, 2007, and August 20, 2007, all public records available through the District's website [billingsschools.org/index.php](http://billingsschools.org/index.php) or at the District's Clerk's office at 415 North 30<sup>th</sup> Street in Billings). As required by Montana law, the Board called for a school election seeking voter approval of the Designated Property as an elementary school site on November 6, 2007. The Designated Property was approved as a school site by the voters with 17,921 voting in favor of the site and 8,320 voting against. The Board may now enter into an agreement with the City for the purchase of the Designated Property. Mont. Code Ann. § 20-6-603. The Board approved this

Purchase Agreement at its regular meeting on December 15, 2008 [note: the Board is scheduled to consider the updated buy-sell on this date. Jeff Weldon, District Counsel].

E. [This recital is reserved for description of City Council Action, as needed]

F.—As provided for in Montana law, Seller desires to sell to Seller and Buyer desires to purchase from Seller the Designated Property, according to the provisions hereinafter set forth.

F. The transaction contemplated by this Purchase Agreement has been approved by both the Board of Trustees of Billings Elementary School District No. 2 and the Billings City Council.

## AGREEMENT

**For Valuable Consideration**, the receipt of which is hereby acknowledged, the parties agree as follows:

### **1. DESCRIPTION OF PROPERTY SOLD.**

a) **The Designated Property.** Pursuant to the Development Agreement, which by reference is made a part hereof, Seller hereby agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, subject to the exceptions and reservations hereinafter described, the Designated Property. The parties agree that the Designated Property is generally described as:

Tract 1B, Amended Tract 1, Certificate of Survey 1815, located in the NE 1/4, Section 31, Township 1 North, Range 25 East, P.M.M., in the City of Billings, Yellowstone County, Montana.

The parties agree the Designated Property shall be surveyed by the City and the City shall create a discrete tract of no more than ten (10) acres which can be conveyed to the District, as contemplated in the Development Agreement and this Purchase Agreement. The parties restate that the Designated Property shall not be materially relocated from the proposed site identified in Exhibit E of the Development Agreement, unless prior to the survey the City and the District determine that there is a mutually acceptable alternative school site. The precise location and size of the Designated Property shall be upon the mutual consent of the Seller and Buyer and shall be determined by the parties before the survey of the Designated Property. Upon the survey of the Designated Property, the Seller shall provide to Buyer a specific legal description, which legal description shall be attached hereto as Attachment A.

Cottonwood Park School Site  
Purchase and Sale Agreement  
Between the City of Billings and  
Billings Elementary School District 2  
Page 2 of 12

**b) Indemnification If Designated Property Reverts.** The parties acknowledge that the Development Agreement includes the following deed restriction provision:

“The property conveyed pursuant to this deed or instrument is subject to various covenants and restrictions described in a Charitable Gift and Park Development Agreement (‘Agreement’) by which Westward Ho, Inc., a Montana corporation, agreed to donate to the City of Billings approximately 38.16 acres of real estate to be developed and maintained as a multifunctional community park, public school, and/or public library. A copy of the Agreement has been filed with the Yellowstone County Clerk and Recorder. It is expressly understood and agreed by and between the parties hereto that the property herein described is subject to the terms of the Agreement and shall be forever maintained as a public park, school, or library in accordance with the terms of the Agreement. In the event that any portion of the property is used as either a public school or a public library but such use is discontinued for a period of five (5) years, that portion of the property shall revert to the City of Billings for use as a public park and associated uses. Should a portion of the property used as a public school revert to the City of Billings through the operation of this paragraph, said property and attached improvements shall revert ‘as is’ and the School District shall not be liable for any costs, expenses or charges whatsoever for its discontinued use of the public school, nor shall it have any duty to remediate, demolish or otherwise participate in the preparation of the designated property for any change in use.”

The parties agree that if by operation of this deed restriction the Designated Property reverts to the City, the District shall indemnify, defend, and hold harmless the City from any costs, expenses or charges whatsoever for the discontinued use of the public school, if any, on the Designated Property.

c) Easement. The City reserves a 49 foot wide public access and utility easement located in the north portion of Tracts 1A and 1B of Amended Tract 1 of Certificate of Survey 1815, located in the NE 1/4, Section 31, Township 1 North, Range 25 East, P.M.M., in the City of Billings, Yellowstone County, Montana.

**2. CLOSING.** If this Purchase Agreement has not been previously terminated as permitted herein and if the conditions to close as set forth below have been met, closing (“Closing”) of this sale shall occur on or before January 30, 2009, at the office of American Title and Escrow in Billings, Montana (“Closing Agent”). Closing may take place at any other date, time or place with the consent of Seller and Buyer. The parties agree that the closing deadline of January 30, 2009, satisfies the closing requirement stated in Paragraph 16 of the Development Agreement. Except as otherwise provided for herein, the closing costs shall be shared equally by Seller and Buyer. The closing costs shall be limited to the Closing Agent’s closing fee and deed recording fees. Closing costs shall not include costs associated with subdividing the subject property.

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**3. PURCHASE PRICE.** Buyer agrees to pay or cause to be paid to the Seller the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) (the "Purchase Price") for the Designated Property, which shall be paid at Closing.

The Closing Agent shall not deliver the Purchase Price to Seller until the Warranty Deed (defined below) has been recorded, title has been updated and the Closing Agent is prepared to issue the title insurance policy required herein.

**4. CONVEYANCE.** At Closing, Seller will deliver to Buyer an executed warranty deed (the "Warranty Deed") conveying valid, marketable fee simple title to the Designated Property, to the Buyer, free and clear of all liens, encumbrances and title defects, except the following:

- a) Reservations and exceptions in patents from the United States or the State of Montana.
- b) Existing easements and rights-of-way, including without limitation the reserved 49 foot wide public access and utility easement located in the north portion of Tracts 1A and 1B of Amended Tract 1 of Certificate of Survey 1815, located in the NE 1/4, Section 31, Township 1 North, Range 25 East, P.M.M., in the City of Billings, Yellowstone County, Montana.
- c) All building, use, zoning, sanitary and environmental restrictions.
- d) General and special taxes and assessments for 2009 and subsequent years.
- e) Mineral and royalty reservations or conveyances of record and any oil, gas and/or mineral leases of record.
- f) Those additional exceptions approved in writing by Buyer.
- g) The notice and restrictive covenant stated in Paragraph 13 of the Development Agreement, to wit:

"The property conveyed pursuant to this deed or instrument is subject to various covenants and restrictions described in a Charitable Gift and Park Development Agreement ('Agreement') by which Westward Ho, Inc., a Montana corporation, agreed to donate to the City of Billings approximately 38.16 acres of real estate to be developed and maintained as a multifunctional community park, public school, and/or public library. A copy of the Agreement has been filed with the Yellowstone County Clerk and Recorder. It is expressly understood and agreed by and between the parties hereto that the property herein

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described is subject to the terms of the Agreement and shall be forever maintained as a public park, school, or library in accordance with the terms of the Agreement. In the event that any portion of the property is used as either a public school or a public library but such use is discontinued for a period of five (5) years, that portion of the property shall revert to the City of Billings for use as a public park and associated uses. Should a portion of the property used as a public school revert to the City of Billings through the operation of this paragraph, said property and attached improvements shall revert 'as is' and the School District shall not be liable for any costs, expenses or charges whatsoever for its discontinued use of the public school, nor shall it have any duty to remediate, demolish or otherwise participate in the preparation of the designated property for any change in use."

The parties affirm that Montana law governs the City's and District's ownership and use of the Designated Property, which may place different or additional restrictions on the Designated Property.

The Parties agree it is necessary for the City to survey the Designated Property from the Development Agreement Property. Any cost associated with surveying the Development Agreement Property shall be the City's responsibility.

**5. TITLE MATTERS.** Buyer shall not be obligated to purchase the Designated Property unless at, or prior to, Closing each of the following conditions has been met or Buyer has expressly waived said conditions in writing. Seller agrees to cooperate with Buyer and to execute any documents which may be necessary or convenient to the performance of these conditions.

- a) Within a reasonable time after the survey of the Designated Property from the Development Agreement Property and the creation of a discrete tract, Seller, at Seller's expense, shall obtain a title commitment for a standard Owner's Title Insurance Policy through American Title and Escrow in Billings for the Designated Property and in the amount of the Purchase Price, with legible copies of all documents referred to therein ("Title Commitment"). Within thirty (30) days after Buyer's receipt of the Title Commitment, Buyer shall raise any objections to title, which objections shall be made to Seller in writing ("Title Objections"). Seller shall have fifteen (15) days from receipt of Buyer's Title Objections to remove and/or cure same. If Seller, after expending diligent efforts, is unable to remove and/or cure such Title Objections, Buyer shall have the right to (i) cure the Title Objections itself and close this transaction, (ii) close this transaction notwithstanding the Title Objections, or (iii) terminate this Agreement.
- b) Seller shall convey to Buyer good and marketable title to the Designated Property, which shall be free and clear of all liens, leasehold interests, tenancies, encumbrances,

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and other exceptions to title, except the liens of taxes and assessments not yet due and payable, easements and restrictions of public record, and those exceptions approved in writing by Buyer ("Permitted Exceptions").

- c) Within a reasonable time after the Closing, Seller shall cause, at Seller's expense, an owner's policy of title insurance to be issued to Buyer in accordance with the terms of this paragraph.

**6. POSSESSION.** Seller agrees to deliver possession of the Designated Property to the Buyer at Closing.

**7. ATTORNEY FEES.** If either party defaults in its performance and the other party employs an attorney, which may include in-house counsel employed by a party, because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney fees, reasonably incurred at any time by the other party or parties because of the default, together with interest thereon at the rate of ten percent (10%) per annum.

**8. NOTICE.** Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the following addresses:

If to Seller, to:

City of Billings  
P. O. Box 1178  
Billings, MT 59103  
Attn: City Administrator

If to Buyer, to:

Billings Elementary District 2  
415 N. 30<sup>th</sup> Street  
Billings, MT 59101  
Attn: Superintendent

A party wishing to change its designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in the United States mail, postage prepaid and addressed to the party as above referenced, or at such other address as the parties may designate in accordance with this paragraph. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be a receipt of the notice.

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**9. BROKERAGE.** Buyer and Seller represent and warrant that all negotiations relative to this Purchase Agreement have been carried on by them directly, without the intervention of any person, and no commissions relating to the purchase and sale hereof are due to any person.

**10. ENVIRONMENTAL MATTERS AND ENVIRONMENTAL ASSESSMENT.** Seller makes the following representations and warranties to the best of its knowledge: (a) no Hazardous Material exists at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property; (b) no Hazardous Material has been generated, discharged, released, deposited, stored, disposed of, placed, or otherwise located at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property, (c) no part of the Designated Property has been used as a landfill, dump, industrial waste disposal area, waste treatment facility, gasoline service station, or any other similar purpose or for any industrial purpose, (d) no above-ground storage tanks or underground storage tanks are or were located on the Designated Property, (e) no investigations, administrative proceedings, litigation, regulatory actions, or claims are pending, proposed, or threatened, or have ever been brought, with respect to the existence of any Hazardous Material at, in, on, under, or about the Designated Property or in any water on or under the surface of the Designated Property or to an alleged violation at, in, on, under, or about the Designated Property of any Environmental Law or regulation, (f) Seller has not violated any Environmental Law or regulation, at, in, on, under, or about the Designated Property, nor, to the best of Seller's knowledge, has any third party, and (g) neither all nor any part of the Designated Property is listed on the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or on any other list, schedule, log, inventory, or record of hazardous waste sites maintained by any federal, state, or local government agency. As used herein, the term "Hazardous Material" shall be defined as asbestos, urea-formaldehyde, petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products), perchlorethylene, tetrachloroethylene, vinyl chloride, polychlorinated biphenyls ("PCB's"), nuclear fuel or materials, chemical, biological or medical wastes, radioactive materials, explosives, known or suspected carcinogens, petroleum products, and all dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any federal, state or local Environmental Law. The term "Environmental Law" shall mean and include any federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

Before the Closing, Buyer shall have reasonable access to the Designated Property, at its own risk and expense, to conduct or to have conducted for its benefit a Phase I Environmental Assessment, if it elects to do so. Buyer agrees to indemnify and

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hold harmless the Seller from all liabilities, obligations, claims and expenses (including reasonable attorneys fees) arising out of or related to the Buyer's, or those acting on the Buyer's behalf, conducting of a Phase I Environmental Assessment on the Designated Property. The obligation under the preceding sentence shall survive any termination of this Purchase Agreement. If Buyer is not satisfied with the Phase I Environmental Assessment, Buyer shall so notify the Seller. The Buyer and Seller shall then attempt to negotiate the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment. If, despite their good faith efforts to do so, the Buyer and the Seller are unable to satisfactorily negotiate the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment, then, upon notice to Seller (given not less than ten (10) days before the date of Closing), Buyer may terminate this Purchase Agreement. If Buyer so terminates this Purchase Agreement, the parties will have no further rights or obligations against the other under this Purchase Agreement, except for those obligations that are expressly stated to survive termination. If the Buyer either is satisfied with the Phase I Environmental Assessment or the matter that causes Buyer's dissatisfaction with the Phase I Environmental Assessment is successfully negotiated, the parties shall proceed to Closing on the same terms and conditions as set forth in this Purchase Agreement, subject to any modification to which the Buyer and Seller may have agreed in their negotiation of the matter that causes the Buyer's dissatisfaction with the Phase I Environmental Assessment.

**11. SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller warrants and represents to Buyer, which warranties and representations shall be true and correct as of the Closing Date, that:

- a) Seller has good and marketable fee simple title to the Designated Property, which will be free from liens and encumbrances at Closing;
- b) No suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation is pending or, to Seller's knowledge, is threatened against Seller which would affect the Designated Property. There is no outstanding judgment, decree, or order against Seller that affects the Designated Property;
- c) Neither the execution and delivery of this Purchase Agreement, nor Seller's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, or conflict with or result in the breach of any term, provision, covenant, or condition of any agreement or other instrument to which Seller is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder; and
- d) Seller shall keep the Designated Property in the same condition from the date of this Purchase Agreement to the time Buyer takes possession.

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These warranties and representations will survive the Closing. Seller will indemnify and hold Buyer harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

**12. BUYER'S REPRESENTATIONS.** Buyer warrants and represents to Seller, which warranties and representations shall be true and correct as of the Closing Date, that neither the execution and delivery of this Purchase Agreement, nor Buyer's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, nor conflict with or result in the breach of any term, provisions, covenant or condition of any agreement or other instrument to which Buyer is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder.

These warranties and representations will survive the Closing. Buyer will indemnify and hold Seller harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

**13. BUYER'S INVESTIGATION AND DUE DILIGENCE.** In addition to Buyer's right to conduct a Phase I Environmental Site Assessment under paragraph 11, Buyer shall have the right, at Buyer's expense to inspect and investigate the Designated Property pursuant to the terms and conditions of this paragraph. Before the Closing, Buyer and its employees, agents, designees, contractors and professionals, will have the right to conduct due diligence with respect to the Designated Property, the terms and conditions of this Purchase Agreement and the matters set forth below to its sole satisfaction for the purpose of evaluating this transaction for all matters and aspects, including but not limited to, all: tax matters; parking and traffic flow; security; safety; health; financing and expenses associated with and/or anticipated and/or expected from the Designated Property and any building or improvement to be located thereon; title matters; local, state and/or federal rules, regulations; hydraulics, including but not limited to water tables, piping, water delivery systems, cisterns, sewer, access and rights pertaining thereto; zoning, policies and legislation; liens, encumbrances and encroachments; soil suitability; state and federal financing; bonding and/or levy requirements; subsequent voter approvals; lease and lease back sufficiency and/or potential; suitability as a school site; management; structural, mechanical, electrical, HVAC, plumbing and aesthetic matters; legal compliance and suitability; regulatory, administrative and other legal matters; and/or any other matter deemed necessary in the District's sole judgment, all of which may be reviewed from a past, current or anticipated basis. Disclosures made by Seller to Buyer prior to Closing will not limit Buyer's ability to investigate all matters pertaining to such disclosures. At all times prior to Closing, on an as necessary basis as deemed reasonably appropriate by Buyer, Seller will make the Designated Property available for inspection, and the Seller will make its agents and employees available to answer questions and to provide information, in order to assist in the timely completion of Buyer's inspection and due

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diligence. In the event that Buyer determines in its sole discretion that as a result of its inspection or due diligence the transaction contemplated herein is not acceptable to it, then the offer set forth in this Purchase Agreement may be terminated at Buyer's option without payment, penalty, cost or fee to Seller.

**14. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS.** The closing of this purchase and sale of the Designated Property is conditioned upon the occurrence of all of the following prior to Closing unless waived by the Buyer in writing:

- a) Seller complying with all of its obligations under this Purchase Agreement;
- b) All of Seller's representations and warranties set forth herein shall be true and correct;
- c) Buyer completing its inspection and due diligence review as set forth in this Agreement and approving the Designated Property in writing to Seller;
- d) There shall have been no material adverse change in the condition of the Designated Property from the date of this Purchase Agreement;
- e) Seller terminating any and all leases pertaining to the Designated Property, if any, to Buyer's sole satisfaction;
- f) Buyer and Seller agreeing on the final form of warranty deed;
- g) Seller obtaining at Seller's expense all necessary approvals, including the surveying of the Designated Property to accomplish the transaction contemplated herein;
- h) The approval of the transaction contemplated by this Purchase Agreement by Buyers' Board of Trustees; and
- i) The approval of the transaction contemplated by this Purchase Agreement by the Seller's City Council,

hereinafter referred to as "Conditions to Close."

If any of the Conditions to Close have not been satisfied by the Closing date or by such later date as may be hereafter mutually agreed upon in writing by the parties, this Purchase Agreement shall terminate upon written notice from Buyer to Seller.

**15. REMEDIES ON DEFAULT.**

- a) If Seller fails to consummate this Purchase Agreement in accordance with its terms for any reason within the control of the Seller, Buyer shall have as Buyer's sole

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remedy the option of either of the following: (i) rescinding this Purchase Agreement by giving written notice to Seller; or (ii) enforcing specific performance by Seller of Seller's obligations hereunder.

b) If Buyer fails to consummate this Purchase Agreement in accordance with its terms for any reason with the control of Buyer, Seller shall have as Seller's sole remedy against Buyer the option of either of the following: (i) rescinding this Purchase Agreement by giving written notice to Buyer; or (ii) enforcing specific performance by Buyer of Buyer's obligations hereunder.

**16. PARTIES' AGREEMENT.** The parties make the Development Agreement a part of this Purchase Agreement. The Recitals above are part of this Purchase Agreement. Except as otherwise provided for herein, this Agreement, the Warranty Deed, and the Development Agreement contain the entire agreement and understanding of the parties, and supersede any and all prior negotiations and understandings. This Purchase Agreement shall not be modified, amended or changed in any respect except by written document signed by all parties hereto.

**17. INTERPRETATION.** If any portion of this Purchase Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. This Purchase Agreement has been made and entered into in the State of Montana and shall be governed by the laws of the State of Montana.

**18. HEADINGS.** The headings used in this Purchase Agreement are for convenience only, and shall not be construed as part of this Purchase Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

**19. BINDING EFFECT.** This Purchase Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors, successors in interest and assigns of the parties.

**20. SURVIVAL OF AGREEMENT.** This Purchase Agreement and all of the representations, warranties, covenants, promises, indemnities and agreements of the parties contained herein or in documents provided pursuant to this Purchase Agreement shall survive the execution and delivery of this Purchase Agreement, the closing and the consummation of the transactions contemplated hereby.

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IN WITNESS WHEREOF, the parties have executed this Purchase Agreement effective the day and year first above written.

**BILLINGS ELEMENTARY SCHOOL DISTRICT 2**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Katharin Kelker  
It's Board of Trustees Chairperson

Attest:

\_\_\_\_\_  
Leo Hudetz, District Clerk

**THE CITY OF BILLINGS**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Ron Tussing  
It's Mayor

Attest:

\_\_\_\_\_  
Cari Martin, City Clerk

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, December 8, 2008

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**TITLE:** Safe Route to School Program Application for Elementary School Traffic Plan  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Darlene Tussing, Alternate Modes Coordinator 

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**PROBLEM/ISSUE STATEMENT:** The City of Billings is seeking Safe Routes to School grants to provide a traffic assessment of the existing conditions in the vicinity of the public elementary schools in Billings. This information can be utilized so traffic engineering principles can be identified for short, medium and long term solutions to create a safe and efficient school related traffic plan for pedestrian, vehicle and bus traffic. This grant was applied for last year and no funds were awarded. The deadline for the grant application is December 31, 2008.

**ALTERNATIVES ANALYZED:** Safe Routes to School grants are made available through the Montana Department of Transportation to ultimately help encourage walking and biking to and from school. Applying for this grant would give the community an opportunity to assess the traffic conditions around the 23 public elementary school sites and offer solutions to create a safer and more efficient environment for pedestrian, vehicle and bus traffic. If we do not submit a grant application to the Safe Routes to School Program, the City will not be able to do the school traffic assessment plan unless other funding is sought from another source.

**FINANCIAL IMPACT:** The Safe Routes to School grant requires no local match. It is a reimbursable funding program. The grant application is for \$50,000. If the grant is approved and additional funding is needed to assess all 23 public elementary schools, other planning dollars or District #2 funds will need to be sought, or an additional SRTS grant will be requested next year to complete the study.

**RECOMMENDATION**

Staff recommends that Council approve the application submittal to the Safe Routes to School funding program for the Elementary School Traffic Plan.

Approved By:  City Administrator  City Attorney

**ATTACHMENT**

A. Application Signature Section

  /  

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## **Section C Signatures**

### **I. Reimbursement**

The Safe Routes to School Program is a reimbursable funding program, meaning that recipients of the funds will front the cost of the project and will be reimbursed during the course of the project. All costs submitted for reimbursement are subject to eligibility requirements. Any costs incurred before a project's authorization in writing are not eligible for reimbursement.

Funding for the SRTS Program is flexible to encourage innovative solutions; however, applicants are advised that certain projects are ineligible. Ineligible projects include the following:

- Projects that do not specifically serve the stated purposes of the SRTS Program.
- Recurring costs such as crossing guard salaries unless there are plans in place for alternative sources of funding to perpetuate the program in the future.
- Projects that reorganize pick-up and drop-off primarily for the convenience of drives rather than to improve the safety of walking and bicycling for students.
- Education programs that are primarily focused on bus safety.
- Improvements to bus stops.

### **II. Certifications and Assurances**

#### **We, the undersigned:**

- Submit this project to the Montana Department of Transportation (MDT) for approval of the project concept.
- Assure MDT that the local government(s) or school district will maintain (or cause to be maintained) this project in a safe and serviceable condition and that the MDT will not be responsible for maintenance of this project.
- Assure that all minority groups, as well as the general public within the appropriate jurisdiction, have been provided adequate opportunity to participate in the process of identifying and selecting this project for SRTS funding.
- Understand the project costs in this proposal are preliminary estimates only and that actual final costs may be more than or less than those reflected herein. If there is any variance from the proposed cost, we are prepared to accommodate any additional SRTS requirements.
- Understand the SRTS Program is not a grant program.

- Understand SRTS payments will be reimbursed by MDT on a work-progress basis; i.e., no payments will be made for any work until it has been completed and proper documentation submitted to MDT.
- Understand because this is a Federal-aid project, it must conform to all federal and state laws and regulations pertaining to procedures for design, the National Environmental Policy Act (NEPA), Americans with Disabilities Act (ADA), rights-of-way, contract letting, and construction standards, including the proper and applicable payment of Federal-aid prevailing wage rates, Disadvantaged Business Enterprise (DBE) regulations, and Equal Employment Opportunity (EEO) contract compliance. We understand failure to meet these requirements may, by law or policy, render this project ineligible for SRTS funding.
- SRTS is a Federal-aid program. The entire SRTS project must meet federal requirements regardless of funding source.
- Understand the information contained herein indicates the general concepts of the project and does not constitute in any way a final plan for project implementation.
- Understand there will be written agreements between MDT and the sponsor to complete certain activities, and the sponsor may not proceed with any activity to be funded with SRTS funds prior to written MDT approval.
- Understand the sponsor is responsible for completing all phases of project development and implementation (except in some cases where SRTS projects may be included with a planned MDT highway project).

### **III. Required Signatures**

Project Sponsor/Title \_\_\_\_\_ Date \_\_\_\_\_

Project Manager/Title \_\_\_\_\_ Date \_\_\_\_\_

Local Government/CTEP Administrator (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

## AGENDA ITEM:



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

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**TITLE:** Resolution Relating to Financing of Certain Proposed Projects; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The City does not anticipate the Department of Natural Resources and Conservation issuing revenue bonds for water projects until March. However, the City needs to expend monies related to the project before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse those expenses from the bond sale proceeds.

**FINANCIAL IMPACT:**

Zone 3 Storage Project	\$5,400,000
Zone 4 Reservoir Project	\$8,200,000
Water Rehabilitation Project	\$3,100,000

**RECOMMENDATION**

Staff recommends City Council approve the attached resolution.

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

**ATTACHMENT**

A – Resolution

## CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a resolution entitled: “RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED WATER SYSTEM PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on December 8, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_  
\_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of December, 2008.

---

City Clerk

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

RESOLUTION RELATING TO FINANCING OF CERTAIN  
PROPOSED WATER SYSTEM PROJECTS; ESTABLISHING  
COMPLIANCE WITH REIMBURSEMENT BOND  
REGULATIONS UNDER THE INTERNAL REVENUE CODE

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

Section 1. Recitals.

1.01 The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

1.02 The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

Section 2. Official Intent Declaration.

2.01 The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the “Projects”).

2.02 Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

2.03 The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$16,700,000 (the “Bonds”) after the date of payment of all or a portion of the costs of the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the

Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Section 3. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Section 4. Reimbursement Allocations. The Director of Administrative Services shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 8th day of December, 2008.

---

Mayor

Attest:

---

City Clerk

## EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
<u>Zone 3 Storage Project:</u> Design, engineer and construct 3.5 million gallon water reservoir to serve Zone 3 of the City's water system	\$5,400,000
<u>Zone 4 Reservoir Project:</u> Design, engineer and construct a 2 million gallon reservoir to serve Zone 4; design, engineer, and construct a pump station to serve Zone 5; construct new access road; install all associated piping and controls, new water lines, and related improvements	\$8,200,000
<u>Water Rehabilitation Project:</u> Design, engineer and replace existing water lines and valves	\$3,100,000
<u>Total</u>	<hr/> \$16,700,000

F

**AGENDA ITEM:**



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

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**TITLE:** Resolution Relating to Financing of Certain Proposed Projects; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The City does not anticipate the Department of Natural Resources and Conservation issuing revenue bonds for sewer projects until March. However, the City needs to expend monies related to the project before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse those expenses from the bond sale proceeds.

**FINANCIAL IMPACT:**

Wastewater treatment plant disinfection system	\$11,300,000
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**RECOMMENDATION**

Staff recommends City Council approve the attached resolution.

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

**ATTACHMENT**

A – Resolution

**CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a resolution entitled: “**RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED WASTEWATER SYSTEM PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE**” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on December 8, 2008, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_  
\_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of December, 2008.

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

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

RESOLUTION RELATING TO FINANCING OF CERTAIN  
PROPOSED WASTEWATER SYSTEM PROJECTS;  
ESTABLISHING COMPLIANCE WITH REIMBURSEMENT  
BOND REGULATIONS UNDER THE INTERNAL REVENUE  
CODE

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

Section 1. Recitals.

1.01 The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

1.02 The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

Section 2. Official Intent Declaration.

2.01 The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the “Projects”).

2.02 Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

2.03 The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$11,300,000 (the “Bonds”) after the date of payment of all or a portion of the costs of

the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Section 3. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Section 4. Reimbursement Allocations. The Director of Administrative Services shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 8th day of December, 2008.

---

Mayor

Attest:

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City Clerk

## EXHIBIT A

<u>Description of Project</u>	<u>Estimated Cost</u>
Design, engineer and construct new wastewater treatment plant disinfection system, install new wastewater lines, and related improvements.	\$11,300,000

## AGENDA ITEM:



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

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**TITLE:** 2<sup>nd</sup> Reading of the Ordinance Approving the Expanded N. 27<sup>th</sup> Street Urban Renewal Area - 2008

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Council will consider the second reading of this ordinance that amends the urban renewal plan and expands the boundary of the N. 27<sup>th</sup> Street Tax Increment District. At its November 24, 2008 meeting, the City Council held a public hearing and approved the ordinance on first reading. Approval on second reading will put the changes into effect and allow staff to provide documentation to the Dept. of Revenue prior to February 1, 2009, the Administrative Rules of Montana deadline for such applications.

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

- adopt the ordinance on second reading that approves the Modified Plan and expands the boundaries of the Extended N. 27<sup>th</sup> Street District
- not approve the ordinance and allow the Extended N. 27<sup>th</sup> Street District that was established in 2006 to remain in place.

**FINANCIAL IMPACT:** The financial impact is unknown, however, the taxable value is approximately \$3.5 million. All of the expansion area was in the 1976 Downtown Urban Renewal Area that expired in March, 2008 but this expanded N. 27<sup>th</sup> Street District is smaller than that earlier downtown district. The purpose of an urban renewal and tax increment district is for the city to invest in infrastructure and thereby encourage private investment that increases the area's taxable value.

**RECOMMENDATION**

Staff recommends that Council adopt the ordinance on second reading that approves the Modified Plan for the Expanded North 27<sup>th</sup> Street Urban Renewal Area (District) - 2008, including proposed projects, authority to collect tax increment within the district and authority to issue tax increment urban renewal revenue bonds to finance the proposed projects.

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

**ATTACHMENT**

A:      Ordinance

**ATTACMENT A**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE MODIFYING THE URBAN RENEWAL PLAN OF THE NORTH 27<sup>TH</sup> STREET DISTRICT URBAN RENEWAL AREA; MODIFYING THE BOUNDARIES OF THE DISTRICT; ADOPTING A MODIFIED URBAN RENEWAL PLAN INCLUDING A TAX INCREMENT PROVISION; APPROVING URBAN RENEWAL PROJECTS THEREIN AND AUTHORIZING THE ISSUANCE OF TAX INCREMENT URBAN RENEWAL REVENUE BONDS OF THE CITY TO FINANCE COSTS THEREOF

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

WHEREAS, on July 11, 2005 the City Council adopted Ordinance No. 05-5333, which created the North 27<sup>th</sup> Street District Urban Renewal Area (hereafter “North 27<sup>th</sup> Street District”) and adopted the Urban Renewal Plan of the North 27<sup>th</sup> Street District Urban Renewal Area (“N. 27<sup>th</sup> Street Plan”) that included a tax increment provision and endorsed urban renewal projects.

WHEREAS, on November 13, 2006 the City Council adopted Ordinance No. 06-5394 which expanded the boundaries and amended the N. 27<sup>th</sup> Street Plan to create the Extended N. 27<sup>th</sup> Street District that included a tax increment provision and endorsed urban renewal projects.

WHEREAS, it has been determined that the Extended North 27<sup>th</sup> Street District and the N. 27<sup>th</sup> Street Plan should be modified to include additional property contiguous to the Extended North 27<sup>th</sup> Street District.

WHEREAS, this Council on November 24, 2008, conducted a public hearing on a proposal to modify the N. 27<sup>th</sup> Street Plan by adopting the Urban Renewal Plan of the Expanded North 27<sup>th</sup> Street District Urban Renewal Area - 2008, thereby establishing a modified urban renewal area to be formally designated as the Expanded North 27th Street District Urban Renewal Area - 2008 (the “Expanded North 27<sup>th</sup> Street District - 2008” or “the Property”), and to undertake urban renewal projects therein, all as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”).

WHEREAS, the Expanded North 27<sup>th</sup> Street District - 2008 is depicted on Attachment 1 (depicting the relationship of the Expanded North 27<sup>th</sup> District – 2008 to the Extended N. 27<sup>th</sup> Street District) and which is hereby incorporated herein and made a part hereof. Pursuant to this Ordinance, the boundaries of the Redevelopment Area are modified to reflect the addition of the Property depicted on the map on Attachment 1. The Redevelopment Area, as modified, is depicted on Attachment 1 and legally described on Attachment 2 (the “Resulting Redevelopment Area”) (each of which is hereby incorporated herein and made a part hereof). The Resulting Redevelopment Area is contiguous.

WHEREAS, opportunities have been presented to the City that makes it desirable for the City to consider urban renewal projects within the Expanded North 27<sup>th</sup> Street District - 2008 consisting of demolishing certain blighted structures within the district; improving such properties with new construction, landscaping, utilities, and other similar improvements; and making the properties so improved available for private redevelopment in accordance with the Act (the “Projects”). Development proposals to be considered for funding include mixed use projects, building renovations, services for the District and the construction or expansion of City owned parking structures within the District.

WHEREAS, the proposed modified urban renewal plan titled the Urban Renewal Plan of the Expanded North 27th Street District - 2008 is attached hereto as Attachment 3 (which is hereby incorporated herein and made a part hereof) (the “Modified Plan”). The Modified Plan contains a tax increment provision and will govern the operation and administration of the Expanded North 27<sup>th</sup> Street District - 2008.

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

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

a. The Property presently contains structures and improvements that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses. The present condition of the Property substantially impairs the sound functioning of the downtown area of the City and its environs, is conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council reaffirms its previous findings that the Property is a blighted area within the meaning of Section 7-15-4210 of the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary and in the interest of the health, safety, morals or welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant downtown.

b. If Projects require relocation of displaced persons, a detailed relocation plan is required and will be prepared.

c. The Modified Plan conforms to the 2003 Billings and Yellowstone County Growth Policy and the City’s Downtown Framework Plan.

d. The Modified Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise.

e. A sound and adequate financial program is required for the financing of Projects, which program includes substantial private investment and financing and the sale and issuance by the City of Tax Increment Bonds in proportions yet to be determined, for the purpose of financing a portion of the costs of the Projects as set forth above.

f. Approved Projects will constitute urban renewal projects within the meaning of the Act and are authorized to be undertaken by the City.

2. Plan Adoption. The Modified Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein. For purposes of allocating taxes according to the Act, the "prior assessed value" of taxable property within the Expanded North 27<sup>th</sup> Street District - 2008 is that value shown on the assessment rolls as of January 1, 2008.

3. Project Approval. Authorized Projects are hereby approved.

4. Bonds. This Council approves financing the costs of Urban Renewal Projects, or a portion thereof, with proceeds of the Bonds. The City is hereby authorized and directed to undertake activities and analysis ordinarily prerequisite to the issuance of tax increment urban renewal revenue bonds in a principal amount not to exceed \$10 million for financing of the costs of Urban Renewal Projects or a portion thereof.

5. Conditional Commitment. The adoption of the Plan does not constitute a guarantee or a firm commitment that the City will issue the Bonds or undertake Projects. If, based on comments or information made available to or obtained by the City, it appears that the issuance of the Bonds or Projects is not in the public interest or consistent with the purposes of the Act, the City reserves the right not to issue the Bonds or undertake the Project.

7. Repealer. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

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

9. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

ADOPTED by the City Council of the City of Billings, Montana, on second reading this 8<sup>th</sup> day of December, 2008.

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Ron Tussing, Mayor

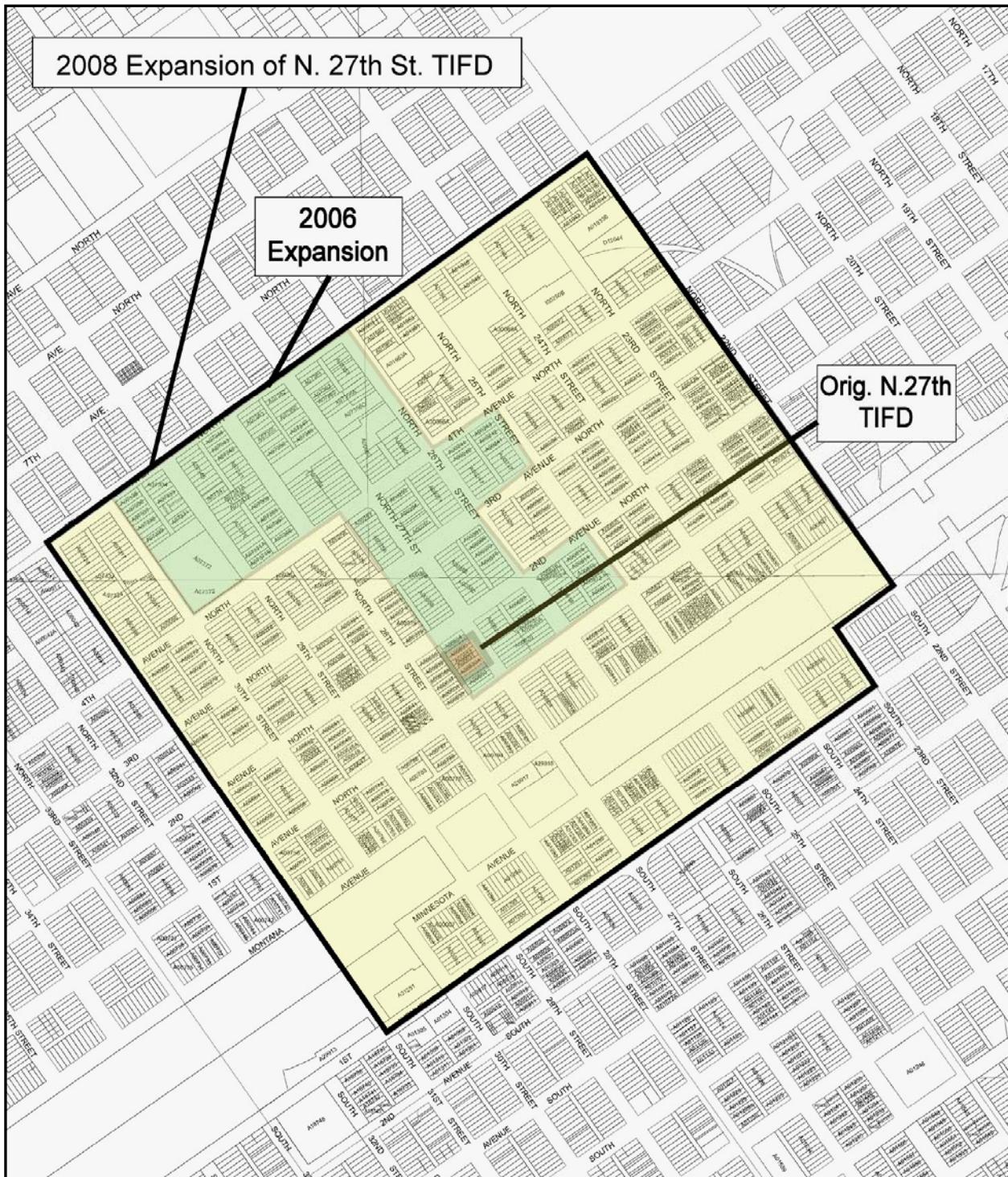
ATTEST:

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Cari Martin, City Clerk

## **ATTACHMENT 1**

**Expanded North 27<sup>th</sup> Street Urban Renewal District – 2008 Boundaries, Boundaries of the Extended N. 27<sup>th</sup> Street District (2006) and the Boundaries of the N. 27<sup>th</sup> Street District (2005)**



**ATTACHMENT 2**  
**Expanded North 27<sup>th</sup> Street Urban Renewal District – 2008**  
**Boundary Description**

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

**ATTACHMENT 3**  
**Expanded North 27<sup>th</sup> Street Urban Renewal Area – 2008**  
**Modified Plan**

**EXPANSION OF THE BILLINGS, MONTANA  
NORTH 27<sup>TH</sup> STREET URBAN RENEWAL AREA,  
WITH TAX INCREMENT, AND AMENDMENT TO  
THE URBAN RENEWAL PLAN**

**FOR CITY OF BILLINGS AND PLANNING REVIEW**  
**October 14, 2008**

Prepared by



Downtown Billings Partnership, Inc  
2815 2<sup>nd</sup> Ave. North – Billings, MT 59101 – [gregk@downtownbillings.com](mailto:gregk@downtownbillings.com)

## **SECTION 1 – INTRODUCTION**

On July 11, 2005, the City Council adopted an ordinance that (a) created the North 27<sup>th</sup> Street District Urban Renewal Area (“North 27<sup>th</sup> Street District”) and (b) adopted an urban renewal plan for the district. On November 13, 2006 the City Council adopted an ordinance that (a) expanded the North 27<sup>th</sup> Street District and (b) modified the urban renewal plan for the district. For reasons discussed in this Amendment to the Urban Renewal Plan of the North 27th Street District (“Plan”), it has been determined that the North 27<sup>th</sup> Street District should be expanded again to include other contiguous blighted properties in need of redevelopment. Further, it has been determined that this area, known as the Central Business District of Billings, has been and is in need of expanded public parking, enhanced pedestrian connections and experiences, improved public safety, and infrastructure improvements to public and private properties that will lead to increased taxable values. The existing urban renewal plan may be modified by ordinance in accordance with the procedure described in M.C.A. § 7-15-4221. The Urban Renewal Plan of the North 27th Street District approved by the City Council on July 11, 2005 and modified on November 13, 2006 is hereby included by reference as part of this amended Plan and shall remain applicable hereto except to the extent the original plan is explicitly or impliedly amended by this Plan. It is recognized as part of this Plan that the basic vision of the document known as Downtown Billings Framework Plan, adopted by the Billings City Council on December 22, 1997 and by the Yellowstone County Commissioners on December 23, 1997, is still valid and should be considered a part hereof. The terms defined in “Part I – DEFINITIONS” of the North 27th Street District Plan shall have the same meanings in this Plan unless a contrary meaning is expressed herein. The expanded district proposed in this Plan is hereafter referred to as the Expanded North 27<sup>th</sup> Street District - 2008 or the “District.”

## **SECTION 2 – BACKGROUND**

The original Downtown Redevelopment District, a downtown tax increment finance district, was created on December 20, 1975 by a resolution which cited hazardous conditions existing in the district due to overhead utility wires, inefficient land use, problems of access and circulation, physical constraints to development, random location of mixed uses and deteriorated building

conditions, and found that rehabilitation and redevelopment of the District would be in the public interest. That original district (hereafter “1975 District”) comprised one hundred and twenty four (124) blocks in the city center after the 1985 south expansion and the 2004 east expansion. The 1975 District expired March 1, 2008 but the Urban Renewal Plan and the Framework Plan used for that district, in many parts and in relation to this District remain valid.

Because the 1975 District has terminated, but many of the undesirable conditions continue to exist, it was determined that it would be in the best interest of the City to expand the North 27<sup>th</sup> Tax Increment District to assist the construction of public improvements, stabilize and grow the tax base, increase the parking inventory, increase the inventory of downtown residential property, stimulate multi-use development (“Multi-Use Facility Projects”), fill street level vacancies, provide expanded security, develop safe event locations with appropriate traffic control devices, expand the Business Improvement District, make modifications to street and intersection lighting, increase traffic calming and reduce the noise in the district through Quiet Zone management and further implement the vision of the Downtown Framework Plan.

Currently, there is a need to expand the North 27<sup>th</sup> Street District to encompass development needs on the North 27<sup>th</sup> Street corridor, the North Broadway corridor, the Old Town Neighborhood and the Montana Avenue Historic District (including expansion of the Historic District to include areas south of the railroad tracks), the Civic District, areas adjacent to the Medical Corridor, adjacent to the East Billings Urban Renewal Area and other underutilized properties within the Central Business District of Billings. Although there has been significant improvement in the valuation of property in much of the 1975 District, the area defined by this proposed expanded tax increment district has major properties that have been neglected for many years and continue to show signs of serious blight and tax base decline. Many parcels have been removed from the tax rolls and/or are delinquent on payments of taxes and fees. The Expanded North 27<sup>th</sup> Street District creates an opportunity to continue redevelopment of the center of downtown with a mixture of public and private investment in a roughly seventy-one-square-

block district (just over half of the size of the 1975 expanded district) encompassing the existing North 27<sup>th</sup> Street District.

The area has several pockets of low taxable value, with several lots of the land being owned by government and other non-profit entities and several buildings that are over 50% vacant.

The creation of the Expanded North 27<sup>th</sup> Street District is essential to any planned development at 4<sup>th</sup> Avenue North and North Broadway, redevelopment of the vacant Northern Hotel, improving security and expanding the clean safe and vibrant programs of the Business Improvement District, continuing redevelopment of the Civic Plaza area, developing the boundary areas of the Medical Corridor and the East Billings Urban Renewal Area, and expanding the Historic District. It could also assist with the essential remodeling of the Northern Hotel, the Babcock Theatre, the Westwood Building, the Lincoln Hotel Building. Public infrastructure construction within this expanded District could assist with the renovation and/or relocation of various City facilities, such as the public library. It is currently expected that the expanded North 27<sup>th</sup> Street District may help fund the following projects:

## **I. Business Programs and Projects**

- a. Business Retention
  - i. Targeted assistance and review of existing street level businesses
  - ii. Retail market survey
- b. Business Recruitment
  - i. Development of a “chainlet” network
  - ii. Business plan development assistance
  - iii. Association networking
  - iv. Business Improvement District support
  - v. Business cluster analysis
  - vi. Pedestrian study
    - 1. demographics
    - 2. directions
    - 3. linkages
    - 4. destinations
    - 5. wayfinding

## **II. Parking and Transportation**

- a. Increase use of public transit
- b. Parking structures to support current and future needs

- c. Explore parking linkages to adjacent destinations
- d. Explore parking management practices and programs
  - i. Off street parking
  - ii. On street parking

### **III. Crime Prevention and Public Safety**

- a. Cooperative Security Program
- b. Business Watch Program
- c. Crime and Fraud prevention programs
  - i. Geared towards street level businesses

### **IV. Management, Implementation and Maintenance**

- a. Downtown Billings Partnership, Inc. or its successor, management agreement
  - i. Project development
  - ii. Public awareness
  - iii. Advocacy and liaison between public and private sectors
- b. Business Improvement District expansion and development
  - i. Cooperative work agreements with PMDs
  - ii. Development and promotion of Conference Corridor
  - iii. BID expansion
  - iv. “Green” Management
    - 1. Recycling programs
    - 2. Tree management

### **V. Infrastructure Improvements**

- a. Public
  - i. Expansion of Historic District
  - ii. New Library
  - iii. New Planning Department Offices
  - iv. Public Parking and Greenspace
  - v. Intersection Lighting by Public Works
  - vi. New SILMDs for mid-block lighting
  - vii. Streetscapes and traffic calming plans
  - viii. Sidewalks, curbs and gutter improvements
    - 1. stabilization of vaults
  - ix. Relocation of public and private utility lines
- b. Public infrastructure improvements that would support the following development projects/programs
  - i. Workforce housing development
  - ii. Loft and Condo development
  - iii. Lodging development
  - iv. Conference Facilities

v. Entertainment venues

### **SECTION 3 – SUMMARY OF BLIGHT FINDINGS**

The area in the proposed expansion of the North 27th Street District contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, a railroad spur line that has been abandoned and a major rail line that continues to divide the Central Business District. Several of the commercial buildings in the district are deteriorated and/or vacant and need demolition or renovation. Many of the storefronts and upper floors are vacant or under-occupied. Sidewalks are cracked; alleys are deteriorated, and, in general, much of the area is below accepted standards. In contrast to the above, there are certain properties within the district in good repair but included in the district to allow for a contiguous block of land within the district and because pockets of revitalization cannot be sustained if areas of neglect and blight surround them. Over time, without continued managed urban renewal, even these success stories will once again decline in taxable value. Most of the district falls into the blighted, neglected and under-utilized categories.

### **SECTION 4 – DESCRIPTION OF BLIGHTED AREA**

The expanded urban renewal area described in this amended Plan incorporates most of the Central Business District. Within the district there are several older, single-story structures that have been retrofitted for offices and warehousing, numerous surface parking lots, and several vacant structures. Many of these structures are unsuited to their current uses because of age obsolescence and physical deterioration.

Montana's Urban Renewal Law (Montana Code Annotated Title 7, Chapter 15, Parts 42 and 43) provides the authority to declare the existence of blighted areas and to target them for improvements. "Blighted area" is defined in Section 7-15-4206(2), M.C.A., as follows:

*[A]n area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability or is detrimental*

*or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:*

- (a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;*
- (b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;*
- (c) inappropriate or mixed uses of land or buildings;*
- (d) high density of population and overcrowding;*
- (e) defective or inadequate street layout;*
- (f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;*
- (g) excessive land coverage;*
- (h) unsanitary or unsafe conditions;*
- (i) deterioration of site;*
- (j) diversity of ownership;*
- (k) tax or special assessment delinquency exceeding the fair vale of the land;*
- (l) defective or unusual conditions of title;*
- (m) improper subdivision or obsolete platting;*
- (n) the existence of conditions that endanger life or property by fire or other causes; or*
- (o) any combination of the factors listed in this subsection (2).*

The land being added to the Plan area includes 405 (Exhibit A) property tax codes plus a segment of centrally assessed BN Railroad property. The complete, expanded Urban Renewal Area will have 481 property tax codes plus the segment of BN Railroad property. Within that total area, and as noted in the 2006 approved Urban Renewal Plan, there are many “target areas” that should be immediately considered for redevelopment. The properties on N. Broadway between 4<sup>th</sup> Avenue North and 6<sup>th</sup> Avenue North will need additional parking to facilitate the construction of a Stockman Bank facility. The area adjacent to the Northern Hotel on North Broadway is in need of parking due to the closure of the privately owned parking structure in that area due to unsafe and blighted conditions of the structure. The area east of the Yellowstone County Courthouse Lawn is targeted for a new federal courthouse and will need additional parking and green spaces. The area between the new MET transit facility on N. 25<sup>th</sup> Street and to the east boundary of the East Billings Urban Renewal Area (N. 22<sup>nd</sup> Street) is in need of redevelopment that could include workforce housing and parking. The status of the Battin Federal Courthouse is still unclear. The facility is contaminated with asbestos and is destined to become vacant with the completion of a new federal courthouse and office building. This

vacancy will present a redevelopment opportunity in the near future. The area surrounding City of Billings Park IV contains many surface parking lots that could be developed if Park IV is sold to a private developer. This area lacks high-rise housing with mixed use occupancy on the first floor. The future use of the Lincoln Center is unclear and it could be a redevelopment opportunity if the school district ceases its administrative and continuing education functions in the building. The properties on 1<sup>st</sup> Ave. S. and Minnesota Avenue are not currently in a Historic District and values remain stagnant as compared to the Montana Avenue area. The redevelopment of the south side of the railroad tracks has not kept up with the redevelopment north of the tracks and should be a target area. Several properties located between Montana Avenue and 1<sup>st</sup> Avenue North are severely underutilized and in need of redevelopment. Without attention to some of this blight, over time, the value of the Montana Avenue redevelopment will most likely be negatively impacted.

## **SECTION 5 – DETERMINATION OF BLIGHT**

The proposed expansion area of the North 27<sup>th</sup> Street District contains a number of underdeveloped properties. The Council previously determined that the property included in the North 27<sup>th</sup> Street District was “blighted” within the meaning of the Act in Resolution 05-18276 adopted June 13, 2005 and Resolution 06-18488, adopted September 25, 2006. The Redevelopment Area, including the portion that is to be expanded to form the Expanded North 27<sup>th</sup> Street District - 2008, was previously determined to be blighted and an appropriate area for an urban renewal project in Resolution No. 12107 dated January 5, 1976. Deficiencies in public and private properties located in the district lead to a determination that the area continues to be blighted, as defined by state statute. Specific areas of blight on the site are listed below:

### **Deficient Structures in Expanded Area**

There are several buildings that are over 50 years in age and do not qualify as being historically significant. Many are in poor repair and may contain potentially hazardous asbestos and lead paint.

#### Deficient Public Facilities in Extended Area

The streets, curbs, gutters and sidewalks in much of the area are in satisfactory repair. However, sewer and water utilities in the area are aging and have required frequent repairs in recent years. Several parking lots generally do not meet code requirements for paving, striping and landscaping. Many of them are cracked and crumbling. The city owned parking ramps within the area, except for Park IV have extensive “waiting lists” and public parking for adjacent office and commercial structures continues to be inadequate. Demand for parking will continue and additional and expanded parking structures will be required to accommodate commercial growth.

#### Deficient Land Use in Extended Area

In general, the area is under-utilized due to the significant amount of surface parking areas and a large number of single-story structures. The taxable value of this district must be stabilized and encouraged to grow.

### **SECTION 6 – THE SITE AND ITS RELATIONSHIP TO THE CITY**

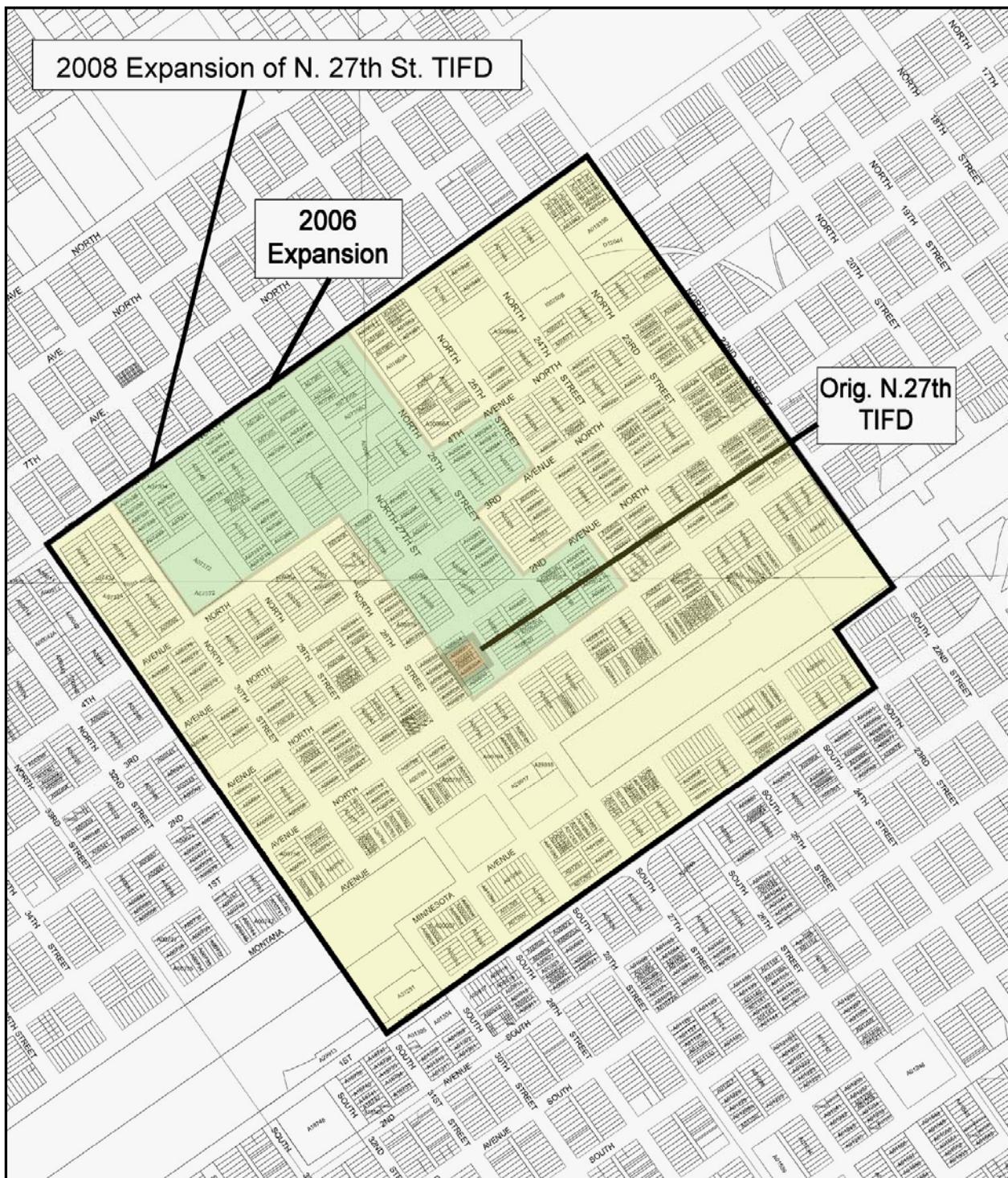
As noted, the expanded North 27<sup>th</sup> Street Urban Renewal Area comprises most of the Central Business District (CBD) of the City of Billings.

### **SECTION 7 – LEGAL DESCRIPTION**

The legal description of the proposed Expanded North 27<sup>th</sup> Street District – 2008 is as follows:

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

### Map of entire Expanded N. 27<sup>th</sup> District



## **SECTION 8 – PROPERTY DEVELOPERS**

New development in the proposed tax increment district will also be accomplished through the implementation of the Downtown Framework Plan. These Projects are described in Section 2 of this plan.

## **SECTION 9 – PROJECT RELATIONSHIP TO THE FRAMEWORK PLAN**

The proposed urban renewal area and expanded tax increment district is located generally in the center of the City and encompasses most of the “districts” as defined by the Billings Framework Plan (“Framework Plan”). One goal of the Framework Plan was to remove barriers to downtown circulation and development created by 4<sup>th</sup> Avenue North and 6<sup>th</sup> Avenue North and establish the area between the avenues as both a discreet district and a recognized extension of the CBD, thereby allowing potential ties to the medical corridor and MSU-Billings from the CBD.

Generally, the Framework Plan stressed the downtown’s ability to make a positive impact on the entire city. The Framework Plan also recommended a private non-profit organization to assist the City of Billings with the management of the Tax Increment District through an annual work plan and contract. This Expanded N 27<sup>th</sup> Street District may be managed in a similar manner and could make use of the redevelopment and facilitation established through that management entity.

### **Framework Plan Recommendation: Housing**

The Framework Plan states that housing should be a top priority and that the City should continue to work with builders and developers to encourage downtown housing through various methods. Specifically, the plan states that high-rise housing is to be located in the east transition zone and portions of the north transition zone.

The formation of an expanded tax increment district will help to raise funds that can be used for construction or rehabilitation of public infrastructure necessary to attract and retain housing in the area.

## **Framework Plan Recommendation: Priorities**

The top priorities identified in the Framework Plan include the following:

- Development incentives, including business retention and recruitment
- Housing – demonstration projects
- Streetscape Kit of Parts – expand kit to include Minnesota Avenue
- Events Kit of Parts – Modern and safer traffic control devices may be needed
- Paring configuration adjustments – several one-way streets could be converted to 2-way
- 5<sup>th</sup> Avenue North Corridor preservation and enhancement

**This amendment to the Plan and the urban renewal projects that it contemplates specifically address all six of these priorities.**

## **SECTION 10 – CONFORMANCE TO THE GROWTH POLICY**

One of the requirements of Montana’s Urban Renewal Law (Title 7, Chapter 15, Parts 42 and 43) is that the urban renewal plan must conform to the community’s growth policy. The Yellowstone County and City of Billings Growth Policy (“Growth Policy”) refers to and promotes downtown redevelopment in a variety of ways. This amendment to the Plan is consistent with the current Growth Policy.

## **SECTION 11 – CERTAIN PLAN FEATURES AND FINANCIAL MATTERS**

Section 7-15-4217, M.C.A., of the Act requires cities to make certain findings when they adopt an urban renewal plan and approve Urban Renewal Projects. These are addressed below:

1. Most of the District contains no existing dwelling units or housing, and planned projects would not displace any persons from housing. Accordingly, there is no need to have a workable and feasible plan for substitute housing until and unless such a project is developed in the future.
2. This amended Plan conforms to the Growth Policy for the City as a whole and to the

Framework Plan.

3. This Modified Plan affords maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the Expanded North 27<sup>th</sup> Street District by private enterprise. It is unreasonable to expect that the district will be remain stabilized and/or redeveloped without substantial public support. Numerous properties within the area are dilapidated. As presently constituted, property in the district is not conducive to any sort of uniform or integrated development and, as presently existing, cannot compete with other areas of the City for substantial developments, particularly areas at the outskirts of the City. Experience has validated the foregoing facts and observations. This amended Plan is intended to facilitate the identification and construction of significant Urban Renewal Projects, which would not be possible without this Plan.
4. A sound and adequate financial program exists for financing projects, which include the sale and issuance by the City of the Bonds in an amount not to exceed the costs of the project, including administration costs and costs of issuance of the Bonds. Any approved Development Project will require commitments of substantial private financing that will provide the primary means for funding construction of the improvements.
5. This Expanded N. 27<sup>th</sup> Street District - 2008 may be modified at any time by the City Council as necessary to eliminate and prevent the development or spread of blighted areas, and encourage urban rehabilitation. The process for plan modification shall follow the procedures set forth in 7-15-4212 through 7-15-4219 MCA, with respect to initial adoption of this plan. For purposes of urban renewal district boundary changes only, the notice of public hearing, as described in 7-15-4215 MCA, may be mailed only to those owners whose properties are situated within the area of expansion or contraction of the Urban Renewal District boundaries. In cases where the boundaries are not modified, but the contents of the urban renewal plan are substantially modified, notification shall be mailed to all owners of property within the Urban Renewal District area.

## SECTION 12 – TAX INCREMENT

Tax increment financing is necessary to encourage private reinvestment within the District, which will further encourage economic growth in the District and Downtown Billings, create substantial employment opportunities, and increase the tax base of the City and other taxing jurisdictions. The expanded North 27<sup>th</sup> Street District is hereby established as a tax increment financing urban renewal area within the meaning of the Act, and, in particular, Section 7-15-4282 through 7-15-4293 of the Act. This Section constitutes a tax increment provision within the meaning of the Act. In connection therewith:

1. For the purpose of calculating the incremental taxable value each year for the life of the district, the base taxable value shall be calculated as current base taxable value of the district plus the base taxable value of all real and personal property added to the district by this amended plan and as show in Exhibit B as of **January 1, 2008.**
2. The City is hereby authorized to segregate the tax increment derived in the district and use and deposit such increment into the tax increment fund of the district for use as authorized by the Act and as authorized herein from time to time, including, without limitation, pledging the tax increment to repayment of Bonds.
3. The tax increment received from the district may be used to pay directly costs of an approved Development Project as may from time to time be approved by the Council. The Council also hereby authorizes the use of tax increment in the district to pay debt service on Bonds issued to finance a portion of the costs of these Development Projects, and costs associated with the sale and security of such Bonds in compliance with the Act, subject to any limitations imposed by the Montana Constitution and federal law.
4. The tax increment provision of the district will terminate upon the latter of:
  - a. The fifteenth (15<sup>th</sup>) year following the original creation of the district; or
  - b. The payment or provision for payment in full or discharge of all Bonds, and the payment of interest thereon, for which the tax increment has been pledged.

After termination of the tax increment provision, all taxes shall continue to be levied upon the actual taxable value of the taxable property in the district, but shall be paid into funds of the taxing bodies levying taxes within the district.

## SECTION 13 – CONCLUSIONS

The creation of this expanded North 27th Street Urban Renewal District will have a positive impact on Downtown Billings and no impact on the total taxable value flowing to the taxing entities from the now expired 1975 Urban Renewal District.

Expansion of the North 27<sup>th</sup> Street District is an essential first-step in completing what may be a number of urban renewal projects. If completed, mixed use projects approved within the first two years could stimulate over \$30 million in new construction, and possibly as much as \$15 million in re-sales and redevelopment. Approximately 500 new employees and new downtown residents could be located on the commercial and upper floors of possible mixed use projects. Thus, expansion of the district, in addition to further stabilizing the tax base, eliminating blight and providing renaissance to the CBD, will also bring new employees and residents to the CBD.

Mixed use development within the Expanded District ties in favorably with and actually stimulates the remodeling plans that are currently underway for several downtown properties. Additionally, like any major new development, the anticipated Stockman Bank construction at 4<sup>th</sup> Avenue North and North Broadway will have a stimulating effect on the surrounding area. Specific examples of this are:

1. It will tie the CBD to the medical corridor located immediately to the north of the development.
2. The Billings Clinic has purchased the Underriner property to the north and west of the Library. The Clinic's plans at this point have not been determined; however, the development proposed in this amended Plan will enhance and encourage future development by this group.

3. The Framework Plan encourages the development of the 5<sup>th</sup> Avenue North corridor. An enhanced Library, as accomplished by projects described in this Plan, will provide an excellent entrance to this corridor.
4. Future redevelopment and revitalization of structures like the Northern Hotel and the Babcock Theatre Building are enabled by this district.
5. This expanded district may assist with the completion of and continued modernization of City owned downtown parking structures.

In conclusion, expansion of the North 27<sup>th</sup> Street Urban Renewal District to include the property described in this amended Plan will have a positive effect on the CBD and the City.

## AGENDA ITEM:



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

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**TITLE:** Second Reading of Ordinance Modifying the South Billings Boulevard Urban Renewal District Area

**DEPARTMENT:** Planning and Community Services Department

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

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**PROBLEM/ISSUE STATEMENT:** On November 24, 2008, City Council on first reading approved an ordinance modifying the South Billings Boulevard Urban Renewal District Area. The final step is for Council to adopt the ordinance on second reading.

At the November 24, 2008, City Council meeting, a public hearing was held to receive comments from the public in regards to modifying the Urban Renewal Plan. No members of the public testified in favor, and 2 members testified against approving the ordinance. The two members who spoke in opposition expressed concerns over properties being included within the district that may not fall under the determination of blight. Also, the speakers voiced concerns about funds from the district being used to pay for the Cabela's site or to specific parties rather than having the tax revenues benefit the entire city and school district. The City Council, on a 10-1 vote, approved the Ordinance modifying the South Billings Boulevard Urban Renewal District Area and Urban Renewal Plan on first reading.

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

- reject the ordinance
- modify the proposed boundary
- adopt the ordinance with the proposed boundary

**FINANCIAL IMPACT:** The financial impact is unknown. However, the 2008 taxable market value of the three properties to be included in the modified TIFD is approximately \$207,500. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus

there is no “loss” of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

**RECOMMENDATION**

Staff recommends that City Council adopt on second reading, the ordinance modifying the South Billings Boulevard Urban Renewal District.

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

**ATTACHMENTS**

A. Ordinance

**ATTACHMENT A**  
**ORDINANCE**

ORDINANCE NO. 08 \_\_\_\_\_

**AN ORDINANCE RELATING TO THE MODIFICATION OF THE  
SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; AND  
ADOPTING A MODIFIED URBAN RENEWAL PLAN, INCLUDING A  
TAX INCREMENT PROVISION.**

**Recitals:**

WHEREAS, this Council on November 24, 2008, conducted a public hearing on a proposal to modify an urban renewal area on specified property (as hereinafter defined, the "Property") to be designated "The South Billings Boulevard Urban Renewal Area", and to adopt a modified urban renewal plan, as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

WHEREAS, the Property is depicted on the attached Exhibit A and legally described on the attached Exhibit B (each of which is hereby incorporated herein and made a part hereof).

WHEREAS, opportunities have been presented to the City that make it desirable for the City to consider an urban renewal project within the District consisting of the acquisition of certain vacant or blighted properties, demolishing the blighted structures thereon, improving such properties with, landscaping, utilities, and other similar improvements, assembling such properties, and making the properties so improved available for private redevelopment in accordance with the Act.

WHEREAS, an urban renewal plan entitled the South Billings Boulevard Urban Renewal Plan is attached hereto as Exhibit C (which is hereby incorporated herein and made a part hereof) (the "Plan"). The Plan contains a tax increment provision and will govern the operation and administration of the District.

WHEREAS, the Plan has been reviewed and approved by the Yellowstone County Planning Board, as evidenced by the Board meeting minutes of November 12, 2008.

**Ordinance:**

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

1. **Findings.** This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

a. The Property presently contains structures and property that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses, the present condition of the Property substantially impairs the sound functioning of the South Billings Boulevard area of the City and its environs, is conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council finds that the Property is a blighted area within the meaning of Section 7-15-4210 of the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary in the interest of the public, health, safety, morals or welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant area.

- b. No housing element or structure is disturbed by this District making no relocation necessary;
- c. The modified Plan conforms to the Growth Policy or parts thereof of the City for the municipality as a whole;
- d. The modified Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;

2. Plan Adoption. The modified Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein.

3. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

PASSED by the City Council on first reading November 24, 2008.

PASSED, ADOPTED AND APPROVED on second reading December 8, 2008.

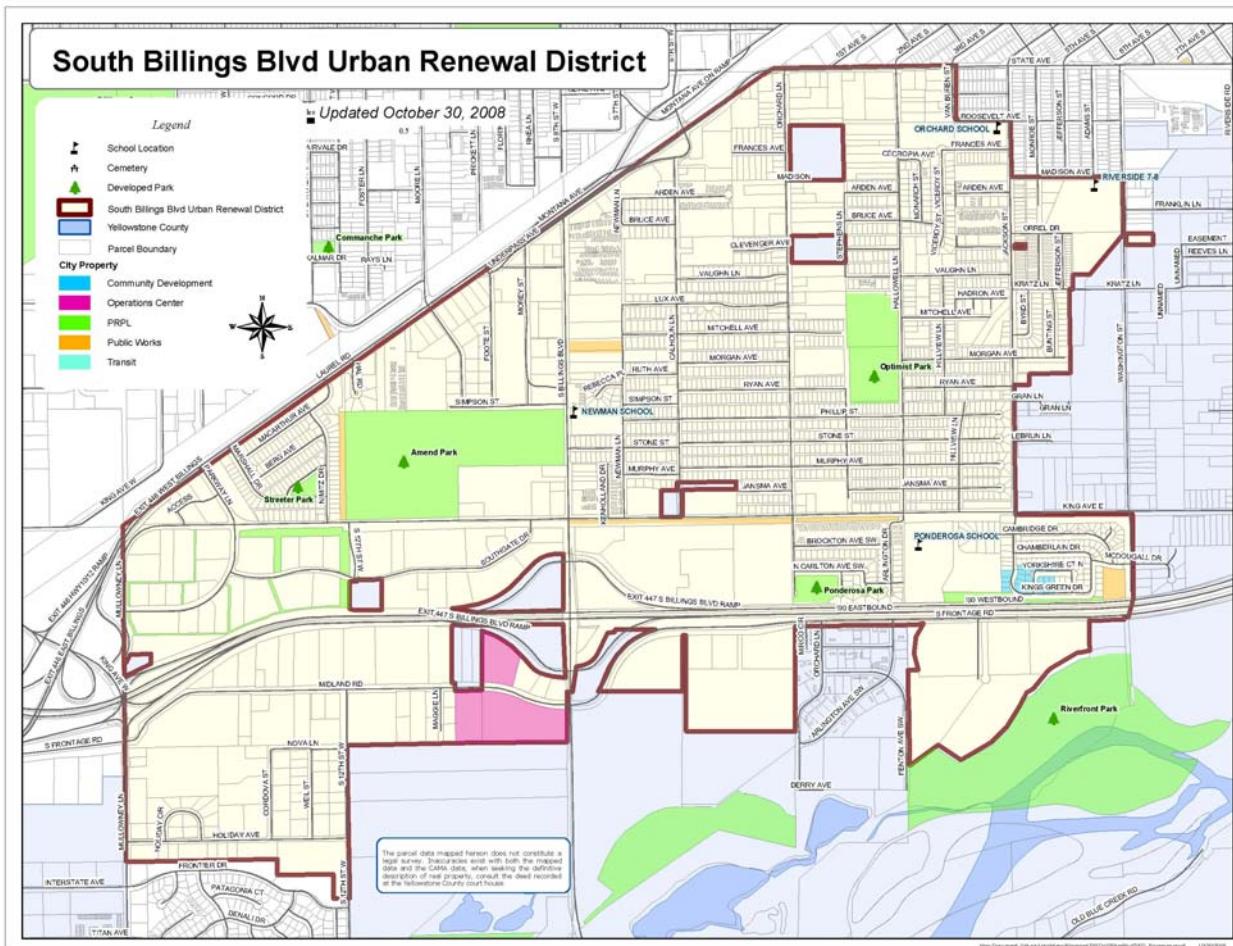
CITY OF BILLINGS:

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

ATTEST:

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

**EXHIBIT A**  
**MAP OF THE MODIFIED URBAN RENEWAL AREA**



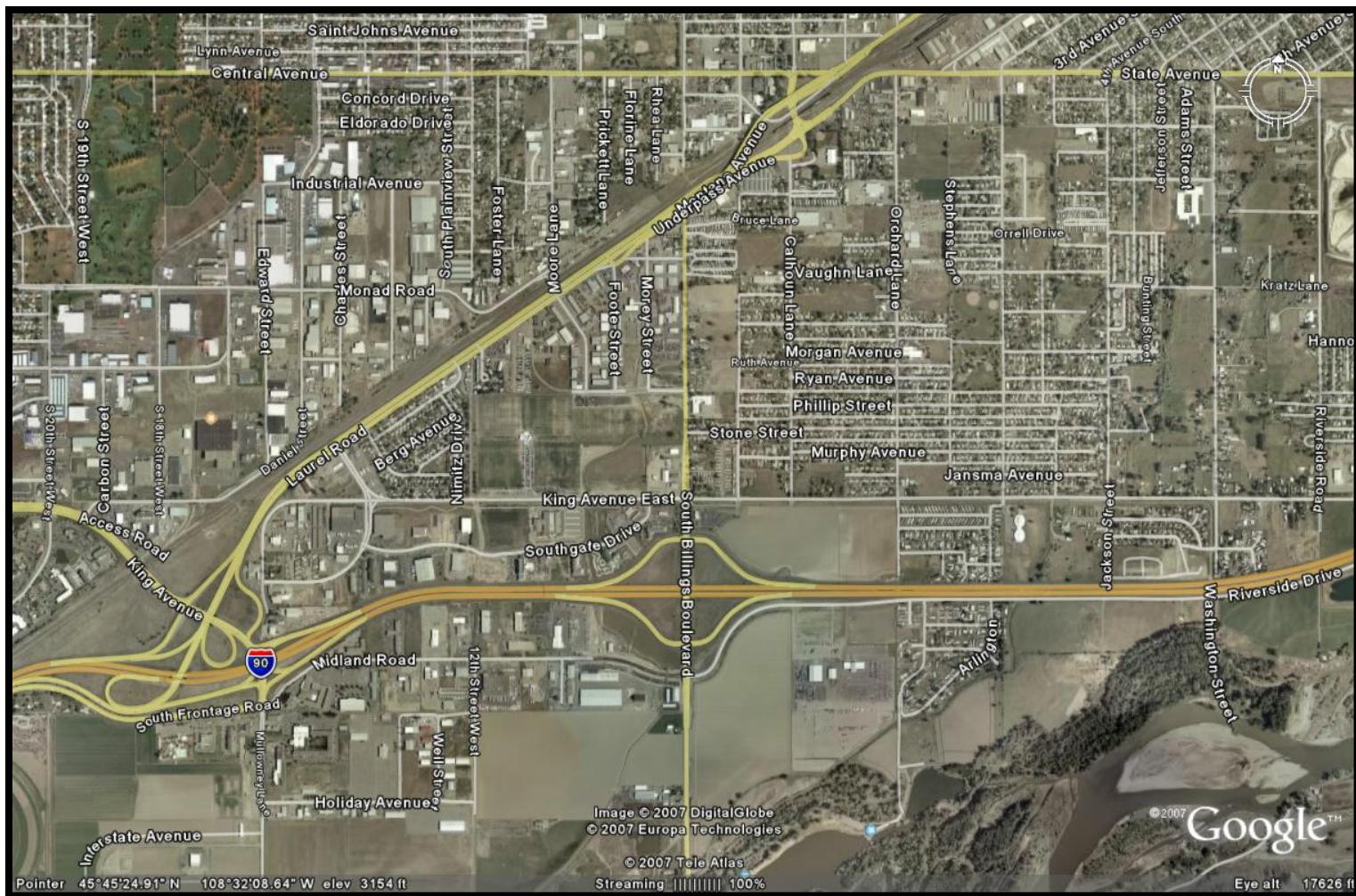
**EXHIBIT B**  
**LEGAL DESCRIPTION OF MODIFIED URBAN RENEWAL AREA**

*Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to the intersection of the centerline of Washington Street and the extension of the northern boundary of Lot 7, Willis Subdivision, extending east along said boundary to the eastern boundary of said lot, extending south along said boundary to the southern boundary of said lot, extending westerly along said boundary and its extension to the centerline of Washington Street, extending north to the existing City of Billings city limit boundary, extending southerly and westerly along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street and its projection across the Interstate 90 right-of-way, to its intersection with South Frontage Road, thence in a westerly direction following the south right-of-way boundary of the South Frontage Road to the intersection of an extension of the east boundary of Riverfront Business Park Subdivision , extending south along eastern boundary of said subdivision to the south boundary of said subdivision, extending southerly and westerly along said boundary to the west boundary of said subdivision, extending northerly and easterly along said boundary and its extension to the south right-of-way boundary of South Frontage Road, extending westerly to the northeast corner of Lot 1, Block 1, Willowbrook Subdivision, thence in a southerly and westerly direction following the existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of Block 4 of Weil Subdivision to the intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to its intersection with State Avenue, extending northeast and east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary.*

**EXHIBIT C**  
**MODIFIED SOUTH BILLINGS BOULEVARD URBAN RENEWAL PLAN**

# Modified Urban Renewal Plan

## South Billings Boulevard Urban Renewal Area



**Prepared by the Planning & Community Services Department**  
Adopted by the Billings City Council on November 24, 2008

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## Acknowledgements

### Participants and Stakeholders

#### City of Billings

- Ron Tussing, Mayor

#### City Council Members:

- Richard (Dick) Clark
- Mark Astle
- Peggy Denney Gaghen
- Jim Ronquillo
- Vince Ruegamer
- Chris “Shoots” Veis
- Ed Ulledalen
- Jani McCall
- Denis Pitman
- Larry Brewster

#### Planning and Community Services Department

#### Southwest Corridor Task Force Officers

- Tom Ruschkewicz, Chair
- Floyd Martin, Vice Chair
- Alan Ponrick, Treasurer
- Debbie Rowe, Secretary

#### Big Sky Economic Development Authority

#### Downtown Billings Partnership

#### Stakeholders

Alene Malloy	Casey Ryan	Edythe Davis
Allen Krenz	Charles Duenow	Eleanor Aukshun
Alta Dean	Cindy Linse	Elissa Linse
Arlene Bierwagen	Cindy Reid	Elsie Arntzen
Barbara Kipp	Clarence Perkins	Floyd Martin
Barbara Prewett	Clifton Burns	Gary Cooper
Barry Willson	Colleen Apps	Gary Tipton
Beth Kirkwood	Connie Wagner	Gene Frank
Betty Hofstad	Connie Wittman	Gerald Apps
Betty Kegley	Cris Ruckman	Gerogia Kembel
Beverly Bennetts	Dale Kiel	Glen Kibbee
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Brenda Estill	Dean Haley	Harriet Conklin
Brenda Ryan	Dean Miller	Ida Stuart
Brian Reid	Dennis Randall	Irene Aure
Bruce Burrows	Don Pett	James Lasater
Candice Reinschmidt	Dorothy Plouffe	Jay Hanson
Carl Howard	Doug Toomey	Jean Randall
Carol Atchley	Duane Bender	Jeannine Swoboda

## Stakeholders Continued

Carol Dale	Ed Gabbo	Jed Porter
Jerald Mohr	Kevin Nelson	Mary Ann Kraske
Jerry Driscoll	Larry Estill	Mary Duenow
Jimmie Frasch	Leonard Bierwagen	Maurice Muth
Joan Dosch	Linda Furlong	Mavis Schultz
JoAnne Mollet	Linda Hayworth	Mavis Wilkinson
Joe Morin	Linda Pettengill	Mel Maier
John Hoffmann	Linda Vansky	Michele Johnson
John Hurless	Loren Bice	Michelle Grasswick
Jon Gowan	Louis Plouffe	Mike Kenney
Jon Rupprecht	Lynn Toomey	Mike Vinton
Joyce Kenney	Marc Swoboda	Neal Armfield
Joyce Pirrie	Margaret Schantz	Nelda Reinschmidt
Judy Coles	Margo Allen	Paige Tipton
Judy Martin	Margo Smith	Partice Schuman
Julie Bender	Marian Lelidowicz	Pat Jensen
Karen Hergett	Marjorie Bishop	Pat Morin
Katherine Gowan	Marlene Anderson	Pat Newbury
Kathy Doty	Marlis Brodsack	Pat Perkins
Kathy Wilkinson	Marlis Bufford	Patsy Kahler
Kelly Handley	Martha Sheldon	Patty Nordlund
Kerri Tallerico	Marvin Forquer	Paul Hartman
Paul Hendershot	Rebekah Wales	Richard Deis
Richard Ruff	Rick Leuthold	Robbin Ostrum
Robert Neal	Robert Popelka	Robyn Rupprecht
Roger Mollett	Ron Hergett	Ron Kaneski
Ron Kirkwood	Ronald Schultz	Roy Linse
Sammy Handley	Sandra Fiscus	Shane Keehn
Shanna Fredrickson	Sharon Franks	Sharon Young

## **Section 1 - Introduction**

On May 12, 2008 the City of Billings adopted an ordinance creating the South Billings Boulevard Urban Renewal District (SBBURD) and established a Tax Increment Finance District. As part of this ordinance, an urban renewal plan and the boundaries of the tax increment finance district were adopted.

Public participation for preparing the urban renewal plan involved public meetings and participation with the City of Billings, the Southwest Corridor Neighborhood Task Force, residents and property owners, Downtown Billings Partnership, and Big Sky Economic Development Authority.

In October of 2008, the City began a modification of the SBBURD to include three additional properties. Two of these properties were recently annexed and contiguous to the existing SBBURD; therefore, the properties are now eligible to be included within the SBBURD. The third property is contiguous and requested an expansion of the district boundary. The modification of the urban renewal plan will reflect the addition of those properties.

The modification of the urban renewal plan will:

- Serve as a framework for the official urban renewal plan
- Fulfill Montana state law
- Update and define district boundaries
- Classify blight
- Set forth the protocol for its authorization, execution, and management
- Illustrate the development opportunities
- Document baseline taxable property values and potential areas for redevelopment

## **Section 2 – Definitions**

The following terms have the following meanings unless a different meaning is clearly indicated by the context:

1. “Agency” or “urban renewal agency” means a public agency created by Section 7-15-4232 of the Montana Code Annotated.
2. “Blighted area” means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:
  - a. The substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
  - b. Inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
  - c. Inappropriate or mixed uses of land or buildings;
  - d. High density of population and overcrowding;
  - e. Defective or inadequate street layout;
  - f. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
  - g. Excessive land coverage
  - h. Unsanitary or unsafe conditions;
  - i. Deterioration of site;

- j. Diversity of ownership;
- k. Tax or special assessment delinquency exceeding the fair value of the land;
- l. Defective or unusual conditions of title;
- m. Improper subdivision or obsolete platting;
- n. The existence of conditions that endanger life or property by fire or other causes; or
- o. Any combination of the factors listed in the subsection (2).

3. “Bonds” means any bonds, notes, or debentures (including refunding obligations) authorized to be issued pursuant to part 43 or this part.

4. “Clerk” means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

5. “Local governing body” means the council or other legislative body charged with governing the municipality.

6. “Mayor” means the chief executive of a city or town.

7. “Municipality” means any incorporated city or town in the state.

8. “Redevelopment” may include:
 

- a. acquisition of a blighted area or portion of the area;
- b. demolition and removal of buildings and improvements;
- c. installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and
- d. making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan. If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.

9. “Urban renewal area” means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

10. “Urban renewal plan” means a plan for one or more urban renewal areas or for an urban renewal project. The plan:
 

- a. must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and;
- b. must be sufficiently complete to indicate, on a yearly basis or otherwise:
  - i: any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;
  - ii: zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;
  - iii: land uses, maximum densities, building requirements; and
  - iv: the plan’s relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

### **Section 3 - Background**

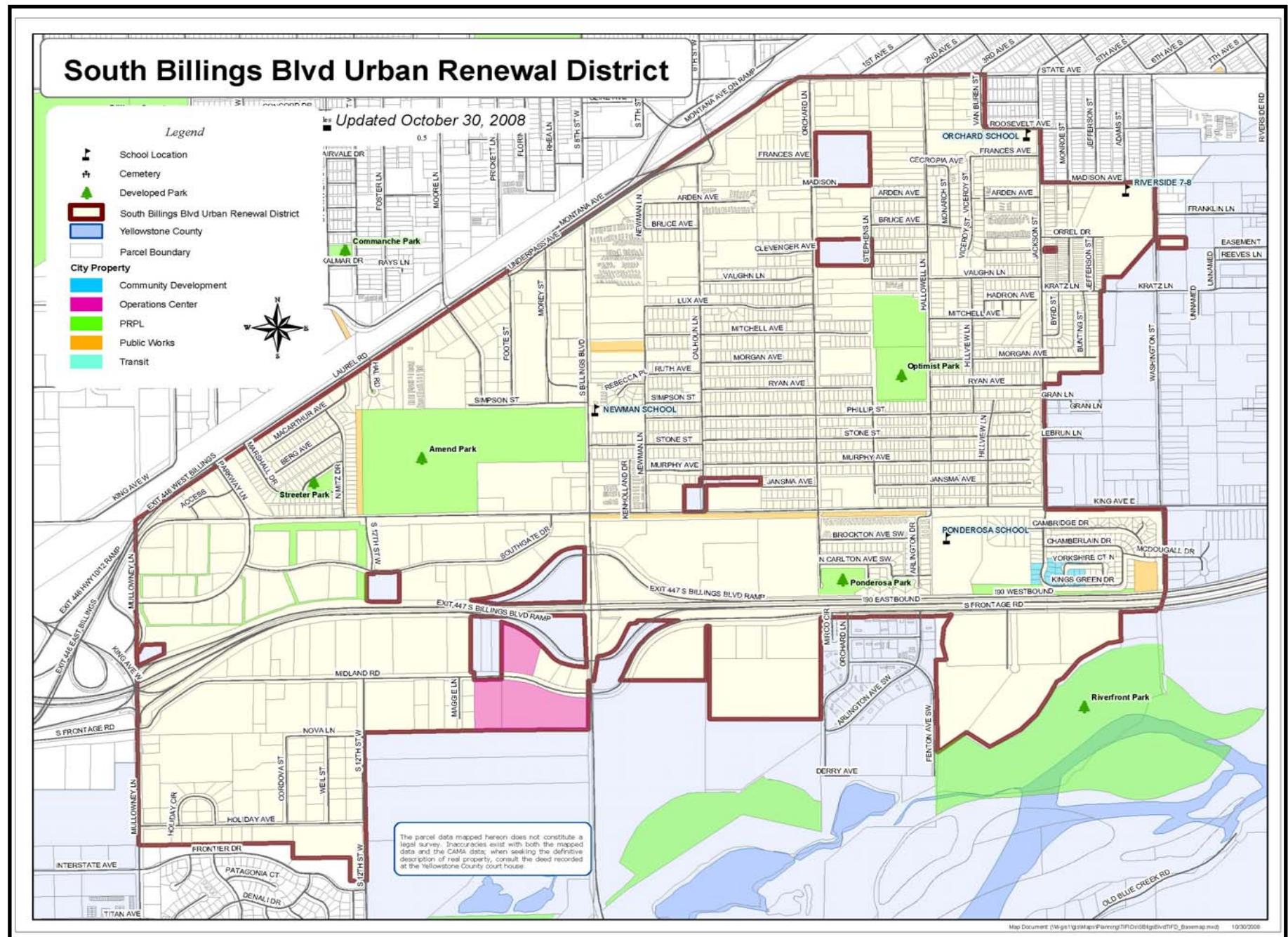
The South Billings Boulevard Urban Renewal District lies within city boundaries, is situated between major transportation routes, and stretches from the east side of the King Avenue Overpass east to Washington Street and from State Avenue South to the city limit boundaries. Located within the district is the I-90/94 Interstate and adjacent north is the major railway line through the city. Map 1 shows the boundaries of the SBBURD.

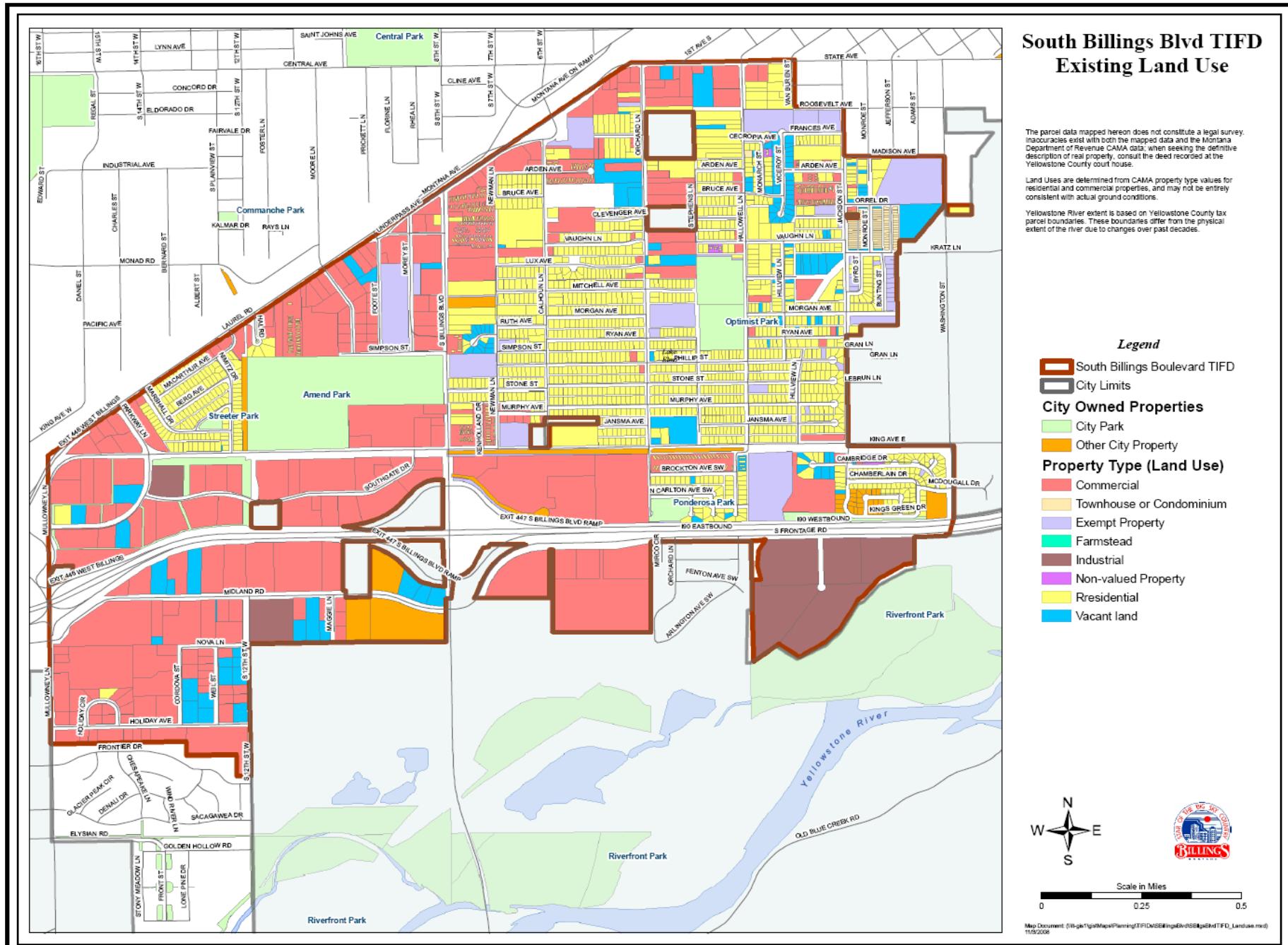
This district lies within the Southwest Corridor Neighborhood Task Force. The task force was created in the early 1990's in response to the growing problem with the roadway interchanges and associated issues. Since that time, the Task Force has become a more diverse body that handles many issues for the Southwest Billings community. Recent neighborhood issues include the re-opening of the Southgate Cop Shop and the development of Amend Park. Existing land uses and current zoning are shown on Maps 2 and 3.

A closer look at this neighborhood shows an established area of mixed residential and commercial uses. This area also includes four schools. Some areas include unimproved streets, no sidewalk, curbs or gutters. In addition, many areas are not served by municipal water and sewer or there is old, inadequate water and sewer infrastructure. Many of the concerns raised by residents within the district center around routes for children to get to school, including bus routes that run on unimproved streets and children walking down the street instead of sidewalks to get to school.

Due to the location, the South Billings Boulevard Urban Renewal District has a tremendous amount of potential to become a major economic force. With the interstate corridor located in this district, the potential exists for this area to become a major destination place for retail, goods and services, manufacturing, and entertainment.

## Map 1 – Proposed Boundaries of the District





## South Billings Blvd TIFD Zoning

The parcel data reported herein does not constitute a legal survey. The boundaries exist with respect to the zoning data and the Montana Department of Revenue CAMA data; when seeking the definitive description of real property, consult the deed recorded at the Yellowstone County court house.

Zoning classifications are updated and maintained by the City-County Planning Department and Yellowstone County GIS.

### Legend

- City Limits
- South Billings Boulevard TIFD

### City Owned Properties

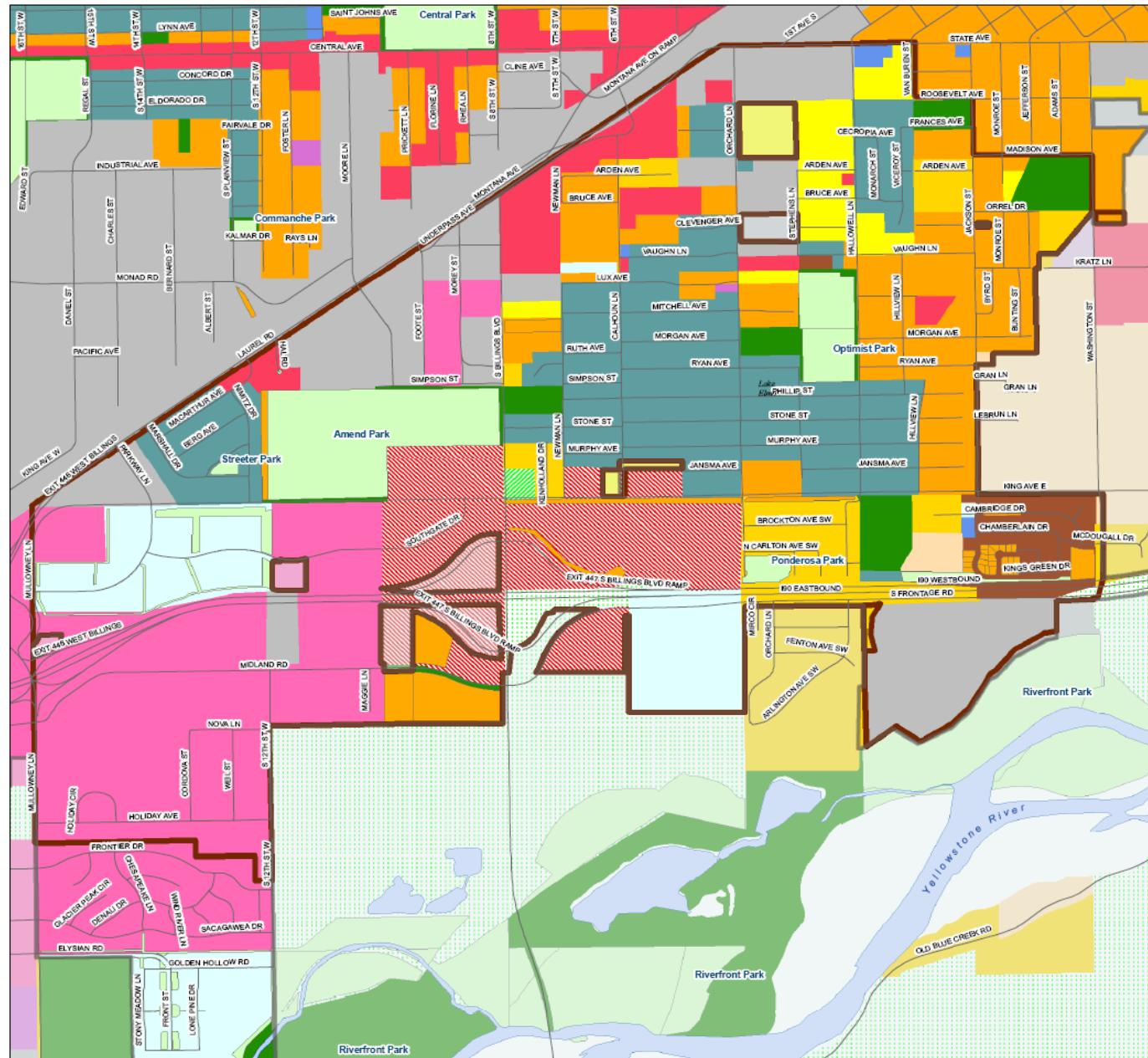
- City Park
- Other City Property

### Zoning Classification

- Agricultural Open
- Community Commercial
- Controlled Industrial
- Entryway General Commercial
- Entryway Light Commercial
- Highway Commercial
- Neighborhood Commercial
- Public
- Planned Unit Development
- Residential 15000
- Residential 5000
- Residential 6000
- Residential 7000
- Residential 9600
- Residential Multi-Family
- Residential Multi-Family Restricted
- Residential Manufactured Home



Scale in Miles  
0 0.25 0.5  
Map Document: (W:\gis\OriginalMap\Planning\TIF\Div\Billings\Blvd\SBldg\SBldgTIFD\_Zoning.mxd)  
11/3/2008



## **Section 4 – Description of Blight**

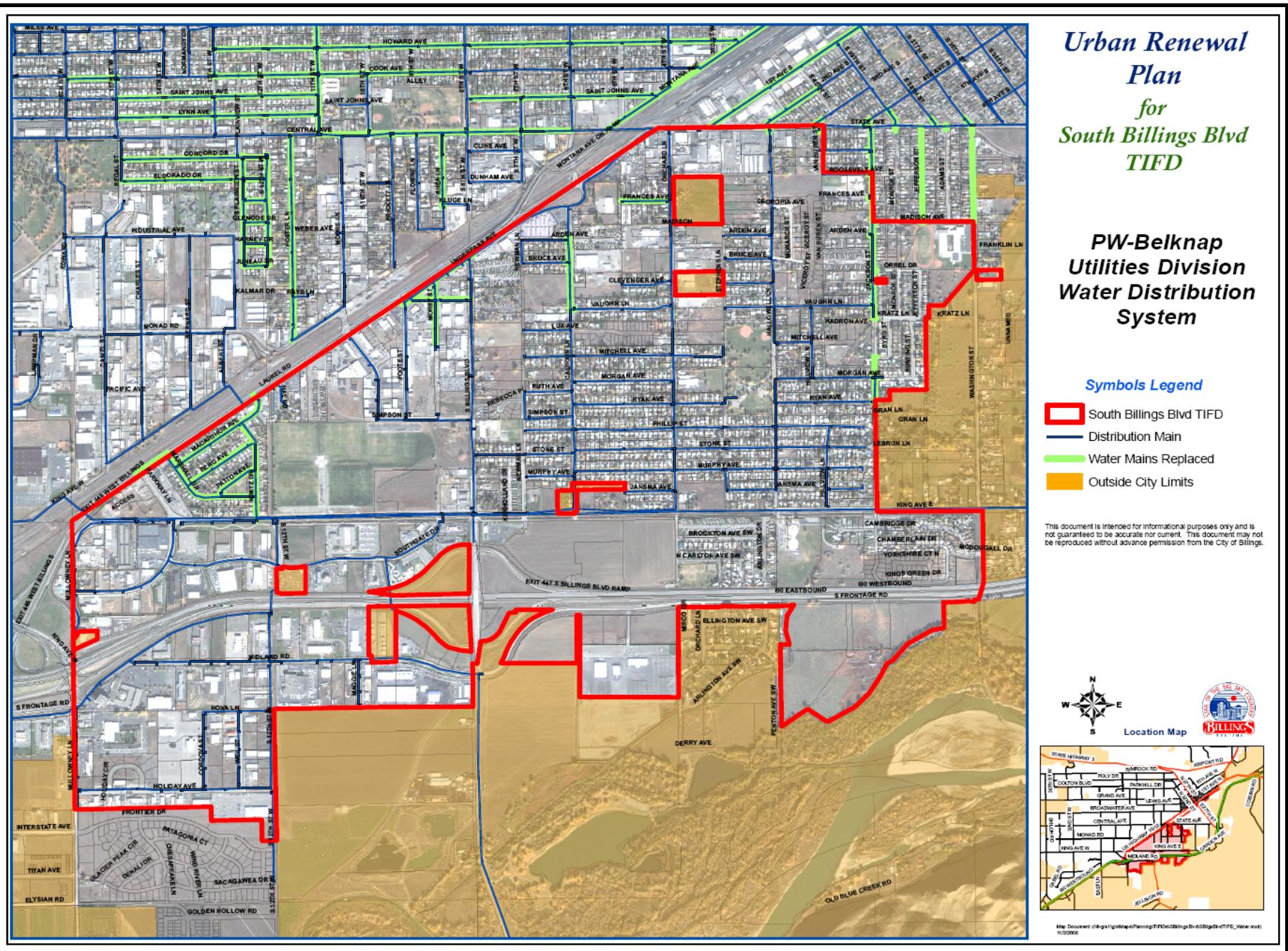
A requirement of Montana Annotated Code 2005 is to justify an urban renewal plan supported through a tax increment finance district through the determination of *blight*. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and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

- the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
- inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- inappropriate or mixed uses of land or buildings;
- high density of population and overcrowding;
- defective or inadequate street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- excessive land coverage;
- unsanitary or unsafe conditions;
- deterioration of site;
- diversity of ownership
- tax or special assessment delinquency exceeding the fair value of the land;
- defective or unusual conditions of title;
- improper subdivision or obsolete platting;
- the existence of conditions that endanger life or property by fire or other causes;
- any combination of the factors listed

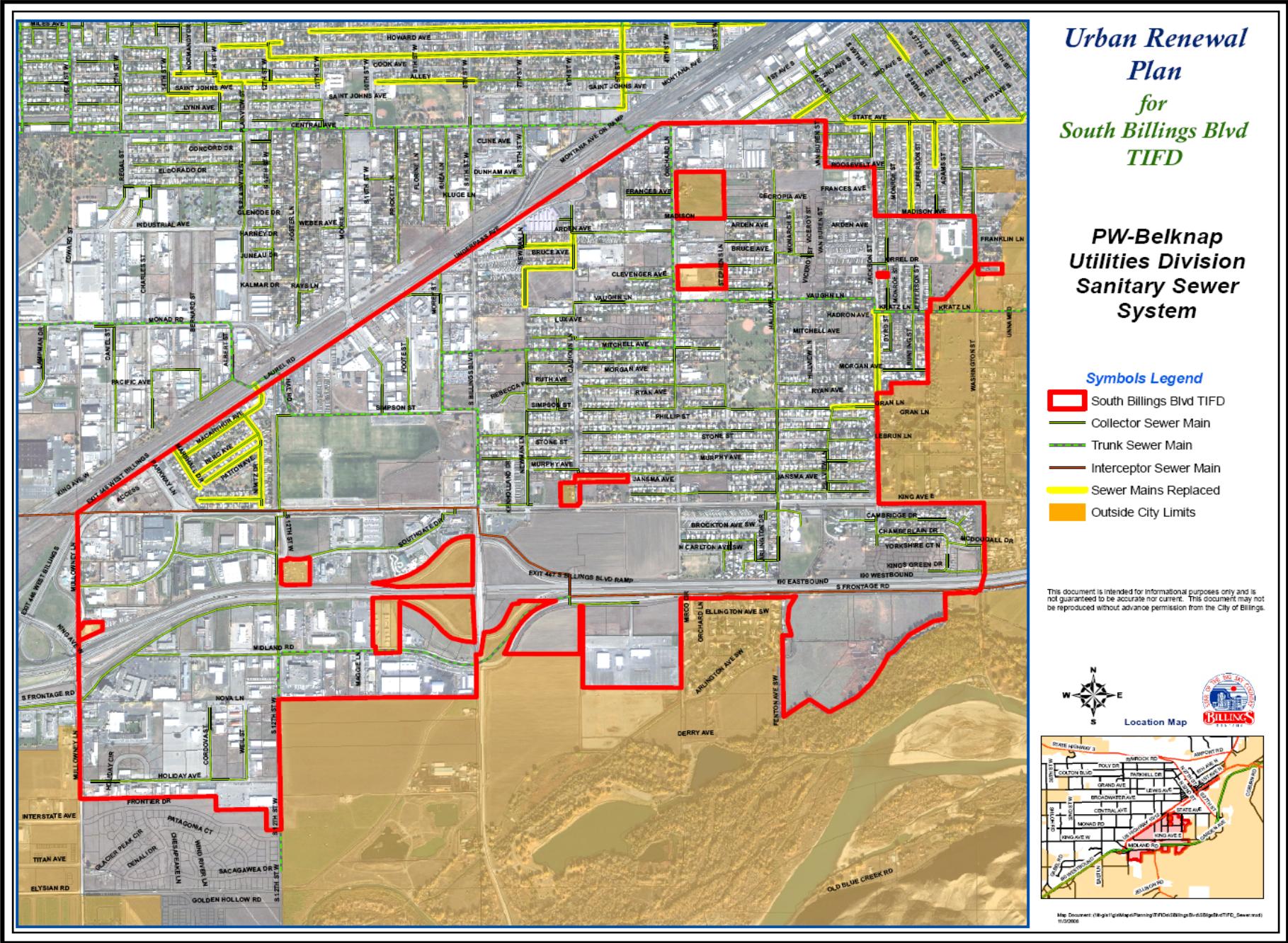
## **Section 5 – Summary of Blight**

The area in the proposed district contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, and significant infrastructure needs. Several of the commercial buildings in the district are vacant or deteriorated and need demolition. Many of the sidewalks are cracked or nonexistent, alleys are deteriorated, and, in general, much of the area is below city standards. In contrast to the above, there are certain properties within the district in good repair but included in the district to allow for a contiguous block of land within the district; and because pockets of revitalization cannot be sustained if areas of neglect and blight surround them. Over time, without continued managed urban renewal, even these success stories will once again decline in taxable value. Portions of the district fall into the blighted, neglected and under-utilized categories. Maps 4 and 5 show the current infrastructure conditions within the district.

Map 4 – Water Distribution System



Map 5 – Sanitary Sewer System



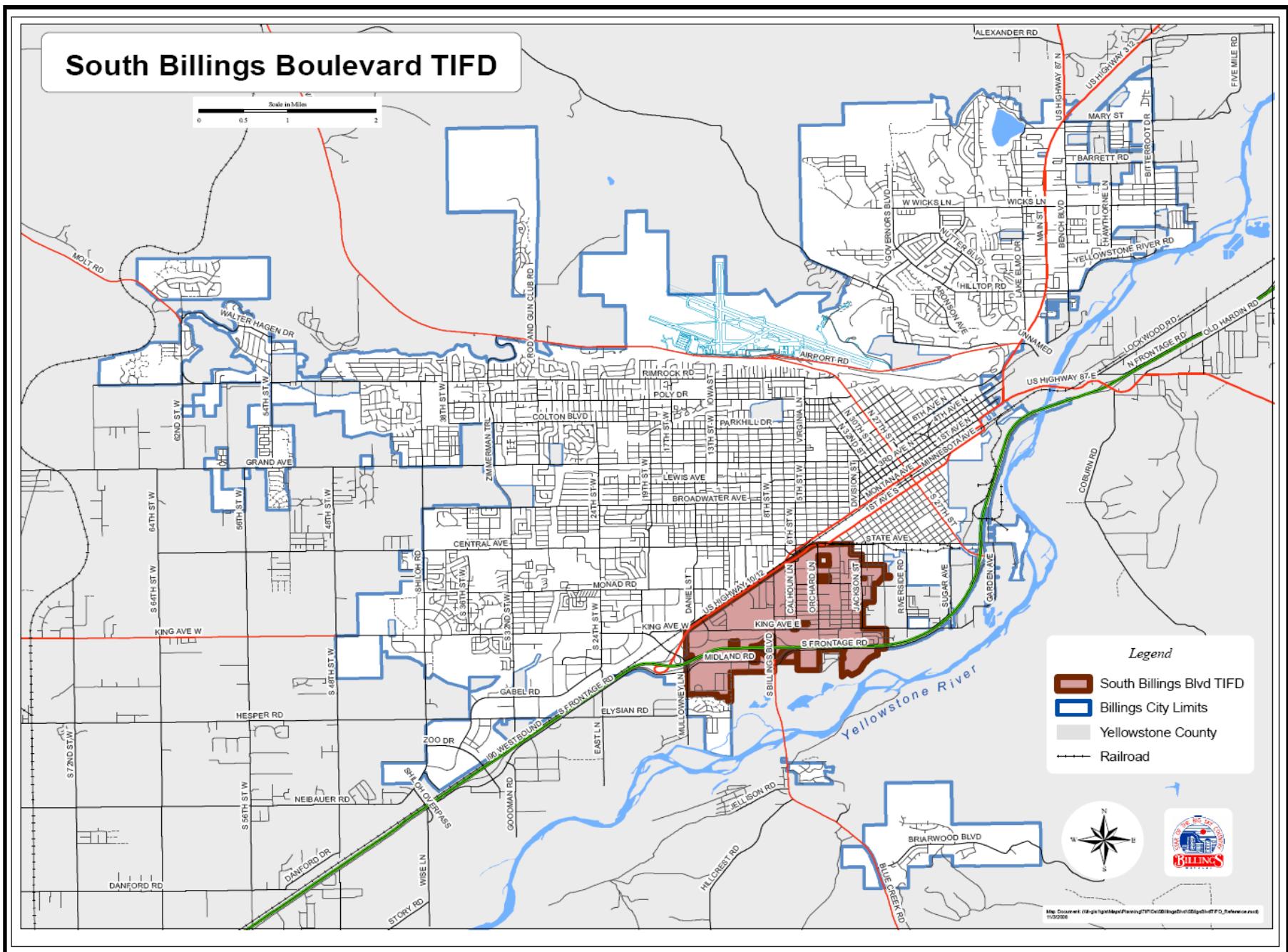
## **Section 6 – The Site and Its Relationship to the City**

The South Billings Boulevard TIFD and Urban Renewal District is located in the south center region of the City of Billings. Bordered by the Interstate Corridor, the main railroad line and principal transportation routes, it is an area where economic development opportunities are numerous. In addition, numerous service, commercial, industrial, parks and recreation and housing choices are located within the district. Map 6 shows the TIFD boundary in relationship to the rest of the city.

## **Section 7 – Description of the District Boundary**

Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to the intersection of the centerline of Washington Street and the extension of the northern boundary of Lot 7, Willis Subdivision, extending east along said boundary to the eastern boundary of said lot, extending south along said boundary to the southern boundary of said lot, extending westerly along said boundary and its extension to the centerline of Washington Street, extending north to the existing City of Billings city limit boundary, extending southerly and westerly along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street and its projection across the Interstate 90 right-of-way, to its intersection with South Frontage Road, thence in a westerly direction following the south right-of-way boundary of the South Frontage Road to the intersection of an extension of the east boundary of Riverfront Business Park Subdivision, extending south along eastern boundary of said subdivision to the south boundary of said subdivision, extending southerly and westerly along said boundary to the west boundary of said subdivision, extending northerly and easterly along said boundary and its extension to the south right-of-way boundary of South Frontage Road, extending westerly to the northeast corner of Lot 1, Block 1, Willowbrook Subdivision, thence in a southerly and westerly direction following the existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of Block 4 of Weil Subdivision to the intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to its intersection with State Avenue, extending northeast and east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary.

### Map 6 – Tax Increment Finance District in Relationship to City



## **Section 8 – Planning Process**

### **Stakeholder and Community Participation**

The initial concept of developing a Tax Increment Finance District and an Urban Renewal Plan in the South Billings Boulevard area was brought forward by the City of Billings, Big Sky Economic Development Authority and the Downtown Billings Partnership. After discussions and meetings with the Southwest Corridor Task Force, it was determined that a steering committee would be established to move forward with the development of an Urban Renewal Plan for the creation of the South Billings Boulevard TIF District. After discussions with the participating members, it was apparent that direct communication with business owners, landowners and public participation was critical for the project to be a success. Two public meetings were scheduled to open dialogue on the proposed Urban Renewal Plan and TIF District process, and to set goals and objectives of the project. It also became clear that a grass-roots effort conducted and led by the property owners themselves was needed.

In October of 2008, the city began an urban renewal plan modification process to include 3 additional properties to the district pursuant to Montana Code section 7-15-4221. All property owners affected by the urban renewal plan modification were notified by mail of the public hearing on the Urban Renewal Plan held November 24, 2008.

### **Urban Renewal Plan**

The Urban Renewal Plan is the tool that governs what public improvements are needed and desired within the district. Through public meetings and meetings at the Southwest Corridor Task Force, neighborhood needs and projects were identified.

With input from property owners and the identification of goals and objectives, the City of Billings moved forward with the completion of the Urban Renewal Plan. A draft was reviewed with the property owners and the Southwest Corridor Task Force prior to review by the City of Billings City Council.

The high level of transparency and frequency of meetings has ensured that a large local constituency has been involved, and as many stakeholders as possible participate and approve of the plan.

### **Eminent Domain**

In no case shall eminent domain be used as a tool in the redevelopment of the South Billings Boulevard Urban Renewal District except as a last resort in the case of needed public infrastructure improvements and/or rights-of way.

### **Residential Relocation Plan**

If a residential structure requires relocation as a result of right-of-way acquisition and/or a public infrastructure construction project, that is partially or fully funded with federal assistance (Housing and Urban Development, Federal Highway, etc), the City of Billings shall abide by the Uniform Relocation Assistance Act.

### **Planning, City Administration and Legal Review**

During the many meetings with the local property owners and the Southwest Neighborhood Task Force, it was decided to begin the process of finalizing the urban renewal plan and take it to the city council before the end of 2007. The urban renewal plan was sent to the City Legal Department and City Administration for review and comments. Comments and recommendations from both City Legal and City Administration were taken into account and incorporated into this plan.

The plan was also sent to the Yellowstone County Board of Planning for its review and recommendations regarding the plan's conformity to the 2003 Growth Policy Plan. A recommendation of approval was passed by the Planning Board on October 23, 2007. The plan was then presented at a City Council Work Session on November 5, 2007. The public hearing and first reading of the Ordinance was held by the City Council on November 26, 2007 with the second reading and final adoption on December 10, 2007.

The modification to the SBBURD plan began in October of 2008. On November 10, 2008, the Billings City Council passed a Resolution Declaring Blight, Intent to Modify the District, and Setting a Public Hearing Date. The Yellowstone County Board of Planning reviewed the modified Urban Renewal Plan and made recommendations to the City Council with regard to the plan's conformity with the 2003 Growth Policy on November 12, 2008. The affected property owners were notified of the plan's modification and public hearing notices were published on November 6, 2008 and November 13, 2008 for the first reading and public hearing on the modification of the plan.

### **Financial Programming**

The City of Billings to ensure a sound and adequate financial program to fund projects has concluded the following: For every \$1 million dollars of increased market value, assuming Class 4 (commercial) property @ 3.01 % taxable rate and a mill levy of \$.55, it is anticipated that an increment value of \$14,500 will be generated yearly.

### **Modification of SBBURD Plan**

The SBBURD may be modified at any time by the City Council as necessary to eliminate and prevent the development or spread of blighted areas, and encourage urban rehabilitation. The process for plan modification shall follow the procedures set forth in 7-15-4212 through 7-15-4219 MCA, with respect to initial adoption of this plan. For purposes of urban renewal district boundary changes only, the notice of public hearing, as described in 7-15-4215 MCA, may only be mailed to those owners whose properties are situated within the area of expansion or contraction of the Urban Renewal District boundaries. In cases where the boundaries are not

modified, but the contents of the urban renewal plan are substantially modified, notification shall be mailed to all owners of property within the Urban Renewal District area.

## **Section 9 - Housing (Conservation of existing affordable housing)**

Housing is an important element to the district. Providing the district with housing opportunities is vital to the sustainability of the district. With housing opportunities, individuals and families can live and work within the district. This provides a dual benefit, first the commute to work for individuals will be reduced and second the businesses within the district will have a local work force to draw from.

Current housing in the area consists of single-family, duplex, and multi-family units and include rental units and owner-occupied. Also, manufactured home parks are located within the district. The main concentration of housing is located in the central and eastern portion of the district. During the summer of 2007, the Planning Division developed a map of existing housing conditions within the City of Billings. The information was generated through the Yellowstone County CAMA (Computer Assisted Mass Appraisal) detail system. Properties were queried that were labeled as either unsound, poor, fair or incomplete. This resulted in approximately 2,390 properties within the city limits that met this query. Out of the 2,390, 562 or 24% were located in the SBBURD. Of the 562 residential structures, 7 were rated as unsound, 184 as poor and 371 as fair.

Future housing for the district is encouraged to be developed for the goal of ownership. When rental housing occurs, such facilities shall be developed in connection with mixed-uses and managed by a company that will provide active policy measures to eliminate crime and blight. Approval of multi-family housing will require either a Zone Change or Special Review request that requires approval by the City Council.

Housing in the area shall also be designed to cater to a variety of income demographics as well. All current affordable housing needs in the district shall be accounted for through the development of owned and rental housing that remain within the district. Housing for mid- and higher level income groups shall also be encouraged. To avoid creation of substandard housing or encourage further blight, mixed-use housing developments shall incorporate all income demographics within the same project in a safe and positive way.

## **Section 10 - Transportation and Pedestrian Circulation**

The transportation and circulation situation in the TIF district should be a major focus during redevelopment of the area. Traffic patterns and access issues can affect the function and livability of a community or neighborhood.

During discussions and public meetings, it was apparent the current street conditions and lack of adequate transportation and pedestrian facilities was a high priority for property owners. The majority of traffic that comes into the district is either pass-through or destination traffic to the major transportation routes located within the district. In addition, the lack of sidewalk and pedestrian routes is a concern with the number of schools and parks located in the district. Safe

and attractive pedestrian amenities, such as sidewalks, boulevards, crosswalks, improved signage and shelters or benches would greatly enhance pedestrian experiences.

## **Section 11 - Public Services and Facilities**

Currently there are four public schools located within the district; three elementary schools and one middle school. A concern mentioned many times by residents was the lack of sidewalks for school children to get to school. It was observed that many students are walking directly in the street due to a lack of sidewalks. The creation of a Safe Routes to School Plan should be created to address this concern. In addition to schools, there are several developed parks located in the district. Amend Park provides a multi-use facility for soccer and rugby as well as picnic sites and shelters. Optimist Park has a variety of amenities that include basketball courts, jogging trails, playground, softball and baseball fields and picnic areas. Ponderosa Park provides horseshoe courts, playground, softball and baseball fields and soccer and rugby fields. The City of Billings also provides services to the district with MET Transit and the Southgate Cop Shop. Currently two MET routes serve the neighborhood; the Central and the Southside Loop. Both of these routes travel to and from the Stewart Park and Downtown Transfer Centers. The Southgate Cop Shop was reopened in May of 2007 and operates on Monday, Wednesday and Friday from 4 – 7 p.m. The station is a neighborhood police contact center currently staffed by volunteers. Residents are encouraged to use the Cop Shop to report crimes, suspicious activities or obtain information and assistance.

## **Section 12 - Infrastructure and Utilities**

The district has infrastructure and utilities deficiencies that need to be addressed prior to any large influx of redevelopment or new building construction. Water and sewer conditions need to be addressed due to out of date installations, inadequate lines, or increases in impacts to existing structures.

The storm water drainage situation is particularly troublesome as many areas either have inadequate storm water facilities or none at all.

By upgrading infrastructure and utilities, therein lies the opportunity for more attractive development opportunities.

## **Section 13 - Urban Renewal Projects**

The Urban Renewal Projects were identified by property owners within the district during the public meetings, the Southwest Corridor Task Force meetings and delivery through comments mailed to the Planning Division. It is the City's intent to use Tax Increment to finance public improvement projects. In addition to TIF financing, the City may also use Special Improvement District financing as well as grant funding through but not limited to, the Community Development Block Grant Program. By combining funding opportunities, more projects will be able to be completed.

Project: Traffic calming measures on Calhoun and Orchard Streets.

Project: Street improvements on Newman Drive between Simpson and Stone Streets, install curb and gutter.

Project: Pave, curb and gutter on Simpson from Calhoun to Newman.

Project: Widen, curb and gutter (where needed) and repave Calhoun the full length.

Project: Widen, curb and gutter (where needed) and repave Orchard the full length.

Project: Widen, curb and gutter (where needed) and repave Hallowell the full length.

Project: Widen, curb and gutter and install bike path or sidewalk the full length of King Avenue East from Parkway to Riverside Drive.

Project: Safety to school plan.

Project: Crosswalks within the district (where needed).

Project: Sidewalks within the district (where needed).

Project: Street lights along King Avenue East.

Project: Street widening at Optimist Park.

Project: 4100 Block of Vaughn Street – sidewalk.

Project: 4100 Block of Vaughn – public sewer needed, drainfields failing.

Project: Bike/pedestrian routes along King Avenue.

Project: Sewer improvements on South Billings Boulevard from Mitchell north to Underpass Road. Sewer line currently runs east under adjoining residential development.

Project: Repave Morgan Avenue between Hallowell Lane and Jackson Street include sidewalks, street lights.

Project: Install public sewer along Morgan Avenue that includes storm water improvements.

Project: More bike trails throughout neighborhood.

Project: Park improvements for Little League and soccer leagues.

Project: Community Resource Officer within the neighborhood to steer kids away from drugs and promote a safe neighborhood.

Project: Pave Newman Lane behind Newman Elementary School.

Project: Storm water improvement at the Northeast corner of Phillip and Hallowell.

Project: Need school zone signage at Newman Elementary School.

Project: Installation and improvement of municipal water and sewer lines within the district.

Project: Installation of sidewalks on Jackson Street (where needed).

Project: Stop light at South Billings Boulevard and Midland Road.

Project: Neighborhood wide traffic study for traffic calming strategies.

Project: Assess adequacy of fire hydrants throughout the neighborhood and add fire hydrants as needed.

Project: Traffic light at State Avenue and Hallowell Lane.

Project: Continuation of street lights on Jackson to King Avenue.

In addition to property owner identification of projects for the district, the City of Billings Public Works Department has several ongoing or future infrastructure projects scheduled. These projects include the following:

- Orchard Lane – Replacement of a water main in Orchard Lane from just south of King Avenue East to Underpass Avenue. This project is scheduled for the spring or fall of 2009.
- Calhoun Lane – Replacement of water main in Calhoun Lane from King Avenue East to Underpass Avenue. This project could be scheduled for 2010 or 2011.
- Jackson Street - Jackson Street is split into two phases. The first phase will provide sidewalk and drive approaches on the west side of Jackson Street from King Avenue East to Ryan Avenue. The second phase will provide drive approaches, sidewalk, curb and gutter, and ADA ramps along both sides of Jackson Street from State Avenue to Kratz Lane. These phases are programmed in the FY 2009 Budget
- Newman Lane and Bruce Avenue – Sanitary sewer rehabilitation work was completed in the TIF district in 2007 at Newman Lane and Bruce Avenue.

## **Section 14 – Identified Projects in Relationship to the Goals and Objectives Respective to the City-County Growth Policy Plan**

One of the requirements of Montana's Urban Renewal Law (Title 7, Chapter 15, Parts 42 and 43, MCA) is that the urban renewal plan must conform to the community's growth policy. The

Yellowstone County and City of Billings 2003 Growth Policy Plan (“Growth Policy”) refers to and promotes economic development and urban renewal in a variety of ways. The preceding list of urban renewal goals listed in Section 13 are relevant to the goals identified in the Growth Policy in the following elements:

**Land Use Element:**

**Goal:** Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns.

**Objectives:** Preserve neighborhood integrity. Empower neighborhood groups.

**Goal:** New developments that are sensitive to and compatible with the character of adjacent city neighborhoods.

**Objectives:** Maintain a high quality of life for new and existing residents. Reduce conflict between neighbors. Improve the appearance of land uses.

**Goal:** Contiguous development focused in and around existing population centers separated by open space.

**Objectives:** Ensure the continued functionality of natural systems. Use city resources in a cost effective manner. Create attractive communities.

**Goal:** Affordable housing for all income levels.

**Objectives:** Improve the quality of life of low income people. Preserve and rehabilitate the existing supply of affordable housing. Promote social equity and diversity. Create more affordable housing and work towards new and replacement housing.

**Goal:** More housing and business choices within each neighborhood.

**Objectives:** Improve quality of life. Encourage more live-work environments. Reduce commuting and subsequent drain on natural resources. Develop more self-contained neighborhoods.

**Economic Development:**

**Goal:** Coordinated economic development efforts that target business recruitment, retention and expansion.

**Objectives:** Improve the quality of life for residents. Strengthen area economy. Create living-wage jobs.

**Goal:** Attractive and accessible communities.

**Objectives:** Encourage new businesses to locate in Billings and gateway areas. Reduce travel time through town. Convey a business friendly attitude. Increase the visual appeal of our highways and railroad corridors.

**Aesthetics:**

**Goal:** Visually appealing communities.

**Objectives:** Improve the image of the community. Instill pride in the community. Improve the quality of life for residents.

Transportation:

Goal: City streets maintained at safe standards.

Objectives: Equitable share the cost of maintaining roadways. Timely response to public needs.

Goal: Well maintained network of safe and interconnected sidewalks.

Objectives: Improved public safety. Promote healthy lifestyle. Reduce traffic.

Public Services:

Goal: Sanitary and safe properties.

Objectives: Provide helpful and responsive public services. Improve the community image. Increase property values.

Goal: Adaptive reuse of vacant structures.

Objectives: Conserve resources. Preserve historic or cultural landmarks. Take advantage of economic development opportunities. Preserve neighborhood integrity.

Open Space and Recreation:

Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness.

Objectives: Develop non-motorized connections between residential neighborhoods and work places. Provide convenient access to bicycle and pedestrian facilities. Improve quality of life for residents.

## **Section 15 – Neighborhood Planning**

Another tool that is expected to be used in the future to address current conditions within the district and the identification of neighborhood needs will be accomplished through the creation of a Neighborhood Plan. A neighborhood plan may be drafted for this area of Billings in the next three or four years based on available funding. The purpose of the neighborhood plan is to assist residents, governing agencies, planners and developers in making the right choices when determining future growth patterns and development within the neighborhood. The plan also encourages local government, developers and businesses to discuss future land use decisions with neighborhood residents and business owners prior to the proposed land use change. The neighborhood plan is not a regulatory document; instead, it is adopted by the City Council and the Board of County Commissioners as an implementation strategy and is part of the City of Billings and Yellowstone County Growth Policy as an advisory document. The neighborhood plan would be implemented through the City's Capital Improvement Program Planning and by the Southwest Corridor Neighborhood Task Force.

The plan would include general and specific recommendations that reflect the values of the community, encourage sound decision-making, and empower people to take action. The plan

also includes realistic implementation strategies that involve both private and public actions, as well as regulatory decisions.

## **Section 16 – Conclusion**

The South Billings Boulevard Urban Renewal District has a tremendous amount of potential to become a viable and reliable economic engine. The district has a great potential to become a destination place where Billings residents, business owners, and visitors will purposefully go to conduct business, have goods and services manufactured and enjoy recreation and leisure activities. At the end of the life of this TIFD program it is the hope of all involved that this area of Billings will be a wonderful place to live, work and play far into the future.

AGENDA ITEM:

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

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**TITLE:** Amended Tract 1, Certificate of Survey 1815, Cottonwood Park Property

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The Amended Plat of Tract 1, Certificate of Survey 1815 is being presented to the City Council for approval. This exempt plat is being presented to Council, as the City owns the property involved in the boundary line adjustment and requires the Mayor's signature on the plat. The result of this plat will be the reconfiguration of two parcels. Proposed Tract 1-A will contain approximately 27 acres and Tract 1-B will be a 10 acre remainder parcel located on the northwestern portion of the property for the school district to purchase. The plat would also grant a 49-foot wide access and utility easement along the entire northern border of the property for access to the remainder (future school property) and will aide in the future extension and widening of Poly Drive when the parcel is developed. In addition to the access easement, there is an extra 10-feet of right-of-way along 54<sup>th</sup> Street West to be dedicated with this plat in order to make the right-of-way consistent along this street. The subject property is zoned Public and is on the northwest corner of the intersection of 54<sup>th</sup> Street West and Colton Boulevard. The property is the future location of Cottonwood Park and a possible school site.

**FINANCIAL IMPACT:** There should be no direct financial impacts to the city as a result of this plat.

**RECOMMENDATION**

Staff recommends that the City Council approve the exempt amended plat of Tract 1 of Certificate of Survey 1815.

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

## AGENDA ITEM:



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

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,063,285.19 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 7, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

## AGENDA ITEM:



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

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$268,798.67 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 14, 2008, are on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

## AGENDA ITEM:



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

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

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Big Sky Economic Development Authority (BSEDA) is constructing a new building at 3333 Hesper Road for occupancy by the General Electric Capital Corporation, GE Capital Solutions (GE). BSEDA/GE has applied for a property tax abatement that would apply to the increased valuation of the property and new structure, estimated to be almost \$9.3 million. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria are identical to those that are established by the State and codified at 15-24-1401 MCA. The Council tabled this item at its November 10<sup>th</sup> meeting because a public notice provision that is unique to the industrial tax incentive was not met. That error has been corrected. The City Council must conduct a Public Hearing to consider testimony regarding the incentive and then consider a Resolution that grants, conditionally grants or denies the tax incentive.

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

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

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

50% X 85% X 3.01% X 410 mills = \$48,950). The City's present share of the abated tax is about 30% of the total.

## **RECOMMENDATION**

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

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

### ATTACHMENTS

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

## **INTRODUCTION**

The Big Sky Economic Development Authority (BSEDA) is constructing a new building at 3333 Hesper Road for occupancy by the General Electric Capital Corporation, GE Capital Solutions (GE). BSEDA/GE has applied for a property tax abatement that would apply to the increased valuation of the property and new structure, estimated to be almost \$9.3 million. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria are identical to those that are established by the State and codified at 15-24-1401 MCA. The Council tabled this item at its November 10<sup>th</sup> meeting because a public notice provision that is unique to the industrial tax incentive was not met. That error has been corrected. The City Council must conduct a Public Hearing to consider testimony regarding the incentive and then consider a Resolution that grants, conditionally grants or denies the tax incentive.

## **BACKGROUND**

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

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

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

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

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

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

## **ALTERNATIVES**

The City Council may:

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

## **RECOMMENDATION**

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

## **ATTACHMENTS**

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

**ATTACHMENT A**  
**GE TAX ABATEMENT APPLICATION**

## APPLICATION FORM FOR NEW OR EXPANDING INDUSTRY TAX REDUCTION

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

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

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

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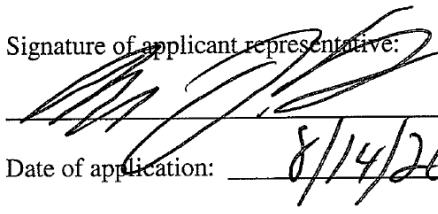
20. City/County Health Department certifies that if a non-public water or sewer system is used (i.e., septic tank and water well) that system conforms to acceptable standard, or

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

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

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

27. Signature of applicant representative:

 (Mark Chernawskas, CS Global Operations)

28. Date of application:

8/14/2008

Recommendation by the Big Sky Economic Development Authority:

Approve

Deny

Action by Board of County Commissioners:

Approve

Deny

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

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

**ATTACHMENT B**  
**RESOLUTION APPROVING TAX ABATEMENT**

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

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

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

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

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

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

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

Tax Code #A29208, Lot 6, Block 1 Gabel Subdivision, 2<sup>nd</sup> Filing

PASSED AND APPROVED by the City Council this 8th day of December, 2008.

**CITY OF BILLINGS**

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

ATTEST:

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

## **ATTACHMENT C**

### **RESOLUTION 05-18376**

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

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

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

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

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

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

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

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

**PASSED AND APPROVED** by the City Council this 12<sup>th</sup> day of December, 2005.

CITY OF BILLINGS

By: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

## EXHIBIT A

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

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

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

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

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

## AGENDA ITEM:



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

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

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** In 2007, Dalco Industries, DBA Teton Steel, built new office buildings and installed equipment at the intersection of Gabel Road and S. 29<sup>th</sup> Street. Teton Steel applied for property tax abatement on the new facilities, having an estimated value of \$1,500,000. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria comply with state law codified at 15-24-1401 MCA. The Council considered this item at its November 10<sup>th</sup> meeting and tabled it until December 8 because a public notice requirement that is unique to industrial incentives was not met. The error has been corrected. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants or conditionally grants the tax incentive. If approved, the incentive applies only to the mills levied by the local high school and elementary school districts and the City of Billings. Teton Steel has applied or is expected to apply to Yellowstone County for county tax abatement.

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

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

**FINANCIAL IMPACT:** If the City Council approves the incentive, 50% of the improvement value will be exempt from City and school taxes for five (5) years following building permit issuance. In years 6-10, 10% of the taxable value will be added to the previous year's total and the full value will be taxable in the 10th and subsequent years. Predicting the amount of tax "loss" from the incentive is difficult for many reasons, including that the Dept. of Revenue will assign a market value that may have little relationship to the owners' stated market value, the long term effect of property reappraisal is unknown and the number of mills applied to the taxable value may change dramatically over a span of ten years. However, assuming that none

of those factors will influence the financial impact to the City, the estimated annual incentive is \$7,870 for each of the first five (5) years ( $\$1,500,000 \times 50\% \times 85\% \times 3.01\% \times 410 \text{ mills} = \$7,867$ ). The incentive will decline each year thereafter by approximately 20% of the previous year's abated tax. Since this building permit was issued in 2007, the abatement period may be less than 10 years. The City's mills presently represent about 30% of the estimated total.

### **RECOMMENDATION**

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

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

### **ATTACHMENTS**

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

## **INTRODUCTION**

In 2007, Dalco Industries, DBA Teton Steel, built new office buildings and installed equipment at the intersection of Gabel Road and S. 29<sup>th</sup> Street. Teton Steel applied for property tax abatement on the new facilities, having an estimated value of \$1,500,000. In 2005, the City Council adopted Resolution No. 05-18376 establishing tax incentives for new and expanding industries. The process and approval criteria comply with state law codified at 15-24-1401 MCA. The Council considered this item at its November 10<sup>th</sup> meeting and tabled it until December 8 because a public notice requirement that is unique to industrial incentives was not met. The error has been corrected. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants or conditionally grants the tax incentive. If approved, the incentive applies only to the mills levied by the local high school and elementary school districts and the City of Billings. Teton Steel has applied or is expected to apply to Yellowstone County for county tax abatement.

## **BACKGROUND**

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

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

## **RECOMMENDATION**

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

## **ATTACHMENTS**

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

**ATTACHMENT A**  
**TETON STEEL TAX INCENTIVE APPLICATION**

**APPLICATION FORM FOR NEW OR EXPANDING INDUSTRY  
TAX REDUCTION**

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

1. Name of Business: DALCO INDUSTRIES DBA TETON STEEL
2.  New Business: Start of construction (date) APRIL 2007  
End of construction (date) JUNE 2007
3.  Expanding Business: Start of construction (date) \_\_\_\_\_  
End of construction (date) \_\_\_\_\_
4. Address of business: NOT ASSIGNED YET  
Actual location of business: SE CORNER OF 29TH ST. W. / GABEL RD.  
Tax Code: C1007 C11009  
Within city limits of Billings  YES  NO
5. Person representing business and responsible for application:  
Name: TAYLOR RANKER Title: GENERAL MANAGER  
Address: 500B PAIGE ST., CASPER, WY 82604 Telephone: 307-234-0715
6. Amount of capital investment for new or expanded industry in Billings / Yellowstone County: \$ 1,500,000.00 (Attach detailed costs of new construction or expansion including land, materials, labor, equipment, and dates of construction. The County Commissioners and/or City Council may request further information, such as financial statements, business references, or other documents, prior to acting on this request.):  
\_\_\_\_\_  
\_\_\_\_\_
7. Describe the project relating to the capital investment: PROJECT WILL INCLUDE TWO NEW OFFICE BUILDINGS, WATER AND SEWER MAIN EXTENSIONS, REINFORCING STEEL FABRICATION EQUIPMENT AND OVERHEAD CRANES.  
THE SITE IS ON LAND LEASED FROM TONY CREEK LLC

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

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

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

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

12. Describe job skills required for all new employees, both full and part time: REINFORCING STEEL ESTIMATOR AND DETAILER,  
RECEPTIONIST AND GENERAL CLERICAL,  
STEEL FABRICATION SHOP WORKERS, TRUCK DRIVER

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

14. Economic impact of capital investment: WILL PROVIDE APPROXIMATELY 10 FULL TIME  
JOBS PAYING JOBS AND WILL PROVIDE  
AN INCREASE IN THE TAX BASE FOR  
THE CITY OF BILLINGS.

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15. Planned hiring schedule: UPON COMPLETION OF FACILITY

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16. List other property tax benefits business currently receives or has applied for: None

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

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

19. City/County Planning Department or Laurel-Yellowstone City/County Planning Board certifies that the business conforms with zoning regulations: BUSINESS CONFORMS  
IN CONTROLLED INDUSTRIAL ZONING REGULATIONS  
SPECIAL REVIEW FOR FACILITY WAS APPROVED IN SEPT. 2006

20. City/County Health Department certifies that if a non-public water or sewer system is used (i.e., septic tank and water well) that system conforms to acceptable standard, or will do so on the completion of construction: WATER AND SEWER ARE PUBLIC

21. County Treasure's Office certifies that City and County taxes have been paid in full or otherwise satisfied: TAXES CURRENT THROUGH 2006

22. A non-refundable fee of \$500.00 must accompany this application to cover the cost of application administration. Make checks payable to the Big Sky Economic Development Authority.

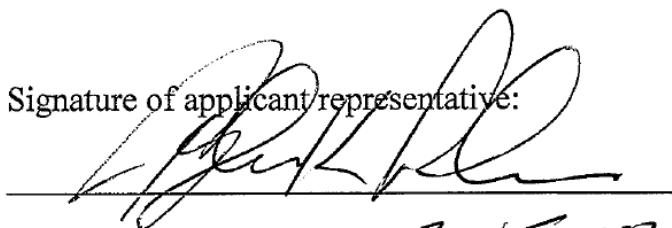
23. All items on this application must be addressed. Upon completion and accompanied by the application fee, the original can be submitted to the Big Sky Economic Development Authority, Attn: Brandon Berger, 222 North 32nd Street, Suite 200, Billings, MT 59101 (Telephone 256-6871). If application is complete, a duly advertised public hearing will be scheduled, after which the County Commissioners and/or City Council will decide whether to approve, conditionally approve or deny the application. The applicant, or a representative of the applicant, must appear in person at the public hearing.

24. The application to Department of Revenue form, which is part of the application, must also be completed and signed by the applicant.

25. The Board of County Commissioners and/or City Council may review this applicant's tax incentive at any time and terminate further reductions at its discretion if it finds the provisions of County Resolution 94-92, City Resolutions or State Code are not being met.

26. In order for this incentive program to apply to the applicant's current year taxes, the application must be approved by the City Council and/or the County Commissioners by the second Wednesday in May of the year in which the reduction is desired.

27. Signature of applicant/representative:



28. Date of application: 2-15-07

Recommendation by the Big Sky Economic Development Authority:

Approve Deny

Action by Board of County Commissioners:

Approve Deny

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

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

APPLICATION TO DEPARTMENT OF REVENUE

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

To: Yellowstone County Assessor

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

Legal description of affected property: LOT 3, BLOCK 5, TIERRA IND. PARK SUBDIVISION,  
Date Construction Permit Issued: APRIL 2001, SECTION 13, TIC, R2SE  
(If no permit required, specify date when certificate in lieu of building permit was issued) YELLOWSTONE COUNTY

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

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

Was held at the Yellowstone County Courthouse at \_\_\_\_\_ am on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

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

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

The qualifying property consists of the following:

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

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

Type of business:

Total Gross Sales or Receipts \_\_\_\_\_  
Sales or Receipts from outside of Montana \_\_\_\_\_  
Percentage out of state \_\_\_\_\_

(Attach Income Statement for last complete year of operation)

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

Signature: \_\_\_\_\_  
(Owner/Agent)

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

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

Chairman

Commissioner

Commissioner

**ATTACHMENT B**

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

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

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

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

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

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

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

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

PASSED AND APPROVED by the City Council this 8<sup>th</sup> day of December, 2008.

CITY OF BILLINGS

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

ATTEST:

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

## **ATTACHMENT C**

### **RESOLUTION 05-18376**

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

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

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

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

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

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

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

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

**PASSED AND APPROVED** by the City Council this 12<sup>th</sup> day of December, 2005.

CITY OF BILLINGS

By: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

## AGENDA ITEM:



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

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**TITLE:** Public Hearing and First Reading Ordinance - Revisions to Boards and Commissions Ordinances

**DEPARTMENT:** City Attorney/City Administrator

**PRESENTED BY:** Brent Brooks, City Attorney; Bonnie Sutherland, Assistant City Attorney  
Christina F. Volek, City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City Council directed staff to standardize the qualifications for members of advisory boards, committees, and commissions. In the process we expanded the scope to review all relevant sections of the Code and to provide better information and direction to board members. At three separate work sessions, staff presented recommendations for improvements, which included ordinance amendments, an updated application form, and an advisory board handbook. The attached ordinance provides consistency for all boards in the areas of rules of procedure, sets consistent qualifications for members and the method of appointment, and relocates all except zoning boards into Article 2-500 of the Code.

**ALTERNATIVES ANALYZED:** At three work sessions we discussed various alternatives to provide consistency on appointment and procedural issues for all advisory boards, commissions and committees. The input from the Mayor and Council is incorporated into the attached ordinance.

**FINANCIAL IMPACT:** There is no financial impact to the City by approving or disapproving the attached ordinance.

**RECOMMENDATION**

Staff recommends that Council consider and adopt the attached ordinance, which provides consistency in procedural areas for advisory boards, commissions and committees and reorganizes ordinances into one Article of the Code.

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

**Attachment:**

- A. Boards and Commissions Ordinance

**INTRODUCTION**

The City Council passed an initiative for Staff to work on standardizing the qualifications for all boards and commissions. We were to recommend changes to both the qualifications and application form. Over the course of two work sessions, that was accomplished, but the review expanded. At the third work session on April 7, 2008, we presented (1) an improved application form, (2) a comprehensive review of proposed ordinance amendments setting consistent qualifications, regulations, and rules of procedure for all of the advisory boards, commissions, and committees, which is the basis for the attached ordinance, and (3) an Advisory Board Handbook that will help board members understand the City organization and their duties. City Administrator Volek also provided a summary of the department head and chairperson feedback on current boards and commissions.

**PROCEDURAL HISTORY**

Currently the various boards and commissions are scattered throughout our ordinance book. We propose placing all boards and commissions, with the exception of those that are zoning related, in one section of the Code at Article 2-500. We also propose consistency among the boards with regard to membership qualifications, rules of procedure, and additional regulations. Attached is the proposed ordinance. Some of the areas covered are:

***Consistent General Provisions***

The first portion of the ordinance sets common features for all advisory boards, commissions, and committees, such as: qualifications for membership, appointment procedure, terms of office, staff liaison, rules of procedure, meeting regulations, etc. Because these are all covered in the introductory general section, other parts of the Code have been streamlined so that these basics are not repeated in each division that addresses a specific board.

***Rules of Procedure***

Each advisory board, commission, and committee now sets its own rules of procedure, form of minutes, agendas, organization, and order of business. Staff recommends that standard rules of procedure apply to all. The proposed rules are similar to those set for the Council. Some boards have already developed their own rules and bylaws. The ordinance would make them void and require Council approval to deviate from the rules set by ordinance. (Section 2-507).

***Appointment, vacancy, and limitations on authority***

The terms of members of a board or commission run on a calendar year basis, unless specifically set otherwise in the Billings Code, statute or interlocal agreement. Section 2-505, BMCC.

Vacancies that occur during the term are only filled during the months of July or January, unless the Mayor determines that the vacancy must be filled sooner due to lack of a quorum. We propose in new section 2-504 that vacancies be filled within 60 days. We also propose setting limits on the authority of advisory board members. (Section 2-508).

*Liaisons to the various committees and subcommittees*

Most advisory boards, commissions and committees have a staff person that works with it, but there is no formal assignment. We propose requiring a staff liaison by ordinance and setting certain duties. (Section 2-506).

*Removal from boards and committees*

Section 2-503, BMCC, states that a member of any “board or commission” who fails to attend 3 consecutive scheduled meetings without being excused shall no longer be considered a member and the position may be declared vacant, unless otherwise provided by statute or interlocal agreement. The proposed ordinance provides additional forfeiture language and makes it clear that board members serve and may be removed at the discretion of a two-thirds vote of the Council. Section 2-503.1, 2-503.2.

*Relocating all boards into one article of the code*

Ordinances on each advisory board are now spread throughout the Code in several different chapters. They are now moved to Article 2-500, with the exception of zoning related boards. Article 2-500 begins with the common features and regulations for all advisory boards, commissions, and committees and then moves into alphabetically arranged specific divisions for each permanent advisory board.

## **ALTERNATIVES ANALYSIS**

### **Advantages of New Ordinance**

The proposed ordinance provides consistency and structure for all advisory boards, commissions and committees. The Council’s permanent advisory boards will now be located together in one article of the Code.

### **Disadvantage to Enacting Ordinance**

There is no disadvantage to enacting the proposed ordinance.

## **STAKEHOLDERS**

The stakeholders are the Mayor and City Council, who appoint advisory board members; affected staff, who are the liaisons to the boards and committees or who interact with the board members; and, the advisory board members themselves. The department heads, staff liaisons, advisory board chairpersons, and advisory board members reviewed and approved the substance of the attached ordinance. All will benefit from improved structure and direction on procedures to be followed.

## **RECOMMENDATION**

Staff recommends that Council adopt the attached ordinance upon first and second readings. If the ordinance is passed, then staff proposes implementing the new application form and Advisory Board Handbook, drafts of which were given to the Council at previous work sessions.

## **ATTACHMENTS**

- A. Boards and Commissions Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY REVISING SECTIONS 2-502, 2-503, 2-504, 2-505, 2-507, 4-201, 4-202, 4-204, 5-201, 5-202, 5-204, 9-201, 9-202, 9-204, 15-708, 15-709, 15-711, 2-721, 2-722, 2-724, 2-725, 2-726, 2-524, 2-525, 2-527, 16-201 THROUGH 16-204, 24-1101, 24-1102, 24-1104, 2-511, 2-512, 2-513, 2-515, 2-536, 2-537, 2-539, 24-201, 24-202, 24-204, AND BY ADDING SECTIONS TO BE NUMBERED 2-501, 2-501.1, 2-501.2, 2-503.1, 2-503.2, 2-506, 2-508, 2-509, 2-510, AND REPEALING SECTIONS 2-506, 4-203, 9-203, 15-710, 2-723, 2-526, 24-1103, 2-514, 2-538, AND 24-203; ESTABLISHING QUALIFICATIONS FOR APPOINTMENT; CLARIFYING TYPES OF BOARDS, APPOINTMENT, FORFEITURE, STAFF LIAISON, SETTING SPECIFIC RULES OF PROCEDURE, LIMITING POWERS OF MEMBERS, AND MOVING VARIOUS BOARDS AND COMMISSIONS' ORDINANCES TO ARTICLE 2-500.

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

**Section 1.** That the Billings, Montana, City Code be amended by adding new sections, amending other sections, repealing some sections, and generally revising content and numbering of most ordinances related to boards, commissions and committees, as follows:

## **ARTICLE 2-500. BOARDS, COMMISSIONS AND COMMITTEES**

### **DIVISION 1. GENERALLY**

#### **Sec. 2-501 Permanent advisory boards, ad hoc council advisory committees or statutory boards**

There are three (3) different types of advisory boards, committees or commissions. (1) Permanent advisory boards are established by ordinance. (Article 2-500, BMCC; Billings City Charter, Art. V). (2) Ad hoc council advisory committees (Section 2-224, BMCC) are created by council resolution, have a specific purpose, and have a limited duration. (3) Statutory boards are required by state or federal law. All boards, committees or commissions shall be governed by Article 2-500 except as otherwise provided by Charter, this Code, statute or interlocal agreement.

#### **Sec. 2-501.1 Qualifications for Membership**

All members of advisory boards, commissions or committees must hold the following qualifications, unless otherwise required by law:

- (1) resident of the City of Billings for at least 2 years;
- (2) qualified voter of the City of Billings;
- (3) resident of the state of Montana for at least 3 years; and
- (4) 18 years of age or older.

### **Sec. 2-501.2. Appointment**

Members of advisory boards, commissions, and committees shall be appointed by the Mayor with the consent of the City Council, unless otherwise provided by federal or state law, or interlocal agreement.

- (1) Notice of a vacancy shall be published thirty (30) days prior to appointment.
- (2) Members of boards, commissions, or committees shall hold no elected city office unless required by federal or state law, or interlocal agreement.

### **Sec. 2-502 Compensation, expenses.**

The members of advisory boards, committees, and commissions of the city shall serve without compensation, but shall be reimbursed their necessary expenses with prior authorization of the Mayor and City Council.

### **Sec. 2-503. Loss of membership.**

If a member of any board, committee or commission of this city fails to attend three (3) consecutive scheduled meetings of such board, committee or commission without being excused from such attendance, such person shall no longer be considered a member of such board, committee or commission, and the position may be declared vacant by the mayor, unless otherwise provided by statute or interlocal agreement.

#### **Sec. 2-503.1. Forfeiture of office.**

(a) The position of advisory board, commission, or committee member is forfeited and becomes vacant for lack of qualification upon the occurrence of any of the following events prior to the expiration of the term:

- (1) The death of the member;
- (2) The member's resignation;
- (3) The member's conviction of a felony;
- (4) The member's ceasing to be a resident of the city; or
- (5) The decision of a competent legal tribunal declaring void the member's appointment.

#### **Sec. 2-503.2. Removal of any or all members.**

Members of advisory boards, commissions and committees serve at the discretion of the Mayor and City Council. Upon two-thirds vote of the Mayor and City Council, any or all members of an advisory board, commission or committee may be removed.

**Sec. 2-504. Filling unexpired term.**

Vacancies occurring for any reason during the member's term shall be filled within sixty (60) days in the same manner as the original appointment. The appointment shall be for the remainder of the unexpired term. Upon loss of membership on a board or commission by default, the unexpired term shall be filled in the same manner as other vacancies.

**Sec. 2-505. Terms of office.**

Except as otherwise provided by Charter, this Code; statute or interlocal agreement: The terms of members of a permanent advisory board or commission will run on a calendar year basis. During the transition to the calendar year terms, any member whose term expires prior to December 31 will holdover in office at least until December 31 or until his position is filled by appointment, whichever is later. All board and commission appointees after the initial appointments shall be appointed for four (4) years. Each member shall be limited to two (2) consecutive four (4) year terms.

**Sec. 2-506. Staff liaison.**

Each permanent advisory board shall have a designated staff liaison appointed by the City Administrator. The staff liaison shall be responsible for preparing the meeting agenda, advertising the meeting, taking minutes, and handling any communications between the board, the Mayor or City Council, or the City Administrator.

**Sec. 2-506. Vacancies.**

Vacancies occurring during the term shall be filled during the months of July or January, unless the mayor determines that the vacancy must be filled sooner due to lack of a quorum. The member shall be appointed for the balance of the term.

**Sec. 2-507. Meetings, rules and procedure.**

All boards, and commissions, and committees shall comply with this Article and the following rules of procedure. A board, commission or committee shall not establish its own bylaws or any other rules without the prior written approval of the City Council, unless otherwise required by law. All bylaws or rules of procedure existing on the effective date of this ordinance are void and shall be replaced with the rules of procedure set by ordinance. meet regularly as determined by the board or commission and at other times at the call of the presiding officer, secretary or city administrator. The board or commission shall establish its rules of procedure and the number constituting a quorum.

**A. Election of chairperson and vice-chairperson; presiding officer.**

At the first meeting of every calendar year, a chairperson and vice-chairperson shall be elected by a majority of members present at the meeting. The chairperson shall be the presiding officer and shall be responsible for recognizing those who would like to speak and generally enforcing a productive decorum. In the absence of the chairperson, the vice-chairperson shall be the presiding officer.

## **B. Location; calling to order; quorum.**

The advisory boards, commissions or committees shall hold regular meetings for the transaction of city business as required. A majority of the meetings held by each board, commission or committee in any calendar year shall be located in a public facility owned by a governmental entity. Any regular meeting may be canceled or rescheduled by majority vote of the advisory board, commission or committee at any time prior to the last business day before the scheduled meeting. The presiding officer or any three (3) members may request that a special meeting be called. The request shall be submitted to the staff liaison who shall prepare the agenda and notice in writing, which notice shall be delivered or mailed to all members. All meetings shall be held in accordance with the public notice and public meeting laws.

At any regular or special advisory board, commission or committee meeting, the presiding officer shall call the roll, and the names of all members present shall be recorded in the Minutes. The presiding officer shall announce whether or not a quorum is present. Unless otherwise set by law, a simple majority of the members of the advisory board, commission or committee duly appointed and qualified is necessary to constitute a quorum. A meeting must have a quorum present in order to conduct business. Members must be physically present for meetings, and no proxy votes shall be allowed. Members shall vote on all agenda items unless prohibited by law.

## **C. Meetings open to the public.**

All meetings of the boards, commissions, committees, subcommittees or other entities created by the city council shall be open to the public if required by state law. "Meeting" means the convening of a quorum of the membership of the boards, commissions or committees created by the city council, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the city council has supervision, control, jurisdiction, or advisory power.

A public comment period shall be provided at each meeting. The presiding officer may set time limits for the comments.

## **D. Proposed agenda.**

- (a) The presiding officer through the staff liaison shall prepare a draft regular meeting agenda and shall provide the same to the members in accordance with an agreed process designed to provide them with sufficient time and opportunity to review the draft agenda and request changes therein prior to its finalization.
- (b) The staff liaison shall prepare the final agenda of business to be considered at the regular meeting and shall transmit copies of the same to the members on or before close of business on the Monday preceding the regular meeting at which the matters are to be considered. Agenda items may only be removed from the agenda by the consent of a three-fourths majority of the members present.
- (c) Only matters that appear on the agenda shall be considered by the members at its regular meeting. Matters that are ministerial or deemed not of significant interest to the public may be added by consent of a three-fourths (3/4) majority of all members present.

## **E. Order of business for regular meetings.**

At all regular meetings of the advisory boards, commissions and committees, the order of business shall be as follows:

- (1) Call to Order;
- (2) Roll call;
- (3) Correcting, if necessary, and approving minutes of the last meeting or meetings;
- (4) Staff liaison reports;
- (5) Public comment on the published agenda or non-agenda items. Speakers are requested to indicate their desire to speak and which item or items on which they wish to offer comment by filling in their name, address and agenda item number or subject on a prepared "sign in" sheet. The length of time a speaker may speak is limited and is set by the presiding officer.
- (6) Agenda. The agenda constitutes an individually numbered listing of business items either:
  - a. Requiring a public hearing prior to action,
  - b. Giving a special informational presentation, or
  - c. Any item that requires separate time by the board, commission or committee to fully discuss the matter prior to rendering a decision.
- (7) Adjourn.

The order of business may be altered for any meeting by a majority vote of the members present. The order of business for any special meeting shall be specified in the notice calling for the special meeting.

#### **F. Minutes.**

- (a) Appropriate minutes of all meetings of advisory boards, commissions and committees shall be kept by the staff liaison and shall be available for inspection by the public.
- (b) Such minutes shall include without limitation:
  - (1) Date, time, and place of meeting;
  - (2) A list of the individual members of the board, commission or committee in attendance;
  - (3) The substance of all matters proposed, discussed, or decided; and
  - (4) At the request of any member, a record by individual members of any votes taken.

#### **G. Distribution of minutes.**

It shall be the duty of the staff liaison to see that copies of the minutes are transmitted to the members as soon after the original minutes are written as possible. The minutes must be finally approved at the next meeting and shall be posted on-line at the City's website within ten (10) business days after final approval. The minutes are permanent records of the City and must be retained indefinitely.

#### **H. Rules of procedure for meetings.**

The meetings of the advisory boards, commissions or committees shall in all cases be governed by the following rules, unless otherwise set by interlocal agreement, statute, or ordinance, or unless they are suspended pro tem by a majority vote:

- (1) Decorum.
  - a. The presiding officer shall preserve order and decorum and shall decide all questions of order, subject to appeal to the board, commission or committee.

- b. Every member, previous to speaking, shall address the presiding officer, but shall not proceed until recognized and named by the presiding officer. The provisions of Robert's Rules of Order Newly Revised concerning assigning the floor are superseded by this rule of procedure.
- c. When two (2) or more members address the presiding officer, the first to have precedence shall be decided by the presiding officer. The provisions of Robert's Rules of Order Newly Revised concerning assigning the floor are superseded by this rule of procedure.
- d. While a question is being placed on the floor, no member shall speak or walk across the meeting room or leave the same.
- e. When any member is addressing the group, no other member shall engage in private conversation or do any other act to divert attention or interrupt the speaker.
- f. At meetings all questions relating to the priority of business shall be decided without debate.
- g. To preserve meeting decorum and minimize distractions, television cameras are to be confined to designated areas. Interviews in the chamber are permissible after meetings. No interview or live narration will be allowed in the chamber prior to or during the proceedings of a meeting.

(2) Meeting protocol.

- a. A member shall not speak more than twice on the same subject without leave of a majority of the group, nor more than once until every member desiring to speak on the pending question has had an opportunity to do so.
- b. No motion shall be debated or put to a vote unless the same shall be seconded. The motion and second shall then be stated by the presiding officer.
- c. All motions shall be stated in clear, concise and definite terms, beginning with the language: "I move that . . . ". "I so move" or any other abbreviated language does not constitute correct form for a motion and is out of order.
- d. After a motion has been stated by the presiding officer it shall be deemed in possession of the group, but may be withdrawn at any time before amendment or decision, by the mover with consent of the second.
- e. If a question under consideration contains more than one distinct proposition any member may demand a division.
- f. When a question is under debate, no motion shall be entertained, except: First, to adjourn; second, to lay on the table; third, for the previous question; fourth, to postpone to a day certain; fifth, to refer to a committee; sixth, to amend; and seventh, to postpone indefinitely. These motions shall have precedence in the order stated.
- g. Amendment of a question may take the form of a motion to substitute. Adoption of a motion to substitute shall be deemed approval of the substitute motion itself and further debate and amendment of the adopted substitute motion are not in order. The provisions of Robert's Rules of Order Newly Revised concerning substitute motions are superseded by this rule of procedure.
- h. A motion to adjourn shall always be in order, except when a member is addressing the chair, or a vote is being taken. Motions to adjourn and lay on the table shall not be debatable.
- i. No motion on a subject different from that under consideration shall be permitted.
- j. After a vote is announced, no member shall change his vote without following the procedure for reconsideration.

k. No motion for reconsideration shall be in order unless made at the same meeting or the meeting following that on which the decision was made, nor shall such motion be made except by a member who voted with the majority. If the motion for reconsideration is approved by a majority vote of the board, commission or committee, then the decision on which the vote is to be reconsidered is placed back on the agenda at a location specified by the presiding officer for further consideration and another vote.

- l. In case a voice vote is indeterminate, a roll call vote shall be taken.
- m. In case of a tie vote on any proposal, the proposal shall be considered lost/failed.
- n. The staff liaison shall rule on all questions of parliamentary procedure and the staff liaison's decision shall be final.
- o. Every member present shall vote upon every question submitted, unless excused or unless the member has a financial or personal interest as defined in section 2-702. If a member has a financial or personal interest, the member shall, immediately after the motion has been made and seconded, or as soon thereafter as the member may be recognized by the presiding officer, publicly disclose the nature and extent of such interest and disqualify himself or herself from participation in the deliberation and voting on the question.

(3) Documentation of proceedings.

- a. In all cases the name of the member proposing a motion and seconding the motion shall be entered in the minutes.
- b. Any member may demand the roll call of ayes and noes upon any question pending. Except as provided in this subsection, a vote on all matters shall be by voice vote.
- c. All reports or proposals shall be reduced to writing before being submitted to a vote.
- d. Application of Robert's Rules of Order. In all parliamentary practice not herein prescribed, Robert's "Rules of Order Newly Revised" shall govern so far as applicable.

(4) Public hearings. Public hearings may be required by law or by council policy. Public hearings are held for the purpose of noticing legislative facts and receiving expressions of public opinion on a question, including views of interested parties. When public hearings are required by law, they shall be held as set out herein. At the commencement of any public hearing, the presiding officer may set time limits for the presentation of views of proponents and opponents of the measure. These time limits shall be adhered to strictly. At the conclusion of his testimony at a public hearing, any individual may be questioned by any member. The time involved in such question and reply shall not count against the time allowed for the presentation of views.

**Sec. 2-508. Limitations of powers**

A member of an advisory board, commission or committee, except as otherwise provided by law, shall not:

- (a) Incur city expense or obligate the city in any way without prior authorization of the mayor and city council.
- (b) Make any written or oral report of any board, commission or committee activity to any individual or body unless (1) to the mayor and city council, or (2) authorized to do so by majority vote of the entire membership of the board, commission or committee, or (3) allowed by law.

- (c) Independently investigate citizen complaints against departments or individual employees or volunteers by questioning witnesses or otherwise.
- (d) Conduct any activity which might constitute or be construed as establishment of city policy.

### **Sec. 2-509. Supervision by Mayor and City Council**

The advisory boards, commissions or committees are established to advise and provide recommendations to the Mayor and City Council on particular issues. As such, the Mayor and City Council have the authority to direct, supervise, and oversee the activities of any board, commission or committee.

### **Sec. 2-510. Reports.**

The presiding officer of each board, commission or committee shall report to the mayor and city council annually either in person or in writing. If the presentation is in person, it will be at a Council Work Session at a date and time arranged through the staff liaison.

## **DIVISION 2. PARKS, RECREATION AND CEMETERY BOARD ANIMAL CONTROL BOARD**

### **Sec. 4-201 2-511. Created.**

There is hereby created an animal control board.

### **Sec. 4-202 2-512. Composition, appointment.**

The animal control board shall be composed of five (5) members ~~who shall possess the qualification for office required for the office of mayor and shall be appointed by the mayor with the consent of the council.~~

### **Sec. 4-203. Organization.**

~~The animal control board shall elect from its membership one person to serve as chairperson, and the city department head or his or her designee responsible for animal control shall serve as secretary.~~

### **Sec. 4-204 2-513. Powers and duties.**

The animal control board shall serve in an advisory capacity to the city council and shall be for the purpose of providing citizen input to the policy decisions of the city council. The primary responsibilities of the board are to review existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out and further, to report any shortcomings and to make recommendations to the city council in the formulation of programs and policies to improve among others the following areas of concern:

- (1) Operation of the city animal shelter and pound, including sanitation and financial efficiency;

- (2) The humane disposition of all of the animals held in the animal shelter or pound;
- (3) The formulation of policies, regulations, implementation and control of animals within the city;
- (4) Solving the serious problem created by the uncontrolled reproduction of pet animals;
- (5) Cooperation with other municipal, county and state governments.

#### **DIVISION 3. HUMAN RELATIONS COMMISSION AVIATION/TRANSIT BOARD**

##### **Sec. 5-201 2-518. Created.**

There is hereby created an aviation/transit board.

##### **Sec. 5-202 2-519. Composition appointment.**

(a) The aviation/transit board shall be composed of seven (7) members, ~~each of whom will possess the qualifications for office required for the office of mayor and shall be appointed by the mayor with the consent of the council.~~

(b) After June 20, 1983 at the time the first vacancy on the board occurs, that position will be filled by appointment of a person from an airport impact area. An airport impact area is defined as an area close to the airport that may in some way be impacted by activity at the airport. As the next vacancy occurs, it will be filled by a person with business management background not related to airport activities. Thereafter, one appointee to the aviation/ transit board shall be from an impact area and one shall be a person with a business management background not related to airport activity; provided, that the requirements as imposed herein shall be followed as closely as reasonably possible.

##### **Sec. 5-203. Organization.**

~~The aviation transit board shall elect from their number a new chairperson and a vice chairperson annually.~~

##### **Sec. 5-204 2-520. Duties and responsibilities.**

The aviation transit board shall be a citizens advisory board to the city council to aid the city council in formulating city policy in matters pertaining to the MET Transit System, the airport and the concomitant properties. The primary responsibility of the board is to review existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out and further, to report any shortcomings and make recommendations to the city council.

#### **DIVISION 4. PUBLIC UTILITIES BOARD COMMUNITY DEVELOPMENT BOARD**

##### **Sec. 9-201 2-525. Created.**

There is hereby created a community development board.

##### **Sec. 9-202 2-526. Composition, appointment.**

The community development board shall be composed of nine (9) members ~~who will possess the qualification for office required for the office of mayor and shall be appointed by the mayor with the consent of the council.~~ Six (6) members shall be appointed from lower-income

neighborhoods of the city as defined by federal regulations for the community development block grant program and three (3) additional members from the community at large.

**See. 9-203. Organization.**

~~Annually, the community development board shall elect from its membership one (1) person to serve as chairperson. The city department head or his or her designee responsible for community development shall serve as secretary.~~

**Sec. 9-204 2-527. Powers and duties.**

The community development board shall serve in an advisory capacity to the city council for the purpose of providing citizen input to the policy decisions of the city council. The primary responsibilities of the board are to review existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out and further, to report any shortcomings and make recommendations to the city council in the area of community development.

**DIVISION 5. EMERGENCY SERVICES BOARD**

**Sec. 15-708 2-533. Emergency medical service advisory board created.**

There is hereby created an emergency medical service (EMS) advisory commission.

**Sec. 15-709 2-534. Composition, appointment, term.**

The EMS advisory commission shall be composed of nine (9) members from the City of Billings and Yellowstone County, ~~each of whom will be a registered voter. All members shall be appointed by the mayor with the consent of the city council~~ as follows: A senior citizen residing within the city and five (5) at-large citizens residing within the city. The remaining four (4) members of the commission shall consist of the following: The Billings City Fire Chief, who shall be a non-voting member, a Yellowstone County government representative, one (1) representative each from Deaconess Medical Center and St. Vincent Hospital and Health Center, one (1) city council member shall be appointed by the mayor as a liaison to the commission and shall report as necessary to the city council. ~~Members shall serve for no more than two (2) consecutive four year terms; however, the mayor shall limit the terms of the first members of the commission as follows: Two (2) members' terms will expire at the end of the first year; two (2) members' terms will expire at the end of the second year; two (2) members' terms will expire at the end of the third year; and three (3) members' terms will expire at the end of the fourth year.~~

**Sec. 15-710. Organization.**

~~The first chairperson of the EMS advisory commission shall be appointed by the mayor to serve for the remainder of the calendar year. Thereafter, at the first meeting of each calendar year, the commission shall elect from its membership one (1) person to serve as chairperson and such other officers as the commission deems appropriate. A person designated by the city administrator shall serve as secretary to the commission and shall prepare all necessary minutes and other appropriate documents.~~

**Sec. 15-711 2-535. Powers and duties.**

Pursuant to Article V, Section 5.01 of the Billings City Charter, the EMS commission shall serve in an advisory capacity to the city council in all aspects of formulating city policy and/or ordinances concerning emergency medical services. The primary, initial responsibility of the commission shall be to review existing city ordinances and policies and make recommendations to the mayor and city council that will improve the city's ability to provide the appropriate level of emergency medical services as required by community need. Additionally, the commission shall continuously review the current local organizations which provide emergency medical services and shall assess their ability to provide necessary and appropriate services to the community. The commission shall present an annual written status report to the city council summarizing the commission's on-going review and assessment.

## DIVISION 6. ETHICS BOARD

### **Sec. 2-721 2-540. Created.**

There is hereby created a board of ethics.

### **Sec. 2-722 2-541. Composition, appointment.**

The board of ethics shall consist of five (5) persons who shall hold no other office or employment under the city. ~~Such members shall be required to be residents of the city. The mayor shall appoint the members of the board with the consent of the council.~~

### **Sec. 2-723. Organization; rules.**

~~The members of the board of ethics shall elect a chairperson annually.~~

### **Sec. 2-724 2-542. Review of allegations.**

- (a) Any allegations that a city official has violated any part of this article may be referred in writing to any member of the board of ethics who shall then request the board to convene for the purpose of reviewing the allegation. If reasonable grounds are found by the board, it may call a hearing to dispose of the allegation.
- (b) In addition, the board may hold a hearing after its own investigation if it finds that a person has failed to comply with the provisions of this article.

### **Sec. 2-725 2-543. Hearings.**

All hearings of the board of ethics shall be conducted as follows:

- (1) A city official shall have the right of representation by counsel.
- (2) The board of ethics shall receive evidence from the city official alleged to have violated any section or sections of this Code, or from any person the accused city official feels may assist in such city official's defense, from the party accusing such city official and from any other person as the board deems necessary.
- (3) The board may request any witness to appear before them at a fixed time or to produce any records or documents required by the board.
- (4) The city attorney shall assign counsel to the board.

### **Sec. 2-726 2-544. Decisions.**

The board of ethics, upon completion of any hearing, shall render a decision in writing to the city attorney and the party involved within fifteen (15) days, either determining no violation occurred, recommending prosecution, or setting forth requirements to be complied with in order that voluntary compliance may be had and final determination obtained.

#### DIVISION 7. HUMAN RELATIONS COMMISSION

##### **Sec. 2-524 2-550. Created.**

There is hereby created a human relations commission.

##### **Sec. 2-525 2-551. Composition, appointment.**

The human relations commission shall consist of nine (9) members ~~to be appointed by the mayor with the consent of the city council~~. The members shall be broadly representative of all citizens and shall reflect as far as possible the religious, racial, ethnic and minority groups of the community whose training, interest, background or experience will aid the commission in its work.

##### **Sec. 2-526. Organization.**

~~The human relations commission shall annually select from its membership a chairperson and such other officers as they may deem desirable.~~

##### **Sec. 2-527 2-552. Functions and duties.**

The functions and duties of the human relations commission shall be as follows:

- (1) Promote mutual understanding and respect among all racial, religious, nationality and minority groups and work to discourage and prevent discriminatory practices against any such group;
- (2) Inform itself on all matters concerning human relations and promote programs of community education with the object of improving human relations among all citizens of the community;
- (3) Review and study complaints, problems and specific situations arising between groups or individuals which result or may result in tensions, discriminations or prejudice in the city on account of race, sex, age, color, creed, national origin or ancestry;
- (4) Cooperate with and advise various groups and agencies of the community, as well as governmental agencies in programs devoted to the improvement of human relations and the elimination of group prejudices, racial or area tensions, intolerance or discrimination;
- (5) Aid in seeing that no person in this city is deprived of equal services furnished in the city by reason of discrimination or prejudice on account of race, sex, age, color, creed, national origin, ancestry, or being a member of a minority group;
- (6) Inform and make recommendations to the mayor and city council from time to time concerning any matters brought before the commission or programs devised by it for the furtherance and advancement of human relations in the community, and at least once a year submit a written report of its work;
- (7) Refer all matters to the police commission that are within its jurisdiction.

#### DIVISION 8. LIBRARY BOARD

**Sec. 16-201 2-557. Created.**

There is hereby created a library board.

**Sec. 16-202 2-558. Composition; appointment.**

The library board shall consist of ~~a minimum of three (3)~~ six (6) members appointed by the mayor with the consent of the city council and other members who may be appointed pursuant to contract.

**Sec. 16-203 2-559. Organization.**

The library board shall elect from its membership ~~at the first meeting of every calendar year one (1) person to serve as chairperson and vice-chairperson. and t~~ The library director shall serve as secretary. The board shall also elect one (1) person to serve on the library federation board of trustees. The chairperson and the federation representative may be, but need not be, the same person.

**Sec. 16-204 2-560. Powers and duties.**

The library board shall be advisory to the city council and shall only assume those functions additionally as may be prescribed and agreed upon by contract between the city and other governmental agencies.

**DIVISION 9. PARKING ADVISORY BOARD**

**Sec. 24-1101 2-565. Created.**

There is hereby created a parking advisory board.

**Sec. 24-1102 2-566. Composition, appointment, term.**

The parking advisory board shall be composed of nine (9) members, ~~who shall possess the qualifications for the office of mayor or own real property located within the central business district. They shall be appointed from the city at large by the mayor with the consent of the city council. Members shall serve for staggered terms of four (4) years each, provided that the mayor shall limit the terms of the first members as follows: two (2) members' terms will expire at the end of the first year; two (2) members' terms will expire at the end of the second year; two (2) members' terms will expire at the end of the third year; and three (3) members' terms will expire at the end of the fourth year.~~

**Sec. 24-1103. Organization.**

~~The first chairperson shall be appointed by the mayor to serve for the remainder of the calendar year. Thereafter, a~~ At the first meeting of the calendar year the parking advisory board shall elect from its membership one (1) person to serve as chairperson and such other officers as they may deem desirable. A person to be designated by the city administrator shall serve as secretary.

**Sec. 24-1104 2-567. Powers and duties.**

The parking advisory board shall serve in an advisory capacity to the city council in all aspects of parking within the ~~central business district~~ City. The purpose of the board is to provide citizen input to the policy decisions of the city council. The primary responsibilities of the board are to provide input on all aspects of public parking ~~within the central business district~~, including but not limited to, on-street parking, parking meters, parking garages, long-range financial plans for parking, annual budget, operating and capital projects plans, parking fees, parking fines and other existing and proposed parking policies of the city, to report any shortcomings, and to make recommendations to the city council with regard to public parking ~~in the central business district~~.

## DIVISION 10. PARKS, RECREATION AND CEMETERY BOARD

### **Sec. 2-511 2-572. Created.**

A parks, recreation and cemetery board is hereby created.

### **Sec. 2-512 2-573. Composition, appointment.**

The parks, recreation and cemetery board shall consist of nine (9) members ~~who will possess the qualifications for office required for the office of mayor and shall be appointed by the mayor with the consent of the council~~. At least one such member shall be representative of School District Number 2.

### **Sec. 2-513 2-574. School appointee.**

If the member of the parks, recreation and cemetery board who is also a representative of School District Number 2 ceases to be the nominee of the school district, his or her membership on this board shall forthwith terminate, and a successor nominee of the school district shall be appointed.

### **Sec. 2-514. Organization.**

~~The parks, recreation and cemetery board shall elect from its membership one person to serve as chairperson, and the city department head responsible for parks shall act as secretary.~~

### **Sec. 2-515 2-575. Powers and duties.**

The parks, recreation and cemetery board shall serve in an advisory capacity to the city council for the purpose of providing citizen input to the policy decisions of the city council. The primary responsibilities of the board are to review existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out. Further, to report any shortcomings and to make recommendations to the city council in the following and other related areas:

- (1) Establishment, acquisition, maintenance and management of city parks;
- (2) Establishment, acquisition, maintenance and conduct of playgrounds, swimming pools, baths, gymnasiums, recreation halls, recreation places, recreation centers and athletic activities within the city limits and within four and one-half (4 1/2) miles from the city limits together with recommendations to the city concerning entertainment, plays, concerts and celebrations;
- (3) Cooperate with all other governmental and private agencies and entities in the development of recreational activities and opportunities within the city and surrounding areas;

(4) Establishment, acquisition, maintenance and management of the city cemeteries.

## DIVISION 11. PUBLIC UTILITIES BOARD

### **Sec. 2-536 2-580. Created.**

There is hereby created a public utilities board.

### **Sec. 2-537 2-581. Composition, appointment.**

The public utilities board shall be composed of five (5) members ~~who shall possess the qualifications for the office of mayor and shall be appointed by the mayor with the consent of the city council.~~

### **Sec. 2-538. Organization.**

~~The public utilities board shall elect from its membership one person to serve as chairperson and the public works department head shall serve as secretary.~~

### **Sec. 2-539 2-582. Powers and duties.**

The public utilities board shall serve in an advisory capacity to the city with respect to all aspects of public utilities. The board may recommend to the city the adoption of such rates, fees and charges as it may deem just and proper, subject to other requirements and provisions imposed by law.

## DIVISION 12. TRAFFIC CONTROL BOARD

### **Sec. 24-201 2-585. Created.**

There is hereby created a traffic control board.

### **Sec. 24-202 2-586. Composition, appointment.**

The traffic control board shall be composed of five (5) members ~~who shall possess the qualifications for the office of mayor and shall be appointed from the city at large by the mayor with the consent of the city council.~~ The board shall in addition include as ex-officio board members:

- (1) The city court judge;
- (2) Transportation director from School District No. 2.
- (3) The chief of police or the chief of police's designee.

### **Sec. 24-203. Organization.**

~~The traffic control board shall elect from the member at large appointees, one person to serve as chairperson and a person to be designated by the city administrator shall serve as secretary.~~

### **Sec. 24-204 2-587. Powers and duties.**

The traffic control board shall serve in an advisory capacity to the city council in all aspects of traffic control, except that all issues involving parking in the central business district will be handled by the parking advisory board. The purpose of the board is to provide citizen input to the policy decisions of the city council. The primary responsibilities of the board are to review

existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out and further to report any shortcomings and to make recommendations to the city council in the area of traffic control.

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF BILLINGS

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

ATTEST:

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

## AGENDA ITEM:



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

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**TITLE:** Public Hearing, Extension of Interim Zoning Ordinance  
Sexually Oriented Businesses

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On June 23, 2008, the City Council passed an interim zoning ordinance that amended Section 27-611 – Sexually Oriented Businesses – to allow the city to study and propose a final amendment to the regulations. An interim zoning ordinance may only be in effect for up to 6 months. On November 10, 2008, the City Council postponed the adoption of the proposed final amendment to the regulations so further review could be done by the Planning Division and City Attorney on the details of the proposed amended regulations. The delay requires the City Council to extend the interim zoning ordinance beyond the initial 6 month period. MCA 76-2-306 allows the City Council to extend an interim zoning ordinance for 1 year.

**ALTERNATIVES ANALYZED:** State law at MCA 76-2-306 allows the adoption and extension of an interim zoning regulation as a matter of urgency without the review of the City Zoning Commission. Interim zoning regulations may only be in effect for six (6) months from the date of enactment. The City Council may extend such interim ordinance for 1 year after a duly noticed public hearing. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted. The City Council may:

1. Approve the extension of the interim zoning regulation
2. Deny the extension of the interim zoning regulation

**FINANCIAL IMPACT:** If the City Council extends the interim zoning ordinance for one year, the City Attorney and Planning Division staff will need to allocate resources to develop a final amendment to Section 27-611 within the next year.

**RECOMMENDATION**

The Planning Division staff recommends that the City Council approve the 1-year extension of the Interim Zoning Ordinance amending Section 27-611 – Sexually Oriented Businesses and allow the interim zoning ordinance to be effective until December 23, 2009.

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

**ATTACHMENTS:**

A:      Ordinance

**ATTACHMENT A  
ORDINANCE NO. 08-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-611(c), AND SECTION 27-611(d); SETTING DEFINITIONS FOR SEXUALLY ORIENTED BUSINESS, ADOPT THE REVISIONS AS AN INTERIM ZONING REGULATION AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA*, provides for the enactment as a matter of urgency an interim zoning regulation. The City Council, City Attorney and staff have reviewed the existing interim zoning regulation and determined there is a matter of urgency to be addressed by the interim zoning regulation that cannot be resolved before its expiration on December 23, 2008. The City Council, in due deliberation, has considered the extension of the interim zoning regulation.

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

3. INTERIM ZONING REGULATION. That Section 27-611(c) and 27-611(d) of the BMCC be amended to read as follows:

**SEC. 27-611. SEXUALLY ORIENTED BUSINESSES.**

(c) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).

~~(12)~~(14) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:

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

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

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

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

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

6. EFFECTIVE DATE. This extension of the interim zoning ordinance shall be effective on December 23, 2008 upon first reading for up to 1 year and as provided by law.

PASSED, ADOPTED AND APPROVED by a 2/3 majority of the City Council on December 8, 2008.

CITY OF BILLINGS:

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

Ron Tussing, Mayor

ATTEST:

BY:

Cari Martin, City Clerk

Extension of Interim Zoning Ordinance

# 6

## AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, December 8, 2008

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**TITLE:** Downtown Billings Parking Study

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Parking Division budgeted \$75,000 in FY 09 for a parking study. The study will be performed by a professional parking consulting/design firm and it will identify parking availability and usage, identify the area with highest demand, recommend solutions to any identified deficiencies and assess potential sites and finances for parking improvements. City staff solicited responses from professional consulting firms, reviewed them with a selection committee and recommends that the City contract with Rich and Associates, Inc. The City Council considered this contract at its November 24, 2008 meeting and delayed action until this meeting. The Council asked that staff justify the need for the study and why it cannot be completed by staff and the Parking Advisory Board. Staff will provide a report prior to the Council meeting.

### **RECOMMENDATION**

Staff recommends that Council approve the contract with Rich and Associates, Inc. for \$68,500.

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

### **ATTACHMENT**

A:  Contract

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "City," and Rich and Associates, Inc. hereinafter referred to as "Consultant."

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

**1. Purpose:** City agrees to hire Consultant as an independent contractor to determine the availability and utilization of existing downtown parking, to identify the area(s) of highest demand for additional parking and to provide preliminary design and financial analysis for the preferred parking option, described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

**2. Effective Date:** This Agreement is effective upon the date of its execution and will terminate on April 1<sup>st</sup>, 2009. The parties may extend this agreement in writing prior to its termination.

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

**4. Payment:** City agrees to pay the Consultant Sixty Eight Thousand Five Hundred Dollars (\$68,500). Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Consultant and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

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

Consultant shall maintain workers' compensation insurance coverage for all members and employees of Consultant's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Consultant shall furnish City with copies showing one of the following: **(1)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(2)** proof of exemption from workers' compensation granted by law for independent contractors.

**6. Indemnity and Insurance:** Consultant agrees to indemnify, defend and save City, its officers and employees harmless from any and all losses, damages, judgments, costs, expenses and liability including reasonable attorneys fees and related litigation expenses arising or resulting from the Consultant's negligent performance of professional services under this Agreement and that of its sub consultants or anyone for whom the Consultant is legally liable. For this purpose, Consultant shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The Consultant shall also provide proof of professional liability insurance is the minimum amount of \$1.5 million per claim. The insurance must be in a form suitable to City.

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

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

**9. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**10. Liaison:** City's designated liaison with Consultant is Chris Mallow, Parking Supervisor, and Consultant's designated liaison with City is John Revell, Project Manager.

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

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

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

**14. Ownership; Publication, Reproduction and Use of Material.**

- A. Except as otherwise provided herein, all data, documents and materials produced by the Consultant under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.
- B. Equipment purchased by the Consultant with Contract funds shall be the sole property of Billings, marked and inventoried as such with a copy of the inventory forwarded to Billings.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will not hold Consultant liable for any damages resulting from Billings's reuse of work products for an unintended purpose. Additionally, any reuse of design drawings or specifications

provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Consultant's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

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

**CITY OF BILLINGS, MONTANA**

By \_\_\_\_\_  
**Ron Tussing, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Cari Martin, City Clerk**

**APPROVED AS TO FORM:**

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

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

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

By \_\_\_\_\_  
**BRENT BROOKS, City Attorney**

## EXHIBIT A

**Purpose:** to determine the availability and utilization of existing downtown parking, to identify the area(s) of highest demand for additional parking and to provide preliminary design and financial analysis for the preferred parking option.

### Phase I- Existing and Future Parking Conditions

**Task 1- Review Existing Data.** Review pertinent parking and traffic studies, master plans, statistical data, annual reports, base maps, etc. provided by the city.

**Task 2- Initial Meeting.** Meet with city officials to clarify study objectives, confirm the study area, define parking analysis zones, and to discuss the work plan and study schedule.

**Task 3- Verification of Parking and Review of Policies.** Verify and breakdown the current parking supply by type, allocation, restrictions and rates. Parking polices will be reviewed to determine if they restrict the maximum usage of the parking supply.

**Task 4- Parking Surveys and Existing Parking Conditions.** Prepare and coordinate parking occupancy surveys to be completed on a bi-hourly basis for the parking within the study area. The data on parking occupancy will be adjusted as necessary to reflect conditions during a normally busy period downtown and compared to the *effective* parking supply. Parking demand ratios will be developed by land use category for the downtown area. Determine parking duration and turnover for all marked on-street and off-street spaces within the study area, including, but not limited to the following:

1. The number of vehicles parking on and off street
2. The average parking duration.
3. The average turnover of each space during the survey period.
4. The number of short-term parkers (3 hours or less) versus long-term parkers (more than 3 hours).
5. The number/percentage of parkers violating time limits.

**Task 5- Interviews.** Interview key property owners, business owners, developers and city staff to determine key parking issues and concerns, determine probable future development activities, and gather their opinions on the best Downtown locations for future parking.

Distribute questionnaires to downtown workers and patrons to determine trip purpose, origin, destination, parking location, walking distance, perceptions of parking, and other parking/transportation characteristics.

**Task 6- Future Parking Conditions.** Parking demand ratios will be used to determine the demand for parking associated with new, planned, and proposed projects and any

other changes within the study area. The future demand for parking will be compared to the adjusted supply, parking surpluses and deficiencies calculated, and the best location(s) for parking expansion determined.

**Task 7- Interim Report.** Prepare an interim report detailing existing and future parking conditions for review and comment by city officials.

## Phase II- Site Evaluation and Schematic Design

**Task 1- Evaluation of Parking Expansion Sites.** Various sites for parking will be identified and evaluated by the consultant. Evaluation criteria will include, but not necessarily limited to, the following:

- ◆ Parking Needs
- ◆ Distance to Primary Destinations
- ◆ User Groups Served
- ◆ Size, Current Use and Topography of the Site
- ◆ Parking Efficiencies and Spaces Replaced
- ◆ Site Access and the Intermixing of Vehicles and Pedestrians
- ◆ Visual Impact/Architectural Compatibility/Historic Integrity
- ◆ Shared-Use Capabilities
- ◆ Development Potential of the Site
- ◆ Mixed-Use Possibilities

**Task 2- Site Selection.** Based on the Task 1 evaluation, up to two preferred sites for parking development will be selected.

**Task 3- Schematic Parking Layouts.** Schematic designs for parking facilities will be developed for each site.

The schematic designs will depict the parking footprint and relationship to the site, number of parking bays, space layout, circulation, entry/exit locations, parking control equipment, accessible spaces, ramping, elevators and stairs (if applicable), and commercial space (if applicable).

**Task 4- Final Designs and Cost Estimate.** Review the plans with client and discuss any modifications to be incorporated into final schematic designs. Provide schematic cost estimates for each design.

**Task 5- Interim Report.** An interim report will be prepared by the consultant outlining all of the above and will include a recommended parking improvement plan.

## Phase III- Financial Feasibility Analysis

**Task 1- Users of Facilities.** Determine the probable hours of operation as this will influence patron characteristics, utilization, and turnover rates. Estimate utilization and turnover for all users of the parking facilities (transients, daily, monthly).

**Task 2- Fee Structure.** Existing private and public parking rates in an area of influence surrounding the facilities will be surveyed and an initial rate structure recommended. The impact of higher/lower rates on utilization will be evaluated.

**Task 3- Operating Method and Costs.** A preferred method of operation will be identified and annual expenses, including labor, utilities, supplies, insurance and maintenance will be determined for each facility.

**Task 4- Mixed-Use Evaluation.** Evaluate the potential for including retail or other commercial space within the parking facilities. Revenue projections for the space will be included in the evaluation.

**Task 5- Size of Bond Issue.** In conjunction with the city, determine the terms and conditions of facility financing.

**Task 6- Ten-Year Projection of Project Revenues and Expenditures.** Develop a ten-year projection of project revenues and expenses for each facility. Debt service coverage ratios will be calculated each year, and a report summarizing the financial feasibility of the facilities.

**Task 7- Additional Revenues.** If it is determined the projects are not self-sustaining, additional revenue sources to support debt retirement will be examined.

**Task 8- Interim Report.** An interim report will be prepared by the consultant outlining all of the above and will include a recommended parking improvement plan.

#### **Phase IV- Final Report and Presentation of Study Findings**

**Task 1- Draft Final Report.** A draft final report will be prepared and will include a priority plan for the development of the parking facilities. Consultant and client will meet to discuss findings and recommendations in the report.

**Task 2- Final Report.** A final report will be prepared detailing the parking improvement plan. All issues discussed in the review meeting will be incorporated into the final report. 20 copies of the report will be issued to the city, as well as a CD or other storage medium containing the full report and recommendations.

**Task 3- Presentation of Study Findings.** Consultant will make a final presentation to the City Council. A PowerPoint presentation will be developed to aid in the presentation of study findings.

**ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE**
DATE (MM/DD/YYYY)  
11/11/2008

PRODUCER (800)969-4041 FAX (800)969-4081  
**Professional Concepts Insurance Agency Inc.**  
 1127 South Old US Highway 23  
 Brighton, MI 48114-9861  
 cheleWeinstein

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED **Rich and Associates, Inc.**  
 26877 Northwestern Hwy  
 Suite 208  
 Southfield, MI 48033

## INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: <b>Hartford Casualty Insurance Co.</b>
INSURER B: <b>Hartford Underwriters Ins. Co.</b>
INSURER C: <b>Beazley Insurance Co.</b>
INSURER D:
INSURER E:

## COVERAGES

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 LITR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS												
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	35SBW1H6395	03/05/2008	03/05/2009	<table border="1"> <tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (EA occurrence)</td><td>\$ 300,000</td></tr> <tr><td>MED EXP (Any one person)</td><td>\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td>\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMPIOP AGG</td><td>\$ 2,000,000</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (EA occurrence)	\$ 300,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMPIOP AGG	\$ 2,000,000
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PRODUCTS - COMPIOP AGG	\$ 2,000,000																	
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C		OTHER <b>Professional Liability</b>	V15M9X08PNPA	05/23/2008	05/23/2009	<table border="1"> <tr><td>Limit:</td><td>\$1,000,000 Each Claim</td></tr> <tr><td></td><td>\$1,000,000 Aggregate</td></tr> </table>	Limit:	\$1,000,000 Each Claim		\$1,000,000 Aggregate								
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## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The City of Billings Montana is named as an Additional Insured as respects to the General Liability policy and would apply so long as required within a written contract.

## CERTIFICATEHOLDER

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

## AUTHORIZED REPRESENTATIVE

MikeCosgrove/MW

*Mike Cosgrove*