

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

COUNCIL CHAMBERS

February 11, 2008

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Gaghen

ROLL CALL

MINUTES – January 28, 2008

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 3, 4, and 9 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. Mayor's Appointments

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	William Anderson	C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/09
2.	Jim Collins	C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/09

3.	Stella Fong	C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/10
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[\(Corresponding Staff Memo A\)](#)

B. Appointment of Work Force Housing Ad Hoc Committee members.

	Name	Representing
1	Jim Ronquillo	City Council
2	Bruce Simon	Central-Terry Task Force
3	Kim Gillan	Heights Task Force
4	vacant	North Park Task Force
5	David Goodridge	North Elevation Task Force
6	vacant	Southside Task Force
7	Barbara Prewitt	Southwest Corridor Task Force
8	vacant	West End Task Force
9	vacant	Highlands Neighborhood Planning Group
10	Tom Llewellyn	The Yellowstone Group
11	Steve Judd	Floberg Realty
12	Jeremiah Rouane	First Interstate Bank
13	Barbara Seeley	Intermountain Mortgage
14	vacant	Home Builders
15	vacant	Home Builders
16	Lucy Brown	Billings Housing Authority
17	Duane Loken	Community Development Board
18	Jean Neyrinck	Affordable Housing Task Force
19	Bruce MacIntyre	Billings Chamber of Commerce

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

C. Bid Awards:

(1) Scoreboard at New Baseball and Multi-Use Stadium, (Opened 2/5/08) Recommend delay of award until February 25, 2008.

[\(Corresponding Staff Memo C1\)](#)

(2) MET Transit Engine Overhauls (Opened 1/29/08) Recommend Interstate Power Systems, Sch. 1 - \$39,942.00; Sch. 2 - \$30,435.00; Sch. 3 - \$19,731.00, for a total bid of \$90,108.00.

[\(Corresponding Staff Memo C2\)](#)

(3) W.O. 07-19 – Yellowstone Country Club Sanitary Sewer Line Extension, (Opened 1/29/08) Recommend Western Municipal Construction, Inc., \$695,103.00.

[\(Corresponding Staff Memo C3\)](#)

D. Contracts for W.O. 07-15, General Engineering Services for Water and Wastewater Improvements, **HDR Engineering**, 3-year contract not to exceed \$250,000.00; **Brown and Caldwell Engineering**, 3-year contract not to exceed \$250,000.00,
([Corresponding Staff Memo D](#))

E. Contract for W.O. 06-10, Bannister Drain Trail-Billings Design and Construction Administration Services, Engineering, Inc., \$64,067.00, contingent on CTEP concurrence.
([Corresponding Staff Memo E](#))

F. Contract for W.O. 02-08, Milton Lane School Route, HKM Engineering, Inc., \$52,500.00, contingent on CTEP concurrence.
([Corresponding Staff Memo F](#))

G. Contract for Groundwater and Landfill-Gas Monitoring Services, Tetra Tech, \$96,042.00, three year contract.
([Corresponding Staff Memo G](#))

H. Memorandum of Agreement with the Montana Department of Transportation for W.O. 03-17, South 27th Street Quiet Zone.
([Corresponding Staff Memo H](#))

I. Compensation Agreement with Montana Sapphire, LLC, for extension of water and sanitary sewer mains in King Avenue West, \$392,870.65.
([Corresponding Staff Memo I](#))

J. Termination of Project Development Agreement with the State of Montana for MT 1036(1) Bench Boulevard-Billings Project.
([Corresponding Staff Memo J](#))

K. Acknowledging Receipt of Petition to Annex #08-01: 114.3 acres of Tracts 1-5, C/S 2063, generally located north and west of the Shiloh Road and King Avenue West intersection, Lenhardt Property, LP; Lenhardt Enterprises, LLC; and Lenhardt Farm, LLC, owners and petitioners; and setting a public hearing date for 2/25/08.
([Corresponding Staff Memo K](#))

L. Street Closures:
(1) St. Patrick's Day Parade and Street Fair. Parade: established downtown parade route, 11:00 a.m. – 12:00 noon. Street Fair: North Broadway between 1st and 3rd Avenues North, noon to 2:00 p.m. on 3/15/08.
([Corresponding Staff Memo L1](#))
(2) Yellowstone Rimrunners Shamrock Run, beginning at 3rd Street West and Avenue B, north onto 3rd Street West, west onto Parkhill to Nordbye, turning around going east on Parkhill, right on 3rd Street West, ending at Pioneer Park, 12:30 p.m. to 2:00 p.m. on 3/16/08.
([Corresponding Staff Memo L2](#))

M. Approval of Application and Acceptance of Stop Violence Against Women Act fund grant for domestic violence training and continuation of the Domestic Violence Investigator program, \$62,862.00, with 25% City match.

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

N. Approval and Acceptance of Donations:

(1) Ballpark Construction and Maintenance Funds, various donors, Construction Fund: \$250,470.00; Maintenance Fund: \$14,200.00.

[\(Corresponding Staff Memo N1\)](#)

(2) Billings Animal Shelter from the Donald and Carol Roberts Foundation in memory of Virginia K. Weston, Inc., \$500.00.

[\(Corresponding Staff Memo N2\)](#)

O. Resolution of Intent to create SILMD 304 in the downtown area and set a public hearing date of February 25, 2008.

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

P. Resolution extending current franchise agreement with Bresnan Communications an additional 60 days.

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

Q. Second/Final Reading Ordinance for Zone Change #827: A 44,644 square-foot property located north of Saturn Place in the Billings Heights. Dorn Property LLC, owner; Engineering, Inc., agent.

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

R. Second/Final Reading Ordinance for Zone Change #830: A 15,000 square foot vacant parcel legally described as the North Fraction 100 feet by 150 feet in Block 305 Billings, 1st Addition, and Sunnyside Subdivision, 3rd Filing, generally located on the southwest corner of the intersection of North 22nd Street and 10th Avenue North. Steve Kerns, owner/applicant.

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

S. Second/Final Reading Ordinance expanding the boundaries of Ward IV to include recently annexed property in Annex #07-19: a 6.832-acre portion of Rimrock Road right-of-way from 62nd Street West to the city limits; City of Billings, requester.

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

T. Preliminary Subsequent Minor Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision.

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

U. Preliminary Minor Plat of Riverfront Business Park Subdivision.

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

V. Bills and Payroll

(1) January 11, 2008

[\(Corresponding Staff Memo V1\)](#)

(2) January 18, 2008

[\(Corresponding Staff Memo V2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **RESOLUTION** approving reimbursement of temporary funding for water and sewer replacement expenses incurred prior to DNRC issuance of revenue bonds. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

3. **RESOLUTION** approving and adopting second quarter budget amendments for Fiscal Year 2007/2008. Delayed from 1/28/08. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

4. **ADDITIONAL FUNDS REQUEST** from homeWORD in the amount of \$200,000.00. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

5. **PUBLIC HEARING** on Reallocation of CDBG and HOME Funds. Community Development Board and Staff recommend approval. **(Action:** approval or disapproval of Community Development Board and Staff recommendation.)

[\(Corresponding Staff Memo 5\)](#)

6. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward I to include recently annexed property in Annex #08-02: 54 acres legally described as Tract 2-B-1, Certificate of Survey 1121, generally located west of Washington Street, south of Interstate 90, and north of the Yellowstone River, King Business Park LLC; Richard Dorn, Samuel Rankin, and Hannah Elletson, owners and petitioners. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 6\)](#)

7. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #08-05:** Property described as Lot 1, Sylvia Subdivision, 1094 Lincoln Lane, generally located on the west side of Lincoln Lane, north of the Target Shopping Center in Billings Heights, First Citizens Bank, owner and petitioner. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 7\)](#)

8. **PUBLIC HEARING AND RESOLUTION** placing a county-wide planning mill levy increase on the June 2008 Election Ballot. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
([Corresponding Staff Memo 8](#))
9. **WASTEWATER SERVICE AGREEMENT** with Lockwood Water and Sewer District. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
([Corresponding Staff Memo 9](#))
10. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**
(*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

Council Initiatives

ADJOURN

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

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, FEBRUARY 11, 2008

SUBJECT: City – County Bicycle and Pedestrian Advisory Committee –
 Appointments

DEPARTMENT: Administration

PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for the City – County Bicycle and Pedestrian Advisory Committee set by Resolution 07-18663.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/09
2.		C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/09
3.		C/C Bicycle and Pedestrian Advisory Committee	02/11/08	12/31/10

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

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

PROBLEM/ISSUE STATEMENT: City Council approved the creation of the Work Force Housing Ad Hoc Committee on December 17, 2007. The resolution specified that the Committee would consist of 19 members from the following private and public entities:

- a. One City Councilmember
- b. One member from each of the 7 Neighborhood Task Forces (Central-Terry, Heights, North Park, North Elevation, Southside, Southwest Corridor, and West End),
- c. One member from the Highlands Neighborhood Planning Group
- d. Two members from the Billings Realtor Association,
- e. Two members from local lending institutions,
- f. Two members from the Home Builders Association
- g. A member from the Billings Housing Authority
- h. A member of the Community Development Board
- i. A member of the Affordable Housing Task Force
- j. A member from local economic development organizations

Committee vacancies were advertised in the Billings Times on December 27, 2007 and January 3, 2008. The deadline for applications was January 25, 2008.

ALTERNATIVES ANALYZED: The City Council may accept the appointments recommended by staff or choose to appoint its own alternatives.

FINANCIAL IMPACT: There is no financial impact resulting from the committee appointments.

RECOMMENDATION

Staff recommends that Council appoint the following Work Force Housing Ad Hoc Committee members:

	Name	Representing
1	Jim Ronquillo	City Council
2	Bruce Simon	Central-Terry Task Force
3	Kim Gillan	Heights Task Force
4	vacant	North Park Task Force
5	David Goodridge	North Elevation Task Force
6	vacant	Southside Task Force
7	Barbara Prewitt	Southwest Corridor Task Force
8	vacant	West End Task Force
9	vacant	Highlands Neighborhood Planning Group
10	Tom Llewellyn	The Yellowstone Group
11	Steve Judd	Floberg Realty
12	Jeremiah Rouane	First Interstate Bank
13	Barbara Seeley	Intermountain Mortgage
14	vacant	Home Builders
15	vacant	Home Builders
16	Lucy Brown	Billings Housing Authority
17	Duane Loken	Community Development Board
18	Jean Neyrinck	Affordable Housing Task Force
19	Bruce MacIntyre	Billings Chamber of Commerce

Approved By: City Administrator_____ City Attorney_____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Award of bid for: SCOREBOARD AT BILLINGS NEW
BASEBALLAND MULTI-USE STADIUM

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Bids were received for the Scoreboard for Billings New Baseball and Multi-use Stadium on February 5, 2008. The Steering Committee is scheduled to review the base bid and alternates and make a recommendation to Council at the regularly scheduled Steering Committee Meeting on February 12, 2008.

ALTERNATIVES ANALYZED:

1. Delay awarding SCOREBOARD AT BILLINGS NEW BASEBALLAND MULTI-USE STADIUM until the February 25, 2008, City Council Meeting to allow time for evaluation of bid submittals and to make a recommendation.

FINANCIAL IMPACT: Funding for the project is through Federal Appropriations Funds and donations.

RECOMMENDATION

Staff recommends that Council delay awarding SCOREBOARD AT BILLINGS NEW BASEBALLAND MULTI-USE STADIUM until the February 25, 2008, City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Award of MET Transit Engine Overhauls Bid

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: To accomplish engine overhauls in a timely manner, MET Transit annually solicits bids from engine repair vendors to perform mechanical and electronic engine overhauls on the three different types of Transit bus engines currently in use at MET. Bids were solicited to do overhauls on an ISM Cummins Diesel Engine (Schedule 1), a Series 50 Detroit Diesel Engine (Schedule 2), and a Series 40 Detroit Diesel Engine (Schedule 3). An agreement is awarded on an annual basis due to the vendor's inability to forecast parts and labor cost increases for a period exceeding one year. Use of an annual agreement also enables the MET to update any agreement specifications for changes in emission standards.

Staff advertised for sealed bids on January 17 and 24, 2008. Bid specifications were delivered to five vendors: Interstate Detroit Diesel, Rocky Mountain Cummins, Northwest Peterbilt Ford, Motor Power Equipment, and TriState Equipment. Bids were opened on January 29, 2008 and Interstate Power Systems (formally Interstate Detroit Diesel) was the only responsive bid received. Staff has reviewed the bid and finds it to be acceptable.

<u>Vendor</u>	<u>Schedule 1</u>	<u>Schedule 2</u>	<u>Schedule 3</u>
Interstate Power Systems	\$39,942.00	\$30,435.00	\$19,731.00

FINANCIAL IMPACT: The engine overhauls have been included and approved in the FY 08 operating budget, and will also be included in the FY 09 proposed budget as well. At this time staff is not aware of any bus engines in need of an overhaul; however, this bid award will allow MET the ability to immediately treat with any engine overhauls as the need arises.

RECOMMENDATION

Staff recommends that Council approve the bid submitted from Interstate Power Systems, and authorize the Mayor to execute the Agreement.

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

ATTACHMENT

Attachment A – Agreement

AGREEMENT
FOR
CUMMINS DEISEL ENGINE OVERHAULS
FOR
DETROIT DIESEL ENGINE OVERHAULS
FOR
DEPARTMENT OF AVIATION & TRANSIT----MET TRANSIT

This Agreement, made _____, between the **CITY OF BILLINGS**, hereinafter designated **OWNER**, and _____ Interstate Power Systems, known as **CONTRACTOR**.

This Agreement shall be From January 1, 2008 through December 31, 2008. **CONTRACTOR** shall commence the work to be performed hereunder promptly on notification from the MET for the need of an engine overhaul and shall continue said work through the completion of the overhaul and the return of the MET bus to revenue service. This Agreement may be terminated by either party on thirty (30) days written notice to the other party.

CONSIDERATION

OWNER shall pay **CONTRACTOR** for the service provided on each overhaul based on the contractor's bid as set forth in the scope of work.

CONTRACTOR'S DUTY

In consideration of the payment or payments herein specified and agreed to by **OWNER**, **CONTRACTOR** hereby covenants and agrees to furnish equipment, labor, and supplies as specified in the following sections of this Agreement for the **OWNER**.

SECTION I:
(Final Agreement Will Include Scope of Work Here)

SECTION II: SUPPLIES AND MATERIALS

CONTRACTOR shall provide for all supplies, materials, and labor necessary and incident to the performance of all services required by this Agreement.

CONTRACTOR shall comply with all State and Federal regulations and City codes, including OSHA.

SECTION III: OTHER PROVISIONS
LEVEL OF SERVICE

ALL WORK SHALL BE DONE IN THE CONTRACTOR'S SHOP FACILITY LOCATED IN THE BILLINGS AREA.

COMPREHENSIVE PERSONAL INJURY, BODILY INJURY, AND PROPERTY DAMAGE LIABILITY

CONTRACTOR agrees to keep in force, for the duration of this Agreement, insurance that meets the specified coverages as set forth on the attached City of Billings, Insurance Requirements as stated in the scope of work.

Said insurance policy or policies shall name the **CITY OF BILLINGS** as PRIMARY ADDITIONAL NAMED INSURED. At the same time of execution of this Agreement, **CONTRACTOR** shall furnish a certificate showing that required insurance is in force.

INDEMNITY

The **CONTRACTOR** shall indemnify, defend, and save harmless the **OWNER** from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description made, brought or recovered against the **OWNER** by reason of any act or omission of the **CONTRACTOR**, his agents, or employees, in the execution of the work. **CONTRACTOR** agrees to reimburse **OWNER** for any loss due to theft by any of the **CONTRACTOR'S** employees.

PERSONNEL

Employees assigned to the performance of this Agreement will be dismissed upon written request of the **OWNER** for due and just cause.

CONTRACTOR will furnish the personnel necessary for the performance of this Agreement. **CONTRACTOR** will give preference to the employment of Montana residents. Applicable Federal and State wage and hour laws must be adhered to and provide the minimum base for personnel wages.

All agreements issued as a result of this Agreement shall adhere to all non-discriminatory provisions of all applicable Federal, State and local laws. In connection with the performance of work under this Agreement, the **CONTRACTOR** agrees not to discriminate against any applicant for employment because of race, religion, creed, color, or national origin. The above provision shall apply to, but not be limited to, the following employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training including apprenticeship.

The **CONTRACTOR** further covenants and agrees that during the progress of the work to be performed under the provisions of this Agreement, he/she will in every respect comply with the provisions of the Worker's Compensation Act, being Chapter 97 of the Sessions Laws of the 17th Legislative Assembly of the State of Montana, and with all

statutory provisions supplementary or amendatory thereto. **CONTRACTOR** shall furnish a certificate showing that required Worker's Compensation Insurance is in force.

WAGES FOR CONTRACTOR'S EMPLOYEES

On all projects and agreements with the **OWNER**, the **CONTRACTOR** and all subcontractors shall pay for all labor employing the standard prevailing rate of wages. The standard prevailing rate of wages as used herein means the standard prevailing rate of wages in the locality where the work is to be performed as determined by the Montana Commissioner of Labor pursuant to MCA 18-2-403. **CONTRACTOR** agrees to pay the prevailing wage rate to all applicable employees pursuant to this wage rate.

The standard prevailing rate of wages applies to agreements of \$25,000 or greater. If the agreement is less than \$25,000, the **CONTRACTOR** does not have to follow the standard prevailing rate of wages.

EXTRA WORK

It is expressly understood and agreed that no claim for extra work or materials, not specifically herein provided, done or furnished by the **CONTRACTOR**, shall be allowed by the **OWNER**, nor shall the **CONTRACTOR** do any work or furnish any materials not covered by this Agreement unless such work is ordered in writing by the **OWNER**, and in no event shall the **CONTRACTOR** incur any liability by reason of any verbal instructions that he/she may be given by the **OWNER**, or its authorized agent; nor will the said **OWNER** be liable for any extra materials furnished or used, or for any extra work or labor done, unless said materials, work, or labor are required by said **CONTRACTOR'S** own risk, cost and expense, and he/she hereby covenants and agrees that without such written order, he/she shall make no claim for compensation for work or materials so done or furnished.

AMENDMENTS

Any modifications or amendments to this Agreement must be in writing and executed by the parties hereto.

ATTORNEY FEES AND COSTS

In the event that either party is required to retain the services of an attorney, or use in-house counsel to enforce the terms and conditions of this Agreement, then the prevailing party shall recover from the other party all reasonable costs, expenses and attorney fees, including fees of in-house counsel.

This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

BONDS

Agreements exceeding \$5,000 will require the **CONTRACTOR** to furnish an approved Performance Bond, Labor and Materials Bond, each in the amount of one hundred percent (100%) of the Agreement.

THIS AGREEMENT EXECUTED THE DAY AND YEAR FIRST WRITTEN ABOVE.

BY: _____
Contractor, Interstate Power Systems

BY: _____
CITY OF BILLINGS
CITY ADMINISTRATOR

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: W.O. 07-19—Yellowstone Country Club Sanitary Sewer Line Extension, Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project encompasses extending a 21-inch sanitary sewer line, with maintenance road, from Rimrock Road and 58th Street West to the Yellowstone Country Club Wastewater Treatment Plant and the subsequent demolition and removal of the Treatment Plant. The extension will connect residents of Yellowstone Country Club to the City sanitary sewer system. The project was designed by Engineering, Inc., with whom the City has a professional services contract. Bids were opened for the project January 29, 2008, and by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT:

The project is included in the FY-08 CIP and utilizes Wastewater funds.

Bids were opened January 29, 2008, with the following results:

Firm(s)	COP Construction	Western Municipal	JEM Contractors	Engineer's Estimate
Schedules I & II	\$ 730,322.00	\$ 660,653.00	\$1,102,916.00	\$ 911,304.00
ALT1-1 (concrete path)	\$ 27,000.00	\$ 27,450.00	\$ 36,000.00	\$ 31,500.00
ADD1-1 (geogrid)	\$ 10,000.00	\$ 7,000.00	\$ 17,000.00	\$ 10,100.00
TOTAL	\$ 767,322.00	\$ 695,103.00	\$1,155,916.00	\$ 952,904.00

Approved Budget Amount in FY-08 CIP	\$ 1,654,000.00
Professional Engineering Services	(\$ 250,913.53)
Construction Contract	(\$ 695,103.00)
Remaining Funds	\$ 707,983.47

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 07-19—Yellowstone Country Club Sanitary Sewer Line Extension to Western Municipal Construction, Inc. for \$695,103.00.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: W.O. 07-15 General Engineering Services Contract
DEPARTMENT: Public Works/engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The Engineering Division advertised for Request for Qualifications for General Engineering Services for Water and Wastewater improvements. The purpose of this contract is to be able to have a qualified Engineer available for smaller projects as they arise. A considerable amount of time and money is invested in submitting individual proposals for smaller projects and is not always cost effective. Statements of Qualifications (SOQs) were received and evaluated. HDR Engineering and Brown and Caldwell Engineering were the two Engineering firms selected. The Engineering Contracts will run for a period of three years.

ALTERNATIVES ANALYZED:

- Approve the Engineering Contracts for HDR Engineering and Brown and Caldwell Engineering.
- Do not approve the Engineering Contracts for HDR Engineering and Brown and Caldwell Engineering.

FINANCIAL IMPACT:

Each contract has a maximum ceiling amount of \$250,000.00. The Engineering fees will be paid out of each individual project budget.

RECOMMENDATION

Staff recommends that Council approve the Engineering Contracts for HDR Engineering and Brown and Caldwell Engineering.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A. HDR Engineering and Brown and Caldwell Engineering Contracts

Contract for Professional Architectural and Engineering Services

W.O. 07-15 – General Engineering Services

In consideration of the mutual promises herein, City of Billings and Brown and Caldwell agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of ___ pages (Basic Services of Contractor);

Appendix B consisting of ___ pages (Methods and Times of Payment);

Appendix C consisting of ___ pages (Additional Services of Contractor);

Appendix D consisting of ___ pages (Schedule of Professional Fees);

Appendix E consisting of ___ pages (Project Schedule);

Appendix F consisting of ___ pages (Certificate(s) of Insurance); and

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Brown and Caldwell.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on January 31, 2011.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than two hundred fifty thousand DOLLARS (\$ 250,000.00) in accordance with this Section, or the amount of approved task orders. Tasks and associated fees will be negotiated and agreed upon by Task Order. No compensation greater than the total executed task orders will be approved. Task orders will serve as Notice to proceed.
- B. Billings shall pay the Contractor in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.

- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:

1. Workers' compensation and employer's liability coverage as required by Montana law.
 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 3. Commercial automobile liability -- \$500,000 per accident.
 4. Professional liability in the amount of \$1,500,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor 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. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. 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 Contractor'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.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: City Engineer (Debi Meling, P.E.)
City of Billings
Department Public Works
510 North Broadway – 4th Floor
Billings, Montana 59101 FAX: (406) 657-8252

Contractor: Fill in
Brown and Caldwell
100 North 27th St. Suite 600
Billings, MT 59101 FAX: (406) 294-7160

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget per executed task order.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;

- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Principal (Fill in.)
(title of position)

Billings: Christina Volek, City Administrator

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the Superior Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

City Council or Designee

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST:

IRS Tax ID # _____

Cari Martin
City Clerk

Date: _____

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____

Note: **Final contract documents will require the Contractor's signature to be notarized.**

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the

Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Fill in

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Travis Harris, PE, Staff Engineer.

Section 3. Scope of Work.

Project Name: City of Billings Work Order 07-15 – Engineering Services

Description of the project: Services to be provided shall be as described in written task orders made pursuant to and referencing this agreement.

Scope of Services: Contractor agrees to perform those basic services described in separate written task orders as assigned by the City of Billings. This agreement provides the terms, obligations and conditions which shall control all work.

Projects may include but not be limited to the SCADA Communications System Replacement; miscellaneous electrical system replacements; water system security improvements; future facilities site evaluations; environmental permitting support; transmission line design, facility site improvements, facility piping upgrades and replacement and any other appropriate projects that may be identified and assigned during the term of the contract.

The actually assignment of any project is at the sole discretion of the City and the items listed in this scope are examples of the type of work that may be assigned by task order.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under each task order and in accordance to this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, accompanied by a completed *Consultant Invoice Cover Letter*, said estimate being proportioned to the work completed by the Engineer.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered prior to construction the Engineer shall be paid based upon actual time accrued, but not to exceed the negotiated task order fee:

For services rendered, the Engineer shall be paid based upon actual time accrued based on the standard hourly billing rates from the Schedule of Professional Fees found in Appendix D.

- B. Final payments for each task order shall be the negotiated task order fee less all previous payments.

Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

Section 3. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

Appendix C

Additional Services of Engineer

Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

Schedule of Professional Fees

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Section 1. Professional Services.

	<u>Standard Rate</u>	<u>Overtime Rate</u>
A. Principal	\$ _____	\$ _____
B. Engineer/Scientist		
1. Sr. Project Manager III	\$ _____	\$ _____
2. Sr. Project Manager II	\$ _____	\$ _____
3. Sr. Project Manager I	\$ _____	\$ _____
4. Project Manager III	\$ _____	\$ _____
5. Project Manager II	\$ _____	\$ _____
6. Project Manager I	\$ _____	\$ _____
7. Project Engineer/Scientist II	\$ _____	\$ _____
8. Project Engineer/Scientist I	\$ _____	\$ _____
9. Staff Engineer	\$ _____	\$ _____
10. Engineer/Scientist Intern	\$ _____	\$ _____
C. Geologist		
1. Sr. Project Manager I, Geologist	\$ _____	\$ _____
2. Project Geologist II	\$ _____	\$ _____
D. Engineering Technician		
1. Sr. Engineering Technician II	\$ _____	\$ _____
2. Sr. Engineering Technician I	\$ _____	\$ _____
3. Engineering Technician	\$ _____	\$ _____
4. Technician III	\$ _____	\$ _____
5. Technician II	\$ _____	\$ _____
6. Technician I	\$ _____	\$ _____
7. Engineering Assistant	\$ _____	\$ _____

	<u>Standard Rate</u>	<u>Overtime Rate</u>
E. Clerical and Computer		
1. Printer	\$ _____	\$ _____
2. Administrative Coordinator II	\$ _____	\$ _____
3. Administrative Coordinator I	\$ _____	\$ _____
4. Secretary II	\$ _____	\$ _____
5. Secretary I	\$ _____	\$ _____
6. Clerical	\$ _____	\$ _____
7. Computer Services	\$ _____	\$ _____

Section 2. Surveying Services.

A. Survey Manager	\$ _____	\$ _____
B. Sr. Land Surveyor	\$ _____	\$ _____
C. Land Surveyor I	\$ _____	\$ _____
D. Land Surveyor II	\$ _____	\$ _____
E. Party Chief	\$ _____	\$ _____
F. Sr. Instrument Man	\$ _____	\$ _____
G. Instrument Man	\$ _____	\$ _____
H. Rodman, Chainman	\$ _____	\$ _____
I. Survey Crew		
1. 3-Man Crew	\$ _____	\$ _____
2. 2-Man Crew	\$ _____	\$ _____

Section 3. Equipment Rates.

A. Vehicle	
1. Larger of	\$ _____ /mile
2. or	\$ _____ /hour
B. ATV/Snowmobile	\$ _____ /day
C. Computer Equipment	
1. Engineering/Technical/CADD/GIS/Word Processing	\$ _____
2. CADD Plotter	
a. Bond	\$ _____
b. Vellum	\$ _____
c. Color	\$ _____
d. Mylar	\$ _____
3. Scanner	\$ _____
D. Electronic Distance Measuring	\$ _____
E. Total Station	\$ _____
F. Nuclear Densometer	\$ _____
G. GPS Equipment	\$ _____
H. RTK System	\$ _____

Section 4. Hydrologic Equipment

A. Well Bailer 2" Stainless Steel	\$ _____
B. Well Bailer 4" PVC	\$ _____
C. Well Bailing Unit, Gas Powered	\$ _____
D. Combustible Gas Indicator, Explosimeter	\$ _____
E. Conductivity Meter	\$ _____
F. pH Meter	\$ _____
G. pH/Temp/Conductivity Meter	\$ _____
H. Photo-Ioniz. Detector (Hnu)	\$ _____
I. Dissolved Oxygen Meter	\$ _____
J. Turbidity Meter	\$ _____
K. Stream Flow Meter	\$ _____
L. Hermit Data Logger/Probe	\$ _____
M. Oil/Water Interface Well Probe	\$ _____
N. Well Probe, SINCO 300 feet	\$ _____
O. Well Probe, 500 ft with Temperature Sensor	\$ _____
P. Checkvalve Pump (Brainard-Kilman)	\$ _____
Q. Submersible Pump (Redi Flo 2)	\$ _____

Section 5. Supplies, Office, Drafting, & Reproduction.

A. Copier Reproduction (Reduced Rates for Volume Copying)	
1. Black & White Copy - \$ _____ per page	
2. Color - 8 1/2 x 11 - \$ _____ per page	
3. Color - 11 x 17 - R _____ per page	
B. Prints (Blue, Black, Brownline)	\$ _____
C. Sepia	\$ _____
D. Clothback	\$ _____
E. Chartpak	\$ _____
F. Repro Mylar	\$ _____
G. Transparency	\$ _____
H. Drafting Film	\$ _____
I. Kroy	\$ _____
J. Prints (Presentation Paper)	\$ _____
K. Offset Printing	\$ _____

Section 6. Field Supplies.

A. Brass Caps - Studded	\$ _____
B. Brass Caps - Pipe 3' x 2"	\$ _____
C. Specialty Monuments	\$ _____
D. Lot Corners with Aluminum Caps	\$ _____
E. Lot Corners with Aluminum Caps	\$ _____
F. Lot Corners with Plastic Caps	\$ _____
G. Plastic Caps, Yellow	\$ _____
H. Rebar	\$ _____
I. Boundary Markers, Carsonite	\$ _____

J. Flagging	\$	
K. Paint	\$	
L. Aerial Target Material	\$	
M. Hubs		
1. 2x2x6 Square (Hub 06-2)	\$	
2. 2x2x10 Wedge (Hub 10-BT)	\$	
N. Lath		
1. 24"	\$	
2. 36"	\$	
3. 48"	\$	
O. Stakes	\$	
P. Nail, 60d	\$	
Q. Personal Protection Gear	\$	
1. Level C	\$	
2. Level C1	\$	
3. Level C2	\$	
4. Level D	\$	
5. Level D1	\$	
R. Soil Sampling Disposables	\$	
S. Water Sampling Disposables	\$	

Section 7. Materials Testing

A. Soils		
1. Proctor Method A	\$	
2. Method B, C, or D	\$	
3. One Point Check	\$	
4. Clay Sample Prep	\$	
5. Course Agg. Prep	\$	
6. Atterberg Limits, LL & PL	\$	
7. Hydrometer w/Gravel	\$	
8. Organic Content	\$	
9. Specific Gravity	\$	
B. Aggregates		
1. Sieve Analysis (+#4 dry, -#4 washed)	\$	
2. Sieve Analysis (Full Wash)	\$	
3. Sieve Analysis (Sand Only)	\$	
4. Sieve Analysis (3" Minus Full Wash)	\$	
5. Specific Gravity and Absorption (Course)	\$	
6. Specific Gravity and Absorption (Fine)	\$	
7. Percent Crushed (Fractured Faces)	\$	
8. LA Abrasion	\$	
C. Concrete		
1. Cylinder Cure, Cap, Test	\$	
2. Cylinder Cure & Handle Spares	\$	
3. Cylinder Mold	\$	
4. Mortar Mold	\$	
5. Prism Break	\$	
6. Grout Prism Break	\$	

- | | |
|--|----------|
| 7. Unit Weight | \$ _____ |
| D. Bituminous | |
| 1. Bituminous Extraction & Gradation | \$ _____ |
| 2. Bituminous Extraction | \$ _____ |
| 3. Marshall Density, Stability, & Flow | \$ _____ |
| 4. Marshall Compaction and Density | \$ _____ |
| 5. Maximum Specific Gravity & Voids Analysis | \$ _____ |
| 6. Thickness & Density of Cores, Each | \$ _____ |
| 7. Coring Machine Including Technician | \$ _____ |

Section 8. Miscellaneous Expenses

- | | |
|--------------|----------|
| A. Lodging | \$ _____ |
| B. Meals | \$ _____ |
| C. Telephone | \$ _____ |
| D. Fax | \$ _____ |

Section 9. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, plus a ten percent (10%) handling fee. Included as direct costs are the following:

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies
- E. Premiums for Special Insurance, Performance Bonds, etc.
- F. Other Out-of-Pocket Expenses
- G. Consultants

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

Appendix E

Project Schedule

Executed Task Orders will serve as Notice to Proceed. Completion dates for tasks will be specified individually in Task Orders.

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F
Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

Contract for Professional Architectural and Engineering Services

W.O. 07-15 – General Engineering Services

In consideration of the mutual promises herein, City of Billings and HDR Engineering agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of ___ pages (Basic Services of Contractor);
- Appendix B consisting of ___ pages (Methods and Times of Payment);
- Appendix C consisting of ___ pages (Additional Services of Contractor);
- Appendix D consisting of ___ pages (Schedule of Professional Fees);
- Appendix E consisting of ___ pages (Project Schedule);
- Appendix F consisting of ___ pages (Certificate(s) of Insurance); and

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means HDR Engineering.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on January 31, 2011.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than two hundred fifty thousand DOLLARS (\$ 250,000.00) in accordance with this Section, or the amount of approved task orders. Tasks and associated fees will be negotiated and agreed upon by Task Order. No compensation greater than the total executed task orders will be approved. Task orders will serve as Notice to proceed.
- B. Billings shall pay the Contractor in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.

- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:

1. Workers' compensation and employer's liability coverage as required by Montana law.
 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 3. Commercial automobile liability -- \$500,000 per accident.
 4. Professional liability in the amount of \$1,500,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor 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. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. 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 Contractor'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.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings:	City Engineer (Debi Meling, P.E.) City of Billings Department Public Works 510 North Broadway – 4 th Floor Billings, Montana 59101	FAX: (406) 657-8252
Contractor:	Craig Habben, P.E. HDR Engineering 2913 Millennium Circle Billings, MT 59102	FAX: (406) 651-6600

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget per executed task order.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;

- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Principal (Craig Habben, P.E.)
(title of position)

Billings: Christina Volek, City Administrator

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the Superior Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

City Council or Designee

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST:

IRS Tax ID # _____

Cari Martin
City Clerk

Date: _____

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____

Note: **Final contract documents will require the Contractor's signature to be notarized.**

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the

Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.

- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Craig Habben, P.E.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Travis Harris, PE, Staff Engineer.

Section 3. Scope of Work.

Project Name: City of Billings Work Order 07-15 – Engineering Services

Description of the project: Services to be provided shall be as described in written task orders made pursuant to and referencing this agreement.

Scope of Services: Contractor agrees to perform those basic services described in separate written task orders as assigned by the City of Billings. This agreement provides the terms, obligations and conditions which shall control all work.

Projects may include but not be limited to the 12.47 KV Master Plan Update for both the Water and Waste Water Treatment Plant; Emergency power facilities for the water system;; High Service Pump Replacements; miscellaneous electrical replacements; future facilities sight evaluations; transmission line design and any other appropriate projects that may be identified and assigned during the term of the contract.

The actual assignment of any project is at the sole discretion of the City and the items listed in this scope are examples of the type of work that may be assigned by task order.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under each task order and in accordance to this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, accompanied by a completed *Consultant Invoice Cover Letter*, said estimate being proportioned to the work completed by the Engineer.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered prior to construction the Engineer shall be paid based upon actual time accrued, but not to exceed the negotiated task order fee:

For services rendered, the Engineer shall be paid based upon actual time accrued based on the standard hourly billing rates from the Schedule of Professional Fees found in Appendix D.

- B. Final payments for each task order shall be the negotiated task order fee less all previous payments.

Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

Section 3. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

Appendix C

Additional Services of Engineer

Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

Schedule of Professional Fees

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Section 1. Professional Services.

	<u>Standard Rate</u>	<u>Overtime Rate</u>
A. Principal	\$ _____	\$ _____
B. Engineer/Scientist		
1. Sr. Project Manager III	\$ _____	\$ _____
2. Sr. Project Manager II	\$ _____	\$ _____
3. Sr. Project Manager I	\$ _____	\$ _____
4. Project Manager III	\$ _____	\$ _____
5. Project Manager II	\$ _____	\$ _____
6. Project Manager I	\$ _____	\$ _____
7. Project Engineer/Scientist II	\$ _____	\$ _____
8. Project Engineer/Scientist I	\$ _____	\$ _____
9. Staff Engineer	\$ _____	\$ _____
10. Engineer/Scientist Intern	\$ _____	\$ _____
C. Geologist		
1. Sr. Project Manager I, Geologist	\$ _____	\$ _____
2. Project Geologist II	\$ _____	\$ _____
D. Engineering Technician		
1. Sr. Engineering Technician II	\$ _____	\$ _____
2. Sr. Engineering Technician I	\$ _____	\$ _____
3. Engineering Technician	\$ _____	\$ _____
4. Technician III	\$ _____	\$ _____
5. Technician II	\$ _____	\$ _____
6. Technician I	\$ _____	\$ _____
7. Engineering Assistant	\$ _____	\$ _____

	<u>Standard Rate</u>	<u>Overtime Rate</u>
E. Clerical and Computer		
1. Printer	\$ _____	\$ _____
2. Administrative Coordinator II	\$ _____	\$ _____
3. Administrative Coordinator I	\$ _____	\$ _____
4. Secretary II	\$ _____	\$ _____
5. Secretary I	\$ _____	\$ _____
6. Clerical	\$ _____	\$ _____
7. Computer Services	\$ _____	\$ _____
 <u>Section 2. Surveying Services.</u>		
A. Survey Manager	\$ _____	\$ _____
B. Sr. Land Surveyor	\$ _____	\$ _____
C. Land Surveyor I	\$ _____	\$ _____
D. Land Surveyor II	\$ _____	\$ _____
E. Party Chief	\$ _____	\$ _____
F. Sr. Instrument Man	\$ _____	\$ _____
G. Instrument Man	\$ _____	\$ _____
H. Rodman, Chainman	\$ _____	\$ _____
I. Survey Crew		
1. 3-Man Crew	\$ _____	\$ _____
2. 2-Man Crew	\$ _____	\$ _____
 <u>Section 3. Equipment Rates.</u>		
A. Vehicle		
1. Larger of		\$ _____ /mile
2. or		\$ _____ /hour
B. ATV/Snowmobile		\$ _____ /day
C. Computer Equipment		
1. Engineering/Technical/CADD/GIS/Word Processing		\$ _____
2. CADD Plotter		
a. Bond		\$ _____
b. Vellum		\$ _____
c. Color		\$ _____
d. Mylar		\$ _____
3. Scanner		\$ _____
D. Electronic Distance Measuring		\$ _____
E. Total Station		\$ _____
F. Nuclear Densometer		\$ _____
G. GPS Equipment		\$ _____
H. RTK System		\$ _____

Section 4. Hydrologic Equipment

A. Well Bailer 2" Stainless Steel	\$ _____
B. Well Bailer 4" PVC	\$ _____
C. Well Bailing Unit, Gas Powered	\$ _____
D. Combustible Gas Indicator, Explosimeter	\$ _____
E. Conductivity Meter	\$ _____
F. pH Meter	\$ _____
G. pH/Temp/Conductivity Meter	\$ _____
H. Photo-Ioniz. Detector (Hnu)	\$ _____
I. Dissolved Oxygen Meter	\$ _____
J. Turbidity Meter	\$ _____
K. Stream Flow Meter	\$ _____
L. Hermit Data Logger/Probe	\$ _____
M. Oil/Water Interface Well Probe	\$ _____
N. Well Probe, SINCO 300 feet	\$ _____
O. Well Probe, 500 ft with Temperature Sensor	\$ _____
P. Checkvalve Pump (Brainard-Kilman)	\$ _____
Q. Submersible Pump (Redi Flo 2)	\$ _____

Section 5. Supplies, Office, Drafting, & Reproduction.

A. Copier Reproduction (Reduced Rates for Volume Copying)	
1. Black & White Copy - \$ _____ per page	
2. Color - 8 1/2 x 11 - \$ _____ per page	
3. Color - 11 x 17 - R _____ per page	
B. Prints (Blue, Black, Brownline)	\$ _____
C. Sepia	\$ _____
D. Clothback	\$ _____
E. Chartpak	\$ _____
F. Repro Mylar	\$ _____
G. Transparency	\$ _____
H. Drafting Film	\$ _____
I. Kroy	\$ _____
J. Prints (Presentation Paper)	\$ _____
K. Offset Printing	\$ _____

Section 6. Field Supplies.

A. Brass Caps - Studded	\$ _____
B. Brass Caps - Pipe 3' x 2"	\$ _____
C. Specialty Monuments	\$ _____
D. Lot Corners with Aluminum Caps	\$ _____
E. Lot Corners with Aluminum Caps	\$ _____
F. Lot Corners with Plastic Caps	\$ _____
G. Plastic Caps, Yellow	\$ _____
H. Rebar	\$ _____
I. Boundary Markers, Carsonite	\$ _____

- 7. Unit Weight \$ _____
- D. Bituminous
 - 1. Bituminous Extraction & Gradation \$ _____
 - 2. Bituminous Extraction \$ _____
 - 3. Marshall Density, Stability, & Flow \$ _____
 - 4. Marshall Compaction and Density \$ _____
 - 5. Maximum Specific Gravity & Voids Analysis \$ _____
 - 6. Thickness & Density of Cores, Each \$ _____
 - 7. Coring Machine Including Technician \$ _____

Section 8. Miscellaneous Expenses

- A. Lodging \$ _____
- B. Meals \$ _____
- C. Telephone \$ _____
- D. Fax \$ _____

Section 9. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, plus a ten percent (10%) handling fee. Included as direct costs are the following:

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies
- E. Premiums for Special Insurance, Performance Bonds, etc.
- F. Other Out-of-Pocket Expenses
- G. Consultants

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: W.O. 06-10 Bannister Drain Trail-Billings, Federal Aid No. STPE 1099(55), MDT UPN 6126, Contract for Professional Engineering Services

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The purpose of this project is to construct a multi-use path from King Avenue West south along the Bannister Drain right-of-way, then east along the Bannister Drain right-of-way to 29th Street West, then connecting to the existing trail in Midland Subdivision. An area map is included as an attachment to this memo. Staff requested the services of an engineering firm to provide design and construction administration services for the project, and Engineering, Inc. was selected through the Request for Proposals (RFP) process. A copy of the professional services contract is on file with the City Clerk's office.

ALTERNATIVES ANALYZED:

- Award the Contract for Professional Services to Engineering, Inc. (Estimated design completion date of May 2008)
- Do not award the contract and perform the design in-house. (Unknown completion date)

FINANCIAL IMPACT: The cost of design and construction administration services is \$64,067. Funding is available from the project funds. The total project funding (for design, construction, and construction administration) is as follows:

<u>Big Ditch Trail (CIP #PL0203)</u>	<u>Amount</u>
CTEP Grant	\$312,406
Parks and Trails G.O. bond (Local match)	\$ 25,748
BikeNet (Local match)	\$ 25,000
<u>Recreational Trails Program Grants</u>	<u>\$ 46,500</u>
Total Funds Available	<u>\$409,654</u>

The required local match funding for the CTEP and Recreational Trails Program grants will come from the Parks and Trails G.O. bond approved by voters in 1999 and from BikeNet, a local non-profit bicycling advocacy group.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Engineering, Inc. for \$64,067, including Alternate #1 and Alternate #2, for engineering design and construction administration services, contingent on CTEP concurrence.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A. Bannister Drain Trail Area Map (1 page)

INTRODUCTION

Each year Billings submits projects to the Montana Department of Transportation for funding from the Community Transportation Enhancement Project (CTEP) program. These projects typically represent construction of pedestrian and/or bicycle facilities in the community. The Bannister Drain Trail was approved as a Community Transportation Enhancement Program (CTEP) project in 2005. The purpose of this project is to construct a multi-use path from King Avenue West south along the Bannister Drain right-of-way, then east along the Bannister Drain right-of-way to 29th Street West, then connecting to the existing trail in Midland Subdivision (see the attached map). Street crossings of King Avenue West and 29th Street West are included in the scope of work. The multi-use path and street crossings will conform to the Heritage Trail Plan and Design Standards and to the appropriate AASHTO design standards for streets, multi-use trails and pedestrian facilities.

PROCEDURAL HISTORY

Completed Items

- CTEP Project Specific Agreement signed with MDT authorizing commencement of project – July 25, 2005
- May 22, 2006 – Council approved the \$25,000 pledge from BikeNet
- August 11, August 18 and August 25, 2007 – RFP advertisement dates
- September 9, 2007 – Proposals received by Engineering Division
- October 14, 2007 – Selection committee meeting

Future Items

- February 11, 2008 – Award of Contract for Professional Services (**this memo**)
- Mid-February 2008 – Begin preliminary design
- May 2008 – Final design completed
- June 2008 – Construction contract award
- August/September 2008 – Construction complete

BACKGROUND

The purpose of this project is to construct a multi-use path from King Avenue West south along the Bannister Drain right-of-way, then east along the Bannister Drain right-of-way to 29th Street West, then connecting to the existing trail in Midland Subdivision.

The project is to be financed using CTEP grant funds (\$312,406), two Recreational Trail Program (RTP) grants (totaling \$46,500), with the required local match for the two grants provided by the Parks and Trails G.O. bond (\$25,748) and by BikeNet (\$25,000), a local non-profit bicycling advocacy group. It is expected that the consultant will begin work on preliminary tasks immediately upon contract signing and have design tasks completed in order to receive construction bids in May 2008.

ALTERNATIVES ANALYSIS

The consultant selection committee comprised of Randy Kujat of the Public Works Department; Mark Jarvis of the Parks, Recreation and Public Lands Department; Darlene Tussing of the City/County Planning Department; Tyler Westrope of the Public Works Department; and Nicholas Bailey of the Public Works Department reviewed the proposals submitted.

Proposals to provide the requested services were received from Allied Engineering, CTA Architects & Engineers, Engineering, Inc., Interstate Engineering, and WWC Engineers. Each of the proposals were reviewed by the selection committee members (five members total) and scored in the following categories: Prior Trails Experience (25 points available), Key Project Personnel (25 points available), Past Project Performance (20 points available), Consultant Work Plan (20 points available), and Grammar, Spelling and Conformance to RFP (10 points available).

Each proposal's scores summed to determine an overall score for each firm. Based on each firm's score, the committee members ranked the proposing firms from first to fifth place. Following the reviews, the committee selected Engineering, Inc. as the clear winner.

Engineering staff then initiated negotiations with Engineering, Inc. for a Contract for Professional Services for design and construction administration services for this project. Alternate #1 in this contract is for design of trailhead signage for the project, and Alternate #2 is for survey, additional geotechnical analysis and design of a pedestrian bridge over the BBWA canal south of King Avenue West.

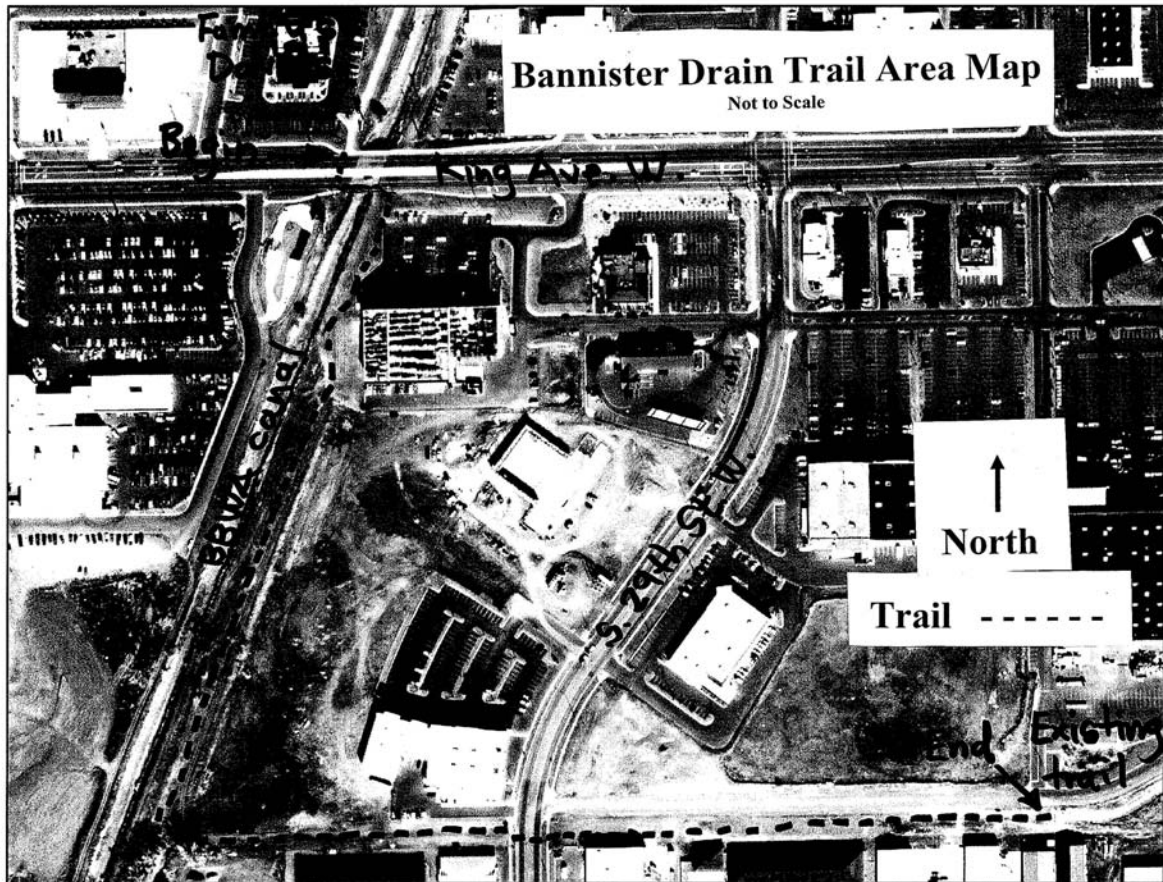
Staff is recommending that Council approve the contract that has been prepared. If approved, it is anticipated that construction of the project would be completed by August/September 2008.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Engineering, Inc. for \$64,067, including Alternate #1 and Alternate #2, for engineering design and construction administration services, contingent on CTEP concurrence.

ATTACHMENT

- A. Bannister Drain Trail Area Map (1 page)



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: W.O. 02-08 – Milton Lane School Route – Billings, Federal Aid No. STPE 1099(53), MDT UPN 6127, Contract for Professional Engineering Services with HKM Engineering, Inc.

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: The purpose of this project is to complete a school route sidewalks project along Milton Lane from the east side of Bench Elementary School (near Rex Lane) to Lake Elmo Drive. An area map is included as an attachment to this memo. The project will complete the street section of Milton Lane including street surface, curb & gutter, and sidewalks; installation of storm drain improvements; construction of one or more enhanced crosswalks; signing and striping improvements; and potentially include re-construction of school frontage improvements to better accommodate bus, van, vehicle and pedestrian traffic. Staff requested the services of an engineering firm to provide design and bidding services for the project, and HKM Engineering, Inc. was selected through the Request for Proposals (RFP) process. A copy of the professional services contract is on file with the City Clerk's office.

ALTERNATIVES ANALYZED:

- Award the Contract for Professional Services to HKM Engineering, Inc. (Estimated design completion date of May 2008)
- Perform the design and construction administration in-house. (Unknown completion date)

FINANCIAL IMPACT: The cost of design and bidding services is available from project funds. The total project funding available (for design, construction, and construction administration) is as follows:

CIP Project ENG28

Gas Tax	\$186,000
CTEP Funds	\$125,000
Property Assessments (Up to)	\$293,000
Storm Drain	\$ 52,500
<u>CDBG (for Storm Drain)</u>	<u>\$ 50,000</u>
Total	\$706,500

RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to execute a Contract for Professional Services with HKM Engineering, Inc. for \$52,500, contingent on CTEP **concurrence**.

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

ATTACHMENT

A. Milton Lane School Route-Billings Area Map (1 page)

INTRODUCTION

The purpose of this project is to provide design and construction administration for a school route sidewalks project along Milton Lane from the east side of Bench Elementary School (near Rex Lane) to Lake Elmo Drive. The project will entail completion of the street section including street surface, curb & gutter, and sidewalks; installation of storm drain improvements; construction of one or more enhanced crosswalks; signing and striping improvements; and potentially include re-construction of school frontage improvements to better accommodate bus, van, vehicle and pedestrian traffic. No right-of-way acquisition is expected to be necessary to complete this project.

The budgeted amount for this project, including engineering and construction, is \$706,500. The project is funded through a combination of sources: a Community Transportation Enhancement Program (CTEP) grant, Community Development Block Grant (CDBG) monies, property assessments to adjoining property owners in accordance with the City's Special Improvement District (SID) policy, storm drain funds, and gas tax funds. The property assessments portion of the project will be structured as a sidewalks assessment as allowed for under Title 7, Section 14, MCA, which is similar in nature to an SID.

It is expected that the consultant will begin work on preliminary tasks upon contract signing and complete design tasks for the Milton Lane project in order to open construction bids not later than May 2008 for summer 2008 construction (while school is out of session).

PROCEDURAL HISTORY

Completed Items

- November 14, 2005 – Council approved using CDBG funds for storm drain for Milton Lane
- June 6, 2006 – CTEP Project Specific Agreement approved by Council
- September 20, September 27, and October 4, 2007 – RFP advertisement dates
- October 19, 2007 – Proposals received by Engineering Division
- November 14, 2007 – Selection committee meeting

Future Items

- February 11, 2008 – Award of Contract for Professional Services (**this memo**)
- April 2008 – Creation of sidewalks assessment project by Council
- May 2008 – Design completed, advertising for construction contract and contract award
- June 2008 – Construction begins
- August 2008 – Construction complete

BACKGROUND

Because this Milton Lane project adjoins the proposed improvements to Lake Elmo Road (Hilltop to Wicks), and because the two projects have many design elements in common, the Request for

Proposals was developed to select one consultant for both projects.

The budgeted amount for this project, including engineering and construction, is approximately \$706,500. The project is funded through a combination of sources: a Community Transportation Enhancement Program (CTEP) grant, Community Development Block Grant (CDBG) monies, property assessments to adjoining property owners in accordance with the City's Special Improvement District (SID) policy, storm drain funds, and gas tax funds. The property assessments portion of the project will be structured as a sidewalks assessment as allowed for under Title 7, Section 14, MCA, which is similar in nature to an SID.

ALTERNATIVES ANALYSIS

The consultant selection committee comprised of the following people: Vern Heisler, P.E., Deputy Public Works Director; Randy Kujat, Construction Inspector II (Public Works); Nicholas Bailey, P.E., Staff Engineer (Public Works); John English, Principal of Bench Elementary School; and Jay Randall, P.E., a Billings resident and retired MDT District Administrator. Each committee member reviewed the proposals submitted.

Proposals to provide the requested services were received from Engineering, Inc., HKM Engineering, Inc.; Interstate Engineering, Inc.; Kadrmas, Lee & Jackson, Inc.; HDR, Inc.; and Morrison-Maierle, Inc. Each of the proposals were reviewed by the selection committee members (five members total) and scored in the following categories: Recent Experience With Similar Projects (25 points available), Key Project Personnel (45 points available), Experience With Property Assessment/Federal Aid Transportation Projects (20 points available), Grammar, Spelling and Conformance to RFP Instructions (10 points available).

Each proposal's scores were summed to determine an overall score for each firm. Based on each firm's score, the committee members ranked the proposing firms from first to sixth place. Upon ranking, HKM Engineering was a clear winner receiving three first place votes and three second place votes. No other firm received more than one first place vote. There was consensus among the committee that interviews were not needed because HKM Engineering was "head and shoulders" above the other submitting firms. Engineering Division staff then initiated scope of services and fee negotiations with HKM Engineering for a Contract for Professional Services for design and bidding services for this project. Public Works staff will perform contract administration and field inspection duties during construction.

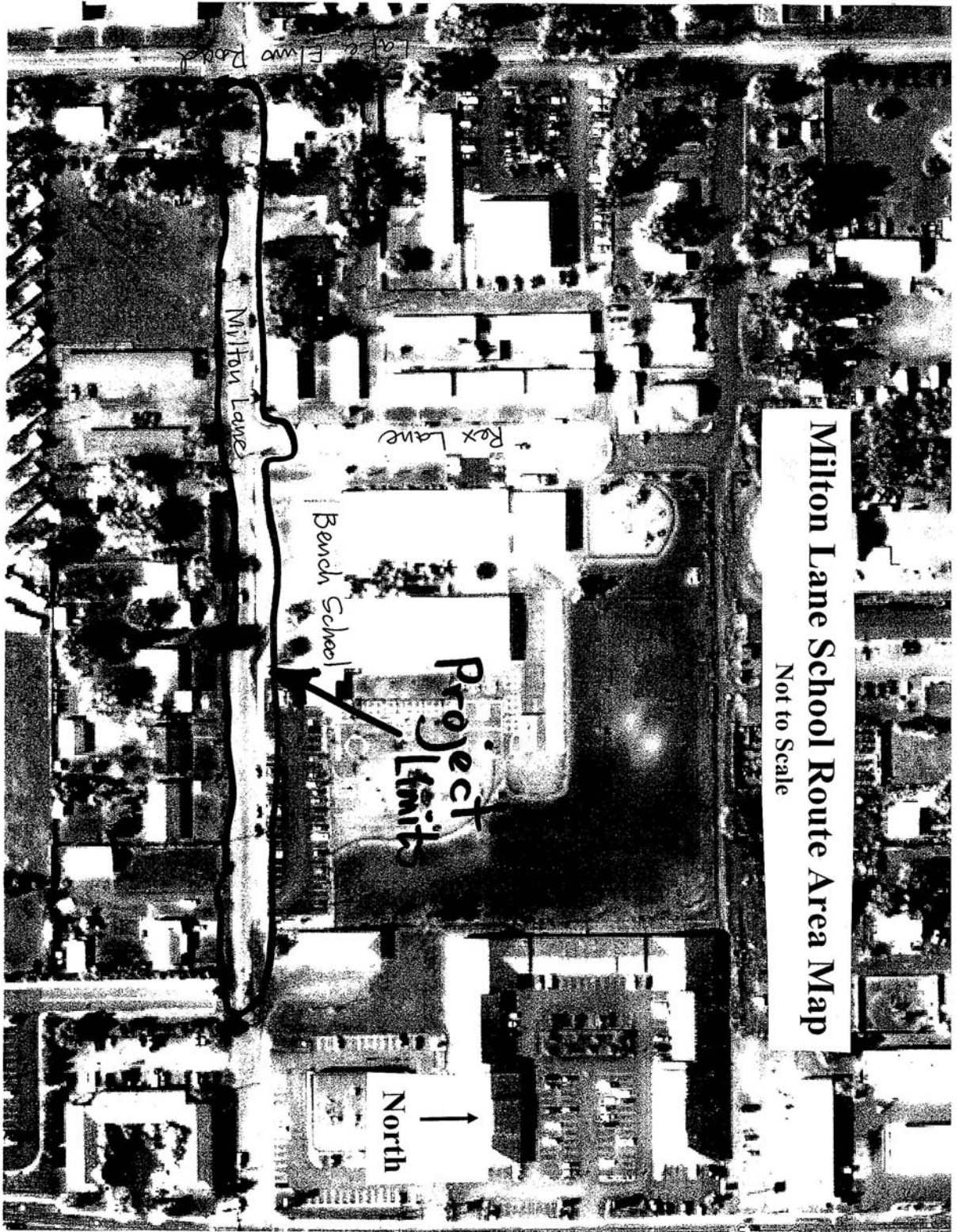
Staff is recommending that Council approve the contract that has been prepared. If approved, it is anticipated that construction of the project would be completed by August 2008.

RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to execute a Contract for Professional Services with HKM Engineering, Inc. for \$52,500, contingent on CTEP concurrence.

ATTACHMENT

A. Milton Lane School Route-Billings Area Map (1 page)



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Contract for Groundwater and Landfill-Gas Monitoring Services – Tetra Tech

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division is required by State and Federal regulations to complete semi-annual groundwater monitoring and quarterly methane monitoring at the Billings Regional Landfill. The current three-year contract to provide this service is nearly completed. Staff conducted a formal consultant selection process and three Proposals were received and reviewed by the committee with Tetra Tech as the selected consultant. We are requesting a three-year contract to maintain consistency in the monitoring requirements.

FINANCIAL IMPACT: The Solid Waste Division annually budgets adequate funds to complete the required environmental monitoring and reporting.

RECOMMENDATION

Staff recommends that City Council approve the Contract for Professional services with Tetra Tech in the amount of \$96,042 to provide three years of groundwater and landfill-gas monitoring services at the Billings Regional Landfill.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Contract for Professional Services, Tetra Tech

INTRODUCTION

Federal and state environmental regulations require all owners and operators of municipal solid waste landfills to perform semi-annual groundwater and quarterly landfill-gas monitoring to determine environmental impacts from landfill operations. The current contract for environmental services will expire following completion of the January 2008 landfill gas sampling event. This contract would provide for the necessary services to continue the on-going monitoring program at the Billings Regional Landfill involving data collection, sampling, laboratory testing, hydrogeologic and geologic analyses, statistical analysis and documentation of groundwater and landfill gas. The Solid Waste Division completed a formal consultant selection process in November 2007 and recommended Tetra Tech.

BACKGROUND

The Billings Regional Landfill, owned and operated by the City of Billings, is Montana's largest municipal solid waste landfill. The landfill receives over 700 tons of solid waste per day from a six-county area. The site has been active since the early 1960's. All areas receiving waste are part of the original footprint, and as such, are unlined. A lateral expansion involving a lined cell is anticipated in the final stages of design and will be constructed this year.

The first groundwater-monitoring program was initiated in the 1970's using bailing procedures. In the 1980's, a Well Wizard sampling system, consisting of dedicated, down-hole air-activated pumps, was installed to assure accuracy and consistency in sample collection. The monitoring system currently consists of seven wells, two background and 5 down gradient, sampled and analyzed semi-annually for approximately 80 parameters under ARM 17.50.708 of the Montana Solid Waste Management regulations.

In 1993, the State of Montana adopted the performance standards for landfill gas control under the U.S. Environmental Protection Agency's Subtitle D regulations (40CFR, Part 258). In anticipation of the requirements, the City of Billings installed a series of methane monitoring wells and initiated a quarterly monitoring program in October 1992. The landfill-gas monitoring program consists of seven on-site wells and 25 on-site structures. Currently, the landfill does not have an active nor passive gas-extraction system in operation.

The current contract for landfill monitoring services will expire following completion of the January 2008 landfill-gas monitoring event. This contract would provide for the services necessary to continue the on-going monitoring program as required under state and federal environmental regulations.

RECOMMENDATION

Staff recommends that City Council approve the Contract for Professional services with Tetra Tech in the amount of \$96,042 to provide three years of groundwater and landfill-gas monitoring services at the Billings Regional Landfill.

ATTACHMENT

A – Contract for Professional Services, Tetra Tech

Contract for Professional Architectural and Engineering Services

Project Landfill Environmental Monitoring

In consideration of the mutual promises herein, City of Billings and Tetra Tech agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 5 pages (Basic Services of Contractor);
- Appendix B consisting of 4 pages (Methods and Times of Payment);
- Appendix C consisting of 1 pages (Additional Services of Contractor);
- Appendix D consisting of 5 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 pages (Project Schedule);
- Appendix F consisting of 3 pages (Certificate(s) of Insurance); and

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Tetra Tech.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.

- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on February 28, 2011.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than ninety six thousand four hundred two DOLLARS (\$ 96,402.00) in accordance with this Section.
- B. Billings shall pay the Contractor in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to

terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
 - 1. Workers' compensation and employer's liability coverage as required by Montana law.
 - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.

3. Commercial automobile liability -- \$500,000 per accident.
 4. Professional liability in the amount of \$1,000,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
 - D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor 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 Contractor 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 Contractor 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 Contractor'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.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: Barbara Butler
Environmental Compliance Coordinator
City of Billings Solid Waste Division
P.O. Box 1178
Billings, Montana 59103 FAX: (406) 247-8626

Contractor: Brian McHugh
Office Manager
618 South 25th Street
Billings, Montana 59101 FAX: (406) 248-9282

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 - 2. Strikes or Work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and

- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Billings Office Manager
(title of position)

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the Superior Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Contractor

City Council or Designee

Tetra Tech Brian McHugh

Name: BRIAN MCHUGH

Title: OFFICE MANAGER

Date: _____

Date: 11/7/08

ATTEST:

IRS Tax ID # 95-4148514

Cari Martin
City Clerk

Date: _____

STATE OF MONTANA)
 :SS.
COUNTY OF YELLOWSTONE)

On this 7th day of JAN, 2009, before me, the undersigned, a Notary Public for the State of Montana, personally appeared BRIAN MCHUGH, known to me to be the OFFICE MANAGER of TETRA TECH, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Lorna Du Ray
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: 4-21-10

Note: Final contract documents will require the Contractor's signature to be notarized.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Jeff Rice working under the Principal-in-Charge, Brian McHugh.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Barbara Butler, Environmental Compliance Coordinator.

Section 3. Scope of Work.

As Attached

APPENDIX A: SCOPE OF WORK

TASK 1: MAINTAIN THE GROUNDWATER MONITORING SAMPLING AND ANALYSIS PLAN

The following section presents the activities necessary for conducting the groundwater and methane monitoring events. All field activities will be completed following Tetra Tech's standard operating procedures and the "Billings Regional Landfill Groundwater Sampling and Analysis Plan," (SAP) previously prepared by Tetra Tech.

Prior to the initial sampling event under this contract, we will review and update the SAP to ensure that components of the plan are consistent with recent advances in field sampling and regulatory changes. Should any changes or additions be made, the revised sampling and analysis plan will be submitted to the City of Billings for their review, comment, and approval prior to forwarding it to the MDEQ for review and approval. The MDEQ will be notified two weeks prior to sample collection as required.

Additionally, prior to each sampling event the site specific health and safety plan (HSAP) will be reviewed by project team members and updates to the HSAP will be prepared as conditions change at the facility or as new technology develops. Each day of field work will be preceded by a "tailgate" safety meeting by project staff.

TASK 2: IMPLEMENT AN ONGOING GROUNDWATER MONITORING PROGRAM

Tetra Tech will conduct six semi-annual groundwater monitoring events in accordance with the Administrative Rules of Montana (ARM) Section 17.50.7. All groundwater monitoring activities will be completed in accordance with the SAP prepared by Tetra Tech and kept on-file with the City of Billings and the MDEQ. At a minimum, the following activities will be completed during each groundwater monitoring event:

- Measure depth to water in all monitoring wells;
- Purge the wells to ensure representative formation water is sampled;
- Collect, filter, and preserve groundwater samples as necessary; and
- Document all field activities on project field logs.

All water sample containers will be appropriately labeled and placed into ice-filled coolers for delivery to the laboratory.

Northern Analytical Laboratories, Inc. (NAL) in Billings, Montana will be used for all groundwater sample analyses. NAL uses inductively coupled argon plasma coupled with a mass spectrometer (ICP/MS) for analysis of trace metals in water. Because groundwater at the Billings Regional Landfill contains high concentrations of naturally occurring dissolved solids, analysis for metals using ICP/MS results in better precision and lower detection limits than other analytical techniques. Volatile organic compounds are measured using gas chromatography/mass spectrometry (GC/MS). This technique is a confirmatory method for measurement and identification of volatile organic compounds in environmental matrices. Both GC/MS and ICP/MS are state-of-the-art techniques for quantification of environmental pollutants in water.

All groundwater samples will be analyzed for parameters listed in Table 1 of ARM 17.50.708, plus dichlorodifluoromethane. Analyses will be performed in accordance with "Methods for Chemical Analysis of Water and Wastes" EPA-600, and "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846, third edition, September 1986.

Quality assurance/quality control (QA/QC) samples will be included with each groundwater monitoring event. Standard QA/QC samples include field blanks, trip blanks, field duplicates, and laboratory duplicate samples, as specified in the SAP. Analysis of field blanks is intended to quantify sample bias due to field procedures. Trip blank analyses will be used to quantify contaminant bias in organic compounds during sample transport and external sample container contamination. Finally, analysis of field duplicate samples is intended to evaluate the accuracy of laboratory analytical procedures. The laboratory will also perform and report routine QA/QC data using laboratory reference standards, matrix spikes, and laboratory duplicates.

Inclusion of a rigorous QA/QC program is necessary to insure that the quality of data produced during groundwater monitoring activities at the landfill is known. Data produced during this program will be subjected to statistical evaluations to validate the data with respect to its accuracy, precision, and representativeness. Knowing the variability of a given data set is necessary to insure that false positive or false negative values are identified, particularly when the data may be compared to established performance criteria.

Upon receipt of laboratory analytical data, Tetra Tech project personnel will prepare monitoring reports that will contain the following information:

- Description of the sampling event;
- Discussion of methods used to complete the sampling event;
- Summary of water level data;
- Summary of laboratory analytical data;
- Listing of any parameters which exceed enforcement standards
- Discussion of data validation methods and results;
- Statistical analyses of water quality data and our interpretation of the data; and
- Conclusions regarding the environmental performance of the landfill and any changes in the regulatory status of the landfill.

Intrawell statistical analyses, conducted in accordance with ARM 17.50.708 and US EPA technical guidance documents will be used to evaluate the water quality data used to assess performance of the landfill. Intrawell statistical analyses compare water quality data for an individual well against other data collected from the same well over time, to identify increasing or decreasing trends and assign a degree of confidence to the trends. Interwell statistics compare water quality data from downgradient well against data collected from upgradient wells to determine landfill performance. Interwell statistics are not appropriate for the Billings Regional landfill because of natural variations in groundwater chemistry.

The reports will also compare analytical data against historical water quality data collected at the landfill. Groundwater sampling field logs, chain-of-custody forms, laboratory analytical reports, water level data, and statistical work sheets will be appended to each report. Two draft reports will be submitted to the City of Billings within approximately 60 days of sample collection. We will finalize the reports upon receipt of comments from the City and submit a final version of each report to the MDEQ within 90 days of sample collection.

TASK 3: PROVIDE ON-GOING LANDFILL GAS MONITORING

Quarterly landfill gas monitoring will be conducted for a period of three years in accordance with ARM, Part 17.50.5. All field activities will be completed following Tetra Tech's standard operating procedures and the current "Billings Landfill Gas Monitoring Plan". Before conducting each gas monitoring event under this contract, Tetra Tech will review and update the existing gas monitoring plan to insure components of the plan are consistent with upgrades in monitoring technologies and

any regulatory changes. If revised, the gas monitoring plan will then be submitted to the City for review and forwarded to the MDEQ for review and approval. All Tetra Tech and City safety requirements will be strictly adhered to during all monitoring activities.

Landfill gas monitoring will involve measuring the explosive potential of gas in established gas monitoring probes, culverts, and all buildings located on the landfill property on a quarterly basis. Two of the gas monitoring events will be conducted in conjunction with the semi-annual groundwater monitoring events to save costs. The percent of the lower explosive limit (% LEL), methane, carbon dioxide, and the percent of oxygen will be measured at all monitoring locations using a "landfill gas" meter.

Following each quarterly landfill gas monitoring event, Tetra Tech will prepare a brief letter report for the City documenting data recorded during the event. The reports will contain a description of equipment and methods used to complete the monitoring and a summary of the data. A current landfill gas database will be included with each report. If the percent LEL exceeds 25% if the LEL in structure or 100% of the LEL at the facility property boundary, Tetra Tech will notify the City via telephone within 24 hours and in writing with seven days such that the MDEQ can be notified as required by ARM 17.50.511.

TASK 4: LANDFILL ENVIRONMENTAL CONSULTING

As requested, Tetra Tech will be available to respond to requests for additional environmental consulting services to the City of Billings. These requests may originate from Montana Department of Environmental Quality (MDEQ) requests for additional information. However, any work conducted under this task will be approved by the City of Billings in advance of conducting any activities.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under Appendix A of this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. ~~Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work.~~ The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed. *OK 11/1/01*

- A. For services rendered prior to construction, Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed the following amounts:

Task 1 Sampling and Analysis Plan, and Health and Safety Plan updates	\$ 754.00 per year
Task 2 Semi-Annual Groundwater Monitoring	\$ 24,780.00 per year
Task 3 Quarterly Methane Monitoring	\$ 5,010.00 per year
Task 4 Environmental Consulting	\$ 1,470.00 per year
Total Cost for 3 years	\$ 96,042.00

(See Attached for Cost Breakdown)

- B. Final payment shall be the above stated basic fee less all previous payments.

Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

Section 3. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

COST ESTIMATE
Environmental Monitoring Services
Billings Regional Landfill, Billings, Montana
(Prepared by Tetra Tech, Billings, Montana)
January 2, 2008

	QUANTITY	RATE	TOTAL
Task 1: Update the Groundwater and Methane Monitoring Sampling and Analysis Plans and Health and Safety Plan			
Labor(per hour per year)			
Project Manager	1	105.00	105.00
Staff Scientist	3	75.00	225.00
Senior Technician	2	60.00	120.00
Database Manager	2	87.00	174.00
Drafting	1	50.00	50.00
Clerical	2	40.00	80.00
<i>Subtotal per year</i>			<u>754.00</u>
TOTAL TASK 1, per year			754.00
Task 2: Perform Semi-Annual Groundwater Monitoring (two events per year)			
Field Labor, per hour			
Project Manager	2	105.00	210.00
Staff Scientist	2	75.00	150.00
Senior Technician	24	60.00	1,440.00
Field Technician	40	50.00	2,000.00
<i>Subtotal - Field Labor - per year</i>			<u>3,800.00</u>
Direct Costs			
Field Meters, per event	2	100.00	200.00
Decontamination Fluids, per event	2	20.00	40.00
Nitrogen Gas (compressed), per event	2	75.00	150.00
Disposable Pressure Filter Apparatus, per well	14	35.00	490.00
<i>Subtotal - Direct Costs - per year</i>			<u>880.00</u>
Laboratory Fees per year (average cost for three years shown)			
Table 1 parameters, per sample	16	520.00	8,320.00
Volatile Organics, per sample	2	250.00	500.00
Laboratory QA/QC Validation	1	400.00	400.00
<i>Subtotal - Laboratory Fees - per year</i>			<u>9,220.00</u>

COST ESTIMATE
Environmental Monitoring Services
Billings Regional Landfill, Billings, Montana
(Prepared by Tetra Tech, Billings, Montana)
January 2, 2008

	QUANTITY	RATE	TOTAL
Reporting/Consulting Labor, per hour			
Senior Scientist	8	115.00	920.00
Project Manager	16	105.00	1,680.00
Project Scientist	48	85.00	4,080.00
Database Manager	40	87.00	3,480.00
Drafting	8	50.00	400.00
Clerical	8	40.00	320.00
<i>Subtotal - Reporting/Consulting Labor - per year</i>			<u>10,880.00</u>
TOTAL TASK 2, per year			24,780.00
Task 3: Perform Quarterly Methane Monitoring (per year)			
Field Labor (per hour per year)			
Project Manager	2	105.00	210.00
Senior Technician	32	60.00	1,920.00
<i>Subtotal - Field Labor - per year</i>			<u>2,130.00</u>
Direct Costs			
Field Meters, per day	4	75.00	300.00
<i>Subtotal - Direct Costs - per year</i>			<u>300.00</u>
Reporting Labor, per hour			
Project Manager	4	105.00	420.00
Staff Scientist	24	75.00	1,800.00
Drafting	4	50.00	200.00
Clerical	4	40.00	160.00
<i>Subtotal - Reporting Labor - per year</i>			<u>2,580.00</u>
TOTAL TASK 3, per year			5,010.00
Task 4: Environmental Contingency Consulting Services, per year as requested			
Senior Project Scientist	2	115.00	230.00
Project Manager	4	105.00	420.00
Project Scientist	8	85.00	680.00
Drafting	2	50.00	100.00
Clerical	1	40.00	40.00
<i>Subtotal - Environmental Contingency Consulting Services</i>			<u>1,470.00</u>
TOTAL TASK 4, per year			1,470.00

COST ESTIMATE
Environmental Monitoring Services
Billings Regional Landfill, Billings, Montana
(Prepared by Tetra Tech, Billings, Montana)
January 2, 2008

	QUANTITY	RATE	TOTAL
SUMMARY OF TASKS			
TOTAL TASK 1, per year			754.00
TOTAL TASK 2, per year			24,780.00
TOTAL TASK 3, per year			5,010.00
TOTAL TASK 4, per year			1,470.00
Total For 1 Year Consulting Services			<u>32,014.00</u>
Total for 3 Years Consulting Services			<u>96,042.00</u>
GRAND TOTAL FOR 3 YEARS			<u>96,042.00</u>

Appendix C

Additional Services of Engineer

Extra Services of the Engineer will be paid only with written prior authorization by Billings.

A.

B.

Appendix D

Schedule of Professional Fees

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Section 1. Professional Services.

	<u>Standard Rate</u>	<u>Overtime Rate</u>
A. Principal/Senior Scientist	\$115.00	\$
B. Engineer/Scientist		
1. Sr. Project Manager III	\$	\$
2. Sr. Project Manager II	\$	\$
3. Sr. Project Manager I	\$	\$
4. Project Manager III	\$	\$
5. Project Manager II	\$ 105.00	\$
6. Data Base Manager	\$ 87.00	\$
7. Project Engineer/Scientist II	\$ 85.00	\$
8. Project Engineer/Scientist I	\$	\$
9. Staff Engineer/ Staff Scientist	\$ 75.00	\$
10. Engineer/Scientist Intern	\$	\$
C. Geologist		
1. Sr. Project Manager I, Geologist	\$	\$
2. Project Geologist II	\$	\$
D. Engineering Technician		
1. Sr. Engineering Technician II	\$	\$
2. Sr. Engineering Technician I	\$ 60.00	\$
3. Engineering Technician/Field Tech	\$ 50.00	\$
4. Technician III	\$	\$
5. Technician II	\$	\$
6. Technician I	\$	\$
7. Engineering Assistant	\$	\$

	<u>Standard Rate</u>	<u>Overtime Rate</u>
E. Clerical and Computer		
1. Printer	\$ _____	\$ _____
2. Administrative Coordinator II	\$ 55.00	\$ _____
3. Administrative Coordinator I	\$ _____	\$ _____
4. Secretary II	\$ _____	\$ _____
5. Secretary I	\$ _____	\$ _____
6. Clerical	\$ 40.00	\$ _____
7. Computer Services	\$ _____	\$ _____

Section 2. Surveying Services.

A. Survey Manager	\$ _____	\$ _____
B. Sr. Land Surveyor	\$ _____	\$ _____
C. Land Surveyor I	\$ _____	\$ _____
D. Land Surveyor II	\$ _____	\$ _____
E. Party Chief	\$ _____	\$ _____
F. Sr. Instrument Man	\$ _____	\$ _____
G. Instrument Man	\$ _____	\$ _____
H. Rodman, Chainman	\$ _____	\$ _____
I. Survey Crew		
1. 3-Man Crew	\$ _____	\$ _____
2. 2-Man Crew	\$ _____	\$ _____

Section 3. Equipment Rates.

A. Vehicle	
1. Larger of	\$0.535/mile
2. or	\$5.00/hour
B. ATV/Snowmobile	\$ _____/day
C. Computer Equipment	
1. Engineering/Technical/CADD/GIS/Word Processing	\$ _____
2. CADD Plotter	
a. Bond	\$ _____
b. Vellum	\$ _____
c. Color	\$ _____
d. Mylar	\$ _____
3. Scanner	\$ _____
D. Electronic Distance Measuring	\$ _____
E. Total Station	\$ _____
F. Nuclear Densometer	\$ _____
G. GPS Equipment	\$ _____
H. RTK System	\$ _____

Section 4. Hydrologic Equipment

A. Well Bailer 2" Stainless Steel	\$10.00/day
B. Well Bailer 4" PVC	\$8.00/ea
C. Well Bailing Unit, Gas Powered	\$130.00/day
D. Combustible Gas Indicator, Explosimeter	\$50.00/day
E. Conductivity Meter	\$35.00/day
F. pH Meter	\$30.00/day
G. pH/Temp/Conductivity Meter	\$40.00/day
H. Photo-Ioniz. Detector (Hnu)	\$55.00/day
I. Dissolved Oxygen Meter	\$40.00/day
J. Turbidity Meter	\$30.00/day
K. Stream Flow Meter	\$
L. Hermit Data Logger/Probe	\$
M. Oil/Water Interface Well Probe	\$45.00/day
N. Well Probe, SINCO 300 feet	\$30.00/day
O. Well Probe, 500 ft with Temperature Sensor	\$
P. Checkvalve Pump (Brainard-Kilman)	\$
Q. Submersible Pump (Redi Flo 2)	\$

Section 5. Supplies, Office, Drafting, & Reproduction.

A. Copier Reproduction (Reduced Rates for Volume Copying)	
1. Black & White Copy - \$0.10 per page	
2. Color - 8 1/2 x 11 - \$1.00 per page	
3. Color - 11 x 17 - R \$1.75 per page	
B. Prints (Blue, Black, Brownline)	\$
C. Sepia	\$
D. Clothback	\$
E. Chartpak	\$
F. Repro Mylar	\$
G. Transparency	\$
H. Drafting Film	\$
I. Kroy	\$
J. Prints (Presentation Paper)	\$
K. Offset Printing	\$

Section 6. Field Supplies.

A. Brass Caps - Studded	\$
B. Brass Caps - Pipe 3' x 2"	\$
C. Specialty Monuments	\$
D. Lot Corners with Aluminum Caps	\$
E. Lot Corners with Aluminum Caps	\$
F. Lot Corners with Plastic Caps	\$
G. Plastic Caps, Yellow	\$
H. Rebar	\$
I. Boundary Markers, Carsonite	\$

J. Flagging	\$ _____
K. Paint	\$ _____
L. Aerial Target Material	\$ _____
M. Hubs	
1. 2x2x6 Square (Hub 06-2)	\$ _____
2. 2x2x10 Wedge (Hub 10-BT)	\$ _____
N. Lath	
1. 24"	\$ _____
2. 36"	\$ _____
3. 48"	\$ _____
O. Stakes	\$ _____
P. Nail, 60d	\$ _____
Q. Personal Protection Gear	\$ _____
1. Level C	\$ _____
2. Level C1	\$ _____
3. Level C2	\$ _____
4. Level D	\$ _____
5. Level D1	\$ _____
R. Soil Sampling Disposables	\$ _____
S. Water Sampling Disposables	\$10.00/sample

Section 7. Materials Testing

A. Soils	
1. Proctor Method A	\$ _____
2. Method B, C, or D	\$ _____
3. One Point Check	\$ _____
4. Clay Sample Prep	\$ _____
5. Course Agg. Prep	\$ _____
6. Atterberg Limits, LL & PL	\$ _____
7. Hydrometer w/Gravel	\$ _____
8. Organic Content	\$ _____
9. Specific Gravity	\$ _____
B. Aggregates	
1. Sieve Analysis (+#4 dry, -#4 washed)	\$ _____
2. Sieve Analysis (Full Wash)	\$ _____
3. Sieve Analysis (Sand Only)	\$ _____
4. Sieve Analysis (3" Minus Full Wash)	\$ _____
5. Specific Gravity and Absorption (Course)	\$ _____
6. Specific Gravity and Absorption (Fine)	\$ _____
7. Percent Crushed (Fractured Faces)	\$ _____
8. LA Abrasion	\$ _____
C. Concrete	
1. Cylinder Cure, Cap, Test	\$ _____
2. Cylinder Cure & Handle Spares	\$ _____
3. Cylinder Mold	\$ _____
4. Mortar Mold	\$ _____
5. Prism Break	\$ _____
6. Grout Prism Break	\$ _____

Appendix E
Project Schedule

Based on a notice to proceed by Billings date no later than March 1, 2008, the completion date for the Engineer's work through final design shall be: February 28, 2011

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F
Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

See attached

ACORD <small>TM</small> CERTIFICATE OF LIABILITY INSURANCE Page 1 of 2		DATE 01/07/2008
PRODUCER Willis North America, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 37205191	877-945-7378	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURERS AFFORDING COVERAGE		
INSURED Tetra Tech, Inc. 618 S 25th St. Billings, MT 59101	INSURER A: ACE American Insurance Company	NAIC# 22667-012
	INSURER B: American International Specialty Lines In	26883-001
	INSURER C:	
	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.

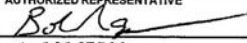
INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contract Liab. <input checked="" type="checkbox"/> X,C,U Coverage GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	HD0G23734825	10/1/2007	10/1/2008	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 100,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	ISAH08238431	10/1/2007	10/1/2008	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 50,000	XOOG23886005	10/1/2007	10/1/2008	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	AOS WLRC44479886	10/1/2007	10/1/2008	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
A		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WI SCFC44479898	10/1/2007	10/1/2008	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B		OTHER Professional Liability Contractor's Pollution Liability	1952583	10/1/2007	10/1/2008	\$5,000,000. Each Claim \$5,000,000. Aggregate \$250,000 Deductible Each claim

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Stop Gap coverage for the following states: OH, ND, WA, WV, WY

It is agreed that City of Billings is included as an Additional Insured as respects to General Liability as required by contract.

CERTIFICATE HOLDER

City of Billings Attn: Ken Behling 510 North Broadway - 4th Floor Billings, MT 59101	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 DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
---	---

ACORD 25 (2001/08)

Coll:2218906 Tpl:686459 Cert:10167501

© ACORD CORPORATION 1988

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Work Order 03-17 – Memorandum of Agreement
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation (MDT) has issued to the City of Billings a Memorandum of Agreement (MOA) which will delegate authority of South 27th Street to the City of Billings for application for the establishment of a railroad Quiet Zone. South 27th Street is one of three highway-rail at-grade crossings (South 28th Street and South 29th Street are the others and are currently under the City's jurisdiction) that are being investigated for the establishment of the Quiet Zone.

ALTERNATIVES ANALYZED:

- Authorize the Mayor to execute the Memorandum of Agreement with the Montana Department of Transportation
- Do not authorize the Mayor to execute the Memorandum of Agreement with the Montana Department of Transportation

FINANCIAL IMPACT: There are no costs to the City identified with the proposed Memorandum of Agreement.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the Memorandum of Agreement with the Montana Department of Transportation for the South 27th Street Quiet Zone.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A. Memorandum of Agreement (2 Pages)

INTRODUCTION

The Montana Department of Transportation (MDT) has issued to the City of Billings a Memorandum of Agreement (MOA) which will delegate authority of South 27th Street to the City of Billings for application for the establishment of a railroad Quiet Zone. South 27th Street is one of three highway-rail at-grade crossings (South 28th Street and South 29th Street are the others and are currently under the City's jurisdiction) that are being investigated for the establishment of the Quiet Zone.

PROCEDURAL HISTORY

- Sept. 22, 2003 – Original Railroad Feasibility Study Contract signed with S.E.H.
- Feb. 2004 – DBP request that City of Billings pursue implementation of a quiet zone

BACKGROUND

The Downtown Billings Partnership and various downtown property owners and businesses would like to see a railroad Quiet Zone implemented at the Downtown railroad crossings on South 27th, 28th, and 29th Streets. Railroad Quiet Zones require approval of the Federal Railroad Administration (FRA) before they can be implemented. If implemented, a Quiet Zone allows the prohibition of blowing the horn or whistle on a locomotive as a warning that a locomotive is approaching the crossing. For applications of Quiet Zones that span multiple jurisdictions of road authority, the FRA requires agreements to be in place such that one jurisdiction acts on the behalf of all jurisdictions involved. The Memorandum of Agreement will grant authority to the City of Billings to act on MDT's behalf.

ALTERNATIVES ANALYSIS

If the Council does not authorize the Mayor to execute the Memorandum of Agreement, the application for the Quiet Zone can not be submitted.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the Memorandum of Agreement with the Montana Department of Transportation for the South 27th Street Quiet Zone.

ATTACHMENTS

- A. Memorandum of Agreement (2 Pages)

MEMORANDUM OF AGREEMENT

THIS Memorandum of Agreement is made and entered into by and between the State of Montana, acting by and through its Department of Transportation (hereinafter MDT), and the City of Billings (hereinafter City).

WITNESSETH THAT:

WHEREAS, MDT and the City are cooperatively working to allow the establishment of a highway-rail grade crossing Quiet Zone (hereinafter “the QZ”) in the City; and

WHEREAS, the QZ is to address highway/rail grade crossings located at South 27th Street, South 28th Street and South 29th Street in the City, and

WHEREAS, the State possesses ownership of South 27th Street; and

WHEREAS, in accordance with 49 CFR 222.37, the State agrees to the establishment of the QZ on South 27th Street; and

WHEREAS, in accordance with 49 CFR 222.37, the State hereby delegates authority to the City for the QZ on South 27th Street; and

THEREFORE, in consideration of the stipulations contained herein, the parties agree as follows for all such work:

1. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of MDT employees, the City will protect, indemnify, and save harmless MDT against and from all claims, liabilities, demands, causes of action, judgments (with any cost and fees that might be awarded), and losses to anyone as a result of errors or omissions in design and/or plans, construction, maintenance or use, including any suits, claims, actions, losses, costs or damages of any kind, including MDT’s legal expenses, made against the MDT by anyone arising out of, in connection with, or incidental to the QZ and its design, construction, maintenance or use.
2. City shall comply with all rules and regulations as set forth in 49 CFR 222 for establishment of a QZ. City shall ensure that the QZ is in accordance to that regulation and its amendments. Any amendment to this rule will require the City to coordinate with MDT to implement the changes. All costs to maintain the QZ is the sole responsibility of the City.
3. City shall ensure that all additional devices installed for the QZ are maintained or caused to be maintained in good working condition. All maintenance costs associated with this shall be the responsibility of the City, including the cost to repair any damage to these devices, unless the damage is solely caused by an MDT employee.

4. City shall provide copies of all documents impacting South 27th Street that are needed for the establishment and design of the QZ for MDT's review and approval. Such approval cannot be deemed a waiver of the City's obligations set forth in paragraph 1, above.
5. Should the City determine to withdraw its QZ status, the City shall notify MDT in writing prior to the withdrawal.

This agreement shall be binding on both parties, the heirs, successors, personal representatives or assigns of either party.

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

MONTANA DEPARTMENT OF TRANSPORTATION

Jim Lynch, Director of Transportation

By _____, _____,
2008

Loran Frazier, P.E., Administrator-Engineering Division

Approved for Legal Content

By _____
MDT Legal Counsel

CITY OF BILLINGS

By _____, _____, 2008
Mayor

Approved for Legal Content

City Legal Counsel

I, _____, Clerk of the City of Billings, hereby certify that the above agreement was regularly adopted by the City Council of the City of Billings at a meeting held on the _____ day of _____, 2008; and that the City Council of the City of Billings authorized the Mayor to sign this agreement on behalf of the Council.

Billings City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Compensation Agreement for Montana Sapphire

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: In order to obtain city water and sanitary sewer service for its property, the Developer, Montana Sapphire, LLC, extended local water main (2,200 feet of 24-inch and 1,000 feet of 16-inch) and local sewer main (2,000 feet of 27-inch) in King Avenue West to the development in 2002-2003 under Private Contract Nos. 452 and 497. Since the City did not have funds budgeted during that time to construct these utilities, the Developer paid the entire cost. The original Subdivision Improvements Agreement (April 22, 2002) outlined future negotiation of City participation in the utility oversizing costs. The Developer now desires to be compensated for a portion of its utility construction costs and the Public Works Department proposes that such compensation be accomplished through the attached Agreement.

FINANCIAL IMPACT: Based on actual project costs, the PWD has determined that the cost attributable to the utilities portion of the contract and eligible to be recovered by the Developer is \$392,870.65.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached Agreement.

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

ATTACHMENT

Attachment A--Compensation Agreement (9 pp.)

BACKGROUND

During construction of the Montana Sapphire development in 2002-2003 under Private Contract Nos. 452 and 497, about 2,200 feet of 24-inch water main, 1,000 feet of 16-inch water main and 2,000 feet of 27-inch sanitary sewer main were installed in King Avenue at the Developer's expense. It is stipulated in the April 22, 2002 Subdivision Improvements Agreement that the additional expense necessary to oversize these utilities beyond the actual needs of the development would be negotiated between Montana Sapphire, LCC, and the City. Since Montana Sapphire, LLC, is now preparing to construct further surface improvements and sell additional lots within the subdivision, they are seeking compensation for their additional costs on the previously installed public utilities.

It has been determined that the City will pay for the following cost components of the actual construction:

1. the difference between the actual cost to install the 27-inch sewer main and what it would have cost to install an 8-inch sewer main which would have met the actual needs of the development;
2. the difference between the actual cost to install the 24-inch and 16-inch water mains and what it would have cost to install a 12-inch water main which would have met the actual needs of the development; and,
3. one half of what it would have cost to install the 8-inch sewer main and 12-inch water main.

The City has determined it to be equitable to share half of the cost of the 8-inch sewer and 12-inch water mains described Item 3 above. Properties on the north side of King Avenue are either already served by existing City utilities or will be required to connect to the utilities installed by Montana Sapphire at some point in the future. At the time these properties connect, they will be assessed the appropriate construction fees to cover the City's cost contribution to the projects.

Based on the actual costs to construct the projects under P-452 and P-497, the PWD has determined that the cost attributable to the utilities portion of the contract and eligible for compensation is \$392,870.65. Costs attributable to the water construction total \$181,781.70 and costs attributable to the sewer construction total \$211,088.95. Sufficient funding is available in the FY08 water and sewer budgets to compensate Montana Sapphire, LLC, these amounts.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached Agreement.

ATTACHMENT

Attachment A--Compensation Agreement (9 pp.)

COMPENSATION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 20__ between **THE CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as the "City," and **MONTANA SAPPHIRE, LLC**, whose address for the purpose of this agreement is, P. O. Box 80104, Billings, Montana 59108, 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 extended water and wastewater facilities for the purpose of providing service to Montana Sapphire Subdivision under Private Contracts P452 and P497. Approved plans and specifications for said Private Contracts generally provided for the construction of water and/or wastewater facilities that are subject to compensation to include 27-inch sanitary sewer in King Avenue West from a point that is approximately 200 feet east of Shiloh Road to a point that is 1,750 feet west of Shiloh Road; 24-inch water main in King Avenue West along the entire north frontage of Montana Sapphire Subdivision; and 16-inch water main in King Avenue West from Shiloh Road to a point that is approximately 925 feet east of Shiloh Road; and

WHEREAS, developer is entitled to certain compensation for eligible water and wastewater facilities installation and oversizing as set forth in the Montana Sapphire Subdivision Improvements Agreement recorded with the office of the Clerk and Recorder of Yellowstone County, Montana under Document No. 3173822; and

WHEREAS, Developer is desirous of obtaining compensation for a portion of the water and/or wastewater facilities hereafter 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 City does hereby agree to compensate Montana Sapphire, LLC for the water and wastewater facilities installed under Private Contracts P-452 and P497 in the amount of \$392,870.65. The premise for the compensation calculation is based on the City's willingness to compensate the Developer for the total construction cost less half of a 12-inch water main and half of an 8-inch sanitary sewer main along the Montana Sapphire Subdivision King Avenue frontage. The attached Exhibits 1 and 2 identify the cost incurred by the Developer and the portion of that amount that the City agrees to compensate the Developer. The costs shown in the attached exhibits are based on actual construction cost data.

2. 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 beyond what was installed under Private Contacts P452 and P497.
3. The City does hereby agree to compensate Montana Sapphire, LLC within 12 months of the execution of this agreement.
4. 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, Montana 59103. The designation of a new address shall be accompanied by a copy of this Agreement.
5. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

DATED this ____ day of _____, 20____.

"CITY"

CITY OF BILLINGS

By: _____

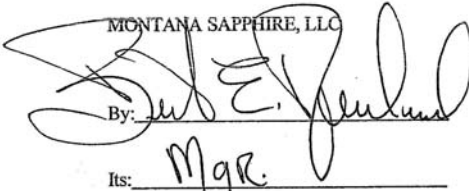
Its: _____

ATTEST:

City Clerk

"DEVELOPER"

MONTANA SAPPHIRE, LLC

By:  _____

Its:  _____

EXHIBIT 1
PRIVATE CONTRACT NO. 452 AND 497
MONTANA SAPPHIRE SUBDIVISION

ITEM NO.	EST. QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
101	1,966 LF	27-inch Sanitary Sewer Pipe 8-inch Sanitary Sewer Pipe Sanitary Sewer Oversizing Delta	100.00 / LF 48.00 / LF 52.00 / LF =	102,232.00
102	2,209 LF	24-inch Water Main 12-inch Water Main 24-Inch Water Oversizing Delta	60.00 / LF 39.00 / LF 21.00 / LF =	46,389.00
103	966 LF	16-inch Water Main 12-inch Water Main 24-Inch Water Oversizing Delta	48.45 / LF 39.00 / LF 9.45 / LF =	9,128.70
104	6 EA	24-inch Butterfly Valve 12-inch Gate Valve 24-Inch Valve Oversizing Delta	4,400.00 / EA 1,450.00 / LF 2,950.00 / EA =	17,700.00
105	2 EA	16-inch Butterfly Valve 12-inch Gate Valve 24-Inch Valve Oversizing Delta	2,146.00 / EA 1,450.00 / EA 696.00 / EA =	1,392.00
106	1 EA	24x16-inch Reducer No Reducer 24-Inch Reducer Oversizing Delta	1,500.00 / EA 0.00 / EA 1,500.00 / EA =	1,500.00
107	1 EA	24-inch Cross 12-inch Cross 24-Inch Cross Oversizing Delta	4,013.00 / EA 1,300.00 / EA 2,713.00 / EA =	2,713.00
108	4 EA	24-inch Bend 12-inch Bend 24-Inch Bend Oversizing Delta	2,000.00 / EA 600.00 / EA 1,400.00 / EA =	5,600.00
109	2 EA	24-inch Plug and Thrust 12-inch Plug and Thrust 24-Inch Plug Oversizing Delta	900.00 / EA 275.00 / EA 625.00 / EA =	1,250.00
TOTAL OVERSIZING COSTS				= 187,904.70

EXHIBIT 2
WATER AND SANITARY SEWER COST SHARE SUMMARY
PRIVATE CONTRACT NO. 452 AND 497
MONTANA SAPPHIRE SUBDIVISION

ITEM NO.	EST. QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
Private Contract P452				
101	1 LS	*Mobilization and Insurance SS	18,500.00 / LS =	18,500.00
101	1 LS	Mobilization and Insurance WTR	18,500.00 / LS =	18,500.00
102	1,966 LF	*27-inch Sanitary Sewer Pipe	100.00 / LF =	196,600.00
103	7 EA	*Sanitary Sewer Manhole	1,900.00 / EA =	13,300.00
104	166.7 VF	*Extra Depth Manhole	77.00 / VF =	12,835.90
105	3 EA	*27-inch Temp Sewer Plug	320.00 / EA =	960.00
106	1 EA	Connect to Existing 16-inch Wtr	600.00 / EA =	600.00
107	1 EA	24x16-inch Reducer	1,500.00 / EA =	1,500.00
108	1 EA	24-inch Cross	4,013.00 / EA =	4,013.00
109	4 EA	24-inch 45° Bends	2,000.00 / EA =	8,000.00
110	6 EA	24-inch Butterfly Valve	4,400.00 / EA =	26,400.00
111	1 EA	24-inch Plug and Thrust	900.00 / EA =	900.00
112	1,728 LF	24-inch Water Main	60.00 / LF =	103,680.00
113	966 LF	16-inch Water Main	48.45 / LF =	46,802.70
114	2 EA	16-inch Butterfly Valve	2,146.00 / EA =	4,292.00
115	1 EA	16-inch Sleeve	468.00 / EA =	468.00
116	1 LS	*Dewatering	69,700.00 / LS =	69,700.00
117	1 LS	*Traffic Control SS	8,050.00 / LS =	8,050.00
118	1 LS	Traffic Control WTR	8,050.00 / LS =	8,050.00
Private Contract P497				
119	1 LS	Mobilization and Insurance	3,420.00 / LS =	3,420.00
120	1 EA	Connect to Existing 24-inch	2,730.00 / EA =	2,730.00
121	1 EA	24-inch Butterfly Valve	4,620.00 / EA =	4,620.00
122	481 LF	24-inch Water Main	85.00 / LF =	40,885.00
123	1 EA	24-inch Plug and Thrust	930.00 / EA =	930.00
124	1 LS	Traffic Control	2,100.00 / LS =	2,100.00
Subtotal - Utilities			= \$	597,836.60
* Indicates Sanitary Sewer Item				
TOTAL P452 AND P497 WATER AND SEWER COSTS			=	\$597,836.60
LESS CITY OVERSIZING COMPENSATION			=	\$187,904.70
TOTAL ADJUSTED MAIN COSTS			=	\$409,931.90
CITY'S PORTION OF ADJUSTED MAIN COST (50% CITY, 50% MT. SAPP)			=	\$204,965.95
CITY'S COMPENSATION FOR MAIN OVERSIZING			=	\$187,904.70
TOTAL CITY COMPENSATION			=	\$392,870.65

EXHIBIT 1
PRIVATE CONTRACT NO. 452 AND 497
MONTANA SAPPHIRE SUBDIVISION

ITEM NO.	EST. QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
101	1,966 LF	27-inch Sanitary Sewer Pipe 8-inch Sanitary Sewer Pipe Sanitary Sewer Oversizing Delta	100.00 / LF 48.00 / LF 52.00 / LF =	102,232.00
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109	2 EA	24-inch Plug and Thrust 12-inch Plug and Thrust 24-Inch Plug Oversizing Delta	900.00 / EA 275.00 / EA 625.00 / EA =	1,250.00
TOTAL OVERSIZING COSTS				= 187,904.70

\$187,904.70
 - 102,232.00 SS

 85,672.70 W

EXHIBIT 2
WATER AND SANITARY SEWER COST SHARE SUMMARY
PRIVATE CONTRACT NO. 452 AND 497
MONTANA SAPPHIRE SUBDIVISION

ITEM NO.	EST. QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
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Private Contract P497				
119	1 LS	Mobilization and Insurance	3,420.00 / LS =	3,420.00
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122	481 LF	24-inch Water Main	85.00 / LF =	40,885.00
123	1 EA	24-inch Plug and Thrust	930.00 / EA =	930.00
124	1 LS	Traffic Control	2,100.00 / LS =	2,100.00
Subtotal - Utilities				\$ 597,836.60
* Indicates Sanitary Sewer Item				
TOTAL P452 AND P497 WATER AND SEWER COSTS			=	\$597,836.60
LESS CITY OVERSIZING COMPENSATION			=	\$187,904.70
TOTAL ADJUSTED MAIN COSTS			=	\$409,931.90
CITY'S PORTION OF ADJUSTED MAIN COST (50% CITY, 50% MT. SAPP)			=	\$204,965.95
CITY'S COMPENSATION FOR MAIN OVERSIZING			=	\$187,904.70
TOTAL CITY COMPENSATION			=	\$392,870.65

SS

18,500.00
196,600.00
13,300.00
12,835.90
960.00

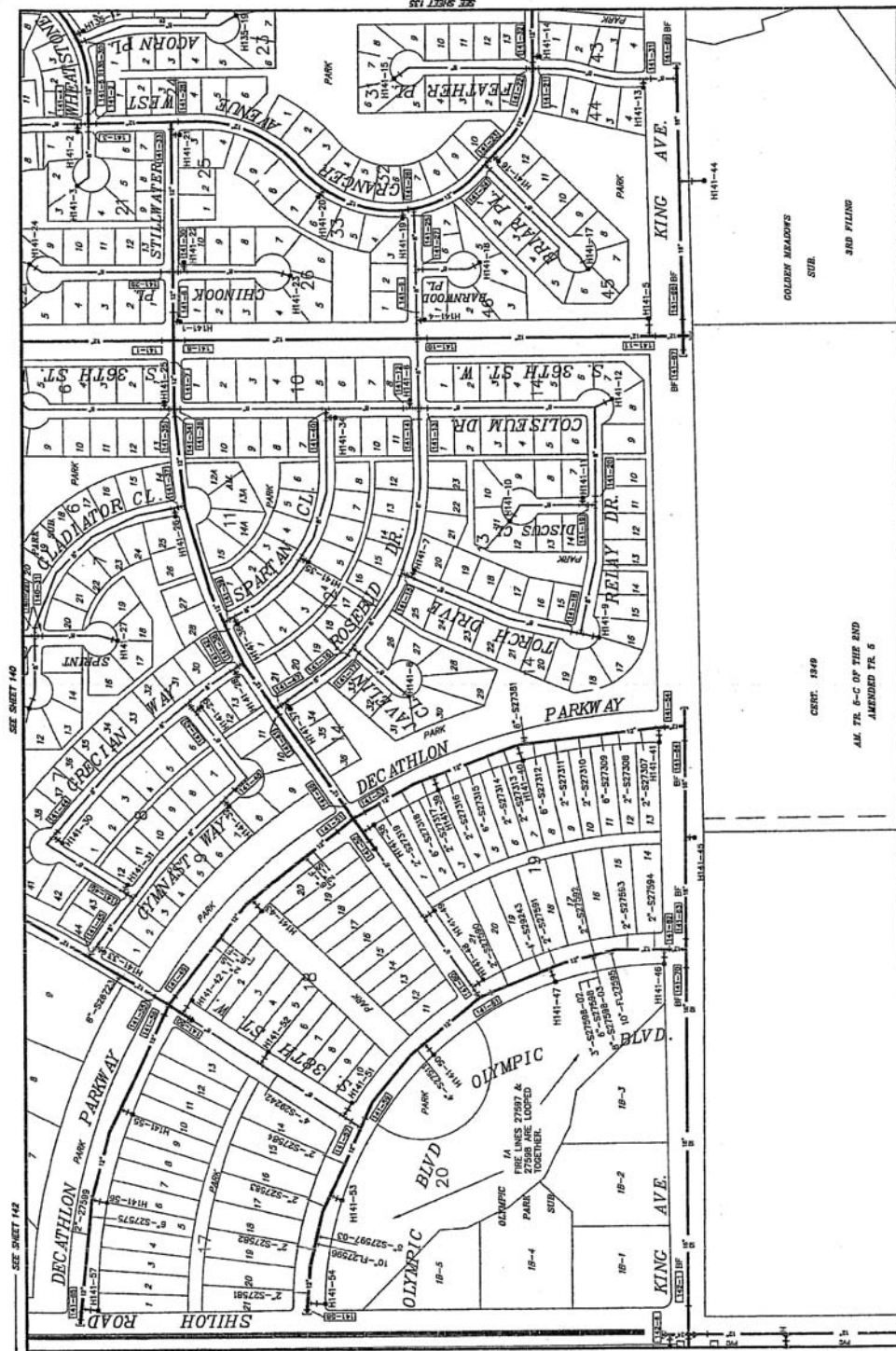
69,700.00
8,050.00

\$ 319,945.90 :
\$ 277,890.70 :

\$597,836.60	<u>W</u>	<u>SS</u>
- 187,904.70	\$277,890.70	\$319,945.90
\$409,931.90	\$85,672.70	\$102,232.00
	\$192,218.00	\$217,713.90
50% \$204,965.95	\$96,109.00	\$108,856.95

TOTAL COMPENSATION

<u>W</u>	<u>S</u>
\$85,672.70	\$102,232.00
+ \$96,109.00	\$108,856.95
\$181,781.70	\$211,088.95



Sheet 141

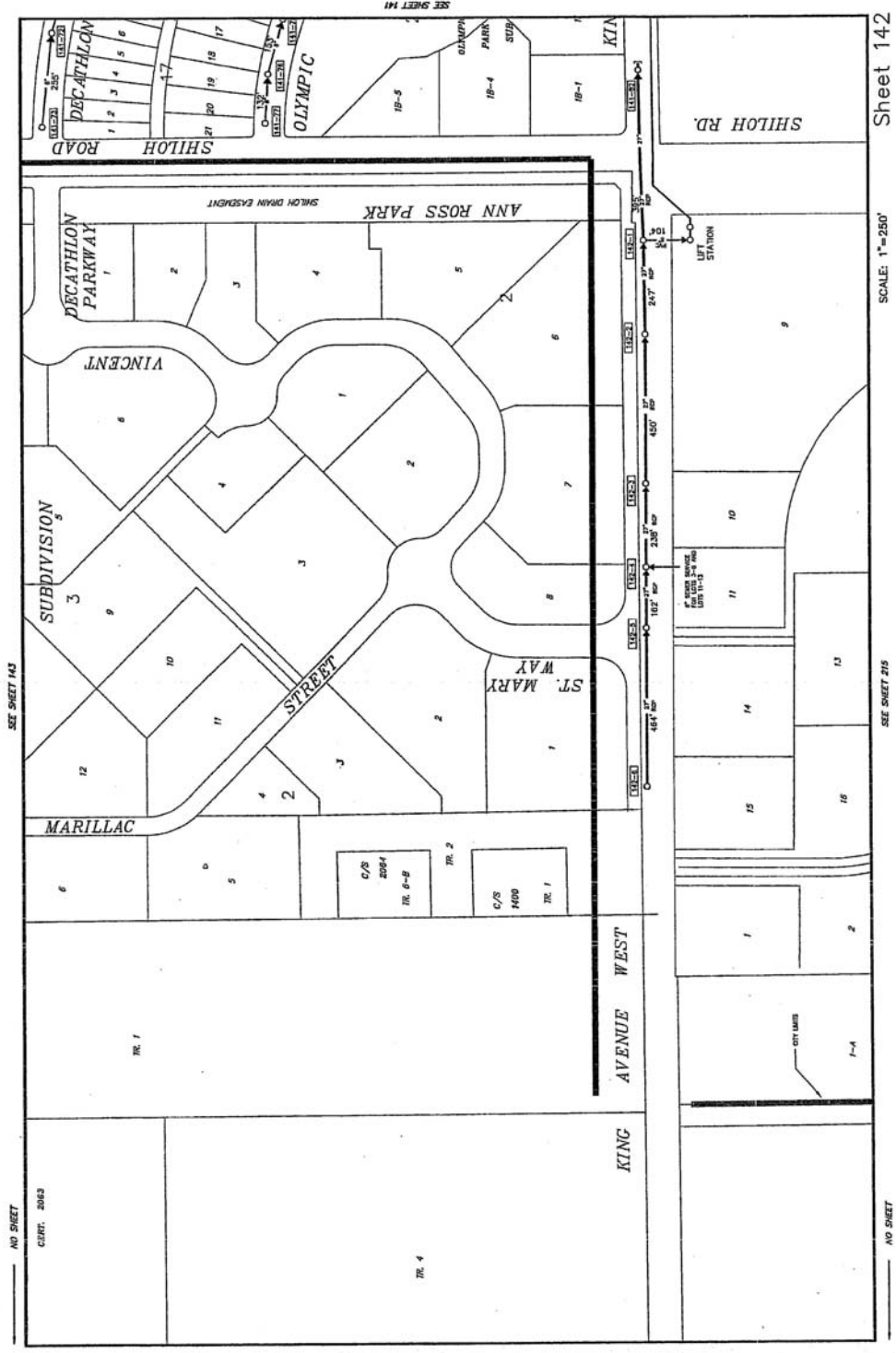
SCALE: 1"=250'

SEE SHEET 142

SEE SHEET 143

CERT. 1849

AM. TR. 5-C OF THE 2ND
AMENDED TR. 5



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Project Development Termination Agreement
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City has requested to terminate the agreement Project entitled MT 1036 (1) Bench Boulevard Billings and located on State Urban Route U-1036 beginning at Lake Elmo Drive and extending north to Main Street/Highway 312. The original agreement was based on the City managing the Bench North Project. This agreement terminates the City's involvement as the project manager. The project will still proceed as planned by MDT and the City will act in a review capacity. The decision to transfer the project management duties to MDT was based on the fact that the City's time and expenses are not reimbursable and we can continue in an advisory capacity without the additional administrative duties and expenses. This agreement also includes a provision that the City will maintain the roads after construction is complete.

ALTERNATIVES ANALYZED:

- Terminate our agreement with Montana Department of Transportation.
- Do not terminate our agreement with Montana Department of Transportation and continue to manage the project.

FINANCIAL IMPACT: No financial impact.

RECOMMENDATION

Staff recommends that Council terminate our agreement with MDT.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Termination Agreement

PROJECT DEVELOPMENT TERMINATION AGREEMENT
MT 1036(1) BENCH BOULEVARD BILLINGS

THIS AGREEMENT is made and entered into, by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called MDT, and the City of Billings, a Montana municipal corporation, hereinafter called the City.

WITNESSETH THAT:

WHEREAS, a formal project development agreement was entered into on July 24, 2006 between MDT and the City for a project entitled MT 1036(1) Bench Boulevard Billings and located on State Urban Route U-1036 beginning at Lake Elmo Drive (Reference Post 0.235) and extending north to Main Street/Highway 312 (Reference Post 3.090); and,

WHEREAS, under provision J 6 of the project development agreement the City has requested to terminate the agreement; and,

WHEREAS, MDT is willing to accept responsibility for the development and construction of the project;

NOW, THEREFORE, the parties agree as follows:

1. By virtue of this agreement the original agreement for the above project is hereby formally terminated.
2. The City will be held harmless for any costs incurred by MDT during the period of the original agreement.
3. The City will be held harmless for administration of the original agreement except for any suits, claims, actions, losses, costs, or damages which are solely the result of negligent acts, or omissions, or misconduct of City employees.
4. The City will be a cooperating agency on the project.
5. MDT has the responsibility and authority to proceed with all aspects of project development and construction.
6. MDT will not let the project to contract without the City's concurrence if the bid price exceeds the available funds or exceeds the engineer's estimate by 10%.
7. Financial participation for the improvements will be financed in part with federal funds. The matching fund percentages will be 86.58% federal Transportation Improvements-Section 1934 funds, and 13.42% state funds. The applicable federal-aid participation rate for this project is 86.58% for all eligible phases.

8. Expenditures occurring after July 1, 2007, will be subject to the then-current indirect cost rate(s) established by MDT.

9. \$17,000,000 in Transportation Improvements-Section 1934 funds have been made available for projects on Bench Boulevard, specifically CM 1099 (32) – 6th Avenue North to Bench Boulevard-Billings, and MT 1036(1) Bench Boulevard Billings. It is understood that the federal share in the MT 1036(1) Bench Boulevard Billings total project cost will not exceed 86.58% of the low bid, up to a maximum of \$17,000,000, less any congressionally-approved adjustments, indirect costs, project development costs, and Section 1934 funds applied to project CM 1099(32) – 6th Avenue North to Bench Boulevard-Billings. Costs exceeding the Section 1934 funds plus accompanying state matching funds are the responsibility of the City.

10. The City will be responsible for routine and long-term maintenance, as defined in Title 60, Montana Code Annotated (MCA), of this project after construction.

This agreement shall be binding on both parties, as well as the heirs, successors, personal representatives, and assigns of either party.

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

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____
Loran Frazier, P.E
Administrator-Engineering Division

December ____, 2007

APPROVED FOR LEGAL CONTENT

MDT Legal Counsel

CITY OF BILLINGS

Ron Tussing, Mayor
City of Billings

I, _____, Clerk of the City of Billings, hereby certify that this agreement was regularly adopted by the Billings City Council at a meeting held on the ____ day of _____, 2007; and the Council authorized the Mayor to sign this agreement on behalf of the Council.

City Clerk Signature

APPROVED AS TO FORM

City Attorney

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Annexation Petition #08-01: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Lenhardt Property, LP; Lenhardt Enterprises, LLC; and Lenhardt Farm, LLC, property owners, submitted a petition to annex land to the City of Billings under 7-2-4600 MCA. The 114.3-acre property is located north and west of the intersection of Shiloh Road and King Avenue West. The property has been used for agricultural purposes for many years. The property owners are requesting annexation in order to obtain all city services to develop the property at high density for a mix of residential and commercial uses. The property has also requested inclusion in the City's Limits of Annexation Map for immediate annexation when the Limits of Annexation Map is amended. The City Council at the same meeting on February 25 will hear the Annexation Committee's recommendation regarding inclusion of this property in the Limits of Annexation area and amendment to the Limits of Annexation Map prior to conducting this public hearing and review of this annexation petition. An Urban Planning Area study has also been submitted for review to maintain this entire property within the Urban Planning Area boundary and also will be reviewed by the Council at its February 25 meeting.

The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date.

FINANCIAL IMPACT: There is no immediate fiscal impact to the City by acknowledging this annexation petition and setting a public hearing date. A fiscal impact statement will be included with the public service report to be presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for February 25, 2008, to consider annexing this property.

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

ATTACHMENTS

- A. Property data
- B. Annexation petition
- C. Map

ATTACHMENT A
Annexation #08-01 Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Lenhardt Property, LP; Lenhardt Enterprises, LLC; and Lenhardt Farm, LLC
Purpose of annexation:	Obtain all City services for high-density, mixed use development
Property included:	Tracts 1-5, Certificate of Survey 2063; S1/2, Section 10, T1S, R25E
Location:	North and west of the intersection of Shiloh Road and King Avenue West
Total area:	400.94 acres
Current zoning:	Agricultural Open Space
Zoning after annexation:	Residential-9600 (Proposed Zone Change to PD)
Current land use:	Agricultural
Future land use:	High-density, urban, mixed use development

ATTACHMENT B
Annexation Petition #08-01

**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:

- a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parnly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
 4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
 5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
8/2/07	Lenhardt Property LP		4035 Cedarbrook Court
	Lorraine Newman, member		Bellingham, WA 98229
	Allan Lenhardt, member		
	Jan Rehberg, member		

(continued on separate page)

07-747

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

[illegible]

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 11/6/07

Fee Paid: \$800.00

Received By: Turning Point / Urgently Funding

Petition Number: #08-01

EXHIBIT *A*



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: St. Patrick's Day Parade
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Big Sky Senior Services and Save Our Parade requests street closures for the annual St. Patrick's Day Parade and street fair on Saturday, March 15, 2008. The parade will assemble at 9:00 am, begin at 11:00 am and disband by 12:00 pm using the established downtown parade route. The street fair will be held on North Broadway between 1st Ave North and 3rd Ave North from noon to 2:00 pm.

Recommended conditions of approval include, Big Sky Senior Services and Save Our Parade:

1. Obtaining the proper permit if alcohol will be consumed in the public right of way
2. Contact all businesses and make them aware of the event
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide and install adequate traffic barricades and signs directing motorists around closure
6. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: Big Sky Senior Services and Save Our Parade requests the standard police support for the parade with a lead car and follow car and street cleaning if needed due to animals. Police, traffic control and litter removal are to be paid for by Big Sky Senior Services and Save Our Parade.

RECOMMENDATION

Staff recommends that Council approve closure of the established downtown parade route and the closure of North Broadway between 1st Ave North and 3rd Ave North on Saturday, March 15, 2008, for the St. Patrick's Day Parade and street fair.

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

ATTACHMENTS

- A. Letter from Big Sky Senior Services (2 pages)
- B. Special Activity Permit application (2 pages)
- C. Map (1 page)
- D. Certificate of insurance (1 page)
- E. BID Event Kit of Parts Usage Package & Business Sign Off (3 page)

January 15, 2007

Mike Whitaker
PRPL Director
City of Billings
390 North 23rd Street
Billings, MT 59101

Mr. Whitaker:

I'm writing to formally request permission for street closures and parade approval for the Annual St. Patrick's Day Parade and Celtic Street Fair.

<u>EVENT</u>	<u>DATE</u>	<u>ORGANIZATIONS</u>	<u>HISTORY</u>
St. Patrick's Day Parade &	3/15/08	Big Sky Senior Services, Inc.	Since 1981
Celtic Street Fair	3/15/08	and Save Our Parade Committee	Since 1999

ST. PATRICK'S DAY PARADE AND CELTIC STREET FAIR

Saturday, March 15, 2008

Pursuant to City Ordinance Sections 24-540 and 24-501, we request permission to hold the annual St. Patrick's Parade & Celtic Street Fair in downtown Billings on Saturday, March 15th, 2008. We intend to use the established Downtown Parade Route. The parade will start at 11:00 am with staging beginning in the staging area east of 26th Street at about 9:00 am. The Celtic Street Fair will run from 9:00 am until 2:00 pm, with an additional hour before and after the event needed for set-up and take down. The Celtic Street Fair will be held on Broadway between 2nd Avenue North and 3rd Avenue North in downtown Billings. We will do our best to inform the public that they should refrain from parking on the parade route, the Celtic Street Fair block, and in the parade staging area. We will request the services of the Billings Police Department to assist in the temporary street closures, especially North 27th Street.

We request the usual police department support for this parade with a lead car and a follow car. Additionally, we also request adequate police presence with bike and foot patrol officers, if available for all events. Finally, we inform your department that there may be animals in this parade and the streets may need to be cleaned following the parade. We will arrange for temporary street closure devices to control access to the parade route, the staging area and the street fair. We will place and remove them appropriately.

Big Sky Senior Services and Save Our Parade will provide necessary barricades for traffic control. We will also arrange for adequate trashcans to control litter as well as for clean up. We will send letters before the events to inform emergency personnel of the street closures and parade events. The Parade Permit Application Form is enclosed and the required insurance forms

with the City of Billings listed as additional insured will be sent to you directly from our insurance provider.

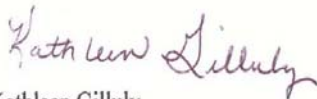
ADDITIONAL INFORMATION:

Big Sky Senior Services, Inc. and the Save Our Parade Committee will sponsor the 2008 St. Patrick's Day Parade & Celtic Street Fair.

Big Sky Senior Services and the Save Our Parade Committee will be requesting that March 15, 2008 be declared Big Sky Senior Services day by the honorable Mayor Ron Tussing.

If you have any questions or concerns, or need to inform us of any additional requirements, please call me at 259-3111.

Sincerely,



Kathleen Gilluly
Big Sky Senior Services, Inc.
Save Our Parade Committee

Per

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

PLEASE COMPLETE BOTH SIDES

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

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

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

APPLICANT SIGNATURE Kathleen Lilluly DATE 1-15-2008

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

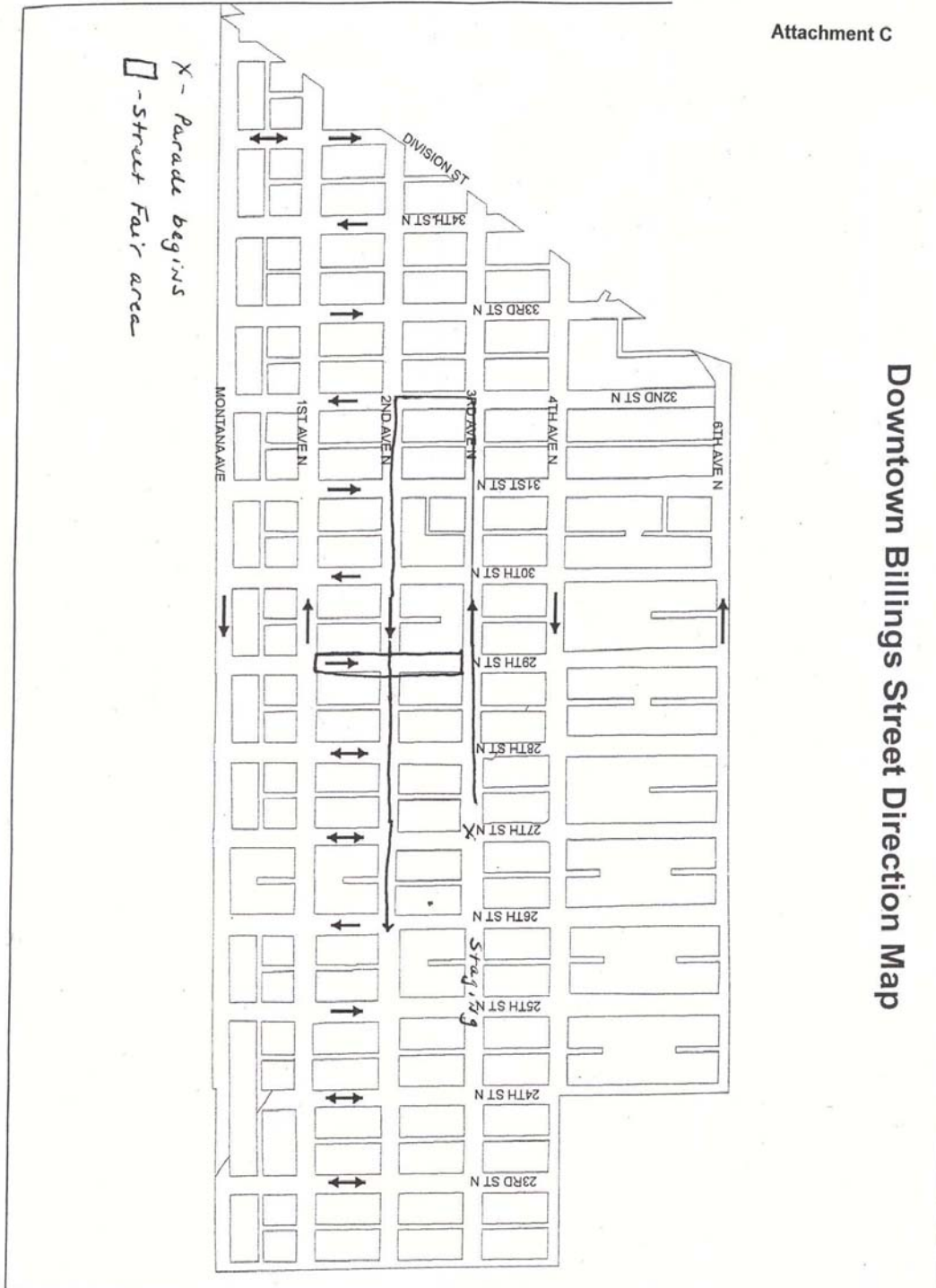
FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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

Downtown Billings Street Direction Map



Client#: 200

CITYOFBI

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/24/07
PRODUCER Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED City Of Billings %Human Resources Dept P.O. Box 1178 Billings, MT 59104		INSURERS AFFORDING COVERAGE INSURER A: Penn-American Insurance Co. INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #

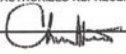
COVERAGES

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 LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:250 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PAC6621619	04/01/07	04/01/08	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/PO/AGG \$2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUS- TORY LIMITS OTH- ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Holder is listed as Additional Insured on policy. St. Patricks Day Parade and Celtic Street Fair. 1st and 3rd Avenue North and 28th Street. 9am -2pm on March 15, 2008.

(See Attached Descriptions)

CERTIFICATE HOLDER Big Sky Senior Services, Inc./Save Our Parade Committee 3 1/2 N. 35th Street Billings, MT 59101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
---	---

ACORD 25 (2001/08) 1 of 3

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 11, 2008

TITLE: Yellowstone Rimrunners Street Closures for the Shamrock Run
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

The Yellowstone Rimrunners request the temporary street closures on Sunday, March 16, 2008, from 12:30 pm to 2:00 pm, for their annual Shamrock Run. The route is as follows: Beginning at 3rd Street West and Avenue B, go north on 3rd Street West then west onto Parkhill up to Nordbye, turn around and go east onto Parkhill, turning right on 3rd Street West and then ending at Pioneer Park.

Recommended conditions of approval include Yellowstone Rimrunners:

1. Have no alcohol consumption in the right of way
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for by the Yellowstone Rimrunners.

RECOMMENDATION

Staff recommends that Council approval the temporary closure of the streets named above.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

- A. Letter from Yellowstone Rim Runners outlining event (1 pages)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (2 page)

Yellowstone Rim Runners
P.O. Box 2424
Billings MT 59103



January 10, 2008

Billings Parks, Recreation and Public Lands
390 North 23rd Street
Billings MT 59101

Dear Sir or Madam:

The Yellowstone Rim Runners are requesting a permit for the Shamrock Run which will be held on Sunday, March 16, 2008. The race will be a 5 kilometer (3.1 mile) race on 3rd Street West and Parkhill Drive.

The race route will be the same as last year. The start line for the race will be at 3rd Street West and Avenue B. Runners will head north on 3rd to Parkhill, then west on Parkhill to the turn around point near the intersection of Parkhill and Nordbye. Runners will then head back east on Parkhill and south on 3rd. Runners will enter Pioneer Park on the service road at the south edge of the park and finish inside the park.

Registration will be held at the Zimmerman Center in Pioneer Park from 11:30 to 12:30. Runners will begin to assemble at the start at about 12:30. The race will begin at 1:00 P.M. All runners will be off the street by 1:45 P.M.

Barricades will be placed at 3rd Street West and Grand Avenue, 3rd Street West and Parkhill, Virginia and Parkhill, and 13th Street West and Parkhill. Barricades will also be placed at intersections one block off of the race course, such as on 2nd Street West, Avenue F, and so forth. The barricades are between two and three feet wide, so intersections will not be completely blocked. Course guards will be stationed at most of the intersections along the race route. Course guards will allow traffic through intersections when there is a sufficient gap between runners to allow traffic to pass without endangering runners.

A 1 mile Kids' Race will be held on the sidewalks around Pioneer Park after the 5K is completed. Awards will be given at the Zimmerman Center after the race.

Please call me at 247-7722 if you have any questions. Thank you for your assistance.

Sincerely,

Brad Coutant
President



**CITY OF BILLINGS
RIGHT-OF-WAY ACTIVITY PERMIT
APPLICATION**

Please check the type of activity you are applying for:

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

Submit this application with a cover letter to: Director of Parks, Recreation and Public Lands, 390 North 23rd Street, Billings, MT 59101 for any events that are not in the Downtown Central Business District. Events in the Central Business District are to be submitted to: Downtown Billings Association, 2815 2nd Avenue North, Billings, MT 59101. Application should be made at least 60 days in advance of the date of proposed event.

PERSON MAKING APPLICATION Brad Cantant
ORGANIZATION MAKING APPLICATION Yellowstone Rim Runners
PHONE 406 247-7722
ADDRESS P.O. Box 2424 Billings MT 59103
City STATE ZIP

APPROXIMATE TIME EVENT WILL:
Assemble 12:30 PM Start 1 PM Disband 1:45 PM

DATE OF EVENT March 16, 2008 - Sunday

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)
5 Kilometer (3.1 mile) road race and 1 mile Kid's Race

EVENT ROUTE DESIRED: (Please attach map.)
3rd St. West from Avenue B to Parkhill, Parkhill from
3rd St. West to 13th St. West and return

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per individual claim and \$1,500,000 per occurrence, and (2) the City of Billings named on the Certificate of Insurance as an additional insured.

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

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

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

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

PLEASE COMPLETE BOTH SIDES

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

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

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

APPLICANT SIGNATURE Basil A. H. DATE 1-9-07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

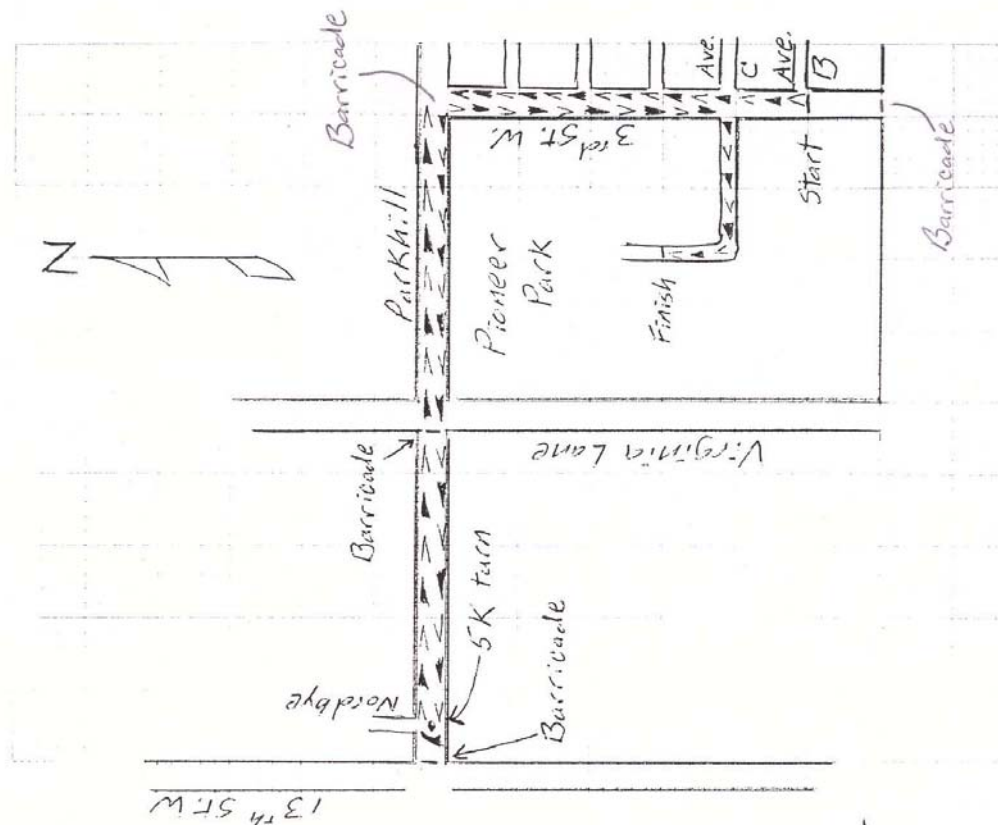
FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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



SHAMROCK RUN ROUTE Not To Scale

5K

ACORD CERTIFICATE OF LIABILITY INSURANCE						DATE (MM/DD/YYYY) 1/4/2008	
PRODUCER PH (260) 467-5690 FAX: (260) 467-5691 STAR Insurance Agency Fort Wayne Office 2130 Dupont Road Fort Wayne IN 46825				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 19990 W. PINE WOOD DRIVE NEW BERLIN WI 53146				INSURERS AFFORDING COVERAGE INSURER A: NATIONAL CASUALTY COMPANY INSURER B: NATIONWIDE LIFE INSURANCE INSURER C: INSURER D: INSURER E:		NAIC #	
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 LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> LEGAL LIAB TO PART \$1,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	KRO00000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EACH OCCURRENCE	\$	1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)				\$	300,000	
	MED EXP (Any one person)				\$	5,000	
	PERSONAL & ADV INJURY				\$	1,000,000	
	GENERAL AGGREGATE				\$	NONE	
					PRODUCTS - COMP/OP AGG	\$	1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	KRO00000000172600	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
	BODILY INJURY (Per person)				\$		
	BODILY INJURY (Per accident)				\$		
	PROPERTY DAMAGE (Per accident)				\$		
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$	
					OTHER THAN EA ACC	\$	
					AUTO ONLY: AGG	\$	
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$	
					AGGREGATE	\$	
						\$	
						\$	
						\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS		
					OTH-ER		
					E.L. EACH ACCIDENT	\$	
					E.L. DISEASE - EA EMPLOYEE	\$	
					E.L. DISEASE - POLICY LIMIT	\$	
B	OTHER EXCESS ACCIDENT & MEDICAL	SPX0000003149700	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.	EXCESS MEDICAL:	\$	10,000
					\$250 DEDUCTIBLE:	PER CLAIM	
					AD & SPECIFIC LOSS:	\$	2,500
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED. DATE & EVENT: 03/16/08 SHAMROCK RUN, 5K ROAD RACE AND 1 MILE KID'S RUN INSURED CLUB: YELLOWSTONE RIM RUNNERS, ATTN: BRAD COUTANT; P.O. BOX 2424; BILLINGS, MT 59103							

CERTIFICATE HOLDER	CANCELLATION
(406) 247-8641 03/16/08 CITY OF BILLINGS ATTN: DANA JEFFERSON 390 N. 23RD STREET BILLINGS, MT 59101	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 DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE John Lefever/JRM

ACORD 25 (2001/08)
INS025 01/03/08

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Page 1 of 7

ACORD CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) 1/4/2008	
PRODUCER (260)467-5690 FAX: (260)467-5691 STAR Insurance - Fort Wayne Office 2130 East DuPont Road			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
Fort Wayne IN 46825 INSURED Yellowstone Rim Runners P O Box 2424 Billings MT 59103			INSURERS AFFORDING COVERAGE INSURER A: NATIONAL CASUALTY COMPANY INSURER B: INSURER C: INSURER D: INSURER E:		
NAIC #					
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	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)
LTR	INSRD				
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> LOC			
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO			
		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	6L-XKO-00000002169-00 STRAIGHT EXCESS	12/31/2007 12:01 A.M.	12/31/2008 12:01 A.M.
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below			
		OTHER			
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED. DATE & EVENT: 03/16/08 SHAMROCK RUN, 5K ROAD RACE AND 1 MILE KID'S RUN					
CERTIFICATE HOLDER (406)247-8641 CITY OF BILLINGS ATTN: DANA JEFFERSON 390 N. 23RD STREET BILLINGS, MT 59101			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 DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE John Lefever/JRM		

ACORD 25 (2001/08)
INSR025 (01/01/08)

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Date: 1 of 2

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Application Submittal and Finalization of Grant – Stop Violence Against Women Act (VAWA) Funds – RFP #08-05-W

DEPARTMENT: Billings Police Department

PRESENTED BY: Chief Rich St. John

PROBLEM/ISSUE STATEMENT: An RFP from the Montana Board of Crime Control was posted in late December, 2007. We would like to pursue this subgrant for Domestic Violence training and continuation of the “Domestic Violence Investigator” program for the 7th year. The amount for this grant totals \$62,862.00. The application is due by February 4, 2008. Staff is asking Council’s approval to submit application and finalize the grant.

FINANCIAL IMPACT: This grant requires a 25% match of hard and/or soft cash. The City of Billings will contribute \$17,894.00, which includes a hard match of \$1,600.00 and a soft match of \$16,294.00. The hard match will be included in the FY 09 Training budget and consists of the City paying \$1,300 toward the instructor cost and \$300 for refreshments for the training. The soft match includes supervision, data analysis, and case management of the grant; cost of a leased vehicle, telephone cost, office space for DV Investigator; and rental of training facility for domestic violence investigator training.

RECOMMENDATION

Staff recommends Council’s approval in pursuing the Stop Violence Against Women Act fund grant application and when notified of its acceptance, City staff be authorized to finalize the grant.

Approved By: City Administrator ____ City Attorney ____

INTRODUCTION

Through the cooperative efforts of the Police Department and the City Attorney's office, a significant need for more intensive investigation was identified in domestic violence cases. Once again, we would like to apply for the Violence Against Women grant. In 2005 the scope of the grant changed from focusing solely on training, to include funds to pay for follow-up investigation of domestic violence cases being prosecuted through the City Attorney's Office.

This change has allowed the city prosecutors to have Billings Police Department Officers available specifically for domestic violence follow-up investigation and case management that was previously unavailable due to manpower restrictions.

Grant money is requested to pay officers to work as domestic violence follow-up investigators in the form of overtime assignments (during their off-time). These investigators are selected from a pool of volunteer officers who have previously received domestic violence training offered through prior "Stop Violence Against Women Act" grants funded by the Montana Board of Crime Control.

BACKGROUND

For the past six years the Billings Police Department's Training Division has applied for the "Violence Against Women Act (VAWA) grant through the Board of Crime Control. For the past two years this grant has included funds to pay Domestic Violence Investigators. This addition of manpower has proven to be very helpful to both the victims of domestic violence as well as the city prosecutors.

This year we would like to continue to apply for funds for both the Domestic Violence training as well as funding for investigators.

RECOMMENDATION

Staff recommends Council's approval in pursuing the Stop Violence Against Women Act grant application and when notified of its acceptance, City staff be authorized to finalize the grant.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 11, 2008

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

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

The G.O. Series B Debt Service Fund Donations totaling \$465,000 are being used to offset the debt currently outstanding. Total year-to-date donations are \$465,000. The donated funds for the construction fund totaling \$250,470 will be used to offset the construction costs of the Ballpark that exceeded anticipated costs. Total year-to-date donations, including current donations, are \$315,520. The donations to the maintenance fund totaling \$14,200 will be applied to the Capital Maintenance Fund and will be used for future Capital Maintenance repairs on the Ballpark. Total year-to-date donations, including current donations, are \$35,600 with previous years totaling \$107,409.

ALTERNATIVES ANALYZED:

- Accept the donation
- Do not accept the donation

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

RECOMMENDATION

Staff recommends that Council accept these donations.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS: Attachment A – Donor List

Attachment A

Contributor	Donation Amount
Bresnan Communications	\$ 10,000.00
First Interstate Bancsystem Foundation	35,000.00
First Interstate Bancsystems, Inc.	15,000.00
SFH2 LLC	5,000.00
Dehler Jon	400,000.00
Total Construction Fund Donations	\$ 465,000.00

Contributor	Donation Amount
Ace Electric	\$ 1,000.00
Billings Mustang Boosters Assoc	1,000.00
Blgs Park Rec & Preservasation	5,000.00
Bob Smith Lincoln Mercury	500.00
ConocoPhillips Company	20,000.00
Econo Glass	500.00
Fisher Construction	500.00
Flowmark/High Tech Companies	1,000.00
Holland & Hart LLP	1,000.00
Huppert Construction Company	500.00
Midland Empire Chapter of CU	1,000.00
Montana District #1 Little League	12,000.00
NorthWestern Energy	2,000.00
Peter Yegen, Jr., Inc.	1,000.00
Sample Foundation	7,000.00
Stillwater Mining Company	6,300.00
Summer, McNea & Company	1,000.00
U S Bank	1,000.00
Yellowstone County	1,000.00
Alweis Don & Ellen	3,000.00
Ambuehl Marty & Brenda	2,000.00
Anonymous Donor	25,000.00
Auer David	1,000.00
Ballard W W & Marilyn	1,000.00
Barnes Les	600.00
Bennett James & Frankie	10,000.00
Brown Rockwood	1,000.00
Brown William & Phyllis	1,000.00
Buchanan Robert	1,000.00
Cole Bill & Anne	500.00
Dimich William	5,000.00
Dimich Tom	1,000.00
Dimich, Jr. Dan	2,000.00
Foster Milan & Cynthia	1,000.00
Gray Daniel & Linda	500.00
Hahn Woody	1,000.00

Hall	Rich	1,000.00
Harris	Joel	2,500.00
Haughey	James	500.00
Hedge	John	1,000.00
Hein	Tiffani & Jeremy	1,000.00
Henderson	Barry	1,000.00
Henderson	Brooke & Susan	10,000.00
Heringer	Mike	500.00
Heringer	Shawn	1,000.00
Heringer, Jr.	Charles	5,670.00
Jerhoff	Tim & Diane	500.00
Jerhoff	Diane	500.00
Kallevig	Michael	1,300.00
Kersich	Al & Joanne	10,000.00
LaGaly	Richard & Doris	600.00
MacBoyle	William	1,000.00
McNally	Jean	10,000.00
Miller	Paul & Ann	1,000.00
Nelles	Ralph & Audrey	25,000.00
Nelson	John	1,000.00
Reichenbach	Ernest & Jeanette	500.00
Roberts	Laura	500.00
Sample	Joseph & Miriam	50,000.00
Schaenen	David	1,000.00
Schuman	George & Maxine	500.00
Tanner	G H	1,000.00
Van Atta	Larry & Shelley	1,000.00
Vogel	Thomas & Jeanne	1,000.00
Williams	David	1,000.00
Williams	Langdon	1,000.00
Wilson	Robert	600.00
Winegardner	A F & Jayne	1,000.00

Total Construction Fund Donations	\$	254,070.00
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Contributor		Donation Amount
Alphagraphics		\$ 1,000.00
Downtown Exchange Club		1,000.00
Moulton, Bellingham, Longo & Mathers		1,000.00
National Information Systems		1,300.00
Sterling Savings Bank		5,000.00
Davies	Jim & Katy	1,000.00
Clark	Beverly	1,000.00
Heringer	Shawn	1,000.00
Lapito	Leo	1,000.00
Rosekelly	Dick	1,000.00
Scariano	Ronald	1,000.00
Spalding	Paige	900.00
Spence	Ralph & Tancy	1,000.00

Total Maintenance Fund Donations	\$	17,200.00
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[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, February 11, 2008

TITLE: Acceptance and Recognition of Donation to the Billings Animal Shelter
DEPARTMENT: Police Department, Animal Shelter Division
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On January 8, 2008 the Billings Animal Shelter received a \$500.00 donation from the Donald and Carol Roberts Foundation in Memory of Virginia K. Weston Inc. The donation has been placed in the Animal Shelter Spay and Neuter, Education, and General Donation Funds as instructed on the check received. City Council is now asked to accept and deposit this donation into the City of Billings, Animal Shelter donation accounts as instructed.

ALTERNATIVES ANALYZED:

- Approval and acceptance of the donation.
- Denial and return of the donation.

FINANCIAL IMPACT: This donation to the Spay/Neuter, Education, and General accounts will be use to benefit our community's animals.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$500 donation to the Billings Animal Shelter Donation accounts.

Approved By: City Administrator ____ City Attorney ____

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

MONDAY, FEBRUARY 11, 2008

TITLE: Resolution of Intention to Create SILMD 304 – Downtown Area
(Replaces SILMD 97)

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Property owners within existing Special Improvement Light Maintenance District (SILMD) 97 contacted City staff to discuss lighting options within the downtown area. City staff met with property owners several times and subsequently contracted with Marvin & Associates to conduct a New Lighting District Study. Upon receipt of the study, City staff met with downtown property owners and discussed options. Property owners decided to pursue replacement of the existing NorthWestern Energy-owned district with a new City-owned district. They chose a complete change out of all street lights and traffic signals within the current SILMD 97 boundary. This would include replacement of 80 traffic signal poles with new poles that would support the required 250 watt streetlights. Mid-block lighting would be provided with three pedestrian scale lights per block. This option will provide safer intersection lighting and mid-block pedestrian lighting. The City would be responsible for the energy and maintenance of the street lights attached to the traffic signal poles.

The City has traditionally created Special Improvement Lighting Maintenance Districts (SILMDs) to assess design, construction, energy and maintenance costs for street lighting to abutting property owners. Passage of the Resolution of Intent is the first step in the legal process of creating an SILMD. Passage of the Resolution of Intent will trigger the mailing of legal notices to the affected property owners and set a City Council public hearing for the district at the February 25, 2008, City Council meeting.

ALTERNATIVES ANALYZED:

1. Create the SILMD to provide a source of funding for design, construction, operation, and maintenance of the street lights. Funding will be provided through the creation of a Special Improvement District and bonds will be sold.
2. Do not create the SILMD and do not install street lighting
3. Develop another source of funding to pay for street light design, construction, energy and maintenance

FINANCIAL IMPACT: Design and construction costs are estimated to be \$2.4 million and financing costs are estimated to be \$462,000 making total costs \$2,862,000. The property owners in the proposed district have requested the creation of a Special Improvement District to finance the project. Design, construction, energy, and maintenance costs for the proposed light district will be paid for by assessments against properties within the district. City properties within light districts are assessed their proportionate share of the costs for that particular district.

RECOMMENDATION

Staff recommends that Council pass the Resolution of Intent to create SILMD 304 and set a public hearing date for February 25, 2008.

Approved By:

City Administrator ____

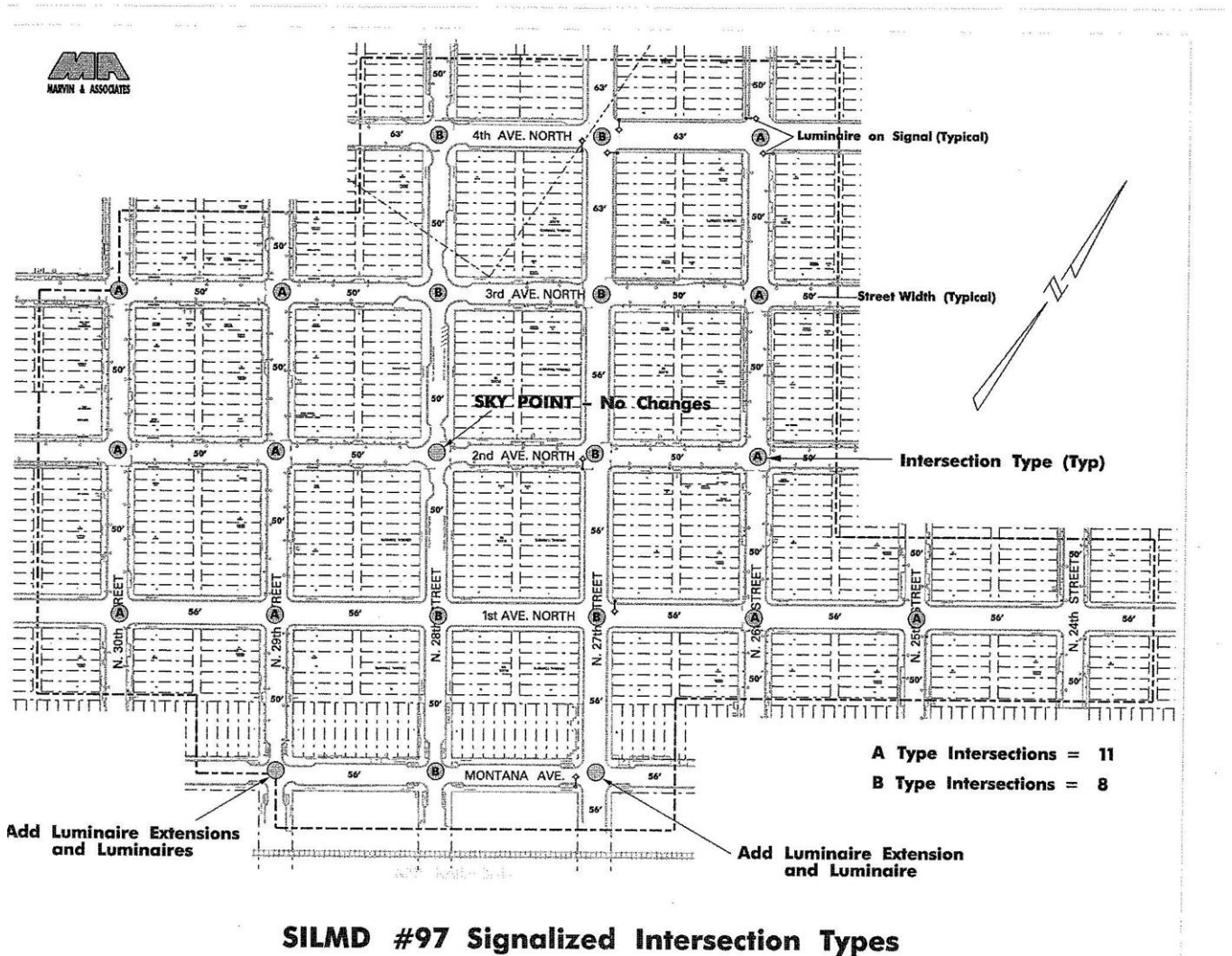
City Attorney ____

ATTACHMENTS:

- A. Proposed SILMD 304 District Boundary Map
- B. Property Owner List
- C. Resolution of Intention to Create

ATTACHMENT A

Proposed SILMD 304 District Boundary Map



**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

			Total District Square Footage		w/ int.	
			1,763,409	\$ 4,276,927		
			Estimate (1/2008)			
Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Total Costs Per Parcel Based Upon Estimate	Yearly Payment Per Parcel Based upon Estimate
Burlington Northern Tax						
E00097	Centrally Assessed	Burlington Northern	54,600	3.09628%	\$132,425.44	\$8,828.36
A00801A	Montana Ave	City of Billings	2,573	0.14591%	\$6,240.49	\$416.03
A29916	2702 Montana Ave	Oliver Building Development	9,500	0.53873%	\$23,041.06	\$1,536.07
A00789	2705 Montana Ave	TG & F Properties Inc.	13,000	0.73721%	\$31,529.87	\$2,101.99
A00792	2713 Montana Ave	TG & F Properties Inc.	9,750	0.55291%	\$23,647.40	\$1,576.49
A29917	2718 Montana Ave	Steve Nelson	19,000	1.07746%	\$46,082.11	\$3,072.14
A00780	2815 Montana Ave	Miller Trois LLC	4,333	0.24572%	\$10,509.15	\$700.61
A00781	2817 Montana Ave	Bert A. & Andrew Nelson	8,650	0.49053%	\$20,979.49	\$1,398.63
A00782	2821 Montana Ave	Diamond Parking Inc #0927	6,500	0.36860%	\$15,764.93	\$1,051.00
A00762	2901 Montana Ave	Benjamin L. Brown	9,750	0.55291%	\$23,647.40	\$1,576.49
A00763	2905 Montana Ave	First National Properties LLC	3,250	0.18430%	\$7,882.47	\$525.50
A00765	2911 Montana Ave	Francis J. Mignone	6,500	0.36860%	\$15,764.93	\$1,051.00
Qwest Corporation Tax						
E00018A	Centrally Assessed	Qwest Corporation	14,000	0.79392%	\$33,955.24	\$2,263.68
A00835	2318 1 Ave N	Emmett & Betty Whalen	21,000	1.19088%	\$50,932.86	\$3,395.52
A00600	2405 1 Ave N	Donald R. Lee	14,000	0.79392%	\$33,955.24	\$2,263.68
Computer Unlimited (50%) & The						
A0828	2406 1 Ave N	Rex Hotel Partnership (50%)	10,500	0.59544%	\$25,466.43	\$1,697.76
A00609	2415 1 Ave N	Housing Authority of Billings	13,250	0.75139%	\$32,136.21	\$2,142.41
A00610	2421 1 Ave N	MCS LLC	6,000	0.34025%	\$14,552.25	\$970.15
A00827	2442 1 Ave N	Tara Kinsey	3,500	0.19848%	\$8,488.81	\$565.92
A00816	2502 1 Ave N	GLI Realty Co	21,000	1.19088%	\$50,932.86	\$3,395.52
A00611	2503 1 Ave N	Harry R. Staley Trustee	14,000	0.79392%	\$33,955.24	\$2,263.68
A00618	2511 1 Ave N	Clyde R. Gibb (50%)	35,000	1.98479%	\$84,888.10	\$5,659.21
A00815	2520 1 Ave N	Montana Rescue Mission	7,000	0.39696%	\$16,977.62	\$1,131.84
A00620	2651 1 Ave N	City of Billings	58,546	3.32005%	\$141,995.97	\$9,466.40
A00630	2701 1 Ave N	The Grand Co	14,000	0.79392%	\$33,955.24	\$2,263.68
A00796A	2708 1 Ave N	Securities Building LLC	1,312	0.07440%	\$3,182.09	\$212.14
A00796H	2708 1 Ave N	Securities Building LLC	202	0.01146%	\$489.93	\$32.66

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodier CAP

1/31/2008

Page 1 of 7

**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

Total District Square Footage 1,763,409 w/ int.
Estimate (1/2008) \$ 2,862,000 \$ 4,276,927

Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Total Costs Per Parcel Based Upon Estimate	Yearly Payment Per Parcel Based upon Estimate
A00796I	2708 1 Ave N	Securities Building LLC	195	0.01106%	\$472.95	\$31.53
A00796J	2708 1 Ave N	Securities Building LLC	203	0.01151%	\$492.35	\$32.82
A00796K	2708 1 Ave N	Securities Building LLC	132	0.00749%	\$320.15	\$21.34
A00796L	2708 1 Ave N	Securities Building LLC	183	0.01038%	\$443.84	\$29.59
A00796N	2708 1 Ave N	Securities Building LLC	179	0.01015%	\$434.14	\$28.94
A00796O	2708 1 Ave N	Securities Building LLC	202	0.01146%	\$489.93	\$32.66
A00796P	2708 1 Ave N	Securities Building LLC	195	0.01106%	\$472.95	\$31.53
A00796Q	2708 1 Ave N	Securities Building LLC	203	0.01151%	\$492.35	\$32.82
A00796R	2708 1 Ave N	Securities Building LLC	132	0.00749%	\$320.15	\$21.34
A00796S	2708 1 Ave N	Securities Building LLC	183	0.01038%	\$443.84	\$29.59
A00796T	2708 1 Ave N	Securities Building LLC	179	0.01015%	\$434.14	\$28.94
A00796B	2708 1 Ave N	Securities Building LLC	925	0.05246%	\$2,243.47	\$149.56
A00796C	2708 1 Ave N	Securities Building LLC	389	0.02206%	\$943.47	\$62.90
A00796D	2708 1 Ave N	Securities Building LLC	698	0.03958%	\$1,692.91	\$112.86
A00796E	2708 1 Ave N	Securities Building LLC	394	0.02234%	\$955.60	\$63.71
A00796F	2708 1 Ave N	Securities Building LLC	647	0.03669%	\$1,569.22	\$104.61
A00796G	2708 1 Ave N	Securities Building LLC	449	0.02546%	\$1,088.99	\$72.60
A00787	2812 1 Ave N	First Citizens Bank	14,000	0.79392%	\$33,955.24	\$2,263.68
A00786	2824 1 Ave N	Neal Lafever	7,000	0.39696%	\$16,977.62	\$1,131.84
A00774	2902 1 Ave N	Neal C. & Dianne M. Lafever	7,000	0.39696%	\$16,977.62	\$1,131.84
A00773	2916 1 Ave N	Paugh St Charles LLC	5,500	0.31190%	\$13,339.56	\$89.30
A00771	2924 1 Ave N	Kenneth E. & Eileen Schlaht	15,500	0.87898%	\$37,593.30	\$2,506.22
A00656	2925 1 Ave N	Ted G. Fink Trustee	14,000	0.79392%	\$33,955.24	\$2,263.68
A00658	3001 1 Ave N	Bennett W. Macintyre	7,000	0.39696%	\$16,977.62	\$1,131.84
A00759	3008 1 Ave N	Hines Buildings Limited Partnership	8,750	0.49620%	\$21,222.03	\$1,414.80
A00616	2520 2 Ave N	Diane M. Miller	3,500	0.19848%	\$8,488.81	\$565.92
A33796	2603 2 Ave N	Big Sky Economic Development	14,000	0.79392%	\$33,955.24	\$2,263.68
A00634	2700 2 Ave N	Eugene H. Rockman	7,000	0.39696%	\$16,977.62	\$1,131.84
A00644	2814 2 Ave N	Royer Property LLC	7,000	0.39696%	\$16,977.62	\$1,131.84
A00367C	2817 2 Ave N	PBG&P Building Partnership LLC	3,920	0.22230%	\$9,507.47	\$633.83

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodler CAP 1/31/2008

**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

		Total District Square Footage		w/ int.	
		1,763,409	\$ 4,276,927		
		Estimate (1/2008)			
Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Yearly Payment Per Parcel Based upon Estimate
A00367	2823 2 Ave N	Ronald C. Simon	6,160	0.34932%	\$14,940.31
A00367A	2823 2 Ave N	PBG&P Building Partnership LLC	1,999	0.11336%	\$4,848.32
A00367B	2823 2 Ave N	PBG&P Building Partnership LLC	1,921	0.10894%	\$4,659.14
A00643	2824 2 Ave N	US Bank Real Estate Tax Desk	14,000	0.79392%	\$33,955.24
A00359	2913 2 Ave N	Cardwell Investments LLC	17,500	0.99240%	\$42,444.05
A00652	2924 2 Ave N	Rajon Properties LLC	7,000	0.39696%	\$16,977.62
A00598	N 24 St	O. E. Lee & Co	7,000	0.39696%	\$16,977.62
A00831	14 N 24 St	Fargo Hotel Corporation	3,500	0.19848%	\$8,488.81
A00830	16 N 24 St	Plaza Hotel Partnership	7,000	0.39696%	\$16,977.62
A00599	101 N 24 St	O. E. Lee & Co	14,000	0.79392%	\$33,955.24
A00601	110 N 24 St	Northwestern Mortgage Co	3,500	0.19848%	\$8,488.81
A00602	118 N 24 St	Donald R. Lee 37% Int	3,500	0.19848%	\$8,488.81
A00826	19 N 25 St	Sandra M. Foxley Trustee	17,500	0.99240%	\$42,444.05
A00612	110 N 25 St	Ponderosa Inn	7,000	0.39696%	\$16,977.62
A00607	115 N 25 St	4th Avenue Meat Market Inc	1,750	0.09924%	\$4,244.41
A00383	203 N 25 St	City of Billings	22,500	1.27594%	\$54,570.92
A00066	N 26 St	2525 4th Avenue North LLC	3,500	0.19848%	\$8,488.81
A00380	N 26 St	The White Family LLC	7,000	0.39696%	\$16,977.62
A00381	N 26 St	The White Family LLC	7,000	0.39696%	\$16,977.62
A00812	11 N 26 St	Meryco Partnership LLP	3,500	0.19848%	\$8,488.81
A00813	15 N 26 St	Computers Unlimited Inc	3,500	0.19848%	\$8,488.81
A00814	17 N 26 St	Meryco Partnership LLP	7,000	0.39696%	\$16,977.62
A00378	208 N 26 St	Yellowstone County	7,000	0.39696%	\$16,977.62
A00379	216 N 26 St	Yellowstone County	7,000	0.39696%	\$16,977.62
A00389	219 N 26 St	Yellowstone County	21,000	1.19088%	\$50,932.86
A00617	219 N 26 St	Bad Osprey Inc	3,500	0.19848%	\$8,488.81
A00246	319 N 26 St	Billings Federal Credit Union	7,000	0.39696%	\$16,977.62
A00633	N 27 St	City of Billings	7,000	0.39696%	\$16,977.62
A33292	18 N 27 St	Securities Building LLC	14,000	0.79392%	\$33,955.24
A00804	27 N 27 St	Makenna Hotel Investments LLC	42,000	2.38175%	\$101,865.72

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodier CAP

1/31/2008

Page 3 of 7

**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

Total District Square Footage 1,763,409 w/ int.
Estimate (1/2008) \$2,862,000 \$ 4,276,927

Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Total Costs Per Parcel Based Upon Estimate	Yearly Payment Per Parcel Based upon Estimate
A00632	106 N 27 St	City of Billings	3,500	0.19848%	\$8,488.81	\$565.92
A00630A	108 N 27 St	City of Billings	7,000	0.39698%	\$16,977.62	\$1,131.84
A00631	114 N 27 St	Fagg Family Properties LLC	3,500	0.19848%	\$8,488.81	\$565.92
A00624	175 N 27 St	SFH II LLC	21,000	1.19088%	\$50,932.86	\$3,395.52
A00368	210 N 27 St	City of Billings	42,000	2.38175%	\$101,865.72	\$6,791.05
A00382	217 N 27 St	Yellowstone County	42,000	2.38175%	\$101,865.72	\$6,791.05
A00255	301 N 27 St	Gayle L. West	15,720	0.89146%	\$38,126.89	\$2,541.79
A00256	310 N 27 St	First Congregational Church	30,738	1.74310%	\$74,551.16	\$4,970.08
A00254	311 N 27 St	Gayle L. West	12,250	0.69468%	\$29,710.84	\$1,980.72
A00252	323 N 27 St	Bill P. Simmons	7,000	0.39698%	\$16,977.62	\$1,131.84
A00063	401 N 27 St	Yellowstone Art Center Foundation	14,000	0.79392%	\$33,955.24	\$2,263.68
A00258	N 28 St	Peter Yegen Jr Family Trust	10,500	0.59544%	\$25,466.43	\$1,697.76
A00777	8 N 28 St	First Citizens Bank	6,500	0.36860%	\$15,764.93	\$1,051.00
A00788	11 N 28 St	First Citizens Bank	7,000	0.39698%	\$16,977.62	\$1,131.84
A00794	19 N 28 St	Northern Garage LLC	16,250	0.92151%	\$39,412.33	\$2,627.49
A00795	23 N 28 St	Northern Condos	21,000	1.19088%	\$50,932.86	\$3,395.52
A00778	24 N 28 St	First Citizens Bank	13,000	0.73721%	\$31,529.87	\$2,101.99
A00639	101 N 28 St	Larry Davidson	7,000	0.39698%	\$16,977.62	\$1,131.84
A00640A	104 N 28 St	Stapleton Development Venture	848	0.04809%	\$2,056.72	\$137.11
A00640B	104 N 28 St	Stapleton Development Venture	414	0.02348%	\$1,004.10	\$66.94
A00640C	104 N 28 St	Stapleton Development Venture	598	0.03391%	\$1,450.37	\$96.69
A00640D	104 N 28 St	Stapleton Development Venture	862	0.04888%	\$2,090.67	\$139.38
A00640E	104 N 28 St	Stapleton Development Venture	462	0.02620%	\$1,120.52	\$74.70
A00640F	104 N 28 St	Stapleton Development Venture	3,831	0.21725%	\$9,291.61	\$619.44
A00640O	104 N 28 St	Stapleton Development Venture	550	0.03119%	\$1,333.96	\$88.93
A00640P	104 N 28 St	Stapleton Development Venture	462	0.02620%	\$1,120.52	\$74.70
A00640Q	104 N 28 St	Stapleton Development Venture	429	0.02433%	\$1,040.49	\$69.37
A00640R	104 N 28 St	Stapleton Development Venture	389	0.02206%	\$943.47	\$62.90
A00640S	104 N 28 St	Stapleton Development Venture	486	0.02756%	\$1,178.73	\$78.58
A00640T	104 N 28 St	Stapleton Development Venture	388	0.02200%	\$941.05	\$62.74

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodier CAP

1/31/2008

Page 4 of 7

**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

		Total District Square Footage		w/ int.	
		1,763,409		\$ 4,276,927	
		Estimate (1/2008)			
Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Yearly Payment Per Parcel Based upon Estimate
A00640U	104 N 28 St	Stapleton Development Venture	315	0.01786%	\$763.99
A00640V	104 N 28 St	Stapleton Development Venture	474	0.02688%	\$1,149.63
A00640H	104 N 28 St	Stapleton Development Venture	641	0.03635%	\$1,554.66
A00640I	104 N 28 St	Stapleton Development Venture	621	0.03522%	\$1,506.16
A00640J	104 N 28 St	Stapleton Development Venture	559	0.03170%	\$1,355.78
A00640N	104 N 28 St	Stapleton Development Venture	527	0.02989%	\$1,278.17
A00640L	104 N 28 St	Stapleton Development Venture	367	0.02081%	\$890.11
A00640K	104 N 28 St	Stapleton Development Venture	774	0.04389%	\$1,877.24
A00638	107 N 28 St	Yurko Properties LLC	7,000	0.39696%	\$16,977.62
A00641	110 N 28 St	Montana State University	6,985	0.39611%	\$16,941.24
A00637	111 N 28 St	ACME Limited Partnership	6,895	0.39100%	\$16,722.96
A00636A	113 N 28 St	Montana Power Building LLC	7,105	0.40291%	\$17,232.28
A00636A	117 N 28 St	Jeff Robertson	7,000	0.39696%	\$16,977.62
A00635	123 N 28 St	Lou Taubert Real Estate Inc	7,000	0.39696%	\$16,977.62
A00642	124 N 28 St	Babcock Building Co	21,015	1.19173%	\$50,969.24
A00360	200 N 28 St	Bill Hansas	24,500	1.38935%	\$59,421.67
A00376	201 N 28 St	Bill Hansas	7,042	0.39934%	\$17,079.49
A00375	205 N 28 St	Valley Federal Credit Union	13,958	0.79154%	\$33,853.38
A00362	212 N 28 St	Patrick C. Cormier Trustee	3,500	0.19848%	\$8,488.81
A00374	213 N 28 St	Chia Wei Lo	7,000	0.39696%	\$16,977.62
A00373	217 N 28 St	D. Joe Reeb Trustee	7,000	0.39696%	\$16,977.62
A00363	218 N 28 St	Patrick C. Cormier Trustee	7,000	0.39696%	\$16,977.62
A00372	221 N 28 St	Gayle L. West	7,000	0.39696%	\$16,977.62
A00261	303 N 28 St	First Bancorp	28,364	1.60848%	\$68,793.32
A00260	313 N 28 St	Billie Ruff	3,136	0.17784%	\$7,605.97
A07364	401 N 28 St	The Billings Gazette	42,000	2.38175%	\$101,865.72
A07366	410 N 28 St	Stockman Bank of America	14,000	0.79392%	\$33,955.24
A07367	412 N 28 St	Stockman Bank of America	7,000	0.39696%	\$16,977.62
A00776	14 N 29 St	Barbazon Apartments LP	7,000	0.39696%	\$16,977.62
A00783	15 N 29 St	Neal C. & Dianne M. Lafever	14,000	0.79392%	\$33,955.24

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodier CAP

1/31/2008

Page 5 of 7

**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

Total District Square Footage 1,763,409 w/ int.
Estimate (1/2008) \$ 2,862,000 \$ 4,276,927

Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Total Costs Per Parcel Based Upon Estimate	Yearly Payment Per Parcel Based upon Estimate
A00775	18 N 29 St	NTC Ventures Inc	7,000	0.39696%	\$16,977.62	\$1,131.84
A00647	102 N 29 St	Edward J. Trout	10,500	0.59544%	\$25,466.43	\$1,697.76
A00648	110 N 29 St	Sherry K. Daly	5,250	0.29772%	\$12,733.22	\$848.88
A00648A	112 N 29 St	John A. Smart	5,250	0.29772%	\$12,733.22	\$848.88
A00645	113 N 29 St	Patterson Properties LLC	21,000	1.19088%	\$50,932.86	\$3,395.52
A00649	114 N 29 St	Gary L. Temple	7,000	0.39696%	\$16,977.62	\$1,131.84
A00650	118 N 29 St	Gary L. Temple	7,000	0.39696%	\$16,977.62	\$1,131.84
A00651	124 N 29 St	McDonald Land Company LMTD P	7,000	0.39696%	\$16,977.62	\$1,131.84
A00351	202 N 29 St	Bruce E. Lee	21,000	1.19088%	\$50,932.86	\$3,395.52
A00366	209 N 29 St	Bill Hangas	17,500	0.99240%	\$42,444.05	\$2,829.60
A00365	223 N 29 St	Two Valleys Realty Inc	10,500	0.59544%	\$25,466.43	\$1,697.76
A00269	302 N 29 St	Sam E. McDonald Jr	14,000	0.79392%	\$33,955.24	\$2,263.68
A00270	310 N 29 St	Sam E. McDonald Jr	2,334	0.13236%	\$5,660.82	\$377.39
A00247	3 Ave N	Diamond Parking Inc	28,000	1.58783%	\$67,910.48	\$4,527.37
A00262	2801 3 Ave N	Fox Theatre Corp	14,000	0.79392%	\$33,955.24	\$2,263.68
A00364	2812 3 Ave N	Michael L. Gray	7,000	0.39696%	\$16,977.62	\$1,131.84
A00264	2825 3 Ave N	Miller Trois LLC	21,000	1.19088%	\$50,932.86	\$3,395.52
A00352	2922 3 Ave N	Billings Montana Parking Com	40,500	2.29669%	\$98,227.66	\$6,548.51
A00273	2929 3 Ave N	Doggett Ranch	21,000	1.19088%	\$50,932.86	\$3,395.52
A00348	3010 3 Ave N	Yellowstone Bank	14,000	0.79392%	\$33,955.24	\$2,263.68
A00761	14 N 30 St	Hines Buildings Limited Partnership	7,000	0.39696%	\$16,977.62	\$1,131.84
A00760	20 N 30 St	Hines Buildings Limited Partnership	5,250	0.29772%	\$12,733.22	\$848.88
A00655	107 N 30 St	Deka Inc	14,000	0.79392%	\$33,955.24	\$2,263.68
A00659	116 N 30 St	Gary P. Ugrin	21,000	1.19088%	\$50,932.86	\$3,395.52
A00654	117 N 30 St	Clean Enterprises LLC	3,500	0.19848%	\$8,488.81	\$565.92
A00653	119 N 30 St	Clean Enterprises LLC	3,500	0.19848%	\$8,488.81	\$565.92
A00660	120 N 30 St	WFAM Group LLC	14,000	0.79392%	\$33,955.24	\$2,263.68
A00357	211 N 30 St	Peter Yegen III	7,000	0.39696%	\$16,977.62	\$1,131.84
A00347	214 N 30 St	Yellowstone Bank	14,000	0.79392%	\$33,955.24	\$2,263.68
A00066A	2525 4 Ave N	2525 4th Ave N LLC	10,500	0.59544%	\$25,466.43	\$1,697.76

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodier CAP

1/31/2008

Page 6 of 7

**PROPOSED SILMD 304 - Downtown Area
(Replaces SILMD 97)**

ATTACHMENT B

Total District Square Footage			1,763,409	w/ int.		
Estimate (1/2008)			\$2,862,000	\$	4,276,927	
Tax Code	Address	Owner	Parcel Square Footage	Percent of Total SF	Total Costs Per Parcel Based Upon Estimate	Yearly Payment Per Parcel Based upon Estimate
A00062	2641 4 Ave N	Madeline Mills Trustee	14,000	0.79392%	\$33,955.24	\$2,263.68
A00257	2702 4 Ave N	Quest 5 Inc	10,500	0.59544%	\$25,466.43	\$1,697.76
A00263	2800 4 Ave N	First Methodist Church	28,000	1.58783%	\$67,910.48	\$4,527.37
A00271	2900 4 Ave N	Michael Development Billings	4,666	0.26460%	\$11,316.80	\$754.45
			1,763,409	100.000000%	\$4,276,927.00	\$285,128.47

SILMD 304 - New Downtown District - ATTACHMENT B
By: Tam Rodler CAP

1/31/2008

Page 7 of 7

RESOLUTION NO. 08-_____

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 304 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING DESIGN, CONSTRUCTION, ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF DESIGN, CONSTRUCTION, ADMINISTRATION, ENERGY AND MAINTENANCE OF SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

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

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

SECTION 1:

That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose of installing new street lights and securing and providing energy and maintenance for new street lights for lighting said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 304" hereinafter called the District, and the boundaries of the District are hereby declared to include: All lots, parcels and pieces of

land in downtown Billings as shown on the map designated at Attachment A and listed on the property owner list designated as Attachment B both of which are attached hereto.

SECTION 3:

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

SECTION 4:

That the general character of the improvements to be made in the District is hereby declared to be as follows: The provision of designing, constructing, energy and maintenance for street lighting facilities along and upon portions of the streets and avenues within the boundaries of the District consisting of 220 luminaires. All luminaries will be mounted on poles served by underground wiring. The City of Billings, Montana shall own and install said lighting units.

SECTION 5:

That the City of Billings intends to construct the new lighting facilities and sell bonds in the amount of Two Million Four Hundred Fifty Thousand (\$2,450,000) to pay for the design, construction and administration costs of the district. The bonds will be issued in accordance with 7-12-4342 MCA and will be paid off over a period of fifteen

(15) years through annual assessments to property owners within the district. Each lot, parcel, or piece of land within the district shall be assessed for that portion of the bond retirement costs which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places. The assessment rate, exclusive of interest charges, is estimated at \$1.39 per square foot of assessable area, with a total estimated cost per tax parcel as show in Exhibit B attached hereto.

SECTION 6:

That the entire cost of maintenance and electrical energy for the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt a resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 304 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefor.

SECTION 7:

That the City of Billings intends to establish the approximate contract rate for supplying electrical energy and maintenance as follows: \$230 per luminaries unit per year.

The estimate of the cost of energy and maintenance for the District per year, including a 10% administrative fee and a 5% delinquency reserve, is the sum of \$50,600 that the entire cost shall be paid by the owners of the property within said

District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys, and public places. Due to the difference in the time the lighting service starts and the time assessments can be levied, the first assessment may cover a period of operation of the District shorter or greater than one year.

SECTION 8:

That the 25th day of February, 2008, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 304 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times."

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in ***The Billings Times***, a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 304. Said Notice is to be published and mailed on the same date.

Passed by the CITY Council and APPROVED this 11th day of February, 2008.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Resolution Extending Cable Television Franchise Agreement
DEPARTMENT: City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings and Bresnan Communications, LLC, are negotiating a 5-year, non-exclusive television franchise agreement. A previous, 19-year agreement was scheduled to expire on Dec. 17, 2007, but the Council granted a 60-day extension on Dec. 10, 2007. The onset of negotiations had been delayed by new Federal Communications Commission rules on franchises that required input from a specialized legal firm in Washington, D.C. A second, 90-day extension is needed to complete the adoption process for the new ordinance and franchise agreement, and to allow 30 days for it to go into effect.

ALTERNATIVES ANALYZED:

- Approve the resolution extending the current franchise agreement;
- Amend the resolution;
- Do not approve the resolution extending the franchise agreement, which could affect cable service and revenue.

FINANCIAL IMPACT: The City receives an annual franchise fee of 5% of the annual gross revenues of the local Bresnan operation, which is the maximum amount allowed under Federal law. For Fiscal Year 2007, the franchise fee was \$890,569, which is a planned revenue in the General Fund.

RECOMMENDATION

Approve the resolution extending the current franchise agreement.

Approved By: City Administrator ____ City Attorney ____

Attachments:

A: Resolution

**AMENDMENT TO AND EXTENSION OF CABLE TELEVISION
FRANCHISE TRANSFER AGREEMENT**

This Agreement to Amend and Extend the terms of the current Cable Television Franchise is made this 11th day of February, 2008, by and between the City of Billings, Montana, a municipal corporation (“City”) and Bresnan Communications, LLC, a Delaware Limited Liability Company (“Bresnan”).

RECITALS

WHEREAS the City Council of the City of Billings previously approved a Transfer Agreement issuing a non-exclusive Cable Television Franchise to Bresnan Communications, LLC through Resolution No. 03-17956; and

WHEREAS the City of Billings and Bresnan Communications, Inc. are currently negotiating a renewal of the existing Cable Television Franchise; and

WHEREAS the parties desire to continue the existing Cable Television Franchise which expired on December 17, 2007; and

WHEREAS the City of Billings and Bresnan Communications previously extended the Cable Television Franchise on December 11, 2007, but additional time is now required to complete the process; and

WHEREAS a Ninety (90) day extension of the current Franchise Agreement is in the best interests of the City, the public and Bresnan to allow modifications of the current Franchise Agreement to be completed.

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. That the current Transfer Agreement dated February 24, 2003, attached hereto as Exhibit “A” between the City and Bresnan, is hereby extended for a Ninety (90) day period of time up to and including May 12, 2008.

2. All other terms, conditions and obligations of such Transfer Agreement and the current Cable Television Franchise dated October 17, 1988, granted to and transferred to several predecessors of Bresnan shall remain in full force and effect during this extension of time.

Agreed to this 11th day of February, 2008.

CITY OF BILLINGS

By: _____
Mayor Ron Tussing

ATTEST:

Billings City Clerk

Bresnan Communications, LLC
By: Bresnan Communications, Inc., its Manager

By: _____
Title: _____

APPROVED AS TO FORM:

Billings City Attorney

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 11, 2008

TITLE: Zone Change #827, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Lora Mattox, AICP, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential-9600 (R-96) to Residential-7000 (R-70) on a 44,644 square foot property located in the Billings Heights north of Saturn Place. The property is proposed as the Eagle View Subdivision. Dorn Property LLC, owner and Engineering, Inc., agent. The Zoning Commission conducted a public hearing on December 4, 2007. It is forwarding a recommendation of approval on a 3-0 vote.

The City Council conducted a public hearing on this application on January 14, 2008. There was no testimony during the public hearing. Councilmember Stevens motioned to postpone this application for 2 weeks (January 28, 2008), to allow the applicant to conduct another neighborhood meeting on the proposal within the Heights neighborhood. There was concern that since the initial neighborhood meeting was not held in the neighborhood, neighbors did not have an opportunity to comment. The motion to postpone was passed on a 10-0 vote.

At the January 28, 2008 council meeting, the council conducted a public hearing on the zone change request. Rhonda Moore, who resides at 1731 St. Andrews Drive, spoke against the request. Ms. Moore was the previous owner of the subject property and stated that it was her understanding that the property would not change zoning and perhaps be retained as green space. Rick Dorn, the developer and current owner of the tract stated that he intends to complete this area in relationship to the Eagle Ridge Subdivision directly south. Mr. Dorn contacted the owners of the tract north of the subject to inquire the interest in future development of that tract and the potential for a road connection to about Venus Circle to the north. The current owners are not interested in development of the property at this time. The public hearing was closed and on a vote of 10-0, the City Council voted to approve the zone change request on first reading.

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

1. Approve the zone change as requested
2. Deny the zone change as requested
3. Approve the zone change as recommended by the Zoning Commission
4. Allow withdrawal of the application
5. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change would facilitate the development of the property which would increase the City's tax revenue on the parcel.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval of Zone Change #827 to the City Council and adoption of the 12 Zoning Commission Determinations on a 3-0 vote.

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

ATTACHMENT:

A: Ordinance

ORDINANCE NO. 08-
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Tract 1-B-1 of Certificate of Survey 1132, containing
approximately 44,644 square feet or 1.02 acres.

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as Tract 1-B-1 of Certificate of Survey 1132, containing approximately 44,644 square feet or 1.02 acres and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9,600** to **Residential 7,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7,000** as set out in the Billings, Montana City Code.

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

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading January 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading February 11, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:
BY:
City Clerk
ZC #827

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Zone Change #830, 2nd Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 15,000 square foot vacant parcel of land. The subject property is legally described as the North Fraction 100 ft by 150 ft in Block 305, Billings, 1st Addition, and Sunnyside Subdivision, 3rd Filing, and is located on the southwest corner of the intersection of North 22nd Street and 10th Avenue North. The applicant is proposing to construct two duplexes on the subject property. The owner and applicant is Steve Kerns. The City Council held a public hearing and approved the first reading of the zone change on a vote of 10-0 on January 28, 2008.

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

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

FINANCIAL IMPACT: If the zone change is approved, future development of the property could increase the City's tax base.

RECOMMENDATION

The Zoning Commission, on a 5-0 vote, recommends that the City Council approve Zone Change #830 and adopt the determinations of the 12 criteria.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENT:

A: Ordinance

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR
The North Fraction 100 ft by 150 ft in Block 305 Billings, 1st Addition, and Sunnyside
Subdivision, 3rd Filing, containing approximately 15,000 square feet

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

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC*, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. DESCRIPTION. A tract of land known as The North Fraction 100 ft by 150 ft in Block 305 Billings, 1st Addition, and Sunnyside Subdivision, 3rd Filing, containing approximately 15,000 square feet and is presently zoned Residential 7000 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 7000** to **Residential 6000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6000** as set out in the Billings, Montana City Code.

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

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading January 28, 2008.

PASSED, ADOPTED AND APPROVED on second reading February 11, 2008.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
City Clerk

ZC #830

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Second Reading of an Ordinance expanding Ward IV: Annexation #07-19
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On December 10, 2007, the City Council approved the annexation of a portion of Rimrock Road right-of-way (Annexation #07-19) containing 6.832 acres. The property is located west of 62nd Street West to just east of 70th Street West. The City requested the annexation, as it owns 6.2 acres of the property and has a beneficial interest in the remaining 0.6 acres that is a County road easement with City utilities within it. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV was held on December 17, 2007. The second reading of the ordinance is scheduled for Council action on February 11, 2008.

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

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds this property to City Ward IV.

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 08-_____

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

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

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

A tract of land situated in the S1/2 of Section 25, T.1N., R.24E., the N1/2 of Section 36, T.1N., R.24E., the SW1/4 of Section 30 T.1N., R.25E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Yellowstone County road easement for Rimrock Road also described as a portion of County Road Petition Number 167, filed November 10, 1908, Declared a County Road December 29, 1908, more particularly described as:

Basis of bearings: Certificate of Survey No. 2465, Recorded October 1, 1987, Under Document No. 1458714, Records of Yellowstone County, Montana,

Commencing at the southeast corner of said Section 25; thence N 00°00'04" W a distance of 30.00 feet to the True Point of Beginning; thence S 89°29'28" W being 30.0 feet parallel to the south section line of said Section 25 for a distance of 2673.17 feet; thence S 89°44'27" W and continuing parallel to the south section line of said Section 25 for a distance of 2256.22 feet to the southeast corner of Tract 2A, Amended Tracts 2 and 3, Certificate of Survey No. 2465, Recorded September 16, 1996, Under Document No. 1845641, Records of Yellowstone County Montana; thence south for a distance of 60.00 feet to a point on a line perpendicular to the south section line of said Section 25, said south section line being also the north section line of said Section 36; thence easterly and 30.0 feet parallel to the north section line of said Section 36 for an approximate distance of 944.7 feet to the northwest corner of Lot 14, Sunny Cove Fruit Farms, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; thence easterly and continuing parallel to the north section line of said Section 36 for an approximate distance of 3985.4 feet to a point on the west section line of said Section 31; thence easterly and 30.0 feet parallel to the north section line of said Section 31 for a distance of 30.0 feet to the northwest corner of Lot 8 of said Sunny Cove Fruit Farms; thence north for a distance of 60.00 feet to a point

on a line perpendicular to the north section line of said Section 31, said north section line being also the south section line of said Section 30; thence westerly and parallel to the south section line of said Section 30 for a distance of 30.0 feet to the Point of Beginning.

Containing 6.832 gross acres, more or less.
(# 07-19) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 17th day of December, 2007.

PASSED by the City Council on the second reading this 11th day of February, 2008.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Preliminary Subsequent Minor Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On December 17, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 5, Block 1, Shiloh Crossing Subdivision, which contains five lots on approximately 12.83 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and is zoned Entryway Light Industrial (ELI). A concurrent zone change to Controlled Industrial (CI) has been submitted for the subject property and will be heard by the Zoning Commission on February 5, 2008, and the City Council on February 25, 2008. The pending zone change will not affect the layout of the proposed subdivision.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on February 7, 2008. On January 10, 2008, the subdivider submitted a time extension of the review period to allow this subdivision to go before the Council on February 11, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

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

ATTACHMENTS

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

INTRODUCTION

On December 17, 2008, the subdivider applied for preliminary subsequent minor plat approval of Amended Lot 5, Block 1, Shiloh Crossing Subdivision, which contains five lots on approximately 12.83 acres for commercial development. The subject property is located on the southeast corner of the intersection of Shiloh Road and King Avenue West. The owner is Shiloh Crossing, LLC, and Engineering, Inc. is the agent. The subject property is currently under construction and is zoned ELI. A concurrent zone change to CI has been submitted for the subject property and will be heard by the Zoning Commission on February 5, 2008, and the City Council on February 25, 2008. The pending zone change will not affect the layout of the proposed subdivision.

PROCEDURAL HISTORY

- On December 6, 2007, a pre-application meeting was conducted regarding the proposed 5-lot subsequent minor subdivision.
- On December 17, 2007, an application for a preliminary subsequent minor subdivision was submitted to the Planning Division.
- On January 10, 2008, a time extension was submitted to the Planning Division to permit this subdivision to go before Council at the February 11, 2008, meeting instead of the originally scheduled January 28, 2008, City Council meeting.
- On February 11, 2008, the City Council will vote to approve, conditionally approve, or deny the preliminary plat for the proposed subsequent minor subdivision.

BACKGROUND

General location:	Southeast corner of the intersection of Shiloh Road and King Avenue West
Legal Description:	Lot 5, Block 1, Shiloh Crossing Subdivision
Subdivider/Owner:	Shiloh Crossing, LLC
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	ELI
Existing land use:	Vacant
Proposed land use:	Commercial Shopping Center
Gross area:	12.83 acres
Net area:	12.83 acres
Proposed number of lots:	5
Lot size:	Max: 5.28 acres Min.: 1.51 acres

Parkland requirements:

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

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. To minimize effects on local services, references to Lot 5 shall be amended in the SIA where required. Section VI.B of the SIA shall be amended to state that the lift station is on lot 5E, instead of Lot 5B. *(Recommended by City-County Planning)*
4. To comply with local subdivision regulations, the reciprocal access easement depicted shall be removed from the face of the plat. *(Recommended by City-County Planning)*
5. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
6. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

There are no variances requested, however, a variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides

of internal subdivision streets was approved by the Council with Shiloh Crossing Subdivision on September 10, 2007.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

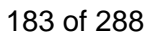
RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary minor plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

Preliminary Plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision



ATTACHMENT B
Site Photographs



Figure 1: View east toward subject property from Shiloh Road



Figure 2: View west from King Avenue toward its intersection with Shiloh Road. The subject property is located south (left) in the photo.



Figure 3: View southeast toward the subject property from the corner of the intersection of Shiloh Road and King Avenue West.

ATTACHMENT C

Findings of Fact

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property. The BBWA canal is located along the southern boundary of the subdivision and is located within its own deeded parcel.

2. Effect on local services

- a. **Utilities** –Water to the subject property will be extended from the 12-inch main line in Shiloh Road and the 16-inch main line in King Avenue West. The SIA does specify that the 12-inch main will be extended along Shiloh Road to the south property line of Shiloh Crossing at the time of the Shiloh Road reconstruction. An internal water main will be installed during Phase I of construction through a private contract, as specified within the SIA.

A 27-inch sanitary sewer main exists in King Avenue at the northwest corner of the subdivision. The SIA specifies that the subdivision will be served by the 2008 extension of the 27-inch main east along King Avenue to a lift station located on Lot 5B. The lift station is actually depicted on the plat in the northeast on Lot 5E. Condition #3 requires this location be amended within the SIA, as well as references to previous Lot 5 of the subdivision.

- b. **Stormwater** – There is no storm drain system available to this area at this time, therefore, stormwater will be handled through a combination of onsite surface flow on streets and parking lots with collection through a network of basins, inlets, and piping. Discharge of the stormwater will be in the existing gravel pit pond on the site. Storm drainage for King Avenue West adjacent to the proposed subdivision will be accomplished in the future once the drain is extended from 31st Street West as part of a 2008 reconstruction process. Storm drainage for Shiloh Road adjacent to the proposed subdivision is currently handled by borrow ditches to Hogan's Slough and the Shiloh Drain. An upgrade of this drainage system will occur in 2009, as part of a Montana Department of Transportation reconstruction. As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via internal private subdivision streets from King Avenue West and Shiloh Road. As specified in the SIA, the subdivider is proposing a 65-foot wide shared access on King Avenue West to allow for the roundabout on the common lot line between Lots 1 and 5. There are also two additional 40-foot wide right-in/right-out approaches along King Avenue West.

There are two main accesses proposed on Shiloh Road, as specified within the SIA. The Shiloh Road accesses have been included in the Shiloh Road reconstruction project. Shiloh Crossing Boulevard is the major internal street and will be constructed to city standards. A reciprocal access easement document was submitted for the shared driveways and parking lots for the commercial development. The plat depicts the easements crossing and splitting proposed Lot 5E of the subdivision. Pursuant to Section 23-404.D, BMCC, no single lot may be divided by a public road, alley, or access easement. Since the depicted street is a private easement outlined within the Reciprocal Access Easement document, it is not necessary that it be shown on the plat. Therefore, to comply with the subdivision regulations, Condition #4 requires the reciprocal access easement be removed from the face of the plat.

A variance to permit a multi-use trail in lieu of sidewalks, where Section 23-406.B.13, BMCC, requires boulevard style sidewalks on both sides of internal subdivision streets was approved with the Shiloh Crossing Subdivision by the City Council on September 10, 2007. The subdivider is proposing to provide a multi-use trail within the subdivision instead of standard sidewalks. This will provide for easy access through the site, as it will be constructed to interconnect all commercial buildings and parking lots on the site

A Traffic Accessibility Study was submitted with Shiloh Crossing Subdivision and all necessary traffic control devices will be as outlined within the study and approved by the City of Billings during construction. All improvements have been specified within the SIA.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5).
- f. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #2. As specified within the SIA, a centralized delivery location shall be provided on proposed Lot 5D. This location of the mail boxes shall be reviewed and approved by the post office.

3. Effect on the natural environment

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

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

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

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

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

The proposed subdivision is consistent with the surrounding commercial and multi-family uses.

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

The subject property is compatible with the commercial development within Montana Sapphire Subdivision to the west and the proposed commercial development to the northwest.

The subdivision is inconsistent with the following goal of the 2003 Growth Policy:

- Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

While the subject property is surrounded by annexed portions of the City and developing parcels, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

A Heritage Trail corridor is identified on the west side of Shiloh Road, Hogan's Slough, and along the BBWA canal. An easement for a segment of trail has been depicted on the north side of the BBWA canal. No improvements are proposed at this time. The subdivider is proposing an internal multi-purpose trail within the entire Shiloh Crossing Subdivision for connectivity to the proposed parking lots and commercial buildings.

4. West Billings Plan

The proposed subdivision satisfies the following policies of the West Billings Plan:

- Conditional approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.
- The West Billings Plan identifies the intersection of King Avenue West and Shiloh Road as a community commercial center.

The proposed subdivision is in conflict with the following goals of the West Billings Plan:

- Medium and high-density residential development should be located nearby and within walking distance to commercial centers, medical facilities, and parks. This subdivision will be close to these amenities once Shiloh further develops.

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

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

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

The property will be served by public water and sewer services from King Avenue West and Shiloh Road.

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

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the ELI zoning district. The subject property is in the process of being rezoned to CI and will be subject to those standards, if approved. The lot size and layout are not affected by the proposed zone change. The subject property will also be required to comply with the South Shiloh Road Overlay District.

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

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

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

Access to the lots will be via private internal streets from King Avenue West and Shiloh Road.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, February 11, 2008

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

February 11, 2008

Shiloh Crossing, LLC
Attn: Steve Corning, Managing Member
Corning Companies
2280 Grant Road
Billings, MT 59102

Dear Mr. Corning:

On February 11, 2008, the Billings City Council conditionally approved the preliminary plat of Amended Lot 5, Block 1, Shiloh Crossing Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. To minimize effects on local services, references to Lot 5 shall be amended in the SIA where required. Section VI.B of the SIA shall be amended to state that the lift station is on lot 5E, instead of Lot 5B. *(Recommended by City-County Planning)*
4. To comply with local subdivision regulations, the reciprocal access easement depicted shall be removed from the face of the plat. *(Recommended by City-County Planning)*
5. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
6. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

Ron Tussing, Mayor

pc: Robert Sanderson, Engineering, Inc.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Preliminary Minor Plat of Riverfront Business Park Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On January 4, 2008, the subdivider applied for preliminary minor plat approval of Riverfront Business Park Subdivision, which contains five lots on approximately 54 acres for commercial and industrial development. The subject property is located west of Washington Street, south of Interstate 90 and north of the Yellowstone River. The owners are King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson. The subject property was recently rezoned from Agricultural Open Space (AO) to Controlled Industrial (CI) in the county and was annexed into the city on January 28, 2008.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on February 21, 2008. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

4. Approve;
5. Conditionally Approve; or
6. Deny the Preliminary Plat

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary minor plat of Riverfront Business Park Subdivision, approval of the variance and adoption of the Findings of Fact as presented in the staff report to the City Council.

Approved by: **City Administrator** _____

City Attorney _____

ATTACHMENTS

- E. Preliminary Plat
- F. Findings of Fact
- G. Variance Findings
- H. Mayor's Approval Letter

INTRODUCTION

On January 4, 2008, the subdivider applied for preliminary minor plat approval of Riverfront Business Park Subdivision, which contains five lots on approximately 54 acres for commercial and industrial development. The subject property is located west of Washington Street, south of Interstate 90 and north of the Yellowstone River. The owners are King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson. The subject property was recently rezoned from AO to CI in the county and was annexed into the city on January 28, 2008.

PROCEDURAL HISTORY

- On October 29, 2007, the Annexation Petition was submitted to the Planning Division.
- On November 29, 2007, a pre-application meeting was conducted for a proposed minor plat on the subject property.
- On January 4, 2008, the preliminary minor plat application was submitted to the planning Division.
- On January 14, 2008, the City Council acknowledged the annexation petition and set a public hearing date for January 28, 2008.
- On January 28, 2008, the City Council conducted the public hearing for the annexation.
- On February 11, 2008, a public hearing for the first reading to expand Ward Boundary I will be conducted; the proposed minor plat of Riverfront Business Park will be on the consent agenda for Council approval.
- On February 25, 2008, if the expansion of the ward boundary is approved on first reading, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

General location:	West of Washington Street, south of Interstate 90 and north of the Yellowstone River
Legal Description:	Tract 2B, Certificate of Survey 1121
Subdivider/Owner:	King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson
Engineer and Surveyor:	Blueline Engineering, LLC
Existing Zoning:	CI
Existing land use:	Vacant
Proposed land use:	Commercial and Industrial Uses
Gross area:	54.12 acres
Net area:	52.58 acres
Proposed number of lots:	5

Lot size: Max: 13.7 acres
Min.: 7 acres

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

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

7. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
8. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
9. To minimize effects on agricultural water user facilities, information shall be added to the Subdivision Improvements Agreement (SIA) that the Gray Eagle Ditch Company shall not be responsible for flooding on the property due to improper maintenance of the ditch, rerouting, or dumping. The 60-foot easement for the ditch shall be properly maintained and the subdivider shall execute a maintenance agreement with the ditch company; this information shall be included in the SIA. *(Recommended by the Grey Eagle Ditch Company)*
10. To minimize effects on local services, an Encroachment Agreement or a letter from ConocoPhillips stating that an encroachment agreement is not necessary shall be submitted prior to final plat approval. Requirements of the Encroachment Agreement and ConocoPhillips shall be outlined within the SIA. *(Recommended by ConocoPhillips)*
11. To minimize effects on local services, prior to final plat approval the subdivider shall provide a written analysis regarding why a 44-foot driveway width is proposed, where the standard maximum width is 40-feet. If the justification is not adequate, the drive

approaches shall maintain a maximum width of 40-feet. *(Recommended by the Engineering Division)*

12. To minimize effects on local services, prior to final plat approval easements will need to be secured across the adjoining property to utilize the City/County Drain; the City will not be securing these easements. At the time of lot development, if easements have not been secured, stormwater will have to be maintained onsite. Plans for the City/County drain outfall shall be approved by the Engineering Division. *(Recommended by the Engineering Division)*
13. To minimize effects on local services, a cultural inventory shall be completed or an archaeologist shall be onsite during excavation for construction of building or development of infrastructure to ensure human remains are not onsite. The cultural inventory and/or a retainer for an onsite archaeologist shall be submitted prior to final plat approval and all findings shall be included within the SIA. *(Recommended by the State Historic Preservation Office)*
14. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
15. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

A variance from Section 23-406.A.6, BMCC, to permit a dead-end cul-de-sac length of 674-feet, where the regulations limit the length of a dead-end street to 600-feet. The proposed internal cul-de-sac, Intermountain Street, will need to extend beyond 600-feet in order to provide access to proposed Lots 4 and 5 of the subdivision. The center of the Grey Eagle Ditch has been used as a common lot line within the subdivision and the placement of the cul-de-sac south of this ditch will allow for the culvert length to be limited to 60-feet. The Fire Department has reviewed this variance and finds that the additional 74-feet will not affect emergency services to the property. Further justification of this variance has been provided as Attachment C of this report.

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

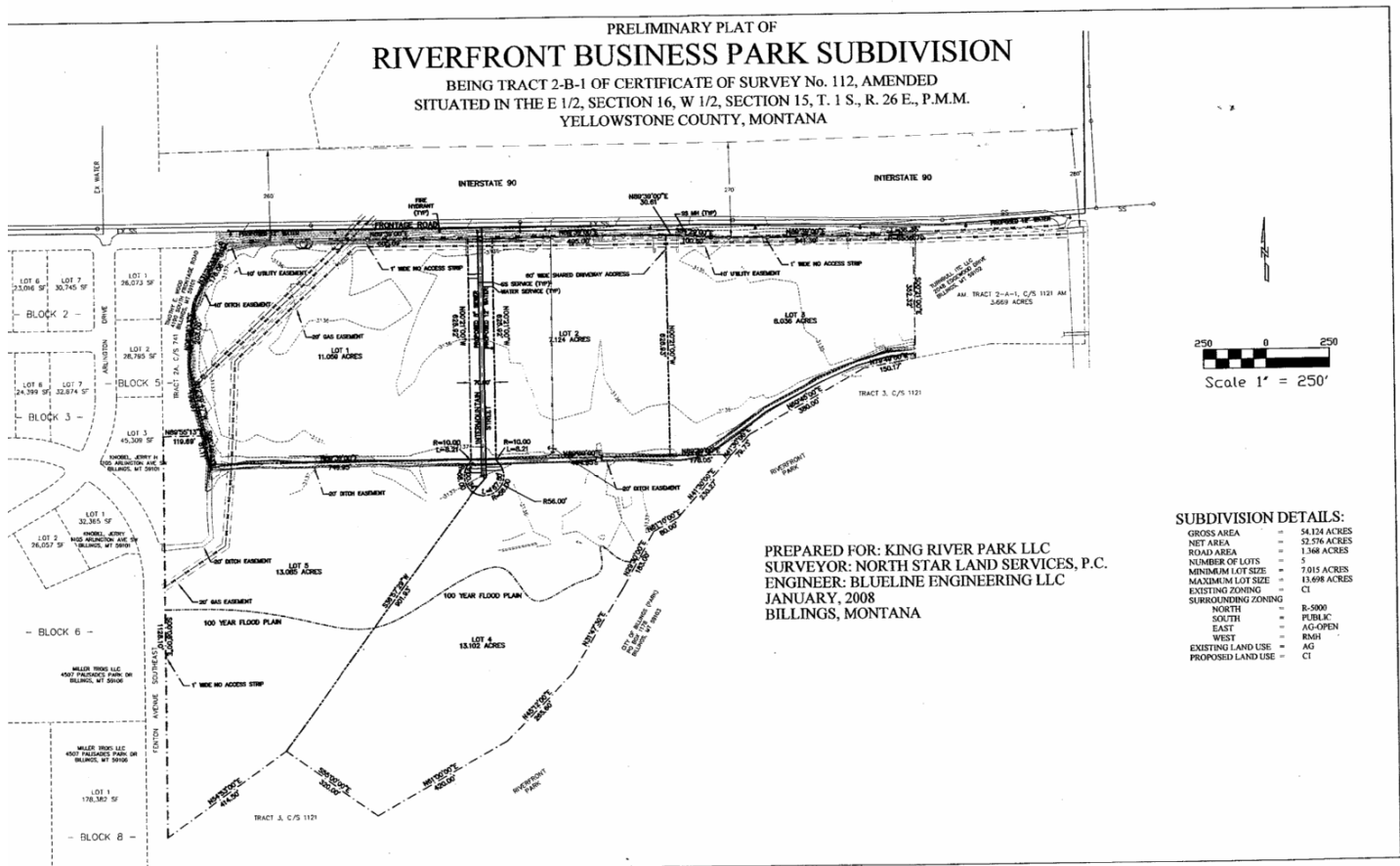
RECOMMENDATION

Staff recommends conditional approval of the preliminary minor plat of Riverfront Business Park Subdivision, approval of the variance and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT A
Preliminary Plat of Riverfront Business Park Subdivision



ATTACHMENT B

Findings of Fact

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

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

1. Effect on agriculture and agricultural water user facilities

The subject property has historically been utilized as irrigated agricultural land; however, it has not been farmed in recent years. The Grey Eagle Ditch is a historical irrigation ditch dating to 1900 that courses through the center of the property. As specified in its review dated January 14, 2008, the Grey Eagle Ditch Company has concerns regarding the width of the proposed easement for the ditch, potential for flooding on the property and alterations to the ditch. The ditch company is requiring that a 60-foot wide easement be maintained for the ditch and that no alterations occur without permission. This shall include buildings being constructed too close to the ditch boundaries, any vegetation growing on the banks, and refuse that may end up in the ditch. The review further states that since the ditch is fed directly from the Yellowstone River, in high water years, there is a potential for flooding on the portion of the property located north of the ditch outside of the delineated floodplain area. The Gray Eagle Ditch Company shall not be held responsible for any flooding or damage to the property and a maintenance agreement shall be executed with the ditch company prior to final plat approval as required by Condition #3.

2. Effect on local services

- e. **Utilities** – Water to the subject property is available on the north side of the interstate. The Public Works Department has stated that the preferred point of extension is northeast of this tract at the intersection of Washington Street and McDougall Drive. A 12-inch main would be extended south across the interstate and then west along the frontage road and property frontage into the property.

Sewer to the subject property will be extended from the 48-inch main line in the frontage road along the northern boundary of the property. The Public Works review specified that a smaller parallel main will need to be constructed along the frontage road across the property frontage and into the property.

- f. **Stormwater** – Storm drainage does not exist in this area. However, the property is bordered on the east by the City-County drain and a limited amount of discharge may be allowed into the drain, provided it has adequate capacity. The City will not secure any easements across the adjoining property to utilize the City/County Drain. At the time of lot development, if easements have not been secured, stormwater will have to be maintained onsite, as required by Condition #6. Plans for the City/County drain outfall shall be approved by the Engineering Division. All stormwater improvements shall

satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- g. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- h. **Streets** – Access to the property will be via an internal public road from the frontage road to the north. Intermountain Street shall maintain a 70-foot wide commercial right-of-way with 44-feet of back to back street width; boulevard style sidewalks will be provided on both sides of the street. All accesses on the South Frontage Road will require Montana Department of Transportation (MDT) approval, as this road is under its jurisdiction. An additional joint access for Lots 2 and 3 has been approved by MDT. The Engineering Division did express concerns regarding the proposed width of the access drives to the subdivision at 44-feet. Therefore, Condition #5 requires that the subdivider provide a written analysis regarding why a 44-foot driveway width is proposed, where the standard maximum width is 40-feet. If the justification is not adequate, the drive approaches shall maintain a maximum width of 40-feet.
- e. **Emergency services** - The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 501 South 28th Street South (Station #2).

A variance from Section 23-406.A.6, BMCC, to permit a dead-end cul-de-sac length of 674-feet, where the regulations limit the length of a dead-end street to 600-feet. The proposed internal cul-de-sac, Intermountain Street, will need to extend beyond 600-feet in order to provide access to proposed Lots 4 and 5 of the subdivision. The Fire Department has reviewed this variance and finds that the additional 74-feet will not affect emergency services to the property.

- f. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #2.
- g. **Historical Features** – The State Historic Preservation Office did submit a review on this subdivision regarding the historic homesite (Newman Homestead) located on the southern portion of the property. In the early 1990's three burials were documented on this property including Mrs. Newman and her daughter and an eight month old infant. While Mrs. Newman and her daughter were located and removed to a cemetery in the early 1990's, the location of the infant has still not been determined; the infant may not be able to be located due to severe deterioration of the bone structure. However, due to the original Newman Homestead and the infant burial, it is recommended that either a cultural inventory be completed or an archaeologist be onsite during excavation to ensure that human remains and/or artifacts of historical value are not disturbed, as required by Condition #7.

- h. **High Pressure Gas Pipeline** - ConocoPhillips maintains a high pressure gas pipeline on the western portion of the property. In its review dated January 17, 2008, ConocoPhillips stated that they have not been contacted by the subdivider regarding the pipeline. It is essential that the easement be maintained and that either an encroachment agreement be executed or a letter from ConocoPhillips be provided prior to final plat approval on this property (Condition #4).

3. Effect on the natural environment

There are three major factors that exist on the property that may have an effect on the natural environment:

- The southern portion of the property has been identified within the 100-year floodplain and is delineated on the preliminary plat. Structures to be built in this area will need to maintain a foundation at least 2-feet above base flood elevation.
- The Grey Eagle Ditch is a historical ditch that courses through the center of the property and can cause potential flooding onsite, as it is fed by the Yellowstone River to the south.
- A geotechnical study was submitted with this application and has been determined sufficient by the Building Official. Once the building locations and sizes are finalized, further geotechnical studies will be required to determine specific design level geotechnical recommendations.

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

There are several major factors that exist on the property that may have an effect on the public health and safety:

- The southern portion of the property has been identified within the 100-year floodplain and is delineated on the preliminary plat. Structures to be built in this area will need to maintain a foundation at least 2-feet above base flood elevation.
- The Grey Eagle Ditch is a historical ditch that courses through the center of the property and can cause potential flooding onsite, as it is fed by the Yellowstone River to the south.
- There is a high pressure gas pipeline located along the western portion of the property. Property owners should use caution while constructing around this pipeline and follow all guidelines set forth by ConocoPhillips.
- The property has been identified as a historic site with human remains and extreme caution shall be utilized during excavation and construction on the property.

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

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

The proposed subdivision would provide for more housing and business choices within this portion of the City.

- **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).**

The proposed subdivision will provide public streets improved to city standards that connect with existing streets, thus creating more efficient transportation connections and ease of traffic flow.

The subdivision is inconsistent with the following goal of the 2003 Growth Policy:

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

The proposed industrial uses of the subdivision are not consistent with the residential uses to the west and the agricultural uses to the east.

- **Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)**

While the subject property is surrounded by annexed portions of the City and developing parcels, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

- **Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land (Natural Resources Goal, Page 8).**

The subject property has historically been utilized for crop production and is in a floodplain. The proposed subdivision will take approximately 54 acres out of agricultural production, which could have a cumulative effect as more subdivisions occur.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

A Heritage Trail corridor does not identify a trail within this subdivision. There is a trail located to the south along Riverfront Park. It was requested that this subdivider provide a connection to this trail, however, one has not been provided with the subdivision.

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

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

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

The property will be served by public water and sewer services.

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

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

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

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

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

Access to the lots will be via accesses from the south frontage road and an internal dead-end cul-de-sac named Intermountain Street.

CONCLUSIONS OF FINDING OF FACT

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

Approved by the Billings City Council, February 11, 2008

Ron Tussing, Mayor

ATTACHMENT C
Variance Findings

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

The variance pertains to the maximum allowable length of 600 feet of a dead-end road within a subdivision. The requested length of the road within the subdivision will be 647 feet. The road will have to extend to the requested length in order to provide access to all the lots within the subdivision. The emergency and protective services will be able to then have full access all lots within the subdivision. The subdivision layout along this access road will meet all subdivision regulations and retain all other provisions to maintain public health and general welfare within the subdivision.

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

The access road will need to extend past the allowable 600 feet in order to provide access to Lots 4 and 5. The center of the ditch has been used as the common lot line within the subdivision. The access road and turnaround cul-de-sac will conform to subdivision regulations. The cul-de-sac and Grey Eagle Ditch are located adjacent to each other. The placement of the cul-de-sac south of the ditch will allow for the culvert length to be limited to sixty feet.

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

The variance will not affect any adjacent landowners or the tax obligation of the subdivision owner.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and

A variance is requested from Section 23-406.A.6 of the Billings Municipal City Code (BMCC) regulation pertaining to the length of dead-end roads. The regulation limits the length of a dead-end road within a subdivision to 600 feet.

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

The site layout of the subdivision prevents access to all lots at the maximum allowable road length. In order for the road to extend to the southern most lot from the local access road, the proposed subdivision road will have to exceed the 600 feet road length limit. Any alternative proposed roads to access the southern most lot would also exceed this road length limit.

ATTACHMENT D
Mayor's Approval Letter

February 11, 2008

King River Park, LLC
1645 Parkhill Drive #3
Billings, MT 59102

Dear Mr. Dorn:

On February 11, 2008, the Billings City Council conditionally approved the preliminary plat of Riverfront Business Park Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. To minimize effects on agricultural water user facilities, information shall be added to the Subdivision Improvements Agreement (SIA) that the Gray Eagle Ditch Company shall not be responsible for flooding on the property due to improper maintenance of the ditch, rerouting, or dumping. The 60-foot easement for the ditch shall be properly maintained and the subdivider shall execute a maintenance agreement with the ditch company; this information shall be included in the SIA. *(Recommended by the Grey Eagle Ditch Company)*
4. To minimize effects on local services, an Encroachment Agreement or a letter from ConocoPhillips stating that an encroachment agreement is not necessary shall be submitted prior to final plat approval. Requirements of the Encroachment Agreement and ConocoPhillips shall be outlined within the SIA. *(Recommended by ConocoPhillips)*
5. To minimize effects on local services, prior to final plat approval the subdivider shall provide a written analysis regarding why a 44-foot driveway width is proposed, where the standard maximum width is 40-feet. If the justification is not adequate, the drive approaches shall maintain a maximum width of 40-feet. *(Recommended by the Engineering Division)*
6. To minimize effects on local services, prior to final plat approval easements will need to be secured across the adjoining property to utilize the City/County Drain; the City will not be securing these easements. At the time of lot development, if easements have not

been secured, stormwater will have to be maintained onsite. Plans for the City/County drain outfall shall be approved by the Engineering Division. *(Recommended by the Engineering Division)*

7. To minimize effects on local services, a cultural inventory shall be completed or an archaeologist shall be onsite during excavation for construction of building or development of infrastructure to ensure human remains are not onsite. The cultural inventory and/or a retainer for an onsite archaeologist shall be submitted prior to final plat approval and all findings shall be included within the SIA. *(Recommended by the State Historic Preservation Office)*
8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

In addition, the City Council approved the following variance with the preliminary plat:

- A variance from Section 23-406.A.6, BMCC, to permit a dead-end cul-de-sac length of 674-feet, where the regulations limit the length of a dead-end street to 600-feet.

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

Sincerely,

Ron Tussing, Mayor

pc: Blueline Engineering, LLC

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

V1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$997,763.05 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 11, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

V2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,748,158.05 have been audited and are presented for your approval for payment. A complete listing of the claims dated January 18, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

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

PROBLEM/ISSUE STATEMENT: The City does not anticipate the Department of Natural Resources and Conservation issuing revenue bonds for the water and sewer replacement projects until April. 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.

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A – Resolution

ATTACHMENT A

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 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 February 11, 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 February, 2008.

City Clerk

RESOLUTION NO. _____
RESOLUTION RELATING TO FINANCING OF CERTAIN
PROPOSED 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:

Recitals.

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.

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

Official Intent Declaration.

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”).

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.

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 \$4,600,000 (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.

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.

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 11th day of February, 2008.

Mayor

Attest:

City Clerk

EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
2008 Replacement Projects	
Sewer	2,900,000
Water	1,700,000

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, FEBRUARY 11, 2008

SUBJECT: Approval of Resolution Approving and Adopting Second Quarter Budget Amendments for Fiscal Year 2007/2008

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Budget amendments are requested for the Public Safety Fund – Fire Division, the General Fund, Fire Station #7 Construction Fund, HazMat Training Fund, Arterial Street Fund, Transportation Enhancement Fund, Gas Tax Fund, Parks and Recreation Construction Fund, Special Improvement Districts Funds, and Animal Shelter Spay/Neuter Fund. The amendment to the Public Safety Fund is to reduce the personnel budget for six fire suppression positions, one vacant deputy fire chief position and 3 months vacancy in the fire chief position. The General Fund is requesting budget authority to transfer funds to the Fire Station #7 Construction Fund which will have additional construction and landscaping expenses. The amendment to the HazMat Training Fund is needed to provide budget authority for monies provided by the State for HazMat Response Team training. The remaining budget requests are for street improvements, special improvement district improvements, and recreation trails.

RECOMMENDATION

Staff recommends that the City Council approve the attached resolution Fiscal Year 2007/2008.

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

ATTACHMENT

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

RESOLUTION 08-

A RESOLUTION TO MAKE FISCAL YEAR 2008 ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

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

WHEREAS, based upon a **Quarterly** Budget Review (**FY 2007/2008**), it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 28th day of January, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A

			Revenue	Expenditure	
150 – 2229 – Public Safety Fund – Fire					
The fire salaries budget will be reduced for six suppression positions, one deputy fire chief position and three months of the fire chief position by increasing vacancy savings (deducting them from approved expenses).					
150-2229-422	1610			(459,150)	Vacancy savings
495 – Fire Station # 7 Construction Fund					
010 – General Fund					
Construction and landscaping costs exceed the budget for Fire Station #7 (Fund 495). General Fund cash reserves will be transferred to the construction fund and will be used to pay the higher costs. <u>There is no offsetting revenue in the General Fund.</u> The original construction funds came from the Public Safety Fund, but that Fund does not accumulate reserves, so this transfer must come from the General Fund.					
010-1412-414	8253			75,000	Transfer to Fire Station #7 Construction Fund
495-2241-383	2045		75,000		Transfer from General Fund
495-2241-422	9290			75,000	Fire Station #7 building construction
220 – Haz Mat Training Fund					
This amendment provides budget authority for planning and training expenditures for the Hazardous Materials Response Team. Intergovernmental revenues will increase for monies provided by the State of Montana to pay for these expenditures.					
220-2233-335	2045		44,167		Intergovernmental Revenues
220-2233-422	3590			20,000	Technical Advisory Group/Planning & Exercises
220-2233-422	3870			4,167	Outreach Training
220-2233-422	3822			20,000	Training & Exercises
845 – Arterial Streets Fund					
This budget amendment is requested to increase capital expenditures in the Arterial Fund by \$400,000. Revenue will not increase because there is sufficient					

unencumbered cash to pay these costs. Public works will delay or defer two planned FY 2009 projects in order to pay for increased project costs in FY 2008. The delayed projects are the annual intersection capacity project and the Midland Road SID. The funds will be used for:

Aronson Avenue

Bids were opened and were higher than estimated. These funds are necessary to complete the road's construction.

Alkali Creek Road

The Alkali Creek project is in the CIP for FY 2009. However, a slope stabilization study was conducted after a landslide occurred that undermined Alkali Creek Road. Per the study's recommendations, Public Works Administration is requesting to move the project from FY 2009 to FY 2008, using available cash.

845-3186-431	9310			220,000	Road improvements – Aronson Avenue
845-3186-431	9310			180,000	Road improvements – Alkali Creek Road

210 – CTEP (Transportation Enhancement Program) Fund

Budget increases are requested for two (2) CTEP projects – Jackson Street Sidewalks and Highland School Route improvements. The costs are paid by federal grants and revenue will increase by the same amount.

210-3110-431	9311			119,000	Sidewalk, curb and gutter – CTEP projects, Jackson Street Sidewalks, and Highland School Route
210-3110-331	1941		119,000		Federal grant – transportation enhancement program

205 – Gas Tax Fund

Budget increases are requested for Jackson Street Sidewalks, Phase I, Highland School Route Improvements, Aronson Avenue, and Drying Bed Expansion in element/object 9310 which is used for capital construction related to roads, streets, and parking. Total budget increase requested for the Gas Tax Fund is \$537,000.

Revenue is not increased because there is sufficient unencumbered/undesignated cash to pay these costs.

205-3131-433	9310			55,000	Jackson Street Sidewalks, Phase I
205-3131-433	9310			28,000	Highland School Route

					Improvements
205-3131-433	9310			104,000	Road improvements – Aronson Avenue
205-3131-433	9310			350,000	Drying Bed Expansion
490 – Parks General Obligation 2000 Construction Fund					
This is a budget amendment for \$200,000 to increase spending authority for the Bannister Trail project. Federal Grant revenues will increase by \$173,160. The remaining \$26,840 is the local share match, which will be funded by cash that is already available in the Fund.					
490-5161-331	1954		173,160		Federal grant – CTEP/BIKENET/Recreational Trails Program Assistance
490-5161-452	9370			200,000	Bannister Trail construction
456 – SID 1378 – Clevenger Construction Fund					
450 – SID 1383 – Cherry Hills Construction Fund					
Budget authority is requested to increase the Special Improvement District (SID) capital expenditures by \$568,000. Revenue will come from bonds that will be sold to finance the projects.					
456-3161-381	6810		235,000		Bond issuance – SID 1378 Clevenger
456-3161-431	9310			235,000	Road improvements – SID 1378 Clevenger
450-3161-381	6810		333,000		Bond issuance – SID 1383 Cherry Hills
450-3161-431	9310			333,000	Road improvements – SID 1383 Cherry Hills
452 – SID 1370 – Interlachen, Phase II Construction Fund					
Budget authority is requested to increase the SID capital expenditure account for Interlachen Phase II. Bonds for this SID were sold in FY 2006 along with bonds for Phase I of the project. Cash remaining from the 2006 bond sale will pay for these costs, so a revenue amendment is not needed.					
452-3161-431	9310			84,000	Road improvements – SID 1370 Interlachen
713 – Animal Shelter Spay/Neuter Relief Fund					

This amendment will provide budget authority to assist pet owners with the cost of having their animals spayed or neutered on February 28, 2008 – National Spay Day, USA. There is sufficient cash in the account, so a revenue amendment is not needed.					
713-2176-441	7935			2,500	Animal Shelter Spay/Neuter Relief Fund

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, February 11, 2008

TITLE: Staff Recommendation for homeWORD Additional Funds Request

DEPARTMENT: Planning & Community Development Division

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

PROBLEM/ISSUE STATEMENT: This is the first agenda item of two items regarding the allocation of funding for Community Development Block Grant (CDBG) and the HOME Investment Partnership program. This agenda item requests an increase in Affordable Housing funding to a current project, Southern Lights. The next agenda item requests a re-allocation of funding from the Affordable Housing fund to the First Time Homebuyer program. If all items are approved through City Council tonight, the City would still have \$196,607 in affordable housing funds available to assist developers in creating affordable housing between now and June 30, 2008.

The Community Development Division received a proposal from homeWORD in response to a RFP issued for sale of City-owned land on South 28th and 8th Avenue South in July of 2005. The proposal was to assist homeWORD in building a 20 unit, multi-family rental complex located on the property. The organization proposed all 20 units be targeted for families at or below 50% of area median income and the project is near completion. The affordability of this project will remain affordable for 46 years. At the time of the application, several sources of funding were included in the budget and final budget figures were forthcoming. Not only were several grants not awarded to the project, but labor shortages in Billings and rapidly increasing costs of materials compounded construction costs, increasing the estimated project costs. Additional funding is necessary and homeWORD is requesting the City increase its current grant from \$300,000 to \$500,000. Leveraging attained for this project thus far is nearly \$5.3 million, making the City's overall contribution, including donated land, less than eleven percent of the total project budget.

The City of Billings is required to commit 15% of the total HOME budget to Community Housing Development Organizations (CHDOs). At present, the City has \$93,144 to commit to CHDOs by June 20, 2008 and anticipates an additional mandatory \$72,594 budget amount will

be required to be allocated to CHDOs for FY2008-2009. This totals an available CHDO balance of \$165,738. Allocating additional funding to homeWORD would assist the City in meeting mandatory CHDO allocations.

ALTERNATIVES ANALYZED: (1) Not assist with more funds for Southern Lights. By not increasing funding for Southern Lights, homeWORD would have to secure conventional financing to complete the project, which would increase costs which would be passed on to the renters. 2) Fund the additional request and secure the City's CHDO investment in Billings which would ensure HUD compliance for CHDO allocations through FY2008-2009.

FINANCIAL IMPACT: CDBG and HOME Investment Partnership program funds are provided by HUD to the City for affordable housing projects. If the request to increase funding to Southern Lights and to move funding into the First Time Homebuyer program are approved, the City would still have \$196,607 in affordable housing funds available to assist developers in creating affordable housing opportunities between now and June 30, 2008, when new funding becomes available. With the addition of this request, HOME / CDBG funds committed per unit would be well below the maximum per unit cost allowed.

RECOMMENDATION

Staff recommends the City Council approve the \$200,000 modification to homeWORD's Development Agreement and extend the Development Agreement term to January 3, 2009, as a grant out of HOME / CDBG funds. These funds will be used by homeWORD to finish the 20 units of affordable rental housing at 8th Avenue South & South 28th Street.

ATTACHMENTS

- A.** Letter from homeWORD dated January 15, 2008 requesting modification (2 pages)
- B.** Section C, Part I & II: Sources of Funds Statement and Uses of Funds (4 pages)

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing. They were affordability, condition and rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers / parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. With the variety of bedroom sizes, including the larger ones this project is proposing, it would help to meet those needs.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed two-thirds of renter households are considered low income and 32% of the total renter households are cost burdened, and living in overcrowded and / or substandard housing.

There are 5,637 renter households under 50% median family income. This report indicates 67.5%, of the renter households with incomes at or below 50% area median income (which is the income group this project is targeting) are cost burdened. This translates into approximately 3,805 households that could benefit from this project.

Almost 34% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type, only behind affordable single family homes for purchase. The Census Tract the project is located in is 70 - 100% low to moderate income.

This project meets the following three strategies in the City's Consolidated Plan:

- Promote new affordable housing opportunities; and
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

Additionally, this project has created in-fill development in an existing lower-income neighborhood and has provided new development in the South 27th Street Corridor.

PROCEDURAL HISTORY

- January 20, 2005 - homeWORD attended the Southside Task Force meeting to announce their interest in developing an affordable housing project in their area.
- May 2005 - homeWORD attended a second Southside Task Force meeting to discuss more formally a project concept and their community design process. At this meeting the Task Force voted to write a letter of support for the project.

- July 11, 2005 - homeWORD submitted bid to Community Development in response to RFP issued for the sale of City-owned land on South 28th and 8th Avenue South.
- July 25 through 29, 2005 - homeWORD conducted a door-knock campaign throughout the neighborhood surrounding the proposed project location. This campaign was to gather residents' thoughts on what they liked and disliked in their neighborhood, as well as let residents know about the proposed project. Invitations to the design charette were issued as well.
- July 25, 2005 - City Council approved the donation of the City-owned lots located on 8th Avenue South & South 28th Street to homeWORD.
- August 12 and 13, 2005 - homeWORD sponsored a two day design charette to obtain community input into the design of the project.
- October 18, 2005 - homeWORD submitted their project proposal to Community Development.
- November 1, 2005 - homeWORD and staff met with City Administrator to negotiate Payment in Lieu of Taxes. The project concept was presented to the CD Board the same day. That evening homeWORD also held a public hearing to present the ideas gathered at the design charette to the neighborhood.
- December 6, 2005 - Staff recommendation is made to CD Board.
- December 19, 2005 - CD Board recommendation is made to City Council.
- December 2006 - Construction began at Southern Lights. Shortly after construction began, Community Development staff was notified of possible cost overruns due to the labor shortage and construction costs.
- January 17, 2008 - Community Development received a request for modification of the current development agreement to increase the amount of funding dedicated to Southern Lights from \$300,000 to \$500,000.

BACKGROUND

Task Force and Community Input – homeWORD has made three presentations to the South Side Task Force, including the last public hearing. Letters of support for the project submitted with the application include the Task Force Chair, City Council members, as well as a realtor and various other community members.

HOME Section 504 Requirements call for one unit to be specifically designed for sensory impaired with an additional unit handicap accessible. These requirements will be met through all of the units being fully handicap accessible; with one of those being accessible for individuals with sensory impairments.

Organizational Strengths

homeWORD is actively participating in a project review by HUD of the affordability requirement for the High Sierra project with City staff. homeWORD has successfully managed six state HOME grants over the past nine years and two City of Billings HOME grants. All of

their projects have come in on time and on budget. They own and operate six affordable housing rental projects. homeWORD submitted an extensive management plan with their application and they have very well-thought out and well-developed management policies and procedures; all of which comply with the Montana Residential Landlord Tenant Act.

Other considerations during the project review

The property is located within the City limits and is located in the South 27th Street Zoning District which required a Special Review to allow for a multi-family development. Parking & landscaping are required and have been included in the site plan. Utilities are available at the site.

During completion of the Environmental Review (ERR) process, a Noise Assessment was required due to the proximity of 27th Street; which is considered a major roadway. Some mitigation was required through the installation of additional insulation on the side facing 27th Street, as well as requiring air conditioning.

Financial Plan

Sources of funds to complete the project financing are as follows:

City of Billings HOME CHDO funds	\$ 300,000
Federal Home Loan Bank	\$ 100,000
Low Income Housing Tax Credits	\$ 4,207,000
Permanent Loan	\$ 219,000
Donor	\$ 60,000
Green Communities	\$ 25,000
Sample Foundation	\$ 2,400
Deferred Developer's Fee	\$ 175,000

homeWORD has acquired a permanent loan in the amount of \$219,000. This loan is amortized over a 30 year period at 5.25% interest. This would mean an annual payment of \$14,150 dollars, which is reflected in the proforma. It is also typical of these types of project to defer part of the developer's fee; which homeWORD is proposing.

HOME Requirements Review

Total square feet of the project is 24,500 and the cost per square foot is \$180. homeWORD is proposing all 20 units be HOME assisted. With the additional \$200,000, the HOME per unit subsidy is \$25,000; well below the maximum subsidy allowed by Federal Regulation. homeWORD is requesting 11% of total project costs from City. The subsidy is appropriate.

Other, similar projects that have been funded include the Acme for \$143,400 which included 19 units that were HOME assisted and cost per unit was \$7,547. The Housing Authority of Billings, Town Square apartments was funded at \$187,000 for 16 units which was \$11,688 per unit cost. The Schwend apartments final cost per unit was \$27,533.

The HOME 25% match requirement is being met through volunteer labor, a percentage of the Architect's fees are being donated and the land donation. Also a portion of the property tax exemption will be used when that is approved. homeWORD has negotiated with the City and is committed to an annual Payment in Lieu of Taxes and payment of assessments in the amount of \$1,500.00, plus a \$25.00 increase annually beginning in year two of occupancy.

Low Income Housing Tax Credits(LIHTC) Restrictions & Requirements

This application was approved for Low Income Housing Tax Credits (LIHTC). LIHTC require that owners target no less than 40% of the units to be rented to 60% area median income or less. homeWORD has elected to provide 100% of the units at 50% or below AMI. They also require projects must remain rent and income restricted for a minimum period of 15 years. homeWORD is proposing this project be restricted for 46 years. The LIHTC rent and income restrictions are enforced through restrictive covenants that are recorded against the title of the property at closing.

In reviewing the application for the following cost limitations, homeWORD has following the LIHTC as well as industry standard allowed percentages with regard to construction contingency, developer's fees, builder's overhead and general requirements. All are a percentage of the construction costs minus the land costs. The breakdown is as follows:

	LIHTC allowed	homeWORD
Construction Contingency	N/A	1%
Developers fee	15%	10%
Builder's Overhead	2%	1%
General Requirements	6%	4%

ALTERNATIVES ANALYZED

(1) To not assist with more funds for the project. By not funding this project, homeWORD would have to secure conventional financing to complete the project which would increase costs which would be passed on to the renters. 2) Fund the additional request and secure the City's CHDO investment in Billings which would ensure HUD allocation compliance through FY2008-2009.

STAKEHOLDERS

- Stakeholders include the South Side Task Force who indicated unanimous support for this project.
- Low Income families and individuals in the community. This project is targeted to families and individuals under 50% AMI
- Disabled individuals and families in the community. All of the units in the proposed project will be handicap accessible.
- Surrounding property owners. By funding this project, a new, high-quality family housing complex with numerous amenities to complement the neighborhood will be

constructed. This will have a positive impact on the surrounding property owners through increasing the value of their homes and the neighborhood as a whole.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This project meets the following three strategies in the City's Consolidated Plan:

- Promote new affordable housing opportunities; and
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

Additionally, this project would create in-fill development in an existing lower-income neighborhood as well as provide development in the South 27th Street Corridor.

SUMMARY

An overall review of the funding for the project reveals it to be consistent with other similar projects that the City has funded. The HOME subsidy amount being requested is consistent with the number of HOME assisted units, and is not over subsidy limitations. Match requirements are being appropriately met, as well as Section 504 requirements and ADA accessibility. homeWORD will contract with a local management company for the day-to-day management services. This project is also consistent with the City's Consolidated Plan.

There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment. The owner / developer has extensive experience, both in developing and managing Low Income Housing Tax Credit projects and is knowledgeable of the HOME program requirements as well. The City has had partnered successfully with homeWORD with a number of projects and a positive relationship has been developed.

RECOMMENDATION

Staff recommends the City Council approve the \$200,000 modification to homeWORD's Development Agreement and extend the Development Agreement Contract to January 3, 2009 as a grant out of HOME / CDBG funds. These funds will be used by homeWORD to finish the 20 units of affordable rental housing at 8th Avenue South & South 28th Street.

ATTACHMENTS

- A. Letter from homeWORD dated January 15, 2008 requesting modification (2 pages)
- B. Section C, Part I & II: Sources of Funds Statement and Uses of Funds (4 pages)



homeWORD

www.homeWORD.org



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P.O. Box 986
BILLINGS MT 59103



January 15, 2008

Brenda Beckett
Community Development Director
510 N. Broadway, 4th Floor
Billings, MT 59103

Dear Brenda,

On behalf of homeWORD, I would like to begin by saying thank you to the City of Billings for its commitment to affordable housing and its commitment to the Southern Lights development. Without the donation of land and the initial \$300,000 in HOME funds, this long term, 20-unit affordable housing project would never have become a reality for the community. At this time, we want the City to know we truly appreciate your consideration of this request for modification of homeWORD's HOME contract for additional \$200,000 of HOME Funds for the construction of the Southern Lights Apartments in the Southside neighborhood located at 801 S. 28th Street.

homeWORD is committed to maintaining affordability at Southern Lights for 46 years. Currently under construction, the project aligns with the City of Billings Consolidated Plan for the CDBG and HOME Programs. Below are a few of Southern Lights essential values:

- Designed to meet the critical need for affordable rental housing for low and very low-income households between 30-50% AMI.
- Provides safe, clean, healthy and well-maintained housing while meeting the needs of elderly, persons with disabilities, and homeless population.
- Offers (5) One-bedroom, (9) Two-bedroom, (4) Three-bedroom, and (2) Four-bedroom that meets the housing need of larger families.
- Located in close proximity to the city center, social services, employment opportunities and supports sustainable transportation options.

As you may know, the project faced tremendous financial challenges. In Summer of 2006, homeWORD hired Hardy Construction. Hardy Construction worked closely with O2 Architects and homeWORD to analyze numbers and move forward with the design of the project with a total site and building construction number of roughly \$3.4 million or \$140/SF. In the fall of 2006, Hardy competitively bid the project to responsible subcontractors to get the best pricing possible. To everyone's surprise the construction market shifted dramatically in Billings and the project bids came back at roughly \$5.4 million or \$220/SF. The labor shortages in Billings and rapidly increasing costs of materials compounded construction costs unlike any other time in Hardy or O2's experience.

Needless to say, this was a difficult time for the project and the development team realized the project could not move forward as planned. Working together, homeWORD, O2 Architect and Hardy Construction value engineered the project from various angles, including donating portions of fees and profit from each entity. After a several months of hard work, the bids decreased to a number and a project that was feasible at \$3.8 million or \$185/SF. homeWORD made appropriate decisions on what to remove from the project and what was core to homeWORD's mission and neighborhood needs in order to maintain a highly energy and resource efficient development with low rents and long term operating costs. Southern Lights not only offers safe and affordable housing for low-income families, but presents residents with amenities that encourage community building and self-empowerment.

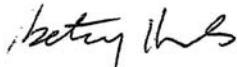
When Southern Lights was originally awarded funds in December 2005, there were a number of sources included in the budget. These sources were comprised of government funding, foundations, and local businesses such as; Low Income Housing Tax Credits, the Federal Home Loan Banks of Seattle and Des Moines, Green Donors, Enterprise Community Partners, NorthWestern Energy, Montana Dakota Energy, St. Vincent, and ConocoPhillips. While the project was largely successful in those fundraising efforts, several key grants were not awarded to the project. These grants included; NorthWestern Energy, Montana Dakota Utilities, Conoco Phillips, and St. Vincent's. These grants total to \$130,000. This combined with the financial impacts of construction delays compounded budget stresses of Southern Lights. Despite some unsuccessful grant applications, the homeWORD staff leveraged over \$4.8 million in funding beyond the City's original \$300,000 investment.

homeWORD and the rest of the team worked closely to manage ongoing construction and cost issues to ensure the continued success of the project. All care was taken to spend money as wisely as possible, but due to the intensity of the project redesign, there were eventual costs associated with both construction clarifications in change orders and contract penalties with the impacted project timeline. As construction now nears completion, homeWORD has to address the financial needs of the Southern Lights.

The additionally requested \$200,000 in funds will help fill the gap in funding and the extended construction interest. These funds are important to the completion of the project and will ensure the long term success of Southern Lights' high quality housing for those most in need. The funds being requested are well below the maximum cost per unit the HOME Program requires.

Thank you for consideration of this request and we look forward to our continued partnership with the City of Billings in making Southern Lights a success.

Sincerely,



Betsy Hands
homeWORD Executive Director

SECTION C - FINANCIAL

PART I - SOURCES OF FUNDS STATEMENT

Please list sources of funding for the project. List both the funding source and the agency which administers the program. Include financing, grants, donations, and equity. Attach letter(s) of commitment. Identify each source as to TYPE by noting after name (L) for Loan, (G) for Grant, or (E) for Equity. Identify each source by DESCRIPTION CODE using the codes from the list below. Indicate in the STATUS column whether (P) Proposed, (R) Requested, or (A) Approved.

LIST ALL SOURCES OF PROJECT FUNDING										
SOURCE	AMOUNT	TYPE	DESCRIPTION CODE	STATUS	LOAN TERM (YEARS)	AMORTIZATION PERIOD (YEARS)	ANNUAL DEBT SERVICE	DATE REQUESTED	ACTUAL OR EXPECTED COMMITMENT DATE	
HOME City of Billings	\$300,000	G	10	A	30			October, 05	January, 06	
Affordable Housing Program - FHLB	\$100,000	G	1	A	30			April, 06	May, 06	
Low Income Housing Tax Credits	\$4,207,000	E	4	A				January, 06	April, 06	
Permanent Mortgage - FIB	\$219,000	L	2	A	30	30	14150	September, 05	January, 06	
Anonymous Green Donor	\$60,000	G	9	A	30			January, 06	April, 06	
Green Communities	\$25,000	G	9	A	30			January, 06	April, 06	
Sample Foundation	\$2,400	G	9	A	30			January, 06	April, 06	
HOME City of Billings	\$200,000	G	10	P	30			January, 08	February, 08	
Deferred Developer Fees	\$175,000	E	4							
TOTAL SOURCES	\$5,288,400						14150			
DESCRIPTION CODES										
1. AHP Subsidized Financing										
2. Other Loans (Conventional)										
3. Low-Income Housing Tax Credit										
4. Equity										
5. Other Subsidies										
6. Housing Agency Bond										
7. State & Local Grants										
8. Foundations										
9. Other Grants										
10. HOME										
11. Rental Rehabilitation										
12. Other HUD										
13. Other Loans (subsidized)										
14. CDBG										

NOTE: TOTAL SOURCES OF FUNDS MUST EQUAL TOTAL USES OF FUNDS

**SECTION C - FINANCIAL
PART II - USES OF FUNDS**

	SOURCE Deferred Dev. Fee	SOURCE Pub./Priv./ Grn.Grants	SOURCE FHLB-AHP	SOURCE Permanent Mortgage	SOURCE City HOME	SOURCE LIHTC	TOTAL PROJECT BUDGET
ADMINISTRATION							
Personnel Services							
Supplies							
Communications							
Printing/Duplication/Postage							
Advertising							
Accounting/Auditing							
Travel							
Training							
Other Administration							
TOTAL ADMINISTRATION COSTS							
LAND/ BLDG./ACQUISITION							
Land							
Existing Structure							
Demolition							
Homebuyer's Assistance							
TOTAL LAND/BLDG./ACQUISITION COSTS							
SITE WORK							
Site Work							
Off-Site Improvement							
Environmental							
Other							
TOTAL SITE WORK COSTS							
CONSTRUCTION AND REHAB							
New Building	\$175,000	\$87,400	\$100,000	\$195,465	\$200,000	\$2,732,076	\$3,489,941
Rehabilitation							
Accessory Structures							
General Requirements						\$225,000	\$225,000
Contractor Overhead						\$75,000	\$75,000
Contractor Profit						\$239,000	\$239,000
Construction Contingency						\$31,389	\$31,389
Materials and Compaction Testing						\$3,098	\$3,098
Fees & Permits						\$6,291	\$6,291
TOTAL CONSTRUCTION AND REHAB COSTS	\$175,000	\$87,400	\$100,000	\$195,465	\$200,000	\$3,311,854	\$4,069,719
SUBTOTAL	\$175,000	\$87,400	\$100,000	\$195,465	\$200,000	\$3,311,854	\$4,069,719

PART II - USES OF FUNDS (cont.)

	SOURCE	SOURCE	SOURCE	SOURCE	SOURCE	SOURCE	TOTAL PROJECT BUDGET
PROFESSIONAL WORK & FEES							
Architect Design							\$320,854
Architect Reimbursibles						\$74,039	\$7,928
Attorney, Real Estate						\$7,992	\$7,992
Consultant/Agent						\$11,686	\$11,686
Engineer/Surveyor						\$5,685	\$5,685
Commissioning						\$13,000	\$18,600
Other							
TOTAL PROFESSIONAL WORK & FEES						\$265,500	\$372,745
CONSTRUCTION/ INTERIM FEES							
Hazard & Liability Insurance						\$13,584	\$13,584
Credit Report							
Construction Interest						\$122,897	\$122,897
Origination Points						\$24,000	\$24,000
Discount Points							
Inspection Fees							
Title & Recording						\$11,542	\$11,542
Legal Fees							
Taxes (PILOT)						\$1,337	\$1,337
Other							
Other							
TOTAL CONSTRUCTION/ INTERIM FEES						\$173,360	\$173,360
PERMANENT FINANCING FEES							
Credit Report							
Discount Points							
Origination Fees							\$2,190
Title and Recording						\$2,190	\$1,095
Legal Fees							
Prepaid MIP							
Perm Loan Rate Lock						\$1,066	\$1,066
Other							
TOTAL PERMANENT FINANCING FEES						\$3,285	\$3,285
SUBTOTAL						\$281,671	\$550,456

PART II - USES OF FUNDS (cont.)

	SOURCE	SOURCE	SOURCE	SOURCE	SOURCE	SOURCE	TOTAL PROJECT BUDGET
SOFT COSTS							
Feasibility Appraisal					\$4,500		\$4,500
Market Study						\$3,821	\$3,821
Environmental Study						\$1,730	\$1,730
Tax Credit Fees				\$20,250			\$20,250
Cost Certification						\$3,800	\$3,800
HOME Soft Costs					\$30,000		\$30,000
Community Design Charrette						\$2,917	\$2,917
Advertising							
TOTAL SOFT COSTS				\$20,250	\$34,500	\$12,268	\$67,018
SYNDICATION COSTS							
Organizational (Partnership)							
Bridge Loan Fees & Expenses						\$25,512	\$25,512
Tax Opinion							
ALTA Survey						\$5,695	\$5,695
TOTAL SYNDICATION COSTS						\$31,207	\$31,207
DEVELOPER'S FEES							
Developer's Overhead							
Developer's Fees					\$510,000		\$510,000
Consultant Fee							
Other							
TOTAL DEVELOPER'S FEES					\$510,000		\$510,000
PROJECT RESERVES							
Rent-Up Reserve						\$1,000	\$1,000
Operating Reserve						\$39,000	\$39,000
Replacement Reserve						\$20,000	\$20,000
Escrow							
Other							
TOTAL PROJECT RESERVES						\$60,000	\$60,000
SUBTOTAL PROJECT RESERVES					\$34,500	\$61,347	\$95,847
SUBTOTAL PROJECT RESERVES					\$200,000	\$3,311,854	\$3,511,854
SUBTOTAL PROJECT RESERVES					\$265,500	\$28,167	\$294,667
GRAND TOTAL PROJECT COSTS	\$175,000	\$87,400	\$100,000	\$219,000	\$500,000	\$4,207,000	\$5,288,400

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

Agenda Item:



City Council AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Public Hearing and Action on Re-allocation of CDBG and HOME funds
DEPARTMENT: Planning & Community Development Division
PRESENTED BY: Brenda Beckett, Community Development Manager
 Candi Beaudry, Planning and Community Services Director

PROBLEM/ISSUE STATEMENT: This is the second agenda item of two items regarding the allocation of funding for Community Development Block Grant (CDBG) and the HOME Investment Partnership program. One agenda item requested an increase in Affordable Housing funding to a current project, Southern Lights. This agenda item requests a re-allocation of funding from the Affordable Housing fund to the First Time Homebuyer program. If all items are approved through City Council tonight, the City would still have \$196,607 in affordable housing funds available to assist developers in creating affordable housing between now and June 30, 2008.

Since July 1st the City First Time Homebuyer Program has assisted 32 homebuyers achieve homeownership and expending available HOME funding for the program. Additional funding for the program is needed to meet the needs of lower income homebuyers in Billings between now and June 30. There is currently a waiting list of 21 families that have applied to the First Time Homebuyers program. These families are waiting for funds to be available to sign a Buy/Sell Agreement to purchase their first home. Applications continue to arrive daily. New funding for First Time Homebuyer activities will not be available until July 1, 2008, but CDBG and HOME funding from Affordable Housing funds are available immediately to assist these families.

The Community Development Division also has CDBG expenditure HOME commitment deadlines as of May 1 and June 30. Allocating funding which has not been committed for affordable housing projects would assist the Division in meeting these deadlines. In addition, it is a Community Development long term goal to make the First Time Homebuyer Program a year-round self-sustaining program and the additional investment of funding will facilitate this goal.

The City's Citizen Participation Plan requires a public hearing and City Council action on amendments in excess of \$25,000 and public comments will be accepted from January 10 through February 8, 2008 on this proposed substantial amendment to the 2007-2008 Consolidated Plan.

ALTERNATIVES ANALYZED: (1) Reallocate \$100,000 in CDBG and \$100,000 in HOME funds to the City's First Time Homebuyers Program to provide the resources to meet the current needs and expend the funds in a timely manner or; (2) Continue to reserve the CDBG and HOME funds for the Affordable Housing Development fund and possibly not meet federal expenditure and commitment deadlines.

FINANCIAL IMPACT:

The recommendation would result in the utilization of existing funds already allocated to the Affordable Housing Development Fund for First Time Homebuyers. If the request to increase funding to Southern Lights and to move funding into the First Time Homebuyer program are approved, the City would still have \$196,607 in affordable housing funds available to assist developers in creating affordable housing opportunities between now and June 30, 2008, when new funding becomes available. Additional funding may also be allocated on July 1, 2008 for FY2008-2009 for affordable housing projects.

RECOMMENDATION

CD Board and Staff recommend: City Council: (1) Hold a public hearing on the reallocation of CDBG and HOME Affordable Housing Fund to the First Time Homebuyers activities; and (2) approve the transfer of \$200,000 from the CDBG and HOME Affordable Housing Development Fund to the First Time Homebuyers Program.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward I:
Annexation #08-02

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On January 28, 2008, the City Council approved the annexation of an approximate 54-acre parcel legally described as Tract 2-B-1 of Certificate of Survey 1121. The request for annexation was submitted by King Business Park, LLC, Richard Dorn, Samuel Rankin, and Hannah Elletson, the owners of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward I will be conducted at this meeting. The second reading of the ordinance will be conducted on February 25, 2008.

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

RECOMMENDATION

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

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

ATTACHMENT

B. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 06-_____

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

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

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

A tract of land situated in the E 1/2 of Section 16, and the NW 1/4 of Section 15, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 2-B-1 of Amended Tracts 2-A and 2-B, of Amended Tract 2, Certificate of Survey No. 1121, Recorded January 14, 2008, Under Document No. 3451343, Records of Yellowstone County, Montana.

Including all adjacent right-of-way of Fenton Avenue Southwest.

Said Tract containing 54.691 gross acres and 53.624 net acres.

(# 08-02) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 11th day of February, 2008.

PASSED by the City Council on the second reading this 25th day of February, 2008.

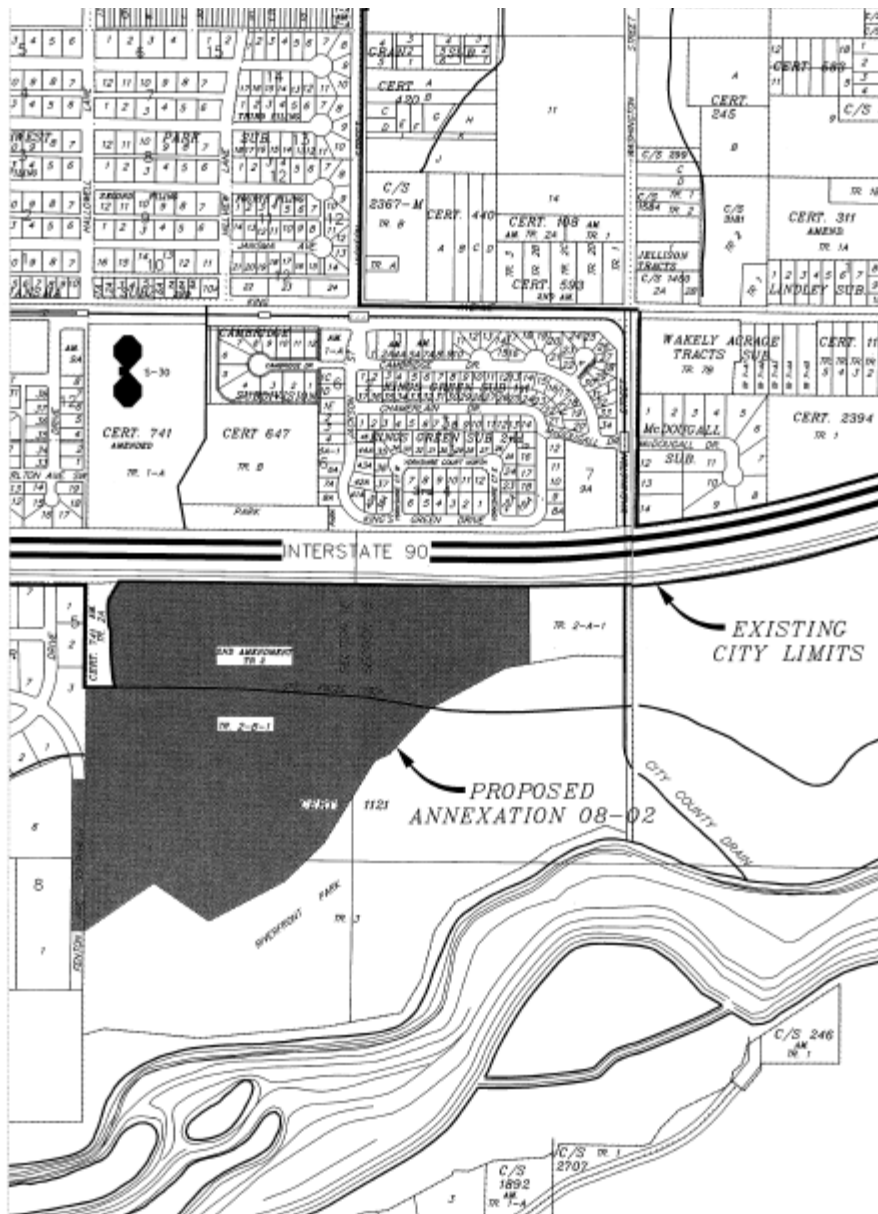
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Public Hearing and Resolution for Annexation #08-05

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, First Citizens Bank of Billings, is requesting annexation of a property legally described as Lot 1, Sylvia Subdivision, located in Section 27, Township 1N, Range 26E into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located at 1094 Lincoln Lane, on the west side of Lincoln Lane, north of the Target Shopping Center in the Heights. It is 0.891 acres in size and is surrounded by the City limits on the north, south and west. The petitioner is requesting annexation in order to obtain City services for development of the property for commercial uses. The subject property is currently vacant with Highway Commercial zoning.

ALTERNATIVES ANALYZED: The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide municipal services to the subject property. If the proposed annexation is approved, the property could further develop with commercial uses, thereby increasing the tax revenue for the City.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Lot 1, Sylvia Subdivision, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

ATTACHMENT

A. Resolution

INTRODUCTION

Owner and petitioner, First Citizens Bank of Billings, is requesting annexation of a property legally described as Lot 1, Sylvia Subdivision. The subject property is located at 1094 Lincoln Lane, on the west side of Lincoln Lane, north of the Target Shopping Center in the Heights. The petitioner is requesting annexation in order to obtain City services for development of the property for commercial uses. The subject property is currently vacant with Highway Commercial zoning.

PROCEDURAL HISTORY

- On December 12, 2007, the annexation petition was submitted to the Planning & Community Services Department.
- On January 28, 2008, the City Council acknowledged the annexation petition and set a public hearing date for February 11, 2008.
- On February 11, 2008, the City Council will conduct the public hearing for the annexation.
- On February 25, 2008, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to expand the Ward II City Council boundary will be conducted.
- On March 10, 2008, the City Council will conduct the second and final reading for the ordinance expanding the ward boundary.

BACKGROUND

The 0.891-acre subject property is located on the west side of Lincoln Lane, just east of Main Street in the Heights. It is bordered on the north, south, and west by properties within the City limits and is within the red boundary of the limits of annexation as specified by the updated Annexation Map adopted by the City Council on February 26, 2007. Annexing the property would allow it to be developed most efficiently for commercial uses, and therefore increase the taxable value of the property. No change in zoning is anticipated at this time.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexing additional properties may affect the City's ability to provide services to new developments without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements will be required to meet City standards.
4. As part of the Development Agreement, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. The proposed land use will conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City and County Departments, and the Heights Neighborhood Task Force were given the opportunity to comment on this annexation. All City departments, with the exception of the police department responded favorably. No comments were received from Yellowstone County or the neighborhood task force.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** The County Water District of Billings Heights (CWDBH) can provide needed water services to the subject property. The property is within their planning area, and can be served by an adjacent 8-inch water main found in Lincoln Lane.
- **Sewer:** The City can provide sewer service to the property using the 10-inch sanitary sewer main that fronts the property in Lincoln Lane. The Public Works Department indicates that the sewer main will need to be tapped and is between 16 and 19 feet deep. Local sewer main construction fees and a system development fee based on the size of the water meter will also be required.
- **Stormwater:** All stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Public Works Department. These improvements may include a requirement to extend the existing 12-inch storm drain located in Lincoln Lane approximately 500 feet to the south of the subject property and/or the provision of on-site storm water storage as determined by the Engineering Division. Public Works is concerned over the number of on-site storage facilities that are being constructed.
- **Transportation:** The subject property has approximately 170 feet of frontage on Lincoln Lane, which is a local street located parallel to and one street east of Main Street. Access to the property will be from one or more drive approaches off of Lincoln Lane. Driveway locations and additional traffic impacts for the site will be reviewed during the site development review process, which, depending on the proposed use, may require submittal of a Traffic Accessibility Study for review by City Engineering.

The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget cuts within the division for fiscal year 2008 and beyond.

- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. Fire Station #6 at 1601 St. Andrew's Drive is the closest station to the subject property and the only station in the Heights. It is approximately two miles from the subject area.
- **Parks:** A parkland dedication is not required, as this is a commercial property. However, the property is within close proximity to MetraPark, the Kiwanis Trail, and Two Moon Park, all which provide recreational opportunities to the citizens in this area.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. No trail connections are proposed to the subject property however, sidewalks will be required along Lincoln Lane at the time of site development.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

- **Transit:** The MET transit system operators have no objections with the annexation request and have several bus routes in this area of town.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The Police Department states that continued annexations without an increase in assets will affect its ability to respond to calls in a timely manner.
- **Public Utilities:** The Public Works--Collection and Distribution Division had no objection with the annexation request.
- **Public Works Department-Street and Traffic Division:** The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget reductions.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.

- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on January 25, 2008, and published in the Billings Times on January 31, 2008. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5).
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Element Goal, page 6).
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, page 10).

Annexation of the subject property is also consistent with the following goals and objectives of the 2006 Heights Neighborhood Plan:

- Revitalize the Main Street corridor to increase and retain the commercial core of the Heights (Land Use Goal, page 20).
- Encourage the annexation of County islands into the City of Billings (Land Use Goal, page 20).
- Attract small and medium businesses to the Heights. Promote “life to work” concept where people work close to or within walking distance of their homes (Economic Development Goal, page 32).
- Create aesthetically appealing business and commercial corridors (Economic Development Goal, page 32).
- Encourage infill development to access existing infrastructure (Infrastructure Goal, page 33).

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Lot 1, Sylvia Subdivision, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

ATTACHMENT

A. Resolution

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY OF BILLINGS
APPROVING PETITIONS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the NE1/4 of Section 27, T.1N., R.26E., P.M.M.,
Yellowstone County, Montana, more particularly described as:
Lot 1, Sylvia Subdivision, Recorded January 5, 1960, under Document No.
634167, Records of Yellowstone County.
Including all adjacent right-of-way of Lincoln Lane.
Containing 1.047 gross acres, and 0.891 net acres.
(# 08-05) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:
 - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 11th day of February, 2008.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

CITY CLERK

(AN 08-05)

41

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Public Hearing for Resolution in Support of Placing County-Wide Planning Mill Levy Increase on the June 2008 Election Ballot

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On January 8, 2008, the Planning Division was directed by the City Council to bring a resolution forward that affirms the Council's support of placing a 1-mill increase of the County-wide planning mill levy on the June 3 election ballot. This 1-mill increase is being proposed by the Planning Division to address ongoing local revenue deficits that have reduced the Division's ability to leverage Federal Transportation Planning funds that enable the Division to provide and maintain the planning services the community demands.

The Board of County Commissioners must take the official action to place the proposed 1-mill increase on the election ballot since the levy is a County wide levy and not a City levy. The staff requests the Council pass this resolution recommending the Board of County Commissioners approve a resolution placing the 1-mill increase on the ballot.

ALTERNATIVES ANALYZED: The City Council, in considering this resolution of support, may do one of the following:

1. Approving the Resolution and supporting placing the 1-mill increase on the election ballot will significantly increase the likelihood of passage of the levy by the Billings Community.
2. Denying the Resolution and not supporting placing the 1-mill increase on the election ballot may decrease the likelihood of passing the mill levy increase and result in a decrease in staffing and services by the Planning Division.

FINANCIAL IMPACT: Approving this resolution will not cause any financial impact to the City.

RECOMMENDATION

Staff recommends that the City Council approve this resolution in support of placing a County-Wide Planning Mill Levy Increase on the June 2008 Election Ballot.

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

ATTACHMENTS

- A. Planning Resource Allocation Comparison With and Without Mill Levy Increase
- B. Allocation of Additional 1-mill for Planning Division and County GIS Services
- C. Resolution

INTRODUCTION

On January 8, 2008, the Planning Division was directed by the City Council to bring a resolution forward that affirms the Council's support of placing a 1-mill increase of the County-wide planning mill levy on the June 3 election ballot. The Board of County Commissioners also on January 8 directed staff to bring a resolution forward to the Commission to place the 1-mill increase on the election ballot for a county-wide vote. This 1-mill increase is being proposed by the Planning Division to address ongoing local revenue deficits that have reduced the Division's ability to leverage Federal Transportation Planning funds that enable the Division to provide the planning services the community demands.

The Division is operating with two vacant planner positions (See Attachment B), a decrease in local funding to leverage the maximum Federal Transportation Planning (PL) funds available to the Division, and has had to delay work on some proposed zoning text amendments and special projects. Projects that have been stopped or delayed include:

- Proposed regulation of wind turbines through the Zoning Code
- Completion of the casino overlay draft regulations
- Completion of a master development plan review process in coordination with other City departments
- Initiation of an infill incentive program in coordination with City Public Works and other departments
- Initiating a corridor/access study for Highway 3 from the Airport to Apache Trail
- Initiating the review and update of the 2003 Growth Policy and the West Billings Plan

Planning Division revenue for subdivision and zoning applications for fiscal year 2008 is tracking about \$6,000 below last year's revenue based on 50% of the fiscal year complete. However, the budget estimates for FY 2008 were significantly reduced for subdivision and zoning revenue from FY 2007 to reflect the anticipated ongoing downturn in applications. This means that current revenues are falling short of last year's revenues even after reducing FY 2008 subdivision and zoning revenue estimates by about 24% from FY 2007. The Planning Division is spending reserves in FY 2008 to meet expenditures and the downward application trend appears to be continuing (See Figure 1 below). This is resulting in a reduction in services as local revenue decreases and the Department loses its ability to leverage the maximum PL funds available for planning services. About \$830,000 in PL funds were not leveraged in FY 2007 (\$440,000) and FY 2008 (\$393,000) due to limited local match.

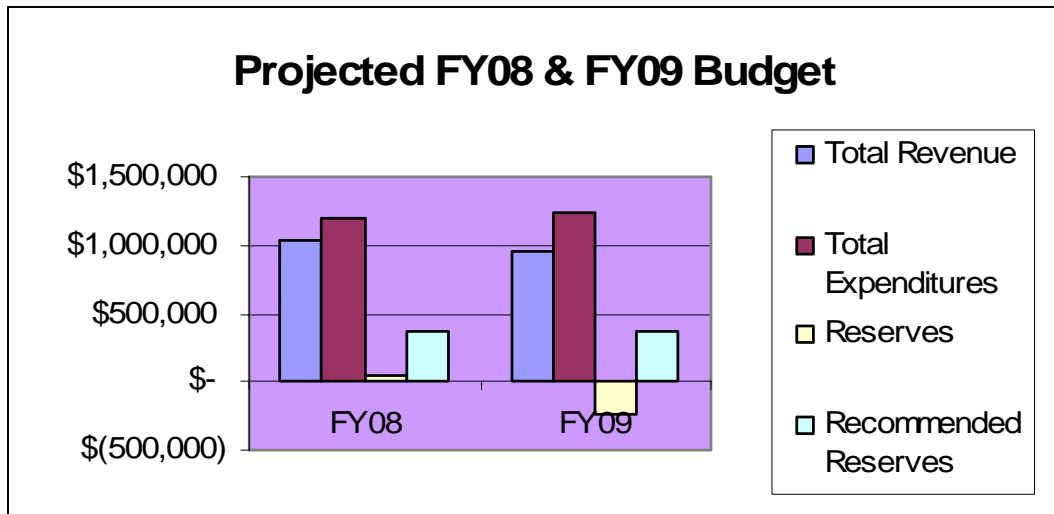


Figure 1. Budget Projections, Fiscal Years 2008 and 2009

At the end of 2007, the Planning Division saw no change in subdivision applications and slight decreases in zoning applications compared to 2006.

- Zoning applications in 2007 were down 13%
- Permits including fences, signs and temporary uses were down 9% from 2006 levels
- Total subdivision applications for the City and County remained flat at 223 total fee applications in 2007. This follows a 30% decrease in subdivision applications between 2005 and 2006.

Actual reserves will not be known until year-end revenues are calculated. The six month property tax payment amount received by the Division at the end of December 2007 was greater than originally estimated, and there could be increases in applications in the next six months. However, any revenue increases from property tax collections and fees are not expected to more than delay significant service cuts in the Division to maintain a balanced budget and begin to try and rebuild reserves.

ALTERNATIVES ANALYZED: The City Council in considering this resolution of support may do one of the following:

1. Approve the Resolution and support placing the 1-mill increase on the election ballot
2. Deny the Resolution and not support placing the 1-mill increase on the election ballot

RECOMMENDATION

Staff recommends that the City Council approve this resolution in support of placing a County-Wide Planning Mill Levy Increase on the June 2008 Election Ballot.

ATTACHMENTS

- A. Planning Resource Allocation Comparison With and Without Mill Levy Increase
- B. Allocation of Additional 1-mill for Planning Division and County GIS Services
- C. Resolution

ATTACHMENT A

BENEFITS	FTE Equivalent		
	Status Quo	With Mill Levy	W/O Mill Levy
Efficient Use of Public Resources			
Planning for Growth and Development			
Land Use Planning	1	1.2	1
Infill Incentive Program			
Transportation Planning	2	2.4	2
Neighborhood/Community Planning	1	1.2	.75
Implementing, Updating Growth Policy, Other Plans	.5	.75	.5
Annexation Policy, Urban Planning Studies,			
West Billings Plan, Heritage Trail Plan			
Zoning Text Amendments	.25	.25	.25
	4.75	5.8	4.5
Maintain Public Health and Safety			
Administer Zoning Codes			
Zone Changes	1	1.2	.75
Special Reviews	.5	.6	.5
Variances	.5	.6	.25
Zoning Compliance Reviews	.5	.5	.5
Zoning Clarifications	.25	.25	.25
Administer Subdivision Codes			
Subdivision Plats	2	2	1.75
Exempt Plats	1	1	.75
	5.75	6.15	4.75
Preservation of Property Values			
Zoning Code Enforcement (Planning Staff)	.3	.4	.2
Shiloh Corridor; Medical Corridor; 27 th St.			
*GIS			
Maintain and disseminate property information	.1	.1	.1
	.4	.5	.3
Preservation of Quality of Life			
Special Projects, Studies and Committees	.4	1	.4
TIFs; Workforce Housing; Bike-Ped.			
Environmental Protection	.1	.25	.1
West End Flood Study			
Grant Administration			
Bike/Ped. Projects	.1	.2	.1
Historic preservation	.1	.12	0
	.7	1.57	.6
Other			
Budgeting	.1	.1	.1
Personnel	.1	.1	.1

Office Management	.2	.2	.2
Training	.2	.3	.1
General Customer Service	.4	.5	.25
	1.0	1.2	.75
TOTAL FTEs	12.6	15.2	10.9
NET FTEs	0	+2.6	-1.7

ATTACHMENT B

Table 2. Allocation of Additional 1-mill for Planning Division and County GIS Services

	Total Increase Cost	Local Match	%	Federal Match %	Total Funds
Fill Vacant Senior Planner Position	\$ 90,000.00	\$ 49,500.00	55%	\$ 40,500.00 45%	\$ 90,000
Fill Vacant Planner II Position	\$ 64,643.00	\$ 35,553.65	55%	\$ 29,089.65 45%	\$ 64,643
Fill 1/2 Time Clerk for Code Enforcement	\$ 23,794.70	\$ 23,794.70	100%		\$ 23,794
Provide Operation and Maintenance for Positions	\$ 32,000.00	\$ 25,280.00	79%	\$ 6,720.00 21%	\$ 32,000
Build Reserves (Goal: 29% of Budget)***	\$ 57,908.00	\$ 57,908.00	100%		\$ 57,908
Totals	\$ 268,345.70	\$192,036.35		\$ 76,309.65	\$268,345

Total Local Funds Needed=\$192,036*

1-mill= \$225,925**

*Total Local Funds Needed= \$192,036; \$225,925(1-mill) - \$33,888 (GIS) = \$192,037

**1-mill Planning Levy Increase Provides @ \$33,888 in Additional Funds to County GIS

***From current levels, 6 years at \$57,908/year would restore reserves

NOTE: A home valued at \$200,000 would pay \$3.97/year in additional levy

ATTACHMENT C

RESOLUTION NO. 08-_____

A RESOLUTION SUPPORTING A JUNE 2008 BALLOT PROPOSAL BY THE YELLOWSTONE COUNTY COMMISSIONERS SEEKING VOTER APPROVAL OR DISAPPROVAL OF A COUNTY PLANNING DEPARTMENT MILL LEVY INCREASE OF 1.0 MILL TO SUSTAIN COUNTY-WIDE PLANNING AND GEOGRAPHIC INFORMATION SYSTEMS SERVICES (GIS) AND INCREASE COMMUNITY ACCESS TO CERTAIN MATCHING FEDERAL GRANT FUNDS. THE CITY OF LAUREL AND THE LAUREL PLANNING JURISDICTION ARE THE ONLY AREAS OF THE COUNTY NOT INCLUDED IN THIS BALLOT MEASURE

WHEREAS, the City of Billings and Yellowstone County continue to experience population growth, significant commercial development and associated increasing demands for growth management and land use planning by the City-County Planning Department and the public continues to support efficient use of public resources, protection of public safety, preservation of property values and sound land use planning. GIS services are also a vital tool for land use planning and also provide public safety, mapping and land analysis information to the City and County ; and

WHEREAS, the City-County Planning Department is currently funded $\frac{1}{2}$ by Federal Transportation Planning funds, $\frac{1}{4}$ by fees, and $\frac{1}{4}$ by a County-wide 1.17 mill levy. Revenue from fee-based services is decreasing while demand for community planning services is increasing, which will ultimately result in reduction in all planning services and loss of matching Federal Transportation Planning funds. Additional Federal Transportation Planning grant monies are available through the City-County Planning Department for the benefit of the City and County, but only if other local matching funding sources, such as the current 1.17 mills, are increased; and

WHEREAS, the demands for exceptional City and County land use planning and growth management exceed the current financial resources available for the City-County Planning Department, and without additional funding, a reduction in services will occur. An additional permanent 1.0 mill levy providing increased access to Federal Transportation Planning funds will be of great benefit and will help ensure quality, long-term growth management and land use planning for both the City of Billings and Yellowstone County, Montana; and

WHEREAS, it is currently projected that an additional 1.0 mill levy will cost taxpayers only \$1.99 per year for a house valued at \$100,000 or \$3.97 per year for a house valued at

\$200,000. The City Council believes that this minimal cost to the taxpayers will result in exceptional planning services that are sustainable and will ensure continued public involvement in the growth and development of the City of Billings and Yellowstone County; and

WHEREAS, the authority to place such a ballot issue before the voters is conferred upon the Yellowstone County Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, DOES HEREBY RESOLVE AS FOLLOWS:

The City Council hereby declares its support for a ballot proposal which would require a permanent County mill levy increase from 1.17 mills to 2.17 mills, a total increase of 1.0 mills, specifically to fund the City-County Planning Department and the County GIS Department. Such a mill levy increase will also result in Yellowstone County receiving increased Federal Transportation Planning monies. The City Council strongly encourages the Yellowstone County Commission to submit this issue to the registered voters of Yellowstone County, Montana, including the City of Billings. This mill levy increase would not apply to the City of Laurel and the Laurel Planning Jurisdiction.

Passed and approved this _____ day of February, 2008.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, February 11, 2008

TITLE: Lockwood Sewer District Wastewater Agreement

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City first approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. Staff directs the Council to the Procedural History portion of this staff report for the lengthy background of this issue. In preparation for pursuing a bond election the District has continued to pursue a new agreement for wastewater service. The Council had their latest discussion of the agreement at the January 22, 2008, work session with direction to staff to modify the agreement and bring back to the Council at the earliest date.

ALTERNATIVES ANALYZED: Staff has identified the following alternatives:

1. Approve.
2. Approve with modifications.
3. Do not approve.

FINANCIAL IMPACT: Staff has identified the following financial impacts:

1. **Approve as requested:** The financial impact of this action is that, per the agreement, the City will undertake a rate study to determine the rates to be charged to the District. This study would not be undertaken until it was assured that the District was proceeding with their project. Staff estimates this study will cost \$40,000 to \$50,000. The contract provides that this cost will be paid by the District directly or through the rate structure. The agreement also provides for a minimum 15% rate of return on investment to the City. The 15% would be applied to the rate base, which generally consists of plant in service less accumulated depreciation; plus construction work in progress, materials and supplies, and working capital; and less contributions in aid of construction, and customer advances. This return will provide revenue over and above the cost to treat the District's

wastewater. The agreement includes language clarifying that the District will be subject to the city franchise fee, which is currently 4%. In addition, the agreement also includes a 6% surcharge, which will go to the city General Fund, in addition to the franchise fee and rate-of-return on investment.

2. **Approve with modifications:** The financial impacts related to this action will depend on the modifications the Council may incorporate; however, as a minimum, the cost of a rate study as mentioned in the above alternative would also apply here. This action will also include the minimum 15% rate of return and the 6% surcharge, both going to the general fund.
3. **Do not approve:** With no agreement in place, the City will not realize the revenue over and beyond the cost to provide the service, which would be the rate-of-return, franchise fee and surcharge.

RECOMMENDATION

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

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

ATTACHMENTS Attachment A – Wastewater Service Agreement

INTRODUCTION

The City first approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. Staff directs the Council to the Procedural History portion of this staff report for the lengthy background of this issue. In preparation for pursuing a bond election the District has continued to pursue a new agreement for wastewater service. The Council had their latest discussion of the agreement at the January 22, 2008 work session with direction to staff to modify the agreement and bring back to the Council at the earliest date.

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

PROCEDURAL HISTORY

- The Public Utilities Board recommended approval of the original service agreement on August 26, 1999.
- The City Council approved the original agreement on September 13, 1999.
- The District requested a 3-year extension of the agreement and waiver of the reserve plant capacity charge by letter dated March 11, 2004.
- City Administrator Kristoff Bauer responded to the District on November 1, 2004, indicating that, for various reasons, the agreement should be allowed to lapse.
- The Public Utilities Board, at the June 15, 2006, meeting, recommended approval by the City Council of a new agreement, which was requested by the District.
- At the July 10, 2006, meeting the Council delayed action on the agreement for one month to allow further discussion. The Council further discussed the agreement at the July 31, 2006, work session with District board members in attendance.
- The Council disapproved the agreement at the August 14, 2006, council meeting.
- The District requested reconsideration of an agreement at the August 27, 2007, council meeting.
- The Council discussed an agreement at the September 17, 2007, work session and directed staff to place the agreement on the October 9 regular agenda.
- The Council conducted a public hearing at the October 9, 2007, council meeting and delayed action to the October 22 meeting.
- The Council further discussed the agreement at the October 15 work session and directed staff to modify the agreement for consideration at either the October 22 or November 13 council meeting.
- At the October 22 meeting, the Council delayed action to the November 13 meeting.
- The Council approved the agreement, with amendments, at the November 13 meeting.
- Staff subsequently met with the District to discuss District-requested revisions to the approved agreement. The Council discussed these revisions at the January 22 work

session and directed staff to modify the agreement for consideration at the February 11 council meeting.

- The action before the Council is to consider the agreement at the February 11 meeting.

BACKGROUND

The District has conducted multiple, unsuccessful bond elections to build a wastewater system for Lockwood. The District wishes to conduct another bond election and has asked the City to enter into a new service agreement. Following the Council's approval of the agreement at the November 13, 2007 council meeting the District requested various revisions to the agreement, which were presented to the Council at the January 22, 2008 work session. Those revisions are:

- Reserve Capacity (Section 4) – language has been added requiring that the rates and amount of reserve capacity be renegotiated when District flows and loadings reach 80% of the projected ultimate flows and loadings.
- Franchise Fee & Surcharge (Section 19) – language has been added to clarify that the 6% surcharge will not apply to the system development fees or franchise fees.
- Wastewater Rate Arbitration Procedure (former Section 23) – all language allowing for binding arbitration of the rates was removed in response to the Council discussion at the recent work session. As staff indicated at the work session, this arbitration provision is the same as in the contract for the Billings Heights Water District. The advantages of this process are that it provides a non-litigious way to resolve disputes and also provides a forum where the decision maker is more knowledgeable in the rate-making process. The proposed language provides no mechanism for a rate dispute other than court action.
- Fixed Sum Payment for Non-Regulatory Breaches (Section 28) – a daily fixed sum payment of \$3,000 for the District's noncompliance of any non-regulatory/non-statutory breach of the agreement has been added. The \$3,000 per day is intended to be a best estimate of risk for these types of situations. The previous \$25,000 per day penalty has been deleted as staff believes this is more appropriately encompassed in the general indemnification provisions of the agreement.
- Performance or Financial Guarantee Bond (Section 29) – a \$1,000,000 performance bond requirement is included in the agreement. The bond is to remain in place throughout the term of the agreement. Language has been added that will allow the District, at the sole discretion of the City, to provide some other form of financial guarantee. This is intended to provide the District alternatives in case they are unable to obtain a performance bond as has been indicated.
- Attorney's Fees (Section 33) – language has been inserted that provides that each party will pay their own attorney fees in cases of disputes with the agreement.

ALTERNATIVES ANALYSIS

Approve: Council approval of the agreement will provide the District with a continued opportunity to pursue construction of a wastewater system. There is sufficient capacity in the wastewater treatment plant to accommodate Lockwood with current average wastewater flows into the plant of approximately 16 mgd as compared to an average plant design flow capacity of 26 mgd. The City's discharge permit for the wastewater plant was renewed in November 2006 and will expire in 2011. For the most part, the permit carried forward the historic discharge limits. However, indications are that the next permit cycle will include limits requiring a higher degree of treatment, which will necessitate modifications to the treatment process and facilities at a future time. While the detail and extent of these modifications have not been identified, staff believes that the city's service requirements will drive the need for these modifications with or without the Lockwood flow contribution.

Approve with modifications: Approval of the agreement with modifications as the Council may determine will, as a minimum, provide the District with the continued opportunity mentioned above. The remaining benefits to the District will, of course, depend upon the nature of the modifications.

Do not approve: This action will not provide the District with the flexibility and time they need to consider further options.

RECOMMENDATION

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

Wastewater Service Agreement

THIS AGREEMENT made and entered into this _____ day of _____, 2008, by and between the City of Billings, Montana, a municipal corporation, hereinafter referred to as "CITY," and the Lockwood Area/Yellowstone County Water and Sewer District, a county water and sewer district organized and existing under the laws of the State of Montana, hereinafter referred to as "DISTRICT";

W I T N E S S E T H

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility; and

WHEREAS, the DISTRICT is authorized under state law to construct, purchase, lease, acquire, operate and maintain a wastewater system to benefit the inhabitants of the DISTRICT; and

WHEREAS, the DISTRICT has determined that it would be cost effective at this time for the DISTRICT to transport its wastewater to the municipal wastewater system and to contract with the CITY for the treatment and disposal of said wastewater; and

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the DISTRICT'S wastewater in a manner that meets all the effluent limitations set forth in the CITY'S current Montana Pollutant Discharge Elimination System Permit, MT-0022586.

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the parties hereto, it is hereby agreed as follows, inclusive of the referenced Exhibits and Attachments:

1. Contractual Relationship: Approval of this wastewater service agreement (Agreement), including payment by the DISTRICT of system development fees, does not create in behalf of the DISTRICT and/or the DISTRICT'S users any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and the DISTRICT and/or the DISTRICT'S wastewater users created hereby. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual

customer (DISTRICT), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either party.

2. **Service Area:** This Agreement obligates the CITY to accept for treatment domestic wastes that are contributed from the DISTRICT'S users whose properties are situated entirely within the boundaries of the DISTRICT at the time of its creation under County Resolution #96-83, dated August 22, 1996, and as more specifically described and shown on Exhibit "A" and Exhibit "B," respectively, subject to the flow and loading limitations in Section 4 herein. Said area will hereinafter be referred to as "Service Area." It is further understood between the parties hereto that the DISTRICT shall not expand its Service Area to include any additional properties without first obtaining the CITY'S written consent to do so and that CITY has sole discretion to withhold such consent. Failure to obtain such consent shall subject the DISTRICT to the penalty fixed sum payment outlined in Section ~~29~~ 28 herein.

3. **Point of Connection:** The DISTRICT'S force main shall connect to the municipal wastewater system at or near the site of the municipal wastewater treatment plant, with the exact location subject to the written approval of the Public Works Director (Director). A professional engineer licensed to practice in the State of Montana shall design the method of connection. The Director and the Montana Department of Environmental Quality (DEQ) shall approve in writing the detailed plans and specifications for the connection prior to its construction. The DISTRICT shall bear all costs associated with construction, operation, maintenance and replacement of the DISTRICT'S force main and appurtenances, including the connection of its force main with the municipal wastewater system.

4. **Reserve Capacity:** Exhibit "C" is a January 22, 1998 Memo from Bill Enright, Morrison-Maierle, Inc., to Al Towleron, Public Utilities Department. Therein the District's engineering consultant estimates the per capita contributions for various wastewater constituents. Exhibit "D" is an excerpt from the Lockwood Water and Sewer District Facility Plan Report, which was subsequently supplied to Alan Towleron, Public Works Department, by Carl Anderson of Morrison-Maierle, the DISTRICT'S engineering consultant. Therein, the projected population for Lockwood is 9,119 for the year 2020, which the DISTRICT represents is the estimated ultimate build out of properties within the Service Area. Applying the per capita contributions to the projected build out population shows that for the Year 2020, the DISTRICT'S average daily wastewater flow will be 0.91 million gallons per day (mgd), its maximum daily flow of wastewater will be 2.74 mgd, utilizing a 3.0 peaking factor, the average Biochemical Oxygen Demand (BOD) Loading will be 1,915 pounds per day and its average Total

Suspended Solids (TSS) Loading will be 2,006 pounds per day. Because conditions of development within the Service Area may change resulting in wastewater flows and loadings ultimately exceeding those estimated above, the amount of capacity that the CITY will reserve in the municipal wastewater system for the sole benefit and use of the DISTRICT shall be 80% of the flows and loadings identified above, subject to negotiations up to 100%. The rates and billing methodologies developed for these flows and loadings, as outlined in Sections 19 and 20 shall be complied with by the DISTRICT. Approximately six (6) months prior to the time that flows or loadings are expected to equal the above-mentioned 80% value, the amount of reserve capacity, not to exceed 100% of the values identified above, shall be renegotiated and rates shall be recalculated in accordance with the applicable provisions of the Agreement. If there are flows or loads exceeding the limits specified in this section that have not been previously negotiated the CITY shall notify the DISTRICT of such noncompliance. ~~Six months prior to the time flows or loadings are expected to equal 80%.~~ If the DISTRICT does not restrict the flows or loads exceeding the limits within five (5) days of such notification, the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein shall apply.

Each time this Agreement is renegotiated, the DISTRICT may, at its sole discretion, decrease the amount of the reserve capacity set forth herein. Any increase in the reserve capacity at that time, however, shall be subject to the approval and acceptance of the CITY. Said renegotiated adjustments in the reserve capacity shall be taken into account the first time the CITY adjusts the rates that it charges the DISTRICT for treatment of the DISTRICT'S wastewater following such renegotiations. In any event, the CITY reserves the right to require the DISTRICT to contribute up-front for the construction cost of any additional reserve capacity that may be renegotiated.

The DISTRICT shall not sell nor transfer to any other party all or any portion of this reserve capacity. Any reserve capacity not being used by the DISTRICT at the termination of this Agreement (measured by utilizing the last 365 days of flow data as well as BOD and TSS Loading data) shall revert back to the CITY at no cost or charge to the CITY.

The DISTRICT may not at any time exceed the reserve capacity the CITY has set aside for the DISTRICT. In the event that the DISTRICT should exceed such reserve capacity, The DISTRICT shall accept no new customers or service line connections into its system and will immediately commence design and construction of pretreatment and/or I/I storage facilities to reduce flows and loads received by the CITY below the reserve capacity. Such facilities shall be completed within two years of notification by the CITY and if not completed, this contract will be terminated and service will be disconnected

within an additional two years. Failure to comply with these provisions will subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

5. Compliance with Regulations: The DISTRICT hereby agrees to accept and abide by the following regulations governing wastewater service:

A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing Wastewater Service or any future amendments thereto;

B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto; and

C. Any special conditions set forth in this Agreement.

If DISTRICT violates any of said codes, regulations and/or special conditions, the indemnification and ~~penalty~~ fixed sum payment provisions set forth in Sections ~~29~~ 28 and ~~31~~ 30 shall apply.

6. Flow Measurement: The DISTRICT, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director. The DISTRICT shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, as a minimum, accurately and continuously indicate and record at the municipal wastewater treatment plant the rate of flow and volume of all wastewater passing through the DISTRICT'S force main and into the municipal wastewater system.

All such flow measuring facilities shall be calibrated at least annually under the direct supervision of a professional engineer who is licensed to practice in the State of Montana. Said professional engineer shall be mutually acceptable to both the DISTRICT and CITY. The professional engineer shall certify in writing to the CITY and DISTRICT within thirty (30) days of performing the calibration that the flow measuring facilities, including the wastewater meter, have been properly calibrated according to the manufacturer's recommendations and are operating within approved accuracy limits. All costs associated with the annual calibration of the flow measuring facilities, including the wastewater meter, shall be borne by the DISTRICT. Reasonable, estimated flow adjustments shall be made for any incorrect meter readings. The DISTRICT agrees to verify the calibration of the flow measuring facilities, at its sole expense and at the request of the CITY, in the event flow information deviates from normal indicating a problem with the facilities.

Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

7. Testing and Sampling: The DISTRICT, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director. As a minimum, the DISTRICT shall install sampling and testing facilities at or near the point of connection of the DISTRICT'S force main with the municipal wastewater system and prior to the mixing of the CITY'S and DISTRICT'S wastewater. Such facilities shall be designed by a professional engineer, licensed to practice in the State of Montana. The facilities shall be located above ground and shall be designed to meet appropriate safety regulations and to satisfactorily operate under all weather conditions. The DISTRICT and the CITY shall have equal access at all times to said facilities.

The Director shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on the DISTRICT'S influent wastewater. Said parameters are subject to change from time to time at the Director's sole discretion. Such changes do not require renegotiations of this Agreement. (See Attachment I)

A mutually acceptable DEQ-certified testing laboratory (CTL) shall perform all the sampling and testing of the District's wastewater required under this Agreement. The CTL shall perform said sampling and testing in accordance with 40 Code of Federal Regulations (CFR) Part 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants*. The CTL shall provide the CITY and DISTRICT with a written copy of the results of each test within 30 days of performing the test. The DISTRICT shall bear all costs associated with such testing and sampling. Reasonable, estimated adjustments shall be made for incorrect test results.

Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

8. Test Noncompliance: Test results on samples of the DISTRICT'S wastewater that are in noncompliance with specified limits shall automatically trigger repeat sampling and testing by the CTL. If the follow-up test results remain out of compliance, the DISTRICT shall forthwith begin an in-depth investigation to determine the cause of noncompliance. Upon making such determination, the DISTRICT shall take immediate steps to correct the problem and regain full compliance. The DISTRICT shall, as a result of such noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and

regulations. In addition, the DISTRICT shall be subject to the ~~penalty~~ fixed sum payment provisions of Section ~~29~~ 28 herein.

9. Sewer Use Regulations: The DISTRICT shall adopt sewer use regulations to regulate the use of its wastewater system. Said regulations shall be subject to the Director's written approval prior to their adoption by the DISTRICT. The sewer use regulations shall, as a minimum, be equivalent to the CITY'S adopted sewer use regulations and the model sewer use ordinance set forth in WPCF Manual of Practice No. 3, *Regulation of Sewer Use*, 1975. The DISTRICT shall aggressively enforce such regulations at all times, especially as it relates to prohibited pollutants and/or any limited pollutants allowed to enter the DISTRICT'S wastewater system. The DISTRICT agrees to adopt and enforce any sewer use regulations of the CITY as they may change from time to time.

The sewer use regulations shall also specifically prohibit the discharging of septage into the DISTRICT'S wastewater system. The DISTRICT shall assure, both through regulation and practice, that the discharging of any nondomestic and/or nonmetered wastes into the DISTRICT'S wastewater system from vehicular washing facilities, recreational vehicle (RV) dumps, and floor drains located in facilities utilized to maintain, repair or house vehicles and other motorized equipment shall conform with all policies, practices, administrative orders, rules and regulations, resolutions and ordinances of the CITY. The DISTRICT shall also prohibit in its sewer use regulations the discharge of any unpolluted waters into its wastewater system, such as storm water, groundwater, roof runoff, subsurface drainage, cooling water or industrial process waters.

Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

10. Construction Standards: The DISTRICT shall adopt the CITY'S construction, testing and inspection standards that govern the installation of its sanitary sewers, the purpose of which shall be to ensure proper installation of said sewers and to ensure compliance with infiltration/inflow (I/I) requirements set forth herein. Plumbing systems and building sewers serving property within the DISTRICT'S Service Area shall comply with the Uniform Plumbing Code prior to connection with the DISTRICT'S wastewater system. I/I in the DISTRICT'S sanitary sewers and building sewers shall not exceed, at any time, 100 gallons per day, per inch-diameter, per mile of sewer pipe.

The DISTRICT shall maintain adequate records (such as inspection reports, test results, as-built drawings, permits, etc.) to document that its facilities have been properly inspected, tested and constructed during installation.

Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

11. Operation and Maintenance: Failure by DISTRICT to properly operate and maintain its wastewater system can substantially influence the volume, rate of flow, and characteristics of the wastewater discharged by DISTRICT into the municipal wastewater system. Accordingly, the DISTRICT shall at all times operate and maintain its wastewater system in a manner that is consistent with good utility practice, as set forth in Water Environment Federation Manual of Practice 7, *Wastewater Collection systems Management*, latest edition. The DISTRICT shall maintain adequate records to document its compliance with this section.

To ensure access to the DISTRICT'S wastewater system for operation and maintenance purposes, the DISTRICT'S sanitary sewer lines shall be located in street right-of-way and easement locations shall be kept to a minimum. In any event, all such easements shall guarantee DISTRICT unrestricted access to its sanitary sewers for such purposes at all times and under any weather conditions.

Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

12. Conservation: The DISTRICT shall actively encourage its users to conserve water and to utilize flow reduction measures, such as reduced-flow shower heads, toilets, and faucets. The DISTRICT shall maintain an ongoing educational program for this purpose. Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

13. Pretreatment Program: The DISTRICT shall not permit any person to discharge industrial wastes into the DISTRICT'S wastewater system without first adopting a Pretreatment Program, which shall be subject to the prior written approval of the Director and the EPA Regional Pretreatment Coordinator. The Director's approval shall be withheld until such time as the DISTRICT legally adopts enforceable pretreatment standards and requirements equal to or exceeding that adopted and enforced by the CITY and those set forth in 40 CFR Part 403. For further information and details regarding this issue as well as information regarding significant industrial users, see BMCC 26.611. Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

14. Odor and Corrosion Control: The DISTRICT recognizes the CITY'S concern of the potential for odor generation and facility corrosion at the point of connection between the DISTRICT'S force main and the municipal wastewater system as well as downstream thereof. Accordingly, the DISTRICT shall construct adequate facilities to control such odors and corrosion using the Best Available Technology prior to beginning discharge of its wastewater into the municipal wastewater system. All odor and corrosion facility plans shall be reviewed and approved by the CITY prior to construction. Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

15. Enlargements and Modifications: The DISTRICT shall obtain the Director's written approval prior to enlarging or modifying any of its wastewater facilities which would change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in this Agreement. Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

16. Access, Records and Contact Person: The DISTRICT shall grant the Director access at all times to DISTRICT'S wastewater system facilities for the purpose of inspecting, sampling, and studying the DISTRICT'S wastewater and permission to contact any individual users. Also, the DISTRICT shall, on request, provide the Director with copies of any flow, sampling and testing records that the Director may deem appropriate for said purposes or for the purpose of checking DISTRICT'S compliance with sewer use, industrial waste and/or pretreatment regulations. Prior to beginning the discharge of wastes into the municipal wastewater system, the DISTRICT shall also advise the Director in writing of the name, telephone number and mailing address of its official representative, who shall be authorized to make decisions on the DISTRICT'S behalf regarding the terms of this Agreement and to receive any notices, service bills, correspondence, etc. required herein. Failure to comply with these provisions shall subject the DISTRICT to the ~~penalty~~ fixed sum payment outlined in Section ~~29~~ 28 herein.

17. Notification: The DISTRICT shall immediately notify the Director and the CITY'S wastewater treatment plant in the event of any accident, negligence, or other occurrence that occasions discharge to the municipal wastewater system of any waters or wastes not covered by this Agreement as well as any accidental slug discharges of authorized pollutants. In addition, the DISTRICT agrees to file with the Director, within five (5) working days of such discharge, a written report explaining why said discharge occurred. The report shall also identify in detail the DISTRICT'S plan of action to prevent reoccurrence of such type discharge. The DISTRICT shall be responsible for all damages, costs, and fines of the CITY due to unauthorized or negligent discharges. In

addition, the DISTRICT shall be subject to the ~~penalty~~ fixed sum payment provisions of Section ~~29~~ 28 herein for failure to comply with these provisions.

18. Degree of Treatment: It is understood by the parties hereto that the CITY can only treat the DISTRICT'S wastewater to the extent the CITY is presently capable of treating said wastewater utilizing the existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a greater degree of treatment, the CITY shall comply with such requirements and DISTRICT shall be assessed a higher rate for the disposal as agreed by the parties or as set forth in Sections 22 ~~and 23~~ herein.

19. Billing: The DISTRICT shall pay to the CITY a monthly charge for the treatment and disposal of the DISTRICT'S wastewater. Monthly payments shall begin at the time the DISTRICT commences discharge of wastewater into the municipal wastewater system. Payments are due and payable in full no later than thirty (30) days from the date of billing. Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge. The late-payment interest charge shall be the amount stated in the CITY'S adopted schedule of Rates and Charges. If agreed by the DISTRICT and CITY, system development fees may be included in this monthly billing process and, if so, will be subject to all provisions contained herein. ~~The DISTRICT agrees that all monthly charges due the CITY shall be subject to the City of Billings Franchise Fee as contained in the adopted schedule of Rates and Charges in effect at the time of billing and,~~ In addition to the franchise fee and other rates, fees and charges specified herein, a six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of the DISTRICT'S wastewater. The surcharge shall not apply to system development fees and franchise fees. All revenue generated from this Agreement as a result of the monthly franchise fee and surcharge shall be transferred to the city's general fund.

In addition to the remedies outlined in this section, the DISTRICT shall be subject to the ~~penalty~~ fixed sum payment provisions in Section ~~29~~ 28 herein.

20. Future Wastewater Rate Making Methodology: It is the intent of the parties hereto that during the life of this Agreement, the DISTRICT shall pay reasonable and just rates for treatment of its wastewater and that the CITY, in turn, shall receive a reasonable and just compensation for the treatment of the DISTRICT'S wastewater. Accordingly, the wastewater rate charged to the DISTRICT in the future for treatment of its wastewater shall be based upon cost-of-service principles as set forth in 40 Code of Federal Regulations (CFR) Part 35, *Guidelines for User Charges*. When calculating the cost-of-service rate to be charged the DISTRICT for treatment of its wastewater, the CITY'S rate expert shall use the "utility approach" to determine revenue requirements

and the industry standards when allocating costs of service to cost components. In addition, the rate expert shall, among other things, take into consideration the following when calculating the cost-of -service rate to be charged the DISTRICT:

A. The amount and level of service that the CITY is providing the DISTRICT as well as any contributions the DISTRICT has made for the construction of the CITY'S wastewater treatment facilities.

B. The amount of contributions made by inside-city customers towards facilities utilized to serve the DISTRICT.

C. The amount of reserve capacity that the CITY has set aside for the DISTRICT in the municipal wastewater system.

D. The costs of any construction improvement required for increases in reserve capacity requested by the DISTRICT.

E. The cost of performing the rate study, unless arrangements are made between the CITY and DISTRICT for payment otherwise.

The rate expert shall also take into consideration the fact that the DISTRICT is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. Moreover, the return on investment paid by the DISTRICT shall be based, among other things, upon the depreciated cost of the facilities needed to provide the reserve capacity the CITY has set aside for the DISTRICT'S exclusive use. Finally, the rate of return to be used to calculate the return on investment shall be a minimum of 15% in order to recognize the risks incurred by the CITY in serving the DISTRICT as well as the fact that the replacement cost of the reserve capacity the CITY has set aside herein for the DISTRICT will greatly exceed its original cost as a result of inflation, etc.

The DISTRICT shall pay its proportionate share of any federal, state or local fees assessed the municipal wastewater utility. Such fees shall be due and payable as set forth in Section 19, above.

In the event the strength of the pollutants (BOD, TSS, etc.) contained in the DISTRICT'S wastewater are determined to exceed those normally present in domestic wastes, the CITY will charge the DISTRICT, in addition to other rates set forth herein, an extra-strength surcharge as identified in the adopted schedule of Rates and Charges.

The rates the CITY charges the DISTRICT for the treatment of any special wastes and/or permitted industrial wastes shall be determined on a case-by-case basis. Determination of such rates requires separate study and negotiation. (See BMCC 26-106 for additional information regarding special agreements and payments for unusual wastewater treatment.) Any and all costs associated with and incurred by the CITY arising from such special study and negotiation shall be paid by the DISTRICT. In the event the DISTRICT declines to pay for such study and negotiation, the special waste and/or permitted industrial wastes shall not be accepted by the DISTRICT into the wastewater system. Failure by the DISTRICT to comply with these provisions will be subject to the ~~penalty~~ fixed sum payment provisions in Section ~~29~~ 28 herein. In any event, such rates shall be charged to the DISTRICT in addition to any other rates set forth herein. Nothing in this section shall relieve the DISTRICT from their obligation to adopt and administer a pretreatment program as specified in Section 13.

The CITY reserves the right to periodically adjust the rates set forth herein in conformance with the provisions of Sections 20; ~~22~~ and ~~23~~ 22.

21. System Development Fees: In addition to the wastewater rates the DISTRICT shall pay to the CITY wastewater system development fees with the amount of the fee to be determined by the CITY'S rate expert. The rate expert shall determine the methodology to be used to calculate the fees that is most fitting for this Agreement; however, lacking such a determination by the rate expert, the methodology used shall be one most advantageous to the CITY as determined by the CITY.

The fees shall be assessed on a per-connection basis and shall be due at the time of connection to the DISTRICT'S sewer system; however, the rate expert may recommend an alternate assessment method if deemed appropriate to this Agreement, provided, however, that any alternate method must be approved by the CITY. The DISTRICT shall maintain sufficient records to document connections to their system and information necessary to determine the system development fees to be paid by the DISTRICT. Such records shall be available to the CITY upon request. Failure to properly maintain records and pay the system development fees due will subject the DISTRICT to the ~~penalty~~ fixed sum payment provisions in Section ~~29~~ 28 herein and will be grounds for termination of this Agreement. Details of the procedure for payment of the fees to the CITY by the DISTRICT as well as the record keeping by the DISTRICT to document the fees to be paid to accomplish this process shall be cooperatively determined by the DISTRICT and CITY.

22. Wastewater Rate Study: With respect to any wastewater rate study that would affect the wastewater rate charged to the DISTRICT, the CITY shall give the

DISTRICT advance notice of its intent to have a rate expert undertake such a study. The rate expert's draft report(s), work papers and any underlying data used to generate such report(s) shall be available upon request to the DISTRICT. The CITY'S rate expert shall be available to meet at reasonable times with the DISTRICT and/or its rate experts during this process or the DISTRICT Manager or member of the DISTRICT'S staff, but not to include counsel. The DISTRICT agrees to provide any information relevant to determining the DISTRICT'S customer service characteristics.

Once the CITY'S rate expert has completed its written report, the CITY shall promptly provide a copy of that report to the DISTRICT, ~~and the DISTRICT shall respond to that report within forty five (45) days after receiving the report by submitting a written response to the Director.~~

~~If the CITY and DISTRICT are unable to agree on a reasonable and just wastewater rate to be charged the DISTRICT, then the CITY and DISTRICT shall have thirty (30) days from the date of submission of the DISTRICT'S response to the CITY'S wastewater rate study within which to informally attempt to reach an agreement through non-binding mediation. The CITY and DISTRICT agree to work together in good faith in attempting to reach an agreement on a reasonable and just rate.~~

~~23. Wastewater Rate Arbitration Procedure:~~ ~~If, after the consultation described in Section 22, the DISTRICT and the CITY are still unable to agree on a reasonable and just wastewater rate to be charged to the DISTRICT, then the matter(s) in dispute shall be submitted to binding arbitration. The CITY'S wastewater rate expert, who conducted the study and participated in the negotiation described in Section 22, and a wastewater rate expert retained by the DISTRICT shall mutually agree and appoint a third wastewater rate expert who shall be the sole neutral arbitrator of the dispute. The appointment of the arbitrator shall be made within twenty (20) days of the conclusion of the negotiation period described in Section 22. The arbitrator shall be neutral, shall never have been a resident of Yellowstone County, shall never have worked for either of the parties, and shall be a qualified wastewater rate expert.~~

~~A.~~ ~~Within twenty (20) days of the appointment of the arbitrator, the parties shall exchange expert disclosure statements containing the information set forth in Rule 26(b)(4), Mont. R. Civ. P., together with any draft report(s), work papers, and underlying data generated and/or used by any expert, and shall provide a list of all lay witnesses and the substance of their testimony.~~

~~B. The arbitration hearing shall be held no later than sixty (60) days following the appointment of the arbitrator, and the arbitrator shall render a decision no later than thirty (30) days after the hearing.~~

~~C. Both the CITY and the DISTRICT shall present their respective positions to the arbitrator. Following the arbitration hearing, the arbitrator shall be limited to adopting that party's position which best represents the intent of this Agreement, but shall be prohibited from adopting any alternative rates.~~

~~D. The arbitration hearing shall be conducted according to such procedure as the arbitrator may choose so as to allow each party to fully present its position and may be formal or informal.~~

~~E. The cost of the arbitrator shall be borne equally by both parties.~~

24. 23. Annexation of District: Should fifty-five (55) percent or more of the property within the DISTRICT'S Service Area become annexed either voluntary or by election into the corporate city limits, the DISTRICT shall take, at the CITY'S sole discretion and with the CITY'S written consent, whatever steps are legally necessary to transfer its wastewater assets and liabilities to the CITY. Failure to timely comply with this section shall subject the DISTRICT to the ~~penalty~~ fixed sum payment provisions of Section ~~29~~ 28 herein and be sufficient grounds to terminate this Agreement.

25. 24. Term of Agreement: The first term of this Agreement is fifteen (15) years. This Agreement is renegotiable at any time if both parties so consent in writing. Either party may terminate this Agreement by giving the other party eight (8) years written notice. ~~If no notice to terminate is received at least one (1) year prior to the expiration of this Agreement, then~~ Upon expiration of the first fifteen (15) year term, this Agreement will automatically renew for four (4) an additional ten (10) years terms unless terminated by either party by giving eight (8) years notice or unless the terms are modified by mutual agreement of the parties. ~~This Agreement may be subsequently renewed three more times for an additional ten (10) years each, subject to the preceding clause.~~

26. 25. Milestones: The DISTRICT shall have two (2) years from the date this Agreement is initially signed to successfully approve a financing program that will allow construction of a wastewater system. Construction of the wastewater improvements ~~to connect to the City's treatment plant~~ shall commence within three (3) years from the date this Agreement is initially signed and be diligently pursued to the point of establishing wastewater discharge to the CITY. Should the DISTRICT fail to meet either of these

milestones, this Agreement shall automatically terminate immediately. However, it is further agreed that if the DISTRICT fails to meet the milestone for whatever reason, termination of this Agreement is the only remedy available to the CITY and the DISTRICT shall not be subject to any liquidated damages fixed sum payment nor will there be any claim asserted by the CITY upon the performance bond/financial assurance as provided in Section 30 29 because the DISTRICT failed to meet the milestone.

~~27.~~ **26. Non-Binding Mediation:** As a prerequisite to commencing litigation on any unresolved dispute arising from this Agreement, the parties agree that, ~~with the exception of wastewater rate adjustment matters,~~ all unresolved claims, demands, disputes, controversies and differences that may arise between the parties concerning the content of this Agreement shall first be submitted to non-binding mediation. The parties shall confer and agree upon selection of a mediator for such purposes; however, if they cannot agree, each party shall select a mediator and both mediators shall then agree upon and select a third mediator before whom all disputes shall be presented. Thereafter, either party may pursue litigation and shall have a right to file an action if mediation does not result in a final agreement and release between the parties which resolves all disputes pending at that time. Jurisdiction of all litigation shall be in Montana State District Court and venue shall be in Yellowstone County, Montana. Each party shall bear its own internal costs of mediation including attorney fees and costs, if any. Each party shall pay 50% of any and all fees and costs charged by the selected mediator.

In lieu of the above paragraph, the parties may agree and stipulate to binding arbitration in lieu of mediation. The arbitrator shall be selected, the arbitration conducted and the arbitration ruling shall be pursuant to the Montana Arbitrators' Association. Binding arbitration shall preclude litigation in District Court by either party on any issue decided by the arbitrator. Each party shall bear their own attorney fees and related costs and expenses if binding arbitration is selected as the dispute resolution method.

The Court shall be authorized to award the prevailing party reasonable attorney fees and costs should the parties proceed with litigation as described above in District Court.

~~28.~~ **27. Definitions:** Terms/phrases used herein this Agreement (such as but not limited to Biochemical Oxygen Demand (BOD), customer, domestic wastes, industrial wastes, Montana Pollutant Discharge Elimination System (MPDES) Permit, municipal wastewater system, municipal wastewater treatment plant, municipal wastewater utility, pollutant, pretreatment, public works department, public works director, rules and regulations, septage, service agreement, Total Suspended Solids (TSS), infiltration/inflow (I/I), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings

Montana City Code or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

~~29. 28. **Penalty Fixed Sum Payment for All Non-Regulatory Breaches of Agreement:** In the event the DISTRICT fails to comply with obligations outlined in this Agreement, in addition to all other remedies available under the law and specified herein, the DISTRICT agrees to pay to the CITY a penalty in the amount of \$25,000.00 per day for each day that the DISTRICT is in noncompliance with any federal, state or local law or regulation or discharges wastewater containing substances that may or does in turn cause the CITY to incur a fine due to such noncompliance or discharge including but not limited to MPDES permit violations or pretreatment violations by the DISTRICT.~~

The DISTRICT also agrees to pay the CITY a fixed sum payment in the amount of \$3,000.00 per day for each day that the DISTRICT is in noncompliance with any non-regulatory/non-statutory breach of this Agreement such as but not limited to exceeding the Reserve Capacity and discharge limits under Section 4 of this Agreement.

~~30. 29. **Performance or Financial Guarantee Bond:** The DISTRICT shall provide an annually renewable Performance or Financial Guarantee bond in the name of the CITY in the amount of \$1,000,000.00 (One Million) dollars for the faithful performance of all obligations under this Agreement and shall remain in force at all times throughout the term of this Agreement. The bond will be for a one year term to protect the CITY in the event of default by the principal (the DISTRICT) in the performance of the terms of this Agreement. The bond may be extended for additional one year terms at the option of the Surety however a new bond shall be provided each year to the CITY, no continuation certificates will be acceptable. Neither non-renewal by the surety nor failure or inability of the principal to file a replacement bond shall constitute a loss by the obligee (CITY) recoverable under the bond. However, non-renewal of the Bond and inability to provide and continuously maintain a replacement bond by the DISTRICT, or the CITY'S decision to reject an unsuitable alternative financial assurance offered by the DISTRICT, shall be a breach of this Agreement subject to alternative action by the CITY such as but not limited to termination under Section 32 31 and/or the non-regulatory/non-statutory penalty provision of Section 29 28 as well as all other applicable provisions within this Agreement.~~

The bond shall be in a form acceptable to the CITY except as provided otherwise by laws or regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety bond Branch, U.S. Department of the Treasury.

Any bond signed by an agent must be accompanied by a certified copy of the agent's authority to act.

If the surety on any bond furnished by the DISTRICT is declared bankrupt or becomes insolvent or its right to do business in Montana is terminated or it ceases to meet the requirements in the section above, the DISTRICT shall notify the CITY and shall, within twenty (20) days after the event giving rise to such notification, provide another bond which shall comply with the requirements herein.

Any bond required shall be obtained from surety or insurance companies that are duly licensed or authorized in Montana, with minimum "A.M. Best Rating" of B+, VI, as will protect the CITY for the amount so required.

In lieu of the performance or financial guarantee bond referenced herein, the CITY may, in its sole discretion, accept other, alternative financial assurances or pledged and encumbered DISTRICT reserves in the amount of \$1,000,000 (One Million) dollars for the faithful performance of this Agreement.

~~Failure to comply with the provisions of this Section shall subject the DISTRICT to the penalty provisions of Section 29 herein as well as be grounds for termination of this Agreement.~~

31. 30. Indemnification and Insurance: The DISTRICT agrees to indemnify, hold harmless, and defend the CITY from and against all liabilities, claims, penalties, daily or one-time fines assessed by any regulatory agency, forfeitures, suits, preliminary or permanent injunctions, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which the CITY may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage is caused by; (1) the DISTRICT'S breach of this Agreement; or (2) any negligent or willful act or omission of DISTRICT or its employees, contractors or agents in the performance of services.

In addition, the DISTRICT shall indemnify and hold the City harmless if the DISTRICT is in noncompliance with any federal, state, or local law, order or regulation including but not limited to discharges of wastewater that causes the CITY to incur a fine or penalty, causes the CITY to do or refrain from doing any act as ordered by any federal, state or local regulatory agency or causes the City to discharge in violation of MPDES permit or pretreatment violations.

The CITY agrees to indemnify, hold harmless, and defend the DISTRICT from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the DISTRICT may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of this Agreement; or (2) any negligent or willful act or omission of the CITY or it's employees or agents.

The DISTRICT shall provide the CITY with proof of the DISTRICT'S liability insurance for personal injury and property damage in the amount of \$750,000 per claim and \$1,500,000 per occurrence, endorsing the City as primary, non-contributory insured. Such insurance shall be reviewed by and subject to approval by the CITY as a prerequisite to commencing the mutual performance of this Agreement by the parties.

~~32.~~ **31. Remedies Upon Default and Termination:** Notwithstanding the notice provision in Sections 4 and 17, should the DISTRICT violate any term of this Agreement the CITY shall provide written notice of such within fourteen (14) calendar days of discovering the violation or being advised in writing by the DISTRICT of such violation. The DISTRICT shall have an additional fourteen (14) calendar days to remedy any violation after receiving written notice from the CITY.

Thereafter, should the DISTRICT fail to remedy any violation, it shall be deemed in breach of and in default under this agreement. The CITY shall be entitled to exercise any or all remedies specifically provided in this agreement as well as all other legal remedies available to it provided by law such as but not limited to submitting a claim upon the DISTRICT'S Financial Guarantee Bond, initiating litigation to compel specific performance, submitting a request to the DISTRICT for indemnification or to recover penalties under Section ~~29~~ **28** of this Agreement or any other incurred damages from the DISTRICT.

~~33.~~ **32. Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Montana, without reference to or application of choice of law rules or principles.

~~34.~~ **33. Attorney's Fees and Litigation Venue:** ~~Should either party employ an attorney or attorneys, or utilize the services of in-house attorneys to enforce any of the provisions herein, or to protect its interest in any manner arising under this Agreement,~~

~~the prevailing party shall be entitled to all reasonable costs, damages, expenses and reasonable attorneys fees including fees for in house attorneys, expended or incurred in enforcing the terms of this Agreement.~~

In the event litigation is commenced by either party to enforce any rights or obligations under this agreement, the prevailing party, if any, shall not be entitled to any litigation costs or expenses; rather, each party shall bear all of their respective litigation costs including, but not limited to, attorneys fees and expert witness fees.

Venue for such litigation shall be in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, Montana.

~~35.~~ **34. Severability and Waiver:** In the event any provision of this Agreement is declared void, invalid or contrary to law, the parties hereto agree that the remaining provisions shall continue and remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

City of Billings, Montana

Lockwood Area/Yellowstone
County Water & Sewer District

By: _____
Mayor

By: _____
Chairman

By: _____
City Attorney

By: _____
District Attorney

Attest:

Attest:

City Clerk

Secretary

ATTACHMENT I

Pursuant to the Agreement between the City of Billings (City) and the Lockwood Area/Yellowstone County Water and Sewer District (District), this Attachment sets forth the tests to be performed by District on the wastewater it discharges into the municipal wastewater system. This Attachment also sets forth the frequency of sampling, the limits for test compliance and the methods of sampling. The following parameters and other criteria are subject to periodic change by the Director, at his sole discretion:

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
BOD ₅	300 mg/l	Weekly ¹	Composite
TSS	300 mg/l	Weekly ¹	Composite
pH	5.5 - 9.0	Daily	Grab
Total Oil & Grease ^{2,5}	100 mg/l	2x/week	Grab
TPH (Total Petroleum Hydrocarbons)	100 mg/l	Bi-monthly	Grab
Total Phosphorus (as P)		1x/Quarter	Composite
Total Ammonia (as N)		1x/Quarter	Composite
Nitrate & Nitrite (as N)		1x/Quarter	Composite
TKN (Total Kjeldahl Nitrogen)		Quarterly	Composite
Temperature		Weekly	Instantaneous
Volatile Organics ^{3,4}		Annually	Grab
Organic Acids ^{3,4}		Annually	Composite
Base/Neutral Organics ^{3,4}		Annually	Composite
Pesticides ^{3,4}		Annually	Composite
Antimony (Total)		Quarterly	Composite
Arsenic (Total)	2.5 mg/l	Quarterly	Composite
Beryllium (Total)		Quarterly	Composite
Cadmium (Total)	13.9 mg/l	Quarterly	Composite
Chromium (III)		Quarterly	Composite
Chromium (VI)		Quarterly	Grab
Chromium (Total)	35.3 mg/l	Quarterly	Composite

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
Lead (Total)	2.2 mg/l	Quarterly	Composite
Mercury (Total)	0.15 mg/l	Quarterly	Composite
Nickel (Total)	26.8 mg/l	Quarterly	Composite
Selenium (Total)	< Detection Limit	Quarterly	Composite
Silver (Total)	1.1 mg/l	Quarterly	Composite
Thallium (Total)		Quarterly	Composite
Zinc (Total)	1.1 mg/l	Quarterly	Composite
Cyanide (Total)	2.6 mg/l	Quarterly	Grab
BTEX (Benzene, Toulene, Ethelbenzene, Xylene)		Monthly	Grab
Tetrachloroethylene		Quarterly	Grab

Footnotes:

- 1 A 24-hour, composite sample to be taken on progressive days each sampling event.
- 2 A visual sheen shall be considered a violation.
- 3 Minimum parameters to be tested for as determined by the Director.
- 4 A minimum of every 5 years, or sooner if determined necessary by the Director; monthly analysis for parameters designated by Director shall be done in support of local limits re-evaluation.
- 5 In addition to the visual sheen criteria set forth in Footnote 2, above, oil and grease shall not cause any interference or obstruction in the municipal wastewater system.

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