

NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

January 12, 2009

6:30 P.M.

**CALL TO ORDER – Mayor Tussing
ELECTION of Mayor Pro Tem
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Councilmember Ronquillo
ROLL CALL
MINUTES – December 15, 2008
COURTESIES
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek**

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 3b 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.	* Ginny Hart	Tourism BID Board	1/12/09	09/01/09
2.	* No Applicants	Energy & Conservation Commission	1/12/09	12/31/10
3.	* Postponed until February 2009	Yellowstone Conservation District Board	1/12/09	06/30/11

*Unexpired term of Erin Kennedy
*Unexpired term of Bernard Rose
*Unexpired term of Gay Easton

B. Bid Awards:

(1) W.O. 01-05, Lake Hills Storm Sewer Outfall (Opened 12/16/08). Recommend H.L. Ostermiller Construction, \$733,015.50 base bid; Alternate 3 -\$39,562.50; Alternate #4 – decrease of \$4,410. Total Bid - \$768,168.

(2) W.O. 07-20 Poly Drive Utilities (Opened 12/16/08). Recommend Castle Rock Excavating, \$78,615.65.

(3) Six (6) new 2009 truck cabs and chassis with refuse compactor bodies. (Opened 12/16/08). Recommend:

Schedule I –Two Units – Tri-State Truck & Equipment, Inc. \$446,200.00

Schedule II –One Unit – Tri-State Truck & Equipment, Inc. \$169,991.65

Schedule III – Three Units –Tri-State Truck & Equipment, Inc. \$717,696.00

C. Change Order #1-Final, Phase 3 Landfill Expansion, Montana Civil Contractor's, Inc., decrease of \$28,890.14 and the addition of seven (7) calendar days.

D Professional Services Contract for W.O. 08-23, West Wicks Lane Water, Sewer, & Storm Drain Improvement , Engineering Inc., \$39,360.

E. Professional Services Contract for W.O. 08-27, Solid Waste Landfill Phase 4 and Related Improvements, Great West Engineering, \$297,000.

F. Contract with Community Solutions, Inc. to provide services to Billings Adult Misdemeanor DUI Court Probation Officer (BAMDUI), January 1, 2009 - September 31, 2009, with option to negotiate two-year extension, at no cost to the City.

G. Approval of Section 5316 Operating Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration JARC Program to access \$90,000 in grant revenue.

H. Supplemental Lease Agreement #4 to the Terminal Building Lease with the U.S. Government for the benefit of the Transportation Security Administration (TSA), adding space and extending the term to May 31, 2012, annual revenue \$77,903.34.

I. Memorandum of Understanding with Beartooth RC&D Economic Development District, \$9,003 annual expense.

J. Amendment #2 to Airport Business Park Building and Ground Lease with Yellowstone County Museum Foundation, adding additional square footage, \$3,590.58 annual revenue.

K. Confirmation of Police Officers:

- (1) Glen Gunther
- (2) Matthew Brandt
- (3) Tony Jensen
- (4) James Ward

L. Street Closures:

(1) Martin Luther King Day Pedestrian March, 6:25 p.m.-6:50 p.m., January 19, 2009, beginning at the Court House lawn, to the corner of N.27th and 3rd Ave. N, crossing N. 27th and marching in the street to N. 29th, then north on N. 29th, disbanding at the Lincoln Center.

(2) Magic City Blues Festival, 9 a.m., August 7, 2009, to noon, August 9, 2009, 2300-2500 blocks of Montana Avenue.

M. Approval and Acceptance of the 2009 High Intensity Drug Trafficking Area (HIDTA) Award, \$138,010.

N. Approval of application for a Certified Local Government Grant from the Montana State Historic Preservation Office for historic preservation activities, \$5,500.

O. Approval of the Metropolitan Planning Organization/Planning Division Public Participation Plan and forward a recommendation of adoption to the Policy Coordinating Committee.

P. Resolution establishing Financial Internal Control Procedures.

Q. Resolution of Intent to construct improvements for W.O. 08-02, 2008 Miscellaneous/Developer Related Project, and set a public hearing date for February 9, 2009.

R. Repeal Resolution #08-18694 approved March 10, 2008, approve a new Resolution of Intent to Create SID 1384, Yellowstone Club Estates, and set a public hearing date for February 9, 2009.

S. Second/Final reading ordinance for revisions to Boards and Commissions: Revisions that provide consistency in procedural areas for advisory boards, commissions and committees, and reorganizes ordinances into one Article of the Code.

T. Second/Final reading ordinance correcting the legal description in Ordinance #08-5480 for Zone Change #848, East 80 Cardwell Ranch, previously adopted by City Council on 10/14/08.

U. Final Plats:

- (1) Gabel Subdivision, 4th Filing
- (2) Amended Fractional Lot of Block 305, First Addition to the City and Block 13, Sunnyside Subdivision, 3rd Filing
- (3) Cardwell Ranch Subdivision, 1st Filing
- (4) Lake Hills Subdivision, 14th Filing, Amended

V. Bills and Payroll

- (1) November 28, 2008
- (2) December 5, 2008
- (3) December 12, 2008
- (4) December 19, 2008
- (5) October 1-November 30, 2008 -- Municipal Court

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION FOR THE SALE OF CITY-OWNED PROPERTY** described as the south 132 feet of Lot 4 in the SW ¼ of Section 9, Township 1 South, Range 26 East more commonly known as South Billings Boulevard, and accepting the

Buy/Sell Agreement from Hanser Properties, LP for \$125,300. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).

3. **(a) PUBLIC HEARING AND RESOLUTION FOR THE SALE OF CITY-OWNED PROPERTY** within the Billings Regional Landfill described as the Tract 1, a portion of the NE ¼ NE ¼ of Section 29 in Township 1 South, Range 26 East, PMM, Yellowstone County, and accepting the offer from Yellowstone Valley Electric Cooperative for \$17,700. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).
- (b) EXEMPT PLAT OF UNNAMED CERTIFICATE OF SURVEY:** a 1.363 acre parcel of City land described as the NE ¼ of Section 29, Township 1 South, Range 26 East located on the southeast corner of the intersection of Bollinger Lane and Hillcrest Road. Yellowstone Valley Electric Cooperative, applicant. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation).
4. **(a) PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #08-09:** Property described as Lots 1-3, Block 1, Cereus Subdivision, located on the north side of Midland Road east of the Motor Power Equipment business, including un-annexed portions of the I-90 and South Billings Boulevard interchange. Brumar Corporation, owner and petitioner; Bruce Sunwall, representative. Staff recommends conditional approval. **(Action:** approval or disapproval of staff recommendation).
- (b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #852:** A zone change from Entryway General Commercial (EGC) to Highway Commercial (HC) on Lots 1-3, Block 1, Cereus Subdivision located immediately east of 5021 Midland Road; Brumar Corporation (Motor Power Equipment) applicant, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. **(Action:** approval or disapproval of Zoning Commission recommendation).
5. **PUBLIC HEARING AND RESOLUTION ADOPTING THE 2008 GROWTH POLICY UPDATE.** Yellowstone County Board of Planning recommends approval. **(Action:** approval or disapproval of Yellowstone County Board of Planning recommendation).
6. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** *(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

(Action: approval or disapproval of Consent Agenda.)

ADJOURN

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JANUARY 12, 2009

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

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Board and Commission positions that are either vacant or up for re-appointment.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	*Ginny Hart	Tourism BID Board	1/12/09	09/01/09
2.	*No Applicants	Energy & Conservation Commission	1/12/09	12/31/10
3.	*Postponed until February 2009	Yellowstone Conservation District Board	1/12/09	06/30/11

*Unexpired term of Erin Kennedy
 *Unexpired term of Bernard Rose
 *Unexpired term of Gay Easton

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: W.O. 01-05 Lake Hills Stormwater Management, Phase I Bid Award
 DEPARTMENT: Public Works/Engineering
 PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for W.O. 01-05 Lake Hills Stormwater Management, Phase I, on December 16, 2008. This project will construct multiple stormwater retention ponds and channels on portions of Lake Hills Golf Club per the Lake Hills Storm Drain Feasibility Study.

ALTERNATIVES ANALYZED:

1. Award W.O. 01-05 to H.L. Ostermiller in the amount of \$768,168.00; or
2. Reject all bids and do not award W.O. 01-05.

FINANCIAL IMPACT: This project will be funded entirely through Storm Drain Funds. We received nine bids for the project; the three lowest are shown below:

<u>Project Costs</u>	<u>Base Bids</u>	<u>Alternate #3</u>	<u>Alternate #4</u>
Engineer's Estimate	\$ 736,063.25	\$40,200.00	\$2,450.00
H.L. Ostermiller	\$ 733,015.50	\$39,562.50	\$(4,410.00)
CMG Construction	\$ 770,572.00	\$45,375.00	\$(8,330.00)
W Construction	\$ 869,443.83	\$28,880.25	\$(31,825.50)

Any remaining funds for this project shall be used for construction administration, staking, and change orders. A breakdown of the project funds per the CIP is listed below:

<u>W.O. 01-05 Funding</u>	
Storm Drain Funds	\$ 850,000.00
Contract Amount (This Memo)	\$(768,168.00)
Remaining Funds	\$ 81,832.00

RECOMMENDATION

Staff recommends that Council award the Base Bid and Alternates #3 and #4 to H.L. Ostermiller Construction for W.O. 01-05 in the amount of \$768,168.00

Approved By: City Administrator _____ City Attorney _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 12, 2009

TITLE: W.O. 07-20 Poly Utilities – Construction Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for W.O. 07-20 Poly Utilities from June Drive to Westfield Drive on December 16, 2008. This project consists of installation of a new water main from June Drive to Westfield Drive and piping of the Hi-Line Ditch under the future section of Poly just north of Rush Park.

ALTERNATIVES ANALYZED:

1. Award W.O. 07-20 to Castle Rock Excavating in the amount of \$78,615.65; or
2. Reject all bids and do not award W.O. 07-20.

FINANCIAL IMPACT: This project will be funded by Gas Tax and Water Funds. Nine bids were received for this project; the three lowest are shown below:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 92,263.16
Castle Rock Excavating	\$ 78,615.65
W Construction	\$ 91,952.61
Gary Weber Construction	\$ 96,924.05

Any remaining funds for this project shall be used for construction administration, staking, and change orders. A breakdown of the project funds per the CIP is listed below:

<u>W.O. 07-20 Funding</u>	
Water Funds	\$ 40,000.00
Gas Tax Funds	\$ 54,338.78
Contract Amount (This Memo)	<u>\$(78,615.65)</u>
Remaining Funds	\$ 15,723.13

RECOMMENDATION

Staff recommends that Council award Castle Rock Excavating's bid for W.O. 07-20 in the amount of \$78,615.65

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM: B3



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 12, 2009

TITLE: Approval of Award to Purchase Six New 2009 Truck Cabs and Chassis with Refuse Compactor Bodies for the Solid Waste Division

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division FY09 Budget includes funds to replace three older garbage trucks and add three additional trucks to the fleet. All are included in the approved Equipment Replacement Plan, and they are scheduled for purchase this fiscal year.

Public Works is ordering three different styles of trucks. Automated “side load” trucks are used to pick up 90 and 300-gallon residential containers, automated “front load” trucks dump metal commercial dumpsters, and the “low entry drop frame automated/manual side load” trucks will be used to service residential yard waste containers. The additional trucks being added to the fleet are the three new trucks for yard waste recycling.

FINANCIAL IMPACT: The Solid Waste Division budgeted \$1,341,471 to purchase the six garbage trucks. Bids were advertised December 4th and 11th, and ten bid packets were distributed to various truck and refuse compactor vendors. Bids were received and opened on December 16, 2008. Three vendors submitted a total of eleven bids on the various schedules. The total low bid for the six trucks is \$1,333,887.65, which is less than the amount budgeted. The bids are summarized as follows:

SCHEDULE I – Two (2) New Tandem Tilt Cabs, 2009 Model, 62,000 GVW Cab & Chassis with Dual Steering and 31-Cubic Yard Automated Side Loading Refuse Compactor Body with 5-Year Engine & Transmission Warranty and 24-Month Packer Warranty

Vendor	<u>I-State</u>	<u>Mt Peterbuilt</u>	<u>Tri-State</u>
Truck	Autocar		Mack
Packer	Heil		Heil
Bid Each	\$258,648	NO BID	\$253,100
Total 2 Units	\$517,296		\$506,200
Less Trade #0131	(30,000)		(30,000)
Less Trade #0132	(30,000)		(30,000)
Net Bid	\$457,296		\$446,200

SCHEDULE II – One (1) New Tandem Tilt Cab, 2009 Model, 62,000 GVW Cab & Chassis 40-Cubic Yard ½ Pack Front Load Refuse Compactor Body with 5-Year Engine & Transmission Warranty, Body Service Lift, and 24-Month Packer Warranty

Vendor	<u>I-State</u>	<u>Mt Peterbuilt</u>	<u>Tri-State</u>	<u>Tri-State</u>	<u>Tri-State</u>
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Truck	Autocar Peterbuilt	Mack	Mack	Mack	
Packer	Heil	Wittke	Heil	New Way	Wittke
Bid for One Unit	\$238,062	\$218,156.59	\$228,365	\$214,378.65	\$217,531.81
Less Trade #0133	(42,000)(44,387.00)	(42,000)(44,387.00)	(42,000)(44,387.00)	(44,387.00)	
Net Bid	\$196,062	\$173,769.59	\$186,365	\$169,991.65	\$173,144.81

SCHEDULE III – Three (3) New Tandem Tilt Cabs, 2009 Model, 62,000 GVW Low Entry Drop Frame Cab & Chassis with Dual Steering and 30-Cubic Yard Automated/Manual Side Loading Refuse Compactor Body with 5-Year Engine & Transmission Warranty and 24-month Packer Warranty

Vendor	<u>I-State</u>	<u>Mt Peterbuilt</u>	<u>Tri-State</u>	<u>Tri-State</u>	
Truck	Autocar Peterbuilt		Mack	Mack	
Packer	Heil	Labrie	Heil	Labrie	
Bid Each Unit	\$239,805	\$262,768.41	\$239,232	\$247,802.30	
Total 3 Units	\$719,415	\$788,305.23	\$717,696	\$743,406.90	

RECOMMENDATION

Staff recommends that Council award the contract for purchase of six new 2009 truck cabs and chassis with refuse compactor bodies as follows:

Schedule I –Two Units – Tri-State Truck & Equipment, Inc.	\$446,200.00
Schedule II –One Unit – Tri-State Truck & Equipment, Inc.	\$169,991.65
Schedule III – Three Units –Tri-State Truck & Equipment, Inc.	\$717,696.00

Approved By: City Administrator _____ City Attorney _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: Phase 3 Landfill Expansion Change Order #1-Final

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The Phase 3 Landfill Expansion project was awarded at the April 14, 2008, City Council Meeting to Montana Civil Contractors, Inc. This project involved excavation and construction of a HDPE liner and leachate collection system and related items at the landfill. The total contract amount was \$1,358,235. Change Order #1-Final is to reconcile actual construction quantities with the bid quantities. This reconciling change order decreases the original contract amount \$28,890.14 and adds seven calendar days to the original contract time of 140 calendar days. The additional calendar days are due to weather delays caused by the October snow storm and the landfill was too wet for the contractor to work.

ALTERNATIVES ANALYZED:

3. Approve Change Order No. 1 Final for a net decrease of \$28,890.14;
4. Do not approve Change Order No. 1 Final.

FINANCIAL IMPACT: Funding for this project was provided by Solid Waste Division funds for CIP projects. This change order will decrease the original contract amount.

RECOMMENDATION

Staff recommends that Council approve Change Order No. 1-Final with Montana Civil Contractor's Inc. for a net decrease of \$28,890.14 and an addition of 7 calendar days.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Change Order No. 1-Final with Montana Civil Contractor's, Inc.

Change Order

No. 1

Date of Issuance: November 3, 2008

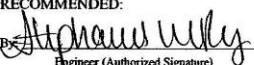

Effective Date: November 3, 2008

Project: City of Billings Solid Waste Division Phase 3 Landfill Expansion	Owner: City of Billings Solid Waste Division	Owner's Contract No.:
Contract: City of Billings Solid Waste Division Phase 3 Landfill Expansion		Date of Contract: April 14, 2008
Contractor: Montana Civil Contractors		Engineer's Project No.: 1-07021

The Contract Documents are modified as follows upon execution of this Change Order:

Description:
Reconciliation of unit price items
Attachments: (List documents supporting change):
Change in Bid Item Quantity Worksheet

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$1,358,235.00	Original Contract Times: <input type="checkbox"/> Working days <input checked="" type="checkbox"/> Calendar days Substantial completion (days or date): <u>140 days</u> Ready for final payment (days or date): _____
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: \$No Previous Change Orders	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial completion (days): <u>No Previous Change Orders</u> Ready for final payment (days): _____
Contract Price prior to this Change Order: \$1,358,235.00	Contract Times prior to this Change Order: Substantial completion (days or date): <u>140 Days</u> Ready for final payment (days or date): _____
[Increase] [Decrease] of this Change Order: \$28,890.14	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): <u>7 days</u> Ready for final payment (days or date): _____
Contract Price incorporating this Change Order: \$1,329,344.86	Contract Times with all approved Change Orders: Substantial completion (days or date): <u>147 days</u> Ready for final payment (days or date): _____

RECOMMENDED:  By: _____ Engineer (Authorized Signature) Date: <u>11/2/08</u>	ACCEPTED: By: _____ Owner (Authorized Signature) Date: _____	ACCEPTED:  By: _____ Contractor (Authorized Signature) Date: <u>11/17/08</u>
Approved by Funding Agency (if applicable): _____	Date: _____	Date: _____

Ken Behling 11/19/08
Solid Waste Supt.

Change Order Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

City of Billings Phase 3 Landfill Expansion
Change in Bid Item Quantities

Bid #	Description	UM	Planned Quantity	Unit Bid Price	Total Bid Price	Quantities Changed	Dollars Changed
4	Clay Layer in Place Preparation	SF	291200.00	\$0.04	\$11,648.00	7225.00	\$289.00
5	Landfill Cell & Road Embankment	CY	4000.00	\$3.23	\$12,920.00	250.00	\$807.50
6	60 MIL HDPE Liner	SF	381200.00	\$0.68	\$259,216.00	7225.00	\$4,913.00
7	16 OZ. Non-Woven Fabric	SF	381200.00	\$0.29	\$110,548.00	-3356.00	-\$973.24
14	Class IV Landfill Cell Rough Excavation	CY	60000.00	\$3.10	\$186,000.00	-10944.00	-\$33,926.40
Total							-\$28,890.14

11/13/2008

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: W.O. 08-23 West Wicks Lane Water, Sewer, and Storm Drain Improvement 100% Design Professional Services Contract

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: W.O. 08-23 West Wicks Lane Water, Sewer, & Storm Drain Improvement includes design and construction of new water, sanitary sewer, and some storm drain on West Wicks Lane from the frontage of Harvest Church to Sierra Granda Blvd in the Heights. Water will be extended to Sierra Granda Blvd and sanitary sewer will be extended to Siesta Blvd. Engineering Inc. was selected through the consultant selection process to design W.O. 08-23.

The projected available funding is estimated to be \$427,000.00 for design and construction. Funding sources are estimated to be the following:

- Grant (Army Corp of Engineers) \$245,000
- Assessments (Harvest & Atonement Churches) \$112,000
- City of Billings (Storm Drain, Water, Sewer Funds) \$70,000

This contract with Engineering Inc. is for 100% design. Design Submittals for 30%, 90%, and 100% design are included in the contract which is the normal progression. The 100% design is expected to be completed and project out to bid by summer of 2009. The project is to be constructed through the summer/fall of 2009.

FINANCIAL IMPACT: The professional services contract with Engineering Inc. is for the amount of \$39,360.00.

RECOMMENDATION

Staff recommends that Council approve the professional services contract for W.O. 08-23 West Wicks Lane Water, Sewer, & Storm Drain Improvement in the amount of \$39,360.00.

ATTACHMENT

- A. W.O. 08-23 West Wicks Lane Water, Sewer, & Storm Drain Improvement Professional Services Contract

Approved By: City Administrator _____ City Attorney _____

Contract for Professional Engineering Services

W.O. 08-23 West Wicks Lane Water, Sewer, and Storm Drain Improvement

In consideration of the mutual promises herein, City of Billings and Engineering Inc. 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 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Contractor);
- Appendix D consisting of Schedule of Professional Fees;
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 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" and "Engineer" means Engineering, Inc..

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.

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 December 31, 2010.

Section 4. Compensation; Method of Payment.

- A. Billings shall pay the Consultant in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. 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 and Billings shall pay for services rendered prior to 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 per claim.
- 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. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. 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: Debi Meling, PE
City Engineer
Department of Public Works – Engineering Division
2224 Montana Ave
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: Rick Leuthold, PE
President
Engineering, Inc.
1300 North Transtech Way
Billings, MT 59102 FAX: (406) 656-0967

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: Rick Leuthold, PE, President, or Authorized Designee

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 District 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 and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or 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, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses 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, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses 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 # _____

City Clerk

APPROVED AS TO FORM:

Date: _____

By _____

BRENT BROOKS, City Attorney

STATE OF MONTANA)
 :ss.
COUNTY OF YELLOWSTONE)

On this _____ day of _____, 2004, 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. Name a Project Manager who shall be the liaison between Billings and the Engineer. For this project the Project Manager designated for the Engineer is Tim Pertz, PE.

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 Project Manager who shall be the liaison between the Engineer and Billings. For this project, the Project Manager designated is Ken Ard, PE, Staff Engineer.

Section 3. Scope of Work.

This narrative provides a description of the anticipated scope of services for the City of Billings Work Order (WO) 08-23 "West Wicks Lane Water, Sewer, and Storm Drain Improvements" project.

The project scope includes project development and design activities related to the installation of water, sewer and storm drain main and services in Wicks Lane from the end of Private Contract No. 488 (frontage of Harvest Church site) to Sierra Granda Boulevard. The anticipated scope of services is more particularly described in the activity descriptions contained herein.

Project Initiation

1. Client consultation and Scoping Meeting
2. Project Stakeholders Meeting – Hold a project stakeholder meeting to discuss and/or confirm the project objectives. Those in attendance shall include representatives from the City Public Works and Parks Departments, Harvest Church, and Atonement Church.
3. Project Planning - A plan shall be developed by the Project Engineer that will identify the activities and tasks to be completed by each of the team members, state the project objectives and basis of design, scheduling, and development of the quality control plan. This plan will then be presented to the project design team.

Data Collection, Topographic and Site Survey

1. Pre-Survey Preparation and Research – This task includes all project control, datum and topographic research. The adjacent property ownership will also be reviewed and verified.
2. In-field Survey Control – Locate existing property pins, establish horizontal and elevation control for the project.

3. Topographic Survey - The site survey will update all of the survey data needed to produce a thorough topographic base plan. Engineering, Inc. currently has a portion of the topographic data; however, additional information will need to be collected to verify the as-built conditions of the recently installed improvements adjacent to this project.
4. Draft Topography and Base Plan - Once the site survey data is obtained, information will be gathered from all of the adjacent projects and combined with the new survey information to prepare a comprehensive topographic base map which shall include existing public and private utilities.
5. Geotechnical Investigation – Soils investigation will be performed by a sub-consultant to Engineering, Inc. to determine the existing soil conditions with regards to classification, properties, ground water, and depths. This information will then be put in a report with recommendations.
6. Quality Control Review

Preliminary Engineering Design

1. Street Layout and Design - Design of the future roadway shall be done to determine the proposed utility locations and grade. The design prepared by Engineering, Inc. under previous projects will be reviewed and revised to meet the current needs of the project stakeholders. The 30% construction drawings shall include at a minimum, a gravel access road to allow the City to maintain utilities and to provide adequate cover over the proposed utilities. It may be necessary to grade the entire roadway template and borrow ditches to complete the entire drainage facilities. Following the review of the 30% construction drawings by the project stakeholders, the future roadway shall be modified as required in accordance to those comments. The 90% construction drawings shall include cross-sections as required for the roadway construction and to determine earthwork quantities required for a more accurate cost estimate.
2. Utility Layout and Design - The design location and grade of the utilities will be combined with the street design and drafted on a set of plan and profiles to be included as part of the 30% construction drawings. The design prepared by Engineering, Inc. under previous projects will be considered and revised to meet the current needs of the project stakeholders. The utility design shall be modified as required in accordance to review comments received from the project stakeholders and incorporated into the 90% construction drawings. Additional detail will be added to the construction documents as required to provide sufficient information necessary for project bidding.
3. Storm Water Design - The preliminary design of the storm drainage system in accordance with the City of Billings Stormwater Management Manual will be submitted for review with the 30% preliminary design submittal. This activity will be done concurrently with the street and utility design tasks. The storm water drainage system and design report shall be modified to reflect the review comments.

4. Storm Water and Erosion Control Permitting – An erosion control plan and erosion control details shall be prepared with the 90% design submittal. The erosion control plan and erosion control details shall be prepared to assist the contractor in obtaining an erosion control permit from the Montana Department of Environmental Quality.
5. Cost Estimate (Engineer's Opinion of Probable Costs) – The preliminary cost estimates will be prepared for each of the 30% and 90% design submittals to determine if the project is within the budget.
6. Public Involvement and Stakeholders Meeting – Upon completion of the preliminary construction documents, an informational meeting will be held with the project stakeholders and the local task force to discuss the proposed improvements and project schedule. Comments from the meeting will be evaluated and incorporated into the 90% construction documents, if warranted.
7. Project Specifications – The project specification will be prepared in accordance with the typical format required by the City of Billings. These specifications will be included with the 90% construction documents submittal.
8. Quality Control Review - The Project Engineer shall oversee all activities and review the work of the team throughout the entire preliminary design phase. Upon completion of the preliminary construction documents, the entire package will be reviewed by the Quality Control reviewer prior to submittal.

Deliverables: *Preliminary 30% Plans*
Preliminary Storm Water Design
30% Cost Estimate

Preliminary 90% Plans and Specifications
Storm Water Design Report
90% Cost Estimate

Final Design Submittal

1. Final Bidding Documents – Once the review comments have been received, all corrections will be made to the storm water design report, construction drawings, contract specifications and cost estimate. Upon acceptance of the final documents by the City, the Bidding Documents will be reproduced for distribution to Bidders and other review agencies.
2. MDEQ Certified Checklist Preparation. Engineering Inc will pay fees to MDEQ review.
3. Final Cost Estimate – The cost estimate will be prepared based on the final construction drawings to determine if the project is within the budget and to obtain the final quantities required for bidding.

Deliverables: *Final Plans and Specifications*
Final Storm Water Design Report
Final Cost Estimate
MDEQ Submittal – Transmitted by City

Bidding and Award

1. Contractor Bid Assistance - The Project Engineer will be the main point of contact for contractors' bidding questions. Engineering, Inc. will distribute bid sets and maintain the plan-holders list.
2. Pre-Bid Meeting - A Pre-bid conference will be held with the Project Engineer as moderator.
3. Addendum Preparation - All modifications and clarifications will be addressed through addenda prepared by Engineering, Inc.
4. Bid Opening, Bid Tab and Award Recommendation - The Project Engineer will be present at the bid opening. Following the opening, the bids will be reviewed, a bid tabulation will be prepared and an Award Recommendation Letter will be submitted to the City of Billings.
5. Pre-Construction Meeting - A Pre-Construction meeting will be attended by the Project Engineer and will be moderated by a representative from the City of Billings.
6. Construction Administration Consultation - The Project Engineer will be available for consultations from the City of Billings during the construction of the project.
7. Substantial Completion, Final and One-Year Warranty Walk-through – The Project Engineer will attend the walk-through inspections along with the inspection staff from the City of Billings. All administrative tasks associated with the walk-through will be done by the City.
8. As-Constructed Drawings – As-constructed drawings will be prepared by Engineering Inc. based on record drawings received from the City.

Exclusions

The following services are excluded from this contract. All or portions of the excluded services may be negotiated and added to the contract with a contract amendment that shall be executed prior to providing said service.

1. Construction Staking – All staking will be provided by the Contractor.
2. Construction Oversight and Construction Administration with exception of limited Construction Administration Consultation. All Construction Oversight shall be done by the City.

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.

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. Billings will pay Contractor within 30 days of receiving an acceptable invoice.

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

1. Appendix A Scope of Work \$39,360.00

The total fee generally represents the following breakdown:

Project Initiation	\$2,670
Data Collection, Topographic and Site Survey	\$3,800
Preliminary Engineering Design	\$15,310
Final Design Submittal	\$5,680
Bidding, Award and Limited Construction Administration	\$6,100
Fees Paid to Others	\$4,200
Reimbursables	\$1,600

- B. Materials and other expenses are included in the total fee amount. Final payment shall be the above stated basic fee less all previous payments.

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

The Engineer will not perform any work that the Engineer deems outside the scope found in Appendix A prior to receiving written approval from City of Billings. Any such work performed, even if requested by City of Billings will not be paid by Billings and any claims for such work will be denied. The Engineer will immediately discuss scope of work issues with the Project Manager for the City of 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

The Engineer shall provide a listing of Standard Hourly Rates to be used in this contract.
(listing attached).



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

CHARGE OUT RATES EFFECTIVE JULY 1, 2008

SURVEY CREW SERVICES

1-man Survey Crew	\$ 110.00 /hour
1-man Survey Crew w/GPS	\$ 145.00 /hour
2-man Survey Crew	\$ 130.00 /hour
2-man Survey Crew w/GPS	\$ 165.00 /hour
Each additional Crew Member	\$ 50.00 /hour

NOTE: 1) Charge out rate for travel time to and from the site same as above.
2) Minimum of one-hour charge for field crew time.

STAFF PERSONNEL SERVICES

Expert Witness/Special Consultant	\$ 180.00 /hour
Principal	\$ 130.00 /hour
Senior Engineer	\$ 100.00 /hour
Project Engineer	\$ 89.00 /hour
Staff Engineer	\$ 77.00 /hour
Engineer Intern	\$ 66.00 /hour
Land Planner/Landscape Architect	\$ 89.00 /hour
Landscape Designer	\$ 77.00 /hour
Senior Professional Land Surveyor	\$ 100.00 /hour
Professional Land Surveyor	\$ 92.00 /hour
Staff Surveyor	\$ 79.00 /hour
Designer	\$ 75.00 /hour
CADD Technician	\$ 59.00 /hour
Senior Construction Engineering Technician	\$ 88.00 /hour
Construction Engineering Technician	\$ 64.00 /hour
Construction Inspector	\$ 57.00 /hour

1300 North Transch Way • Billings, MT 59102 • Phone (406) 656-5255 • Fax (406) 656-0967 • www.enginc.com

Project Administrator	\$ 65.00 /hour
Party Chief	\$ 60.00 /hour
Administrative/Clerical	\$ 49.00 /hour

Outside Consultants:

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

Independent Laboratories:

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

ADMINISTRATIVE EXPENSES

Administrative expenses (including copies, prints, phone, postage, materials, and travel) based on professional services only 3.5% *

* unless modified by contract

07-21-08

Appendix E

Project Schedule

Based on a notice to proceed by Billings dated no later than 02/01/2009, the completion date for the Engineer's work through final design shall be:

100% Design, specifications, and cost estimate	not later than April 2009
Record drawings	not later than December 2009
One year walk through	not later than December 2010

It is anticipated that this project will be constructed summer of 2009. The Construction Engineering (CE) phase of this project is expected to be complete by December 31, 2010.

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)



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: W.O. 08-27—Solid Waste Landfill Phase 4 and Related Improvements, Professional Services Contract with Great West Engineering, Inc.

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings Regional Landfill has a need to expand by constructing the Phase 4 waste cell. In association with the new cell, work is required for the closure / post closure of the existing Phase 2 and 3 cells. This work is estimated to last two or more years. Proposals were requested from qualified consulting firms in November to provide these professional services. Great West Engineering, Inc. (Great West) was chosen by the selection committee as the preferred consultant.

In addition to the tasks described above, Great West's services will include, but are not limited to, design and construction of new concrete approaches to the landfill scale. The proposed contract will be in effect until December 31, 2011, which will allow any unforeseen miscellaneous tasks to be added via contract amendment.

FINANCIAL IMPACT: The project is being funded by Landfill Infrastructure funds. The associated FY 2009 CIP has been approved by the Mayor and City Council. There are sufficient funds available to cover the costs of the Professional Services Contract.

Funding Sources: Landfill Infrastructure (account #544-3123-435-9390)

Maximum amount being requested: \$297,000.00

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the Professional Services Contract with Great West Engineering, Inc. for W.O. 08-27—Solid Waste Landfill Phase 4 and Related Improvements in the not-to-exceed amount of \$297,000.00.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

Attachment 'A': Professional Services Contract with Great West Engineering (10 pages)

Contract for Professional Architectural and Engineering Services

W.O. 08-27—City of Billings Regional Landfill Phase 4 Landfill Design, Construction Administration and Related Design and Improvements

In consideration of the mutual promises herein, City of Billings and Great West Engineering, Inc. 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 11 pages (Basic Services of Contractor);

Appendix B consisting of 2 pages (Methods and Times of Payment);

Appendix C consisting of 1 page (Additional Services of Contractor);

Appendix D consisting of 1 page (Schedule of Professional Fees);

Appendix E consisting of 1 page (Project Schedule);

Appendix F consisting of 7 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 her designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" and/or "Contractor" means Great West Engineering, Inc.

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 mylars 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 December 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 ninety-seven thousand DOLLARS (\$297,000.00) in accordance with this Section.
- B. Billings shall pay the Contractor in accordance with 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. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- 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 therefore, 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 and Billings shall pay for services rendered prior to 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 per claim.
- 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. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. 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), e-mail, or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings:	Debi Meling City of Billings Public Works Engineering 2224 Montana Avenue Billings, Montana 59101	e-mail: melingd@ci.billings.mt.us FAX: (406) <u>237-6291</u>
Contractor:	Robert E.Church, PE Great West Engineering, Inc 2501 Belt View Drive Helena, MT 59601	e-mail: rchurch@greatwesteng.com FAX: (406) 449-8631

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 in 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: President Dan McCauley, PE or
Vice President Robert Church, PE

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 District 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 and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or 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, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses 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, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses 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

Mayor

Great West Engineering, Inc.

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST:

IRS Tax ID # 20-2501633

City Clerk

APPROVED AS TO FORM:

Date: _____

By _____
BRENT BROOKS, City Attorney

STATE OF MONTANA

)

:ss.

COUNTY OF LEWIS AND CLARK

)

On this ____ day of _____, 2009, 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 Helena, Montana
My Commission Expires: _____

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

Appendix A

Basic Services of Contractor

Section 1. Contractor's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor'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 Contractor 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. Contractor'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 Contractor 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 Contractor. 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 Contractor'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 Contractor. For this project the Task Director designated for the Contractor is Robert E. Church, PE working under the Principal-in-Charge, Daniel M. McCauley, PE.

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. Billings shall provide general inspection as necessary and pre-determined and coordinated with Contractor (Contractor will be responsible for all specialty inspections and other inspections as specifically designated in this contract or as coordinated with City).
- B. Name a Task Director who shall be the liaison between the Contractor and Billings. For this project, the Task Director designated is Will Robbins, City Staff Engineer.

Section 3. Scope of Work.

TASK 1 – PHASE 4 LANDFILL CELL PRELIMINARY DESIGN

A. Surveying/Mapping

The Contractor shall conduct a detailed topographic survey of the Phase 4 expansion area. The survey will be used to prepare a detailed design level base map of the project area.

B. Evaluate Cell Design Alternatives

The Contractor shall evaluate alternatives for the cell design within the framework of the Master Plan work that has already been completed to date. Design alternatives will be evaluated and discussed with City staff and a preferred alternative selected.

C. Draft Design Submittal

The Contractor shall prepare the necessary plans and report to be submitted to the local and State officials for the proposed expansion cell. The plans shall delineate the location of the new cell, proposed drainage ditches, on-site access roads and typical sections and details delineating the liner and leachate collection system, and cell base contours. It is anticipated the City will use the same liner design section as was utilized in the cell 3 expansion.

D. QA/QC Plan

The Contractor will prepare a Quality Assurance/Quality Control (QA/QC) plan for the construction of the Phase 4 cell expansion. The QA/QC plan will describe the quality assurance measures to be implemented during construction to insure the project is

constructed properly in accordance with the plans and specifications. The QA/QC plan will be submitted to the DEQ for approval.

TASK 2 - PHASE 4 LANDFILL CELL ALTERNATIVE LINER DEMONSTRATION & HYDROGEOLOGIC & SOILS STUDY

The landfill expansion will require the preparation of an alternative liner demonstration and hydrogeologic and soils study. Soils testing and field investigations already completed on the site from previous work will be utilized to the extent possible. However, some additional investigations will be necessary to ascertain the characteristics of subsurface of materials in the Phase 4 area.

A. Data Review

Existing reports and data will be reviewed to determine the types of information available for completing the liner-related design and evaluation. Types of information which will be compiled include groundwater elevations, groundwater flow direction, aquifer characteristics, soil types, soil permeabilities, and soil density tests. Cost estimates for this item are based on maximum use of the existing available data for the site. However, some specific data will need to be obtained from the Phase 4 cell area.

B. Geotechnical Investigations

Two boreholes will be drilled in the Phase 4 expansion area in order to determine the types of materials present and the depth to groundwater in this area. Holes will be logged, samples taken, and laboratory testing conducted on representative samples from the boreholes.

C. Alternative Liner Demonstration

An alternative liner demonstration will be completed in accordance with the Administrative Rules of Montana. It is anticipated the City will utilize the same liner system design for Phase 4 as has been previously approved for Phase 3. Discussions with DEQ staff have indicated that the rationale and modeling utilized for the Phase 3 demonstration will be accepted for the Phase 4 system without any additional modeling as long as the hydrogeologic and soils setting is similar to that found in Phase 3. From the previous work that has been done on site, it is assumed that the hydrogeologic and soils conditions in Phase 4 will be similar or better than that in Phase 3. The deliverables for the task will consist of a draft and final report.

TASK 3 - PHASE 4 LANDFILL CELL FINAL DESIGN, PLANS AND SPECIFICATIONS

A. Final Cell Design

The Contractor shall finalize the design of the proposed new cell delineating the base contours and details of the liner, and leachate collection system. The final design shall

incorporate changes based on the City's and DEQ's review of the preliminary design plans and supporting documentation.

B. Final Site Plan

The Contractor shall finalize the design and location of the on-site roads, ditches, ponds, etc. and prepare a final site plan.

C. On-site Roads

The Contractor shall prepare the design and necessary plans for any access roads needed for the cell.

D. Final Design Report

The Contractor's Scope of Work shall include preparing a Final Design Report and submitting the necessary information along with the plans and specifications to obtain approval from the State DEQ.

E. Permitting

The Contractor will assist the City in applying for and obtaining any required permits.

F. Plans, Specifications and Bid Documents

The Contractor shall prepare and assemble the plans, specifications and bid documents for the items listed above. This package shall be submitted to the Owner and the DEQ for review and comment.

TASK 4 - PHASE 4 LANDFILL CELL BIDDING AND AWARD PROCEDURES

For the work included in Task 4, the Contractor shall provide the necessary work to advertise and receive bids and award construction contract(s). The major tasks shall be as follows:

A. Assistance in Bidding Procedures

The Contractor shall prepare and distribute sufficient copies of plans and specifications to qualified bidders and shall assist the Owner in obtaining competitive bids. The Contractor will address questions from general contractors and prepare addendums, if necessary. The Contractor shall arrange, attend, and conduct a pre-bid conference. Contractor shall review and tabulate all bids and make a recommendation to the Owner on the selection of a general contractor.

The budget does not include attendance at the bid opening by any "out-of-Billings" Contractor personnel.

B. Award & Agreements

Upon award of the bids, the Contractor shall prepare the necessary Agreements, Performance and Payment Bond forms and Notice to Proceed forms for use in awarding the contract.

TASK 5 - PHASE 4 LANDFILL CELL CONSTRUCTION ENGINEERING

After the construction contract has been awarded, the Contractor shall provide the engineering and construction management necessary to assure that the work conforms to the plans and specifications and local, State and Federal requirements. These services shall include:

A. Excavation Staking for City Construction Activities

The City may need intermediate construction staking prior to the letting of the cell liner contract if the City elects to excavate material from Phase 4 prior to letting of the construction contract. The task has two interim surveying trips for construction staking should the City require it.

B. Pre-Construction Conference

The Contractor shall conduct a pre-construction conference to discuss all appropriate details concerning the construction of the improvements with the General Contractor, owner and Local and State officials. An on-site visit will be included.

C. Control Staking

The Contractor shall provide necessary control staking including offset lines, bench marks and other pertinent information to allow the General Contractor to construct the project and the inspector can check and approve the work.

D. Shop Drawings

The Contractor shall review all shop drawings submitted by the General Contractor to assure that all materials, systems and components meet or exceed the specifications.

E. Inspection

The Contractor shall provide inspection for the duration of the construction period. The inspector shall be responsible for construction adhering to the requirements of the plans and specifications. Inspector shall keep daily logs of the work performed and provide to the Owner weekly progress reports. The budget proposed is based on a maximum construction period of 90 calendar days, with one full-time inspector included the entire period.

F. Progress Meetings

The Contractor shall conduct progress meetings as necessary to provide updates to the construction schedule and tasks.

G. Quality Control

The Contractor shall perform the necessary quality control for the installation of the liner and leachate collection system. The fee estimate included in this agreement is based upon a system that includes a compacted liner subgrade, 60 mil HDPE liner, and leachate collection system with all the necessary piping to be installed in the cell. The Scope of Work shall include the following:

1. Inspecting and monitoring the installation of the liner subgrade. Specifications will be written such that the General Contractor will pay for laboratory testing required during construction.
2. Inspection and monitoring installation of HDPE liner and non-woven fabric for liner protection.
3. Inspection of the LCS system elements including inspection and testing of the drainage media, protective soil layer, piping, manholes and other pertinent materials.
4. Preparation of a QA/QC report that summarizes all inspections and tests. The QA/QC report will certify the quality of the work. Copies of the manual shall be submitted to the Owner and State DEQ.

H. Nuclear Density Testing

The Contractor's inspector will provide nuclear density and moisture testing of all compacted subgrade and engineered fill. The Contractor will provide a licensed and calibrated nuclear densometer for density and moisture testing.

I. Requests for Information / Change Orders

The Contractor shall review and respond to Requests for Information (RFIs) received from the Construction General Contractor. Contractor shall recommend and prepare change orders as needed to be approved and processed by the City.

J. Payment Requests

The Contractor shall review each monthly payment request submitted by the General Contractor. Upon approval of each request, Contractor shall coordinate with the Owner for payment.

K. Final Inspection & As-Built Drawings

Upon completion of all work, the Contractor shall conduct a final inspection of the project. Upon approval of all work, the Contractor shall write a letter of acceptance to the Owner. The Contractor shall also prepare "As-Constructed" drawings and submit them to the Owner and applicable State agencies for final approval.

TASK 6 – UPDATE LANDFILL CLOSURE/POST CLOSURE PLAN

The Contractor will update the landfill closure/post-closure plan and submit it to DEQ for review and approval. The Contractor will also update the closure/post-closure cost estimates for the landfill and prepare a report the City can use to insure compliance with the financial assurance requirements.

TASK 7 – CONCRETE SCALE APPROACHES

The Contractor will prepare engineering drawings and specifications for installing inbound and outbound reinforced concrete scale approaches. The Contractor will help the City solicit quotes from qualified concrete contractors in Billings to complete the work. The construction contract amount is expected to be under \$50,000 so a full fledged bidding process is not required. The Contractor will also review shop drawings and submittals and approve them. The Contractor will also conduct periodic inspections during removal of the asphalt, placement of the rebar and during the concrete pour.

TASK 8 – ALTERNATIVE COVER DEMONSTRATION

A. General

The purpose of the alternative cover demonstration is to provide the City a more economical and reliable final cover system for the landfill than the regulatory prescriptive final cover system that would be required for the lined cells the City is currently required to construct. Alternative covers rely on natural soil characteristics, evaporation, and vegetation for the uptake of moisture in comparison to standard regulatory covers which strive to provide a barrier layer against moisture migration. Across the Western U.S. and within Montana, regulators have accepted alternative cover systems as a superior system. The benefits to the landfill owner are considerable. First, an alternative cover will save the City a great deal of money on landfill closure projects. An alternative cover could save the City up to \$50,000 per acre on closure projects. This is a great deal of money considering that the City has over 95 acres of landfill left to close over the remaining life of the site. Second, the alternative cover is much more reliable since it relies on natural on-site soils rather than synthetic materials. The regulatory cover systems have a much higher risk for failures associated with gas buildup under the liner and soil veneer failures. In fact, failure of regulatory covers has been so common that the EPA is actively promoting alternative cover technology for landfills within the Western U.S. Third, approval of an alternative cover will reduce the City's closure/post-closure financial obligations. Great West will develop an alternative cover system design uniquely tailored to the City's landfill site and submit it to the Montana DEQ for review.

B. Preliminary Evaluation

The Contractor will develop a preliminary design proposal for the alternative cover based on a review of on-site soils, climatic conditions, native vegetation, regulatory concerns, etc. The preliminary design will allow the Contractor to determine necessary material quantities so that a preliminary cost and technical feasibility analysis may be performed. The

Contractor will also make a site visit to determine potential borrow locations for the alternative cover soils. During this trip, the Contractor will take up to six (6) soil samples for necessary laboratory testing needed for the demonstration. Out of these six samples, two (2) samples will be used for detailed unsaturated hydraulic soil analysis. The City will provide a backhoe and operator to assist the Contractor in obtaining the soil samples.

C. Soil Testing

The Contractor will send soil samples to a qualified laboratory for necessary soil characteristic testing. There is a standard suite of tests typically conducted for alternative cover evaluations. **The soil testing costs are included in the engineering fees for this task.**

D. Draft Report

The Contractor will conduct the necessary analysis and modeling to demonstrate that the alternative cover proposed for the site meets the Montana DEQ's requirements. This work will include the collection of climatic and vegetation data necessary for the demonstration. The work will also require hiring a vegetation subconsultant to determine the best plant mix for optimizing the performance of the alternative cover. After the Contractor has completed the analysis, the findings will be presented in a draft report. The Contractor will provide the City with five copies of the draft report. This subtask will also include one trip to Billings for the presentation of the report to City staff. The City will review the draft report and City comments on the report will be included in the submittal to the Montana DEQ.

E. Final Report

Preparation of the Final Report will be completed after the Contractor has received comment from the DEQ and the City. The Contractor will work with the DEQ and City to obtain final approval for the alternative cover demonstration.

Task 9 – PHASE 2 LANDFILL CLOSURE - FINAL DESIGN, PLANS, & SPECIFICATIONS

A. Surveying/Mapping

The Contractor shall conduct a detailed topographic survey of the Phase 2 closure area. The survey will be used to prepare a detailed design level base map of the project area.

B. Closure Design Plans

The Contractor shall prepare the necessary plans and report to be submitted to the local and State officials for the proposed closure area. The plans shall delineate the location of the closure area, final grading plan, drainage ditches, on-site access roads and typical sections and details delineating the final cover system.

C. QA/QC Plan

The Contractor will prepare a Quality Assurance/Quality Control (QA/QC) plan for the construction of the Phase 2 closure project. The QA/QC plan will describe the quality assurance measures to be implemented during construction to insure the project is constructed properly in accordance with the plans and specifications. The QA/QC plan will be submitted to the DEQ for approval.

D. QA/QC Plan

The Contractor's Scope of Work shall include preparing a Final Design Report and submitting the necessary information along with the plans and specifications to obtain approval from the State DEQ.

E. Permitting

The Contractor will assist the City in applying for and obtaining any required permits.

F. Plans, Specifications and Bid Documents

The Contractor shall prepare and assemble the plans, specifications and bid documents for the items listed above. This package shall be submitted to the Owner and the DEQ for review and comment.

Task 10 – PHASE 2 LANDFILL CLOSURE - BIDDING SERVICES

For the work included in Task 10, the Contractor shall provide the necessary work to advertise and receive bids and award construction contract(s). The major tasks shall be as follows:

A. Assistance in Bidding Procedures

The Contractor shall prepare and distribute sufficient copies of plans and specifications to qualified bidders and shall assist the Owner in obtaining competitive bids. The Contractor will address questions from general contractors and prepare addendums, if necessary. The Contractor shall arrange, attend, and conduct a pre-bid conference. Contractor shall review and tabulate all bids and make a recommendation to the Owner on the selection of a general contractor.

The budget does not include attendance at the bid opening by any “out-of-Billings” Contractor personnel.

B. Award & Agreements

Upon award of the bids, the Contractor shall prepare the necessary Agreements, Performance and Payment Bond forms and Notice to Proceed forms for use in awarding the contract.

Task 11 – PHASE 2 LANDFILL CLOSURE CONSTRUCTION ENGINEERING

After the construction contract has been awarded, the Contractor shall provide the engineering and construction management necessary to assure that the work conforms to the plans and specifications and local, State and Federal requirements. These services shall include:

A. Excavation Staking for City Construction Activities

The City may need intermediate construction staking prior to the letting of the closure project if the City elects to complete the final grading prior to the final cover installation. The task has two interim surveying trips for construction staking should the City require it.

B. Pre-Construction Conference

The Contractor shall conduct a pre-construction conference to discuss all appropriate details concerning the construction of the improvements with the General Contractor, owner and Local and State officials. An on-site visit will be included.

C. Control Staking

The Contractor shall provide necessary control staking including offset lines, bench marks and other pertinent information to allow the General Contractor to construct the project and the inspector to check and approve the work.

D. Shop Drawings

The Contractor shall review all shop drawings submitted by the General Contractor to assure that all materials, systems and components meet or exceed the specifications.

E. Inspection

The Contractor shall provide both periodic and full time inspection during the project. The construction period will depend on the specific work elements under construction. The inspector shall be responsible for construction adhering to the requirements of the plans and specifications. Inspector shall keep logs of the work performed and provide the Owner weekly progress reports. The budget proposed is based on a maximum construction period of 150 calendar days.

F. Progress Meetings

The Contractor shall conduct progress meetings as necessary to provide updates to the construction schedule and tasks.

G. Quality Control

The Contractor shall perform the necessary quality control for the installation of the final cover system. The fee estimate included in this agreement is based upon the alternative final cover system being a thick monolayer evapotranspiration cap. The Scope of Work shall include the following:

1. Verifying the grade and condition of the final cover subgrade.
2. Inspection and monitoring installation of final cover system components.
3. Inspection of the drainage ditch, topsoil layer and seeding installation
4. Preparation of a QA/QC report that summarizes all inspections and tests. The QA/QC report will certify the quality of the work. Copies of the manual shall be submitted to the Owner and State DEQ.

H. Nuclear Density Testing

The Contractor's inspector will provide nuclear density and moisture testing of all final cover system soil layers. The Contractor will provide a licensed and calibrated nuclear densometer for density and moisture testing.

I. Requests for Information / Change Orders

The Contractor shall review and respond to Requests for Information (RFIs) received from the Construction General Contractor. Contractor shall recommend and prepare change orders as needed to be approved and processed by the City.

J. Payment Requests

The Contractor shall review each monthly payment request submitted by the General Contractor. Upon approval of each request, Contractor shall coordinate with the Owner for payment.

K. Final Inspection & As-Built Drawings

Upon completion of all work, the Contractor shall conduct a final inspection of the project. Upon approval of all work, the Contractor shall write a letter of acceptance to the Owner. The Contractor shall also prepare "As-Constructed" drawings and submit them to the Owner and applicable State agencies for final approval.

ADDITIONAL SERVICES

Additional services that are outside the scope of this budget are listed in Appendix C of the contract.

City Staff Requirements:

We will work closely with Solid Waste Division staff throughout the entire project and actively solicit ideas and comments from the staff as we develop the plan. However, the actual time demands of City staff for this project will be minimal. We will need the City to provide copies of all the necessary records, and we will need staff to be available for site tours and interviews. We

also expect that key staff will review and comment on draft deliverables during the course of the project. Finally, it is possible that City equipment and an operator may be needed in the event that additional site soils investigations become necessary during the project.

Current billing rates are attached in Exhibit D.

Appendix B

Methods and Times of Payment

Section 4. Payments for Basic Services.

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

Partial payment shall be made to the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Contractor. Billings shall deduct five percent (5%) from each monthly pay estimate. Partial release of retainage may be requested upon completion of milestone tasks. 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, Appendix A, the Contractor shall be paid based upon actual time accrued, but not to exceed the following amounts:

- | | |
|-------------|---|
| 1) \$43,000 | Task 1: Phase 4 Landfill Cell Preliminary Design

Task 2: Phase 4 Landfill Cell Alternative Liner Demonstration and Hydrogeologic & Soils Study |
| 2) \$26,000 | Task 3: Phase 4 Landfill Cell Final Design, Plans & Specifications

Task 4: Phase 4 Landfill Cell Bidding and Award Procedures |
| 3) \$72,000 | Task 5: Phase 4 Landfill Cell Construction Engineering |
| 4) \$43,000 | Task 6: Update Landfill Closure / Post Closure Plan

Task 7: Concrete Scale Approaches—Design, Solicit Quotes, Award, Construction Engineering

Task 8: Phase 2 Closure—Alternative Cover Demonstration |
| 5) \$55,000 | Task 9: Phase 2 Closure—Final Design, Plans & Specifications

Task 10: Phase 2 Closure—Bidding and Award Procedures |
| 6) \$58,000 | Task 11: Phase 2 Closure—Construction Engineering |

\$297,000

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

Section 5. 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 6. Corrections.

Costs of Billings's work that are required for corrections to the Contractor's work which requires redoing by Billings shall be deducted from any payments due the Contractor, if the Contractor 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 Contractor's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

Appendix C

Additional Services of Contractor

Extra Services of the Contractor will be paid only with written prior authorization by Billings. Any work desired by the City on these task items will be negotiated with the City on a task by task basis:

- A. Field and laboratory testing of materials and reports other than those that are specifically outlined in the scope.
- 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.
- C. Tier II air emissions testing or analysis.
- D. Stormwater SWPPP or discharge permit updates.
- E. Operations & Maintenance Plan.
- F. Laboratory testing of liner materials.
- G. Additional services not specifically listed in Tasks 1-11 in Appendix A.

Appendix D

Schedule of Professional Fees

SCHEDULE OF BILLING RATES*	
	<u>Hourly Rate</u>
Clerical Support	\$ 47
Project Assistant	53
Project/Marketing Coordinator	58
Grant Administrator 1	60
Grant Administrator 2	90
Office Manager	80
Engineering Intern	70
Construction Inspector 2	88
CADD Operator/Designer	80
Senior CADD Operator/Designer	83
Engineer 1	78
Engineer 2	83
Engineer 3	88
Land Surveyor	90
Senior Technician/Planner	88
Senior Hydrogeologist	93
Senior Designer	98
Project Manager 1	98
Project Manager 2	115
Project Manager 3	120
Project Manager 4	130
Senior Project Manager	145
Principal/Project Manager	160
Reimbursable Expenses include but are not limited to:	
Auto Mileage	\$.65/mile
Outside Consultants	1.10 x Cost
Shipping & Delivery	1.10 x Cost
Fees & Permits	1.10 x Cost
Supplies	1.10 x Cost
Travel and Per Diem	1.10 x Cost

*These rates are effective January 1, 2009. They are subject to update in January, 2010.

Appendix E

Project Schedule

Based on a notice to proceed by Billings dated no later than February 1, 2009, the targeted completion date for the Contractor's work through final design shall be:

- H. Task 1—Submit Design to DEQ for Phase 4: May 15, 2009
- I. Task 3—Final Design of Phase 4: July 15, 2009
- J. Task 4—Phase 4 Construction Award: September 1, 2009
- K. Task 6—Update of Closure / Post Closure Plan: November 15, 2009
- L. Task 8—Submit Alternative Final Cover Demonstration to DEQ: July 1, 2009
- M. Task 10—Phase 2 Closure Construction Award: July 15, 2010

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 Contractor is behind on this Contract due to no fault of Billings, then the Contractor 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

See attached certificates of Insurance (6 pages).

Client#: 69252

GREATWES4

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/09/08
PRODUCER Montana International Ins. A Member of Payne Financial Group P.O. Box 6127 Helena, MT 59604-0638		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 Great West Engineering, Inc. P. O. Box 4817 Helena, MT 59604		INSURERS AFFORDING COVERAGE INSURER A: American Zurich INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #

COVERAGES

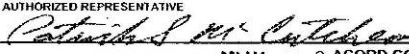
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES 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	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
		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-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		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 AUTO ONLY: EA ACC \$ 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 STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		OTHER Professional	EOC925904801	03/25/08	03/25/09	2,000,000 25,000 Deductible

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

Re: Project Name is Billings Phase 4 Landfill Design.

Notification due to non-payment of premium will always be 10 days.

CERTIFICATE HOLDER

City of Billings 210 N. 27th St. PO Box 1178 Billings, MT 59103	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 
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#S356252/M324975

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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.

Client#: 69252

GREATWES4

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/09/08
PRODUCER Montana International Ins. A Member of Payne Financial Group P.O. Box 6127 Helena, MT 59604-0638		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 Great West Engineering, Inc. P. O. Box 4817 2501 Beltview Helena, MT 59604		INSURERS AFFORDING COVERAGE INSURER A: Travelers Indemnity Company INSURER B: Travelers Indemnity Co. of America 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.

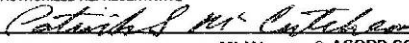
INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	68089475M764	11/21/08	11/21/09	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 \$2,000,000 PRODUCTS - COM/PROP AGG \$2,000,000
B	AUTOMOBILE LIABILITY <input checked="" 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 GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	BA8645M819	11/21/08	11/21/09	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	CUP1848T083	11/21/08	11/21/09	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$ WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	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

Re: Project Name is Billings Phase 4 Landfill Design.
 City of Billings is named as an Additional Insured.
 Waiver of Subrogation in favor of Certificate Holder.
 10 Day Notice of Cancellation in the event of Non Payment of Premium.

CERTIFICATE HOLDER

CANCELLATION

City of Billings 210 N. 27th St. PO Box 1178 Billings, MT 59103	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 
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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.

Client#: 69252

GREATWES4

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/09/08
PRODUCER Montana International Ins. A Member of Payne Financial Group P.O. Box 6127 Helena, MT 59604-0638		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 Great West Engineering, Inc. P. O. Box 4817 Helena, MT 59604		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: Montana State Fund		
INSURER B:		
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 ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	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-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP AGG \$	
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	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 \$ \$ \$ \$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	033026949	03/27/08	03/27/09	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000	

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

Re: Project Name is Billings Phase 4 Landfill Design.

CERTIFICATE HOLDER

City of Billings
 210 N. 27th St.
 PO Box 1178
 Billings, MT 59103

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 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 2

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IMPORTANT

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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).

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ACORD 25-S (2001/08) 2 of 2

#S356250/M355007

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

SUBJECT: Contract for Billings Adult Misdemeanor DUI Court Probation Officer
DEPARTMENT: Municipal Court
PRESENTED BY: Mary Jane Knisely, Municipal Court Judge

PROBLEM/ISSUE STATEMENT: The Billings Adult Misdemeanor DUI Court (BAMDUI) must establish a contract with a local agency to provide a Probation Officer for supervision/probation of the participants, administer random urinalysis and breath testing, administer and monitor alcohol/drug testing and GPS surveillance, verify employment or track job search efforts, and act as a liaison with the Court and Law Enforcement. Such services are used to monitor court participants for compliance with sentencing orders issued by the Court. After completing the RFP process, Community Solutions, Inc. was selected to provide a Probation Officer for the Billings Adult Misdemeanor DUI Court.

ALTERNATIVES ANALYZED:

- Approve the contract with Community Solutions, Inc.
- Do not approve the contract with Community Solutions, Inc.

FINANCIAL IMPACT: NO FINANCIAL IMPACT. The City of Billings accepted a one-year grant in the amount of \$170,895 from the Montana Department of Transportation in December of 2008. Funds in the amount of \$47,600 are included in the grant for SCRAM units, alcohol screening & testing. Alcohol and drug testing fees in the amount of \$30.00 per week are paid directly to the DUI Coordinator by the participant. Total amount estimated to be paid to provider by BAMDUI participants is \$30,000 during the contract period.

RECOMMENDATION

Staff recommends that Council approve the contract with Community Solutions, Inc. to provide services to BAMDUI from January 1, 2009, through September 31, 2009, with the right to negotiate an extension of two years.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A - Contract for Professional Services

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of January, 2009 by and between the **CITY OF BILLINGS (BILLINGS MUNICIPAL DUI COURT), MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, hereinafter referred to as “City (BMDUIC),” and, Community Solutions, Incorporated, hereinafter referred to as “Consultant.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City (BMDUIC) agrees to utilize Consultant as an individual service provider to perform probation services to the Billings Municipal DUI Court described in the Scope of Services and on an individual referral basis.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the 30th day of September, 2009.

3. **Scope of Work:** Consultant will perform the work and provide the services below.

a) Misdemeanor Probation/Supervision:

Pursuant to MCA 46-23-1012, Consultant agrees to provide client supervision services to those clients who participate in the Billings Municipal DUI Court program. All Consultant’s probation officers are certified through the Montana Law Enforcement Academy according to state statutory requirements Consultant agrees to maintain a probation officer on the BMDUIC team and follow all training and guidelines set forth by the team. Consultant agrees to maintain all client files relating to supervision while under the jurisdiction of the Billings Municipal DUI Court.

b) Auxiliary Services (as needed):

Consultant agrees to provide auxiliary services to the BMDUIC on an as needed basis determined by the BMDUIC team (ie. anger management, drug and alcohol testing, MRT, electronic monitoring, ignition interlock, chemical dependency treatment, etc.). These programs/ services will be provided to the BM on a ‘fee for service’ basis and billed to BMDUIC unless other arrangements have been made.

4. **Payment:** All cost(s) associated with the above position and services will be billed to the Billings Municipal DUI Court. Consultant will provide BMDUTC with monthly invoices by the 5 of every month. Payment shall be made by the BMDUIC within 5 days of receipt.

5. **Independent Service Provider Status:** The parties agree that Consultant is an independent service provider for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Consultant is not subject to the terms and provisions of the City’s personnel policies handbook and may not be considered a City employee for workers’ compensation or any other purpose. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Consultant shall maintain workers' compensation coverage for all members and employees of Consultant's business, except for those members who are exempted by law.

Consultant shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: Consultant agrees to indemnify defend and save the City, its officers, agents and employees harmless from any and all claims, losses, damages, judgments, and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent acts or omissions on the part of Consultant or Consultant's agents or employees.

For this purpose, Consultant shall provide City with proof of Consultant's commercial general liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim and \$1.5 million for each occurrence. Consultant agrees to include the City as an 'additional insured' within its general liability insurance policy and provide documentation to that effect to the City.

Consultant shall also maintain professional Liability insurance in the minimum amount of \$1.5 million per claim during the term of this agreement.

7. Professional Service: Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner.

8. Compliance with Laws: Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations. Consultant agrees to purchase a City business license.

9. Nondiscrimination: Consultant agrees that all hiring by Consultant of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

10. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

11. Modification and Assignability: This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights,

including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

12. Liaison: City's designated liaison with Consultant is Melinda Balter, Municipal Court Administrator and Consultant's designated liaison with City is Greg A. Pohle, President-CSI.

13. Applicability: This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

By _____
Ron Tussing, Mayor

CONSULTANT

By _____
Name _____
Title _____

APPROVED AS TO FORM

By _____
Brent Brooks, City Attorney

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Acceptance of Contract with Montana Department of Transportation for FY 2009 Operating Assistance through the Federal Transit Administration Section 5316 JARC Grant Program

DEPARTMENT: Aviation and Transit Department

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

PROBLEM/ISSUE STATEMENT: The City of Billings MET Transit Division was eligible this year to apply for new federal grant operating assistance funds (Section 5317 JARC – Job Access Reverse Commute Program) to help supplement operating expenses for paratransit service to the low-income disabled citizens of Billings. In past years the MET has contracted with the Department of Public Health and Human Services (DPHHS) and other social service agencies to provide transportation to and from work sites and training programs for the disabled low-income/welfare residents of Billings. However, due to recent funding changes from DPHHS, the MET has sought to receive supplemental funding to help continue to provide this valuable transportation service. The acceptance of this contract with the Montana Department of Transportation will provide reimbursement of \$90,000 of operating expenses to the MET on a 50% grant, 50% local basis for FY 08/09. Sufficient eligible operating dollars are contained in the budget so no additional revenue for the match is needed.

The MET will pursue this grant revenue again next year; however, these funds are allocated by the State on a year by year basis so continued funding is unknown at this time.

FINANCIAL IMPACT: This contract will allow the MET to access \$90,000 in grant revenue to help offset paratransit operating expenses for the disabled low-income citizens of Billings.

RECOMMENDATION

Staff recommends that Council approve and the Mayor execute the attached Section 5316 Operating Contract with the Montana Department of Transportation for paratransit operating assistance through the Federal Transit Administration JARC Program.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A – Section 5316 Operating Contract

SECTION 5316 OPERATING CONTRACT
CFDA #20.516 – Job Access Reverse Commute

THIS Contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana (State) and City of Billings – Aviation and Transit Department - MET Transit Division, PO Box 1178, Billings, Montana 59101 (Grantee). Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Ron Wenger.

The State, having been allocated grant monies from the Federal Transit Administration (FTA), through Section 5316 of the Federal Transit Act for the Federal Fiscal Year of 2009 (October 1, 2008 – September 30, 2009), as amended, and desiring to assist the Grantee, enters into the following Contract with Grantee. Actual award is contingent upon the availability of FTA funding.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance for the Grantee to implement Job-Access Reverse Commute (JARC) transit services.

SECTION 1.2 Scope of Project. Grantee shall implement a JARC system in accordance with the budget, goals and plans outlined in its 2009 Operating Application, Transportation Development Plan (TDP) and in accordance with the regulations of the Section 5316 program. The Grantee shall use its best efforts to efficiently and economically complete the Project.

SECTION 1.3 Project Description. Reimbursement of JARC urban operating expenses described in Grantee's Application for the period July 1, 2008 through June 30, 2009.

SECTION 1.4 Period of Performance. This Contract will be effective from January 1, 2009 to June 30, 2009.

SECTION 1.5 Cost of Project. The total cost of the Project shall be \$180,000.00. The cost of the Project shall be shared as follows:

50% Federal Share	\$ 90,000.00
50% Local Match	\$ 90,000.00
	\$180,000.00

The Grantee agrees to provide matching funds to assure payment of Project costs. Grantee shall provide these funds when necessary to meet Project costs. The Grantee will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State.

Up to one-half of the Grantee share for capital, administrative, and operating expenses may be provided from unrestricted federal funds. At least one-half of the Grantee share must be from sources other than federal funds.

State will make quarterly grant payments to Grantee based upon the State's approval of reports and invoices submitted by the Grantee.

SECTION 1.6 Purchase of Project Equipment. The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the Uniform Administration Requirement for Grant and Cooperative Agreement to State and Local Government (49 CFR PART 18). PROJECT equipment shall be purchased in conformity with the latest approved Cost of Project as shown in Section 1.5.

SECTION 1.7 Title to Project Equipment. The Grantee shall hold title to Project equipment. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in Project equipment.

SECTION 1.8 Use of Project Equipment. The Grantee shall use Project equipment for transportation service described in the Project Application and in compliance with FTA Circular 9050.1. If any Project equipment is no longer needed for this service, the Grantee shall immediately notify the State and the State shall dispose of such Project equipment.

SECTION 1.9 Maintenance. During the contract period Grantee shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. This includes but is not limited to lifts, securement devices, elevators and signage. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project vehicle covered under this agreement, after proper application by Grantee and approval by the State.

SECTION 1.10 Insurance. During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the federal share portion of Project facilities and equipment. Grantee will furnish proof of such insurance for the State's approval.

SECTION 1.11 Records, Reports and Information Access.

1.11.1 Recordkeeping. The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances, and such records as the State and the Federal Transit Administration (FTA) may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

1.11.2 Reporting. Grantee shall advise the State in writing of Project progress at such times and in such manner as the State and FTA may require, but not less than on a quarterly basis.

1.11.3 Information Access. The Grantee shall permit the State, FTA, or their authorized representatives, to inspect all vehicles, facilities and equipment purchased for the Project, and all transportation services provided through the Project. The Grantee shall also permit the above-named persons to examine the books, records, data and accounts pertaining to the Project.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Grantee shall account for any Project property in its possession.

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this Agreement, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance

This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Transit Administration.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Agreement, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FTA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of the Grantee's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The Grantee's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on

this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Prohibition Against Use of Federal Funds for Lobbying. The Grantee or its subcontractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508, 7324-7326 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, et seq., and/or 49 U.S.C. 5307(n)(1), as may be deemed by FTA to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No State Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Elderly and Handicapped. The Grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The Grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 3.19 Buy America Provision. The Grantee agrees that, in its execution of this Contract, it will comply with the requirements of 49 U.S.C. 5323(j), with the FTA regulations "Buy America Requirements at 49 CFR part 661, and with any implementing guidance that the FTA may issue.

SECTION 3.20 Pre-award and Post-delivery Audit. The Grantee shall comply with any regulations that may be issued to implement 49 U.S.C. 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

SECTION 3.21 School Bus Operations. The Grantee, or any operator of mass transportation acting on its behalf, shall not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided under 49 U.S.C. 5323(f) and applicable regulations, "School Bus Operations," set forth at 49 C.F.R. Part 605, as amended. Any school bus agreement entered into under these regulations is incorporated into this Contract by reference.

SECTION 3.22 Charter Service Operations. The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

SECTION 3.23 Air Pollution. No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the grantee obtains satisfactory assurances that they are (or will be) designed and equipped to limit air-pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s), appropriate FTA directives and all other applicable standards.

SECTION 3.24 Energy Conservation. The Grantee and its third party contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.).

SECTION 3.25 Federal Changes. Grantee shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Grantee's failure to so comply shall constitute a material breach of this contract.

SECTION 3.26 Authority. The Grantee warrants that it has the lawful authority to enter this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Agreement, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this Agreement on behalf of Grantee.

SECTION 3.27 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein withstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Grantee shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

SECTION 3.28 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Grantee is solely responsible for its lawful compliance with them.

SECTION 3.29 Drug and Alcohol Compliance. The Grantee shall comply with USDOT Federal Transit Administration drug and alcohol rules as established in the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace act. Grantee understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 3.30 Privacy Act. The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

SECTION 3.31 Audit Requirement. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee will provide the MDT Transit Section with a copy of the audit report for each fiscal year FTA funds are received by the Grantee.

SECTION 3.32 Coordination. The recipient of any capital project purchased through this program certifies: (1) the projects selected were derived from a locally developed and coordinated public transit and human services transportation plan; (2) the plan was developed through a process that included representatives of public, private and nonprofit transportation and human services providers as well as the general public; and (3) vehicle use and location is identified in the planning document and will not be altered without the prior written permission of the Montana Department of Transportation. Should the recipient of any capital project withdraw from the coordinated plan, the ownership of any vehicle purchased under the plan shall revert back to the State or the State will be reimbursed full cost of the capital.

SECTION 3.33 FTA Master Agreement The Grantee understands that this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the Grantee or its project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(12) at the FTA website <http://www.fta.dot.gov/documents/13-Master.doc>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements.

The Grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 4. NON-DISCRIMINATION NOTICE

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

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

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

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

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

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

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

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF BILLINGS – AVIATION AND TRANSIT DEPARTMENT – MET TRANSIT
DIVISION

BY: _____

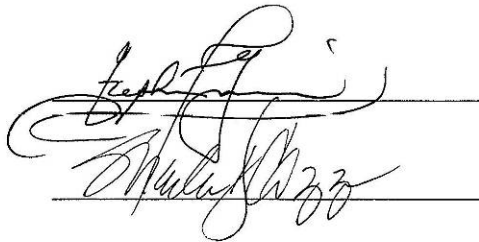
DATE: _____

MONTANA DEPARTMENT OF TRANSPORTATION

BY: _____
Sandra S. Straehl, Administrator

DATE: _____

Approved for Legal Content by:

A handwritten signature in black ink, appearing to be "L. J. [unclear]", written over a horizontal line.

Approved for Civil Rights Content by:

A handwritten signature in black ink, appearing to be "M. [unclear]", written over a horizontal line.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Supplemental Lease Agreement #4 to Terminal Building Lease with Transportation Security Administration

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Transportation Security Administration (TSA) has been an Airport tenant since 2004. Due to changing needs, the TSA wishes to revise and increase the space it currently leases in the Airport's Terminal Building. Currently, the TSA leases 1,802 square feet of office space on the main and second floors of the Terminal. They will be releasing Room 219, which they currently occupy on the second floor, in exchange for Rooms 200 and 206, also on the second floor. TSA will release most of the space it currently has on the main floor, with the exception of 524 square feet it added on November 13, 2007. The net increase in space is 683 square feet. Additionally, the TSA has requested an extension of the term of the Lease, which is scheduled to expire on May 31, 2009. This action requires that the Lease be amended via Supplemental Lease Agreement #4 (SLA#4) to: (1) reflect the new total square footage of 2,485 square feet, (2) change the description of the leased space, and (3) extend the term an additional three (3) years. SLA#4 will become effective February 1, 2009.

FINANCIAL IMPACT: The Lease amendment will generate an additional \$21,412.05 per year, for a total of \$77,903.34 per year of revenue for the City's Airport.

RECOMMENDATION

Staff recommends that Council approve Supplemental Lease Agreement #4 to the Terminal Building Lease with the U.S. Government for the benefit of the Transportation Security Administration (TSA), adding space and extending the term to May 31, 2012.

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Beartooth R C & D Memorandum of Understanding
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City of Billings annually approves a Memorandum of Understanding (MOU) with the Beartooth RC&D Economic Development District (District). The 2008 agreement was approved by Council on January 28, 2008. The District is presenting the 2009 MOU for Council consideration. The District also plans to report on its 5 year Economic Development Strategy.

The MOU and the funding provided by the City (\$9,003) ensures the City's participation in and access to the District's economic development/grant writing service. For example, the District; 1) assisted the City with the grant that allowed the relocation of the Edwards Street Center, which permitted Sysco's expansion and creation of the Billings Operations Center on Midland Road, 2) planning and financing for the Trans Tech Center, 3) grant and planning for Grains of Montana and 4) the Billings BEAR program. The City appoints one member to the District and that position is presently occupied by Councilmember Veis.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the MOU (and funding)
- Disapprove the MOU

FINANCIAL IMPACT: The 2009 assessment is \$9,003. The City budgeted \$8,500 for this expense. The overage will not require a budget amendment.

RECOMMENDATION

Staff recommends that Council approve the Beartooth RC&D Economic Development District Memorandum of Understanding.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

A: Memorandum of Understanding

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING
between
Yellowstone County Commissioners
and
the Beartooth RC&D Economic Development District

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of _____, 2009, by and between the **Beartooth RC&D, Economic Development District**, whose principal business address is P.O. Box 180, Joliet, Montana 59041, hereinafter referred to as “Beartooth RC&D” and **Yellowstone County Commissioners (in cooperation with the City of Billings, City of Laurel, and Big Sky EDA)**, and hereinafter referred to as “**the Entity**”.

WHEREAS, The Beartooth RC&D has been formally recognized by the U.S. Department of Commerce, Economic Development Administration (EDA) as a designated Economic Development District (EDD), and As a District, the Beartooth RC&D has been awarded funding to carry out its Comprehensive Economic Development Strategy (CEDS). This funding will provide a staff person, administrative support and operating costs. This is a continual grant, renewable based on successful program operation and availability of federal funds. Local match is required.

WHEREAS, Each entity participating in the District will designate a representative and an alternate to the regional Economic Development Committee. This individual will convey the needs and development goals of the local entity to the committee. Regular meetings will be held every two months to assess project status, assign workload and evaluate progress.

NOW THEREFORE IT IS UNDERSTOOD AS FOLLOWS:

ARTICLE 1: SCOPE OF WORK:

Beartooth RC&D employs an Economic Development Coordinator to assist in Economic Development efforts in the region. The Coordinator’s time will be allocated consistent with the goals in the Comprehensive Economic Development Strategy by the regional Economic Development Committee. The Committee is composed of one representative and an alternate from Big Horn, Carbon, Stillwater, Sweet Grass and Yellowstone Counties, Crow Tribe and Big Sky Economic Development Authority. Input to this Committee by local entities is essential for obtaining the services of the Coordinator.

Higher priority will be assigned projects of regional scope or projects with strong local leadership. Grant funding for this position is from EDA, therefore, emphasis will be on regional economic development planning and projects which have a correlation to job creation. Matching funds are from participating entities and emphasis will be placed on their specified projects.

Specific items of work for this project year are detailed in the attached “Annual Report and Update”. It is understood that this Annual Report will be presented each year.

Annual Evaluation:

The performance of the Economic Development Coordinator will be evaluated annually by local entities participating on the regional Economic Development Committee. Progress and/or accomplishments on each program/project will be evaluated to ensure resources are being utilized in the most effective and efficient manner possible.

ARTICLE 2: PERIOD OF PERFORMANCE:

The term of this Memorandum of Understanding shall be from the date it is signed through **December 31, 2009**, unless extended by mutual agreement by both parties. Such extension must be in writing, signed by authorized representatives of both parties, and made a part of the original Memorandum of Understanding by modification reference. This Memorandum of Understanding supersedes the prior Memorandum for participation in the Economic Development District.

ARTICLE 3: PAYMENT:

The Entity’s annual contribution will be \$3,500 as a “Membership” fee plus a per capita assessment of **.1537** cents per person. These funds will provide the necessary match to obtain the **\$52,000** in federal funds. Entities who do not participate financially in the match requirement will not receive services from the Economic Development Coordinator. The calculated fee for **Yellowstone County** is **\$25,008** this figure is based from the **\$3,500** county fee plus **\$21,508** based on a per capita formula whereby a population of **139,936** was used from the 2007 Census population estimate. Yellowstone County’s full payment of **\$25,008** will be separated into a four-way payment system. Each entity within the county will pay a percentage (%) similar to the previous year. Big Sky EDA- 34% or **\$8,503**, City of Billings- 36% or **\$9,003**, City of Laurel- 6% or **\$1,500**, and Yellowstone County- 24% or **\$6,002**.

Each year in January, the Beartooth RC&D/EDD staff will provide a comprehensive report of the past year’s activity. A new Memorandum of Understanding will be prepared and a request for the following year’s match submitted. Entities will be billed for match funds on or about November 1st.

Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment, and incidentals necessary to complete the.

ARTICLE 4: EXAMINATION OF RC&D RECORDS:

The Entities or their representatives shall have the right to examine any books, records, or other documents of the Beartooth RC&D directly relating to costs when such costs are the basis of compensation hereunder.

ARTICLE 5: OWNERSHIP AND USE OF DOCUMENTS:

Reproducible copies of all documents and other materials produced by the Beartooth RC&D in connection with the services rendered under this memorandum of understanding shall be provided to the Entity for the Entity's use whether the project for which they are made is executed or not. The Beartooth RC&D shall be permitted to retain originals, including reproducible originals, of drawings and specifications for information, reference and use in connection with Beartooth RC&D's endeavors.

ARTICLE 6: WARRANTY:

The Beartooth RC&D warrants that all services performed herein shall be performed using that degree of skill and care ordinarily exercised in and consistent with generally accepted practices for the nature of the services and shall conform to all requirements of this Memorandum of Understanding.

ARTICLE 7: SAFETY:

The Beartooth RC&D agrees to fully comply with the Occupational Safety and Health Act of 1970, all regulations issued there under and all state laws and regulations enacted and adopted pursuant thereto. The Beartooth RC&D shall take all necessary precautions in performing the services hereunder to prevent injury to persons or damage to property.

ARTICLE 8: APPLICABLE LAW:

This Memorandum of Understanding shall be governed in all respects by the laws of the State of Montana. No changes, amendments or modifications of any of the terms and conditions hereof shall be valid unless agreed to in writing. Venue of any proceeding arising hereunder shall be the Thirteenth Judicial District.

ARTICLE 9: COMPLIANCE WITH LAWS:

The Beartooth RC&D shall in performing the services contemplated by this Memorandum of Understanding, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Memorandum of Understanding.

ARTICLE 10: CHANGES:

The parties, by mutual agreement, may, at any time during the term of this Memorandum of Understanding and without invalidating the Memorandum of Understanding, make changes within the general scope of the Memorandum of Understanding. The Beartooth RC&D agrees to perform such changed services. The Entity's priority list for project work within their county can be changed at any time. In such case, Beartooth RC&D will be informed of this change at the Entity's earliest convenience.

ARTICLE 11: TERMINATION:

This Memorandum of Understanding may be terminated in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Memorandum of Understanding through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon such termination the Entity shall pay the Beartooth RC&D amounts due and unpaid for services rendered as of the effective date of termination, and the Beartooth RC&D shall provide to the Entity all materials, surveys, reports, data, and other information performed or prepared as of such date.

ARTICLE 12: INDEMNIFICATION:

The Beartooth RC&D agrees to and does hereby indemnify and save the Entities, their officers, officials and employees, harmless against and from:

1. Any and all claims and liabilities, including but not limited to costs, expenses, and attorney fees arising from injury to, or death of, persons (including claims and liabilities for care or loss of services in connection with any bodily injury or death) and including injuries, sickness, disease, or death to Beartooth RC&D employees occasioned by a negligent act, omission, or failure of the Beartooth RC&D;
2. Any and all claims and liabilities, including costs and expenses, for loss or destruction of or damage to any property belonging to the Beartooth RC&D or the Entities caused by a negligent act, omission, or failure of the Beartooth RC&D and;
3. Any fines, penalties, or other amounts assessed against the Entities by reason of the Beartooth RC&D's failure to comply with all health, safety, and environmental laws and regulations applicable to the services; resulting directly or indirectly from, or occurring in the course of the Beartooth RC&D's performance of the services. However, this indemnity shall not extend to claims and liabilities for (i) injury or death to persons or (ii) loss of or damage to property to the extent that these claims and liabilities result directly from the Entity's negligence or willful misconduct.

ARTICLE 13: INSURANCE:

The Beartooth RC&D shall maintain and demonstrate the following types of insurance:

1. The Beartooth RC&D agrees that its employees and particularly the employees designated to work on this memorandum of understanding are covered by applicable Worker's Compensation provisions. The Beartooth RC&D further agrees that if the Entities should legally incur any costs whatsoever under the Worker's Compensation laws by reason of the Beartooth RC&D employees' injury or death while engaged in the contract work, the RC&D will

indemnify and hold harmless the Entities' for such costs which the Entities' may be legally be required to pay to employees of the Beartooth RC&D.

2. Comprehensive general liability insurance for bodily injury, death, or loss of or damage to property of third persons or other liability due to the negligent acts of the Beartooth RC&D in the minimum amounts of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage. Proof of coverage as required by this section shall be delivered to the Entity within fifteen (15) days of execution of this Agreement.

3. Professional liability errors and omissions insurance in a minimum amount of \$100,000.00.

ARTICLE 14: NONDISCRIMINATION:

The Beartooth RC&D will not discriminate against any employee or applicant for employment relating to this project on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin. All hiring associated with any project shall be on the basis of merit and qualifications related to the requirements of the particular position being filled.

ARTICLE 15: INDEPENDENT CONTRATOR:

The Beartooth RC&D and the Entity agree that the Beartooth RC&D is an independent contractor with respect to the services provided pursuant to this Memorandum of Understanding. Nothing in this Memorandum of Understanding shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Beartooth RC&D nor any employee of the Beartooth RC&D shall be entitled to any benefits accorded Entity employees by virtue of the services provided under this Memorandum of Understanding. The Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state Worker's Compensation program, nor shall the Entity be deemed in any way to assume the duties of an employer with respect to the Beartooth RC&D, or any employee of the Beartooth RC&D.

ARTICLE 16: ASSIGNMENT:

The Beartooth RC&D shall not sublet or assign any of the services covered by this Memorandum of Understanding without the express written consent of the Entity.

ARTICLE 17: NON-WAIVER:

Waiver by the County of any provision of this memorandum of understanding or any time limitation provided for in this memorandum of understanding shall not constitute a waiver of any other provision.

ARTICLE 18: NOTICES:

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

COUNTY: Yellowstone County
P.O. Box 35000
Billings, MT 59107

RC&D: Beartooth RC&D
P.O. Box 180
Joliet, MT 59041

ARTICLE 19: INTEGRATED AGREEMENT:

This Memorandum of Understanding together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

YELLOWSTONE COUNTY COMMISSIONERS

BEARTOOTH RC&D/EDD

Jim Reno

Charles E. Egan, Chairman

Bill Kennedy

John Ostlund

ATTEST: _____ Date: _____

ARTICLE 18: NOTICES:

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

ENTITY: **Big Sky EDA**
 222 N. 32 St Suite 200
 Billings, MT 59101

RC&D: **Beartooth RC&D**
 P.O. Box 180
 Joliet, MT 59041

ARTICLE 19: INTEGRATED AGREEMENT:

This Memorandum of Understanding together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

BIG SKY EDA

BEARTOOTH RC&D/EDD

Steve Arveschoug
Executive Director

Charles E. Egan
Chairman

ARTICLE 18: NOTICES:

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

ENTITY: **City of Billings**
 210 N. 27th Street
 Billings, MT 59101

RC&D: **Beartooth RC&D**
 P.O. Box 180
 Joliet, MT 59041

ARTICLE 19: INTEGRATED AGREEMENT:

This Memorandum of Understanding together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

CITY OF BILLINGS

BEARTOOTH RC&D/EDD

Ron Tussing
Mayor

Charles E. Egan, Chairman

ARTICLE 18: NOTICES:

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

ENTITY: **City of Laurel**
 P.O. Box 10
 Laurel, MT 59044

RC&D: **Beartooth RC&D**
 P.O. Box 180
 Joliet, MT 59041

ARTICLE 19: INTEGRATED AGREEMENT:

This Memorandum of Understanding together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

CITY OF LAUREL

BEARTOOTH RC&D/EDD

Kenneth E. Olsen, Jr.
Mayor

Charles E. Egan, Chairman



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Amendment Two to Airport Business Park Building and Ground Lease with Yellowstone County Museum Foundation

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Yellowstone County Museum Foundation (the Foundation) currently leases 609.07 square feet of storage space in the basement of the building known as IP-9 in the Airport Business Park. The Foundation wishes to lease 385.33 square feet of additional storage space to consolidate storage of items presently in its collection. This Amendment adds 385.33 square feet of space to the Lease for a revised total of 994.40 square feet. The additional space will provide a climate controlled environment and accommodate items presently stored in an off Airport location. The current Lease, dated January 9, 2006, is for a five-year term, which commenced on July 1, 2005, and expires on June 30, 2010. The documentation for this item is available for viewing at the office of the City Clerk.

FINANCIAL COMMENT: The additional space will generate \$1,391.35 per year, for a total of \$3,590.58 per year of revenue for the City's Airport. Rent will be adjusted annually by the Consumer Price Index – Urban (CPI-U) on the anniversary date of the Lease.

K. RECOMMENDATION

- L.** Staff recommends that Council approve Amendment Two to the Airport Business Park Building and Ground Lease with Yellowstone County Museum Foundation.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT:

- A. Amendment Two

COPY

AMENDMENT TWO

CITY OF BILLINGS

AND

YELLOWSTONE COUNTY MUSEUM FOUNDATION

BUSINESS PARK BUILDING AND GROUND LEASE

WITNESSETH

WHEREAS, the City of Billings, Montana and Peter Yegen Jr. Yellowstone County Museum Foundation entered into the Business Park Building and Ground Lease (the Lease) on January 9, 2006, for the term commencing July 1, 2005 and terminating on June 30, 2010, and

WHEREAS, on February 13, 2007, the Peter Yegen Jr. Yellowstone County Museum Foundation changed its name to the Yellowstone County Museum Foundation, and

WHEREAS, on March 10, 2008, the Lease was amended via Amendment One to add space to the leased premises to include an additional storage room consisting of 230.42 square feet, effective April 1, 2008, and

WHEREAS, both parties desire to further amend the Lease by adding space to the leased premises to include an additional storage room consisting of 385.33 square feet, effective January 1, 2009, and reflected as Item D on the revised Exhibit A attached hereto and by this reference made a part hereof.

COPY

NOW THEREFORE, this Amendment serves to amend Article I, Paragraph A.,
Description of Premises, as follows:

ARTICLE I

PREMISES AND PRIVILEGES

A. Description of the Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain parcel of real property, together with appurtenances (hereinafter designated premises), for its use, specifically described as follows:

In Building IP-9, storage space in the basement, consisting of four (4) rooms and totaling 994.40 square feet. The location and dimensions of these premises are set forth on Exhibit A attached hereto and by this reference made a part hereof.

All other terms and conditions of the original Lease remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this ____ day
of _____ 2009.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

BY _____
YELLOWSTONE COUNTY
MUSEUM FOUNDATION

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Confirmation of Probationary Police Officers
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On December 27, 2007, Officers Glen Gunther, Matthew Brandt, Tony Jensen and James Ward, were hired by the Billings Police Department as probationary Police Officers. According to MCA 7-32-4113, their probationary period is for one year from date of hire. At this time Officers Gunther, Brandt, Jensen and Ward have completed their one year probation, and according to state statute, their names are to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning the above named officers' performance are positive and indicate that they are doing a good job, and recommend confirmation.

RECOMMENDATION

City staff recommends Officers Glen Gunther, Matthew Brandt, Tony Jensen, and James Ward, be confirmed as Billings Police Officers.

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Martin Luther King Day Pedestrian March Street Closure Request
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Paul Reeder of the Black Heritage Foundation requests temporary street closures along the following route for the annual pedestrian march in observance of the Martin Luther King Day on Monday January 19, 2009. Marchers assemble on the Court House lawn at 6:25 p.m., walk on the sidewalk to the corner of N.27th and 3rd Ave. N, cross N.27th, march in the street to N. 29th, then north on N. 29th, disbanding at the Lincoln Center at approximately 6:50 p.m.

Recommended conditions of approval include Black Heritage Foundation:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event
3. Coordinate with Police Department to ensure proper assistance is provided
4. Clean the area to be used following the event and provide and empty waste cans
5. Notify all emergency facilities, bus lines and media as soon as possible
4. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
5. Provide and install adequate traffic barricades and signs directing motorists around closure

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above for the annual Martin Luther King Day March.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit Application
- B. Map of March
- C. Certificate of insurance



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for:

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

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

PERSON MAKING APPLICATION PAUL J. REEDER

ORGANIZATION MAKING APPLICATION BLACK HERITAGE FOUNDATION

PHONE 406-252-7458

ADDRESS P.O. Box 31001 Billings MT 59107
CITY STATE ZIP

EMAIL ADDRESS _____

APPROXIMATE TIME EVENT WILL:

Assemble 6:25 p.m. Start 6:30 p.m. Disband 6:50 p.m.

DATE OF EVENT Monday January 19, 2009

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

Pedestrian march/procession, possibly up to 200 persons
marching together, honoring memory of Martin Luther King Jr.

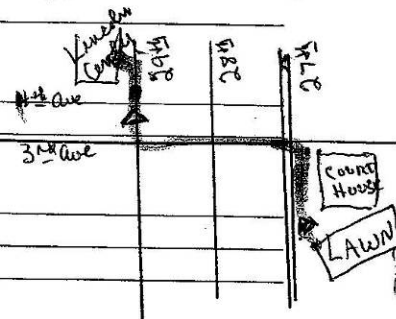
No motor vehicles we ask for police escort to facilitate
at intersections, and use of street

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

Assemble on Court House Lawn; walk on sidewalk to and through
intersection of N. 27th and 3rd Ave. N. walk in street on 3rd Avenue
to 29th St., north on 29th, across 4th Ave N, to Lincoln Center,
to enter Lincoln Center Auditorium.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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



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

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

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

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

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

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

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

Applicants also agree to obtain valid "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 Paul Reader DATE Nov 18, 2008
APPLICATION APPROVED _____ DATE _____
APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

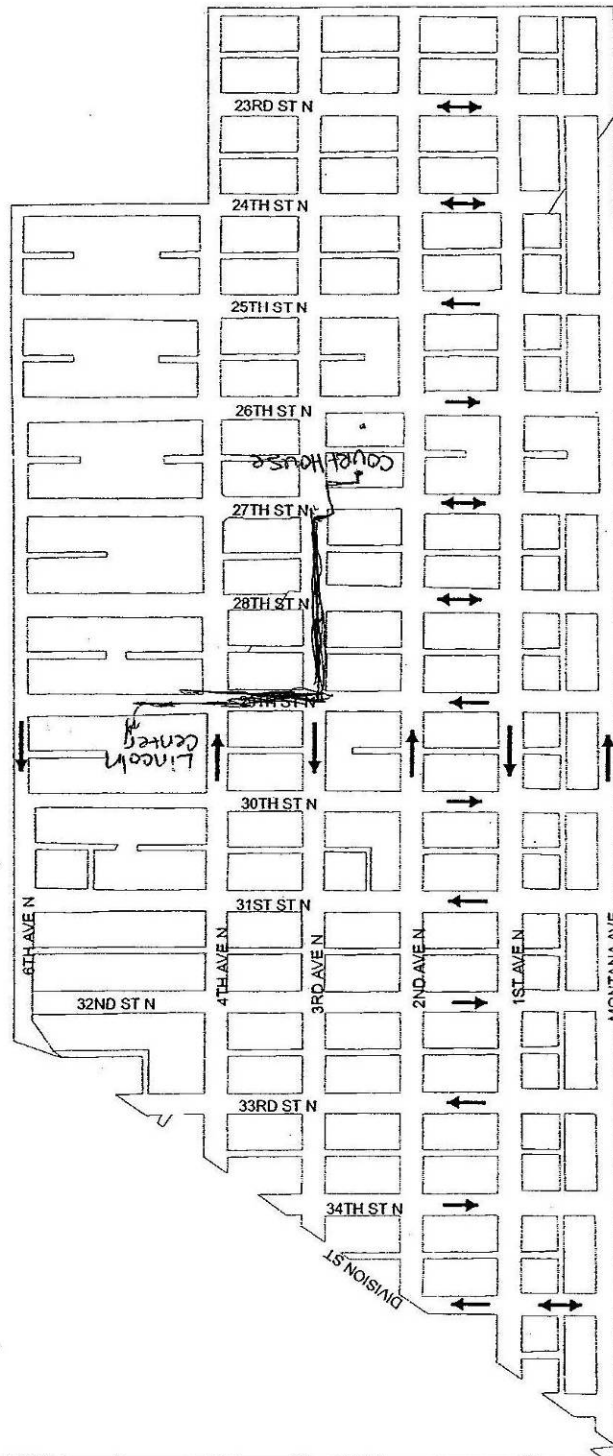
FEE: _____

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 Street Direction Map



ACORD <small>TM</small> CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 11/3/2008
PRODUCER (406)252-0551 FAX: (406)252-4532 ISU Streeter Brothers Insurance 2823 6th Ave N P.O. Box 1416 Billings MT 59103		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 Black Heritage Foundation Of Billings & Yell PO Box 31001 Billings MT 59107		INSURERS AFFORDING COVERAGE INSURER A: Zurich American Ins Co Of 27855 INSURER B: 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	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS			
A	X	GENERAL LIABILITY	PPS02048777	11/22/2008	11/22/2009	EACH OCCURRENCE \$ 2,000,000			
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000			
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 10,000			
						PERSONAL & ADV INJURY \$ 2,000,000			
						GENERAL AGGREGATE \$ 4,000,000			
						PRODUCTS - COM/POP AGG \$ 4,000,000			
		GEN'L AGGREGATE LIMIT APPLIES PER:							
		<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							
		AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$	
		ANY AUTO						BODILY INJURY (Per person) \$	
ALL OWNED AUTOS				BODILY INJURY (Per accident) \$					
SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$					
HIRED AUTOS									
NON-OWNED AUTOS									
GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$					
ANY AUTO				OTHER THAN EA ACC \$					
				AUTO ONLY: AGG \$					
EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$					
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$					
				\$					
DEDUCTIBLE				\$					
RETENTION \$				\$					
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS					
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				OTH-ER					
If yes, describe under SPECIAL PROVISIONS below				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 The City of Billings is listed as an additional insured. Martin Luther King Day March 1/19/09									

CERTIFICATE HOLDER City of Billings Parks and Recreation PO Box 1178 Billings, MT 59103	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Richard L. Hall</i> (m)
--	---

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Page 1 of 2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Magic City Blues Festival Street Closure request
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Tim Goodridge of the Magic City Blues Festival requests the closure of Montana Avenue between the 2300 and 2500 blocks from 9:00 am on Friday, August 7, 2009, until noon on Sunday, August 9, 2009, for the annual Magic City Blues Festival. Please see enclosed map of event layout and signatures of support from Montana Avenue business owners.

Recommended conditions of approval include:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

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

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

ATTACHMENTS

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



City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT

Please check the type of activity you are applying for:

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

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

PERSON MAKING APPLICATION

Tim Goodridge

ORGANIZATION MAKING APPLICATION

City Blue Productions LLP

PHONE

406-670-2329

ADDRESS

2990 Lohr Billings MT 59102

EMAIL ADDRESS

tgoodridge^{CITY}3@bresnan^{STATE}.net^{ZIP}

APPROXIMATE TIME EVENT WILL:

Assemble

4pm

Start

6pm

Disband

1am

same both days

DATE OF EVENT

August 7 & 8, 2009

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

8th Annual Magic City Blues Festival
2 night outdoor music festival featuring 2 stages.

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

2300-2500 block of Montana Avenue

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

2300-2500 block of Montana Avenue

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

We do the cleanup.

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

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

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

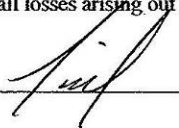
IF USING THE ESTABLISHED EVENT ROUTE, THE CITY WILL PROVIDE TWO POLICE OFFICERS WITH VEHICLES TO START THE EVENT, AND A STREET SWEEPER, IF NECESSARY, TO FOLLOW THE EVENT.

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

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

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

Applicants also agree to obtain valid "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  DATE 11/21/08
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

November 20, 2008

Magic City Blues (MCB) is a two-day annual music festival planned for the second weekend in August each year. The event takes place in the Billings, Montana "Historic District". This year, 2009, will be the eighth annual.

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

To accommodate the outdoor stages and provide a safe gathering place for the people attending MCB, Montana Avenue will need to be closed to all vehicle traffic. Affected blocks will be 2500–2300 block of Montana Avenue. Closures will be from 9am Friday, August 7 to 12 noon Sunday, August 9, 2009. These are the same festival closure times approved by council for the past five years.

Billings Construction Supply will handle traffic closure and diversion.

Our marketing and advertising is very strong and will make people aware of the event on Montana Ave., the dates, and the resulting street closure. In addition to our marketing campaign, major media outlets in Billings will cover the festival as a story to further the awareness. It is the intention of the organizers to make the 2009 festival as smooth and complaint free as years past to ensure continued city support for future festivals.

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

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

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

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

Our intention, in addition to presenting more Live Music, is to draw people downtown and develop a broad festival atmosphere over the weekend. B&B Tire launched a car show in the east parking lot of the Depot on the Saturday of the festival from noon to 4pm in 2006. Street Rods and Indy car simulators were on display and lots of folks enjoyed the event. B&B is already planning for their 4th car show in 2009. We encourage businesses to develop ideas to capitalize on the crowds and attention surrounding the event to further benefit Billings. Our goal of making Billings the Live Music capital of Montana will be a tremendous boon to the city.

We are very proud of our involvement in providing community entertainment and donating \$30,000 to Billings Public Schools for music programs over the years. This relationship with the school district is a foundation of our business practices and we will continue to work to increase opportunities and funding for the students.

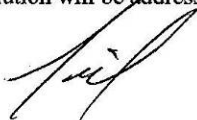
As part of our commitment to Live Music in Billings, MCB provides financial and professional support to Perfect Pitch, a 501(c)3 non-profit. For the second year, Perfect Pitch presented a 9 part concert series called Montana Avenue Live at the McCormick Café on Friday nights throughout the course of last summer. Perfect Pitch donated \$2,000 to the Shepherd High School Band from the proceeds. Our focus for 2009, in addition to the festival, will be to help resurrect the Babcock Theater as a viable performing arts venue in Billings.

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

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

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

Respectfully submitted by:



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

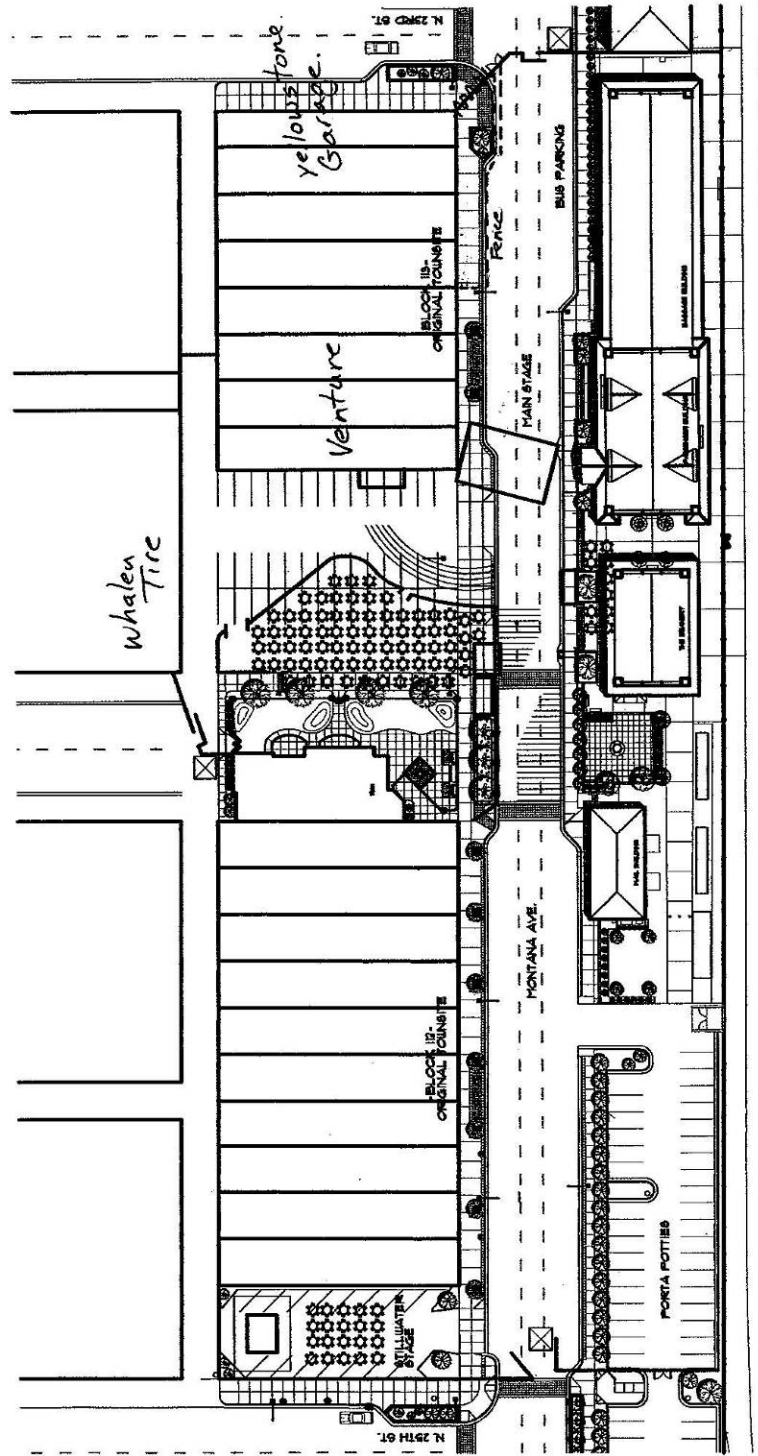
tgoodridge3@bresnan.net

670-2329

2990 Lohof Dr. Billings, MT 59102

Magic City Blues Festival
 8th Annual August 7 & 8, 2009
 Street Closure from 9am, 8/7 - noon 8/9
 Gates close at 4pm - 1am

Fence line goes on South side of planter box ---
 at 23rd and Montana, keeping side walk open
 to Venture Theater.



Tim Goodridge 670-2329.

Liability insurance coverage for the Magic City Blues Festival cannot be obtained and bound prior to 30 days out from the event, August 8&9. Our carrier is Western States Insurance here in Billings and we will obtain coverage in the amounts on the attached copy of our certificate from the 2008 festival. This is the way we have done it for each of the previous 7 years.

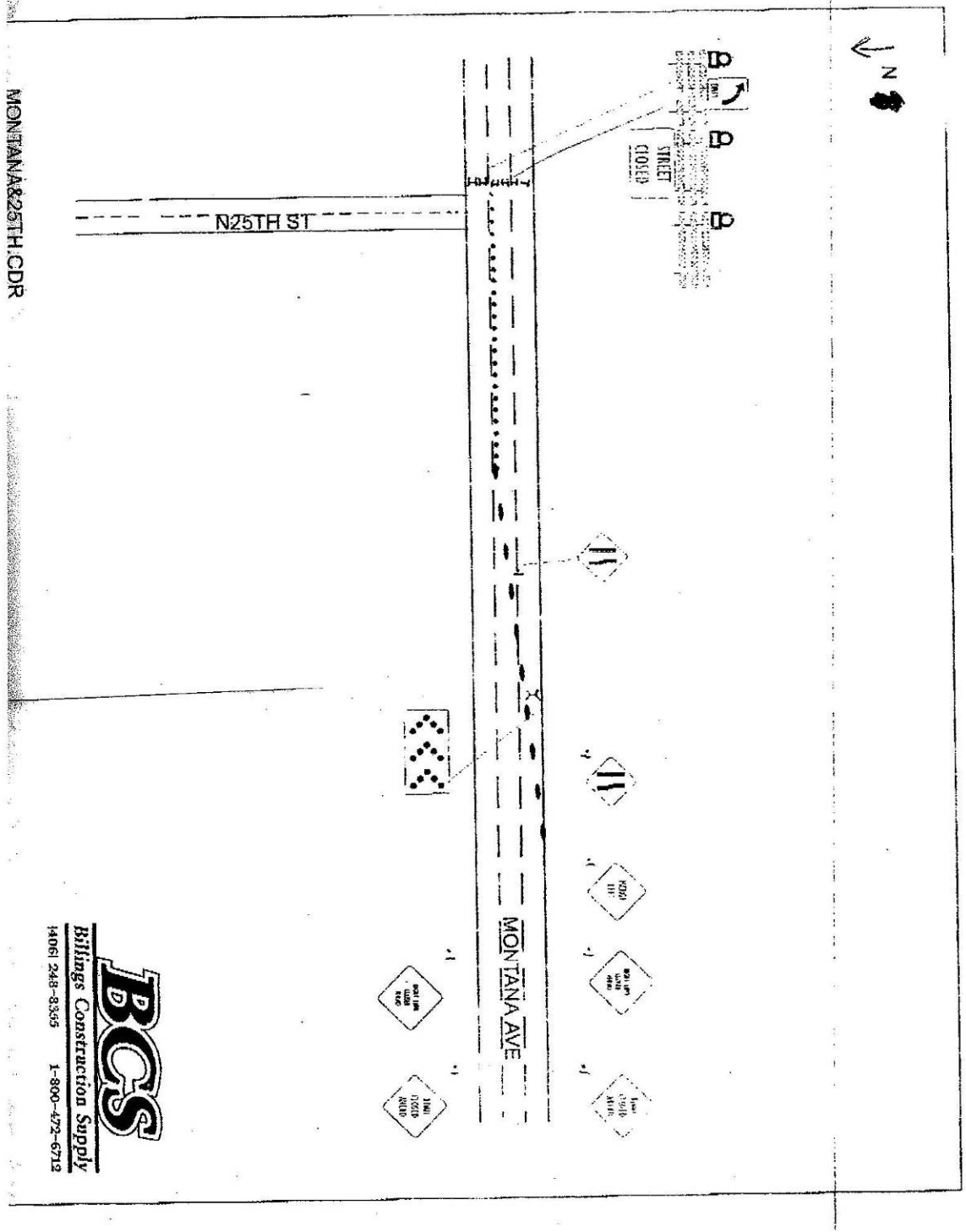
Magic City Blues 2008 Insurance

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 08/01/2008
PRODUCER L.A. Xcess Insurance Brokers, Inc. 10474 Santa Monica Blvd #306 Los Angeles, CA 90025 Phone No. (818) 623-5410 Fax No. (818) 623-5510		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 Blue Productions, LLP 2990 Lohof Drive Billings, MT 59102 Phone No. (406) 670-2329 Fax No. (406) 252-5279		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: STP - St. Paul Fire and Marine Ins. Co.		
INSURER B:		
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 ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
STP	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> LIQUOR LIABILITY EXCLUDED <input type="checkbox"/> GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	EW06108296	08/08/2008	08/11/2008	EACH OCCURRENCE	\$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 50,000	
	MED EXP (Any one person)				\$ Excluded	
	PERSONAL & ADV INJURY				\$ 1,000,000	
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COM/POP AGG	\$ 1,000,000
	<input type="checkbox"/> 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)	\$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AUTO ONLY: AGG	\$
STP	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	EX06101345	08/08/2008	08/11/2008	EACH OCCURRENCE	\$ 1,000,000
	AGGREGATE				\$ 1,000,000	
					\$	
					\$	
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	OTHER				Coverage	Deductible
					\$	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS *Split Dates apply to all coverages in the specified section.	Coverage Location: United States & Canada
The Certificate holder is included as Additional Insured, but only as respects to claims arising out of the negligence of the Named Insured.	Event: Magic City Blues Festival
	All coverages expire at 12:01 a.m. Standard Time.

CERTIFICATE HOLDER	CANCELLATION
City of Billings P O Box 1178 Billings, MT 59101 United States Of America Phone No. Fax No.	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>1</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 <i>Richard P. Peltz</i>



MONTANA&25TH.CDR

BCS
 Billings Construction Supply
 14061 248-8345 1-800-472-6712

The eighth annual Magic City Blues festival will be held in the 2500-2300 block of Montana Ave. on Friday and Saturday August 7 & 8, 2009. The street will be closed to vehicle traffic during those two days and part of Sunday to allow site set up and clean up. Pedestrian access to the two blocks will only be affected from 3 pm to 1 am on Friday and Saturday. At those times access will be restricted to ticket holders with admission only through the gates. During the rest of the day, people on foot can come and go as they please with no restrictions.

The festival will control all vendor activity in the street and on the sidewalk during the closure. Vendors will be required to abide by festival rules. Private businesses are encouraged to remain open during evening hours to take advantage of the concert crowds.

I support the closure of Montana Avenue for Magic City Blues.

Address	Property Owner	Business Name	Signature
2401 Montana Ave.	Gene Burdard	The Rex	Gene Burdard
2404, 2314 & 2310 Montana Ave.	Billings Depot, Inc. 2404 & 2310	Billings Depot, Inc.	Harry Stollwach
2305 Montana Ave.	Depot Salon-Jana Bawney	Depot Salon	Jana Bawney
2317 Montana Ave.	Dina Brophy	Venture Theatre	Dina Brophy
2411 Montana Ave.	Mike Greeng	Opal Hotel	Michael Greeng
2403 Montana Ave.	Linda Jacobson	Rainbow Bar	Linda Jacobson
2303 Montana Ave.	DB2 L.L.C.	DB2/Cao-Tambo	DB2/Cao-Tambo
		Dec 13 Closing	Dec 13 Closing

The eighth annual Magic City Blues festival will be held in the 2500-2300 block of Montana Ave. on Friday and Saturday August 7 & 8, 2009. The street will be closed to vehicle traffic during those two days and part of Sunday to allow site set up and clean up. Pedestrian access to the two blocks will only be affected from 3 pm to 1am on Friday and Saturday. At those times access will be restricted to ticket holders with admission only through the gates. During the rest of the day, people on foot can come and go as they please with no restrictions.

The festival will control all vendor activity in the street and on the sidewalk during the closure. Vendors will be required to abide by festival rules. Private businesses are encouraged to remain open during evening hours to take advantage of the concert crowds.

I support the closure of Montana Avenue for Magic City Blues.

Address	Property Owner	Business Name	Signature
2405 2407 } Montana Ave. 2409 }	Computers Unlimited	Computers Unlimited	Michael Schae
2415 Montana Ave.	" "	" "	Michael Schae
2417 Montana Ave.	" "	Cafe Italia	Michael Schae
2419-23 Montana Ave.	" "	McBarnick Cafe	Michael Schae
2501 Montana Ave.	" "	The Carlin	Michael Schae
2503 Montana Ave.	" "	Q Cusano	Michael Schae
2511-19 Montana Ave.	" "	Log Cabin Building	Michael Schae

[Handwritten mark]

The eighth annual Magic City Blues festival will be held in the 2500-2300 block of Montana Ave. on Friday and Saturday August 7 & 8, 2009. The street will be closed to vehicle traffic during those two days and part of Sunday to allow site set up and clean up. Pedestrian access to the two blocks will only be affected from 3 pm to 1 am on Friday and Saturday. At those times access will be restricted to ticket holders with admission only through the gates. During the rest of the day, people on foot can come and go as they please with no restrictions.

The festival will control all vendor activity in the street and on the sidewalk during the closure. Vendors will be required to abide by festival rules. Private businesses are encouraged to remain open during evening hours to take advantage of the concert crowds.

I support the closure of Montana Avenue for Magic City Blues.

Address	Property Owner	Business Name	Signature
2504 Montana Ave.	Computers Unlimited	RAILYARD	<i>Michael S. L.</i>
2506 Montana Ave.	" Quatro Brewery	CARTERS	<i>Michael S. L.</i>
2600 Montana Ave.	" Humble Bakery	Humble Bakery	<i>Michael S. L.</i>
2224 Montana Ave.	City of Billings	Public Works	<i>David O. M. Ford</i>
_____ Montana Ave.	_____	_____	_____
_____ Montana Ave.	_____	_____	_____
_____ Montana Ave.	_____	_____	_____

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: Acceptance and Approval of the 2009 High Intensity Drug Trafficking Area (HIDTA) Award #G09RM0038A in the amount of \$138,010

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Montana has been designated as a High Intensity Drug Traffic Area (HIDTA), and the Office of National Drug Control Policy (ONDCP) has awarded the Eastern Montana Drug Task Force \$138,010 for the calendar year 2009. This is the eighth year the City of Billings is the recipient agency of this award. The 2009 HIDTA Award will be used to pay for an Administrative Assistant position for the HIDTA task force, task force overtime, administrative and investigative travel, an automobile rental, cell phones, copier maintenance agreement, investigative/office supplies, equipment and informant costs. HIDTA does pay for all costs associated with the Task Force, except for the Task Force Officers' salary and benefits. When the award documents are received, staff asks that the Mayor be authorized to sign.

FINANCIAL IMPACT: The \$138,010 award will require no city match. The award has been budgeted in Fund 255 for the balance of FY 08/09.

RECOMMENDATION

Staff recommends that Council approve and accept the 2009 HIDTA award from the Executive Office of the President, Office of National Drug Control Policy in the amount of \$138,010 and authorize the Mayor to sign the necessary award documents, when they are received.

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

Since 1999, Senator Max Baucus tried to have Montana designated as a High Intensity Drug Trafficking Area (HIDTA) in order to receive federal resources to battle the methamphetamine epidemic in Montana communities. Senator Baucus succeeded in his cause and Montana was designated as a HIDTA in 2002. This memo is to ask Council for acceptance and approval of the 2009 Award in the amount of \$138,010.

BACKGROUND

In 2002, Senator Baucus finally succeeded in designating Montana as a High Intensity Drug Trafficking Area because of the amount of methamphetamine in the State. This designation provides federal money to help address the problem of use and abuse of methamphetamine-related crimes. Since Montana has been given the HIDTA designation, Eastern Montana Drug Task Force at the Rocky Mountain High Intensity Drug Trafficking Area was created in 2002. This task force consists of personnel from the following agencies: U.S. Marshal's Service, Immigration and Customs Enforcement (ICE), Alcohol, Tobacco and Firearms (ATF); Billings Police Department; Drug Enforcement Administration (DEA); FBI; Probation and Parole; and the Yellowstone County Sheriff's Office. The Task Force is managed by a Sergeant from the Billings Police Department and is currently housed in the U. S. Marshal's Building across from Yellowstone County Courthouse. Tonight, Council is being asked to approve and accept the 2009 HIDTA Award.

RECOMMENDATION

Staff recommends Council approve and accept the 2009 HIDTA Award from the Executive Office of the President, Office of National Drug Control Policy in the amount of \$138,010 and authorize the Mayor to sign the necessary award documents when they are received.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Certified Local Government Grant Program
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, AICP, Transportation Planner

PROBLEM/ISSUE STATEMENT: The State of Montana Historic Preservation Office has designated the City of Billings as a Certified Local Government (CLG) for historic preservation activities. As a CLG, the City is eligible to receive state funding to coordinate historic preservation efforts in our area. Applications for FY2009-10 funding from the State are due on January 30, 2009. The City of Billings has been utilizing Certified Local Government funding for activities in support of the efforts of the Yellowstone Historic Preservation Board since 1997. A description of these activities is provided in Attachment A.

ALTERNATIVES ANALYZED: Agree or decline to participate in State CLG program and accept CLG grant funding to coordinate historic preservation activities.

FINANCIAL IMPACT: City Council approval would allow the City of Billings to apply for \$5,500 in State of Montana Certified Local Government funding. The local cash match for the Certified Local Government will be \$2,500 and \$36,799 will be provided in in-kind match for a total match of \$39,299. The majority of the in-kind match is from calculating time and salary of the 2 Historic Preservation Officers. The total cash funding package is \$8,000 that is used for consulting services provided by the Western Heritage Center to perform activities identified in the Yellowstone Historic Preservation Board Annual Work Plan. The Planning Division will provide \$1,031 towards the local cash match. The Yellowstone Historic Preservation Board will request \$1,000 from Yellowstone County and \$469 from the City of Laurel towards the remaining local cash match.

RECOMMENDATION

Staff recommends that the City Council authorize the submission of an application for a \$5,500 Certified Local Government grant from the Montana State Historic Preservation Office.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Yellowstone Historic Preservation Board Work Plan
- B. Certified Local Government Grant Application

Attachment A

Yellowstone Historic Preservation Board Work Plan 2009-2010

Goals & Objectives:

- I. Promote the preservation of historic buildings, sites or neighborhoods.
- II. Increase community awareness on the benefits of historic preservation activities.
- III. Promote increased awareness of preservation activities and the work of the YHPB through the four governing bodies represented on the Board.
- IV. Comply with the duties and responsibilities of historic preservation organizations under the State Certified Local Government Program and the requirements of the Inter-local Agreement.

2009 Projects

- 1. To assist with the National Register of Historic Places nomination of McKinley Elementary School.**

Time Frame: 2009-2010
Who: YHPB Board and HPO/WHC, North Elevation Task Force
Status: This is part of the North Elevation Task Force but will be nominated individually.

- 2. To assist North Elevation Task Force in the development of a Historic Residential District, provide technical assistance as needed.**

Time Frame: Begin 2/19/08 and continuing
Who: Brian Roberts is the lead board member, YHPB Board, WHC and staff, North Elevation Task Force
Status: This project is ongoing and the board will continue assisting as needed.

- 3. To assist the Old Town Neighbors, Inc. with the survey and completion of a National Register Nomination of the properties along Minnesota Avenue that were approved for a Preserve America Grant.**

Time Frame: 2009-2010
Who: Maisie Sulser is the lead board member, YHPB, WHC, HPO and the Old Town Neighbors, Inc.

Status: Contract with state signed. RFP for consultant underway.

4. To assist the City of Laurel with the historic survey of downtown through funding from Preserve America.

Time Frame: 2009-2010

Who: Emelie Eaton is the lead board member, YHPB, WHC, HPO and the City of Laurel

Status: This project is commencing and the board will assist as needed.

5. Continue fund raising for the “Billings Through the Decades” sign board.

Time Frame: 2009-2010

Who: Bill DuBeau is the lead board member, YHPB, WHC, HPO

Status: This project is seeking funding to complete.

6. Prepare education trunks for area elementary schools.

Time Frame: 2009-2010

Who: Kathleen Armstrong is the lead board member, YHPB, WHC, HPO, possibly Montana SHPO

Status: This project is working toward completion.

7. Assure existing YHPB products are current and disseminated in communities (Laurel Walking Tour, Billings Walking Tour, South Side Presentation, and Rural Yellowstone County Presentation, etc).

Time Frame: 2009-2010

Who: Maisie Sulser is the lead board member, YHPB, WHC, HPO

Status: The board will review the Billings Downtown Walking Tour booklet for update and republishing. The board will review other media outlets for dissemination such as radio and computer downloads (mp3 files, etc).

8. Review data prepared by MSU-B students on the inventory of historic barns, silos and other important structures in Yellowstone County. Determine if 2 to 3 properties could be eligible for the National Register and contact property owners to gage interest.

Time Frame: 2009-2010

Who: YHPB, WHC, HPO

Status: The board will review this project as time allows.

Annual Board Activities

1. Continue the review of building permits submitted for properties located within the designated historic district.

Time Frame: Ongoing
Who: Committee and HPO

- 2. To provide up to date information to the general public, continually update the web site on activities and programs.**

Time Frame: Ongoing
Who: WHC

- 3. Promote additional nominations to the National Register. Assure resources are available for property owners, such as literature and technical assistance. Look at possible nomination of school sites in conjunction with local school districts.**

Time Frame: Ongoing
Who: YHPB Board/HPO/WHC

- 4. Expand YHPB meetings to alternate locations. To take advantage of some of our many historic venues, the board wishes to expand meetings to alternate locations. This is an event that will take place quarterly.**

Time Frame: Ongoing
Who: HPO/WHC

- 5. Due to a loss of potential historic buildings within the City of Billings, an effort is being made to notify WHC and a member of the board about upcoming demolitions. The Building Department notifies HPO on the release of demolition permits, HPO notifies members of the demolition and a determination is made to either document/photograph building.**

Time Frame: Ongoing
Who: HPO/WHC/Board

- 6. To provide additional funds to the YHPB for projects, continue exploration of grant opportunities.**

Time Frame: Ongoing
Who: HPO/WHC

- 7. To keep the YHPB abreast of Historic Preservation Activities, consultants and the HPO will attend meetings as needed.**

Time Frame: Ongoing
Who: WHC/HPO

- 8. To provide a forum for Historic Preservationist to share their successes and discuss projects and to present historic preservation awards, continue to host the Historic Preservation Roundtable yearly.**

Time Frame: Yearly
Who: WHC/HPO/Board
Status: Preservation Month - May

- 9. To continually update the local governing bodies of the activities undertaken by the YHPB, annual PowerPoint Presentations will be made to the City of Billings, the City of Laurel and Yellowstone County.**

Time Frame: Yearly
Who: Chair/WHC/HPO
Status: The scheduling of these meetings will take place yearly during spring.

- 10. Celebrate National Historic Preservation Month. Board will decide on a program, speakers and other events to commemorate this event.**

Time Frame: Yearly
Who: Committee/WHC

Attachment B

Certified Local Government
Grant Application

1 April 2009 to 31 March 2010

Application Deadline

30 January 2009

Montana State Historic Preservation Office
PO Box 201202
Helena, MT 59620-1202
(406) 444-7715

2009-2010 GRANT APPLICATION
CERTIFIED LOCAL GOVERNMENT PROGRAM

Certified Local Government: City of Billings

Address: 510 North Broadway, 4th Floor, Parmly Billings Library

Contact Person: Lora Mattox, AICP, Historic Preservation Officer, Transportation Planner

Period of Grant Request: 1 April 2009 to 31 March 2010

Scope of Work: The National Park Service asks we grant funds to CLGs for kinds and levels of work that reflect increasing sophistication, skills, and roles by the Preservation Officers, in other words, tasks that reflect improvement in community thinking. For this section, please itemize regular work duties (not including special projects) – products or projects starting or completing, meetings to be attended, etc., and more specifically, ways in which the local program will grow and develop. Please tie your tasks to your community's Preservation Plan. If not, please explain.
(X Check if Scope of Work is continued on additional pages.)

The Cities of Billings and Laurel, Yellowstone County, and the Crow Tribal Council entered into an inter-local agreement in July 1993 establishing the Yellowstone Historic Preservation Board (YHPB). Along with the inter-local agreement, the four governmental entities adapted ordinances setting up a multi-government YHPB, appointed nine (9) qualified board members, and a Historic Preservation Officer. Since that time, the YHPB has been meeting monthly and has continued to develop and refine an encompassing Historic Preservation Program implementing the specific goals of the historic element of the 2003 City/County Growth Policy.

In the past, local match funds were provided through the City of Billings, City of Laurel, and Yellowstone County in the amount of \$6,500. This amount combined with the \$5,500 from the CLG provided \$12,000 for consulting services provided by Western Heritage Center. Due to budget constraints in the City of Billings Planning Division, the contract with Western Heritage Center has been cut to \$8,000. This reduction now reflects the following local cash match of \$1,031 from the City of Billings, \$469 from the City of Laurel, and \$1,000 from Yellowstone County. In addition to the local funds, the Planning Division also provides in-kind match through room usage, supplies and staff time. Also, Historic Preservation Board members' time is also counted towards in-kind match. As mentioned above, the CLG and local funds are used to contract services with the Western Heritage Center and assist in carrying out the following activities:

- Assist Board and Historic Preservation Officer in undertaking actions to meet short and long-range goals established by the Board. See Attachment A.
- Provide professional services to assist Board, Officer, and the City in performing duties and responsibility identified in the City's Historic Preservation Ordinance MCA 27-500.
- Act as a historic preservation center by providing technical assistance, direction, and literature on the following:
 - a. Historic preservation tax credits
 - b. National Register
 - c. Federal historic preservation regulations, and
 - d. Secretary of Interior standards related to historic preservation activities

- Attend community meetings related to preservation activities, on behalf of the Board upon request.
- Plan and coordinate activities and publicity during National Historic Preservation Week in May 2007.
- Carrying out the responsibilities for the CLG Program as outlined in "The Certified Local Government Program in Montana."
- Submit quarterly reports on the historic preservation efforts of the community carried out by the City under the CLG grant.

BUDGET

4-1-2009 to 3-31-2010 Budget	Cash Amount	Cash Source	In-kind Amount	In-kind Source	Total
A. Salaries, Wages, Benefits			HPO #1 \$18,720 HPO #2 \$13,920	HPO #1 - \$39hr x 40hrs/mo x 12 mos HPO #2 - \$29/hr x 40hrs/mo x 12 mos	\$32,640
B. Office Rental			\$1,000	Large conference use @ 2 hrs/mo x \$50/hr x 10 mtgs/yr	\$1,000
C. Equipment			*	CI/CO	
D. Supplies & Materials Itemize major categories			*	CI/CO	
E. Postage			*	CI/CO	
F. Telephone & Internet			*	CI/CO	
G. Photocopies			*	CI/CO	
H. Preservation Commission Number of hours X * rate X number of members X number of meetings			\$2,457 2 hrs/mo x \$17.55 x 7 members x 10 mtgs/yr	YHPB Members	\$2,457
I. Volunteers Hours X * rate X number of volunteers.			\$702 8 hrs/mo x \$17.55 x 5 mos.	Board Member assistance North Elevation Residential District	\$702
J. Travel Mileage Number of miles X					

0.585 cents. Include funds for HPO and/or Commissioners to attend CLG annual training			*	PR	
K. Travel Meals # of Meals X rate: Breakfast - \$5.00 Lunch - \$6.00 Dinner - \$12.00			*	CI/CO	
L. Lodging \$70.00 plus tax X number of nights			*	CI/CO	
M. Project (s) Expenses – fully itemized.	\$5,500	F			\$8,000
Contract Services	\$2,500	CI/CO			
N. Other Expenses – fully itemized.					
M. Total Expenses					\$44,799

SOURCE KEY:

F-Federal
CI-City
CO-County
NP- Private/Non-Profit

*** Federally approved minimum rate for volunteers is \$17.55 per hour.**

SOURCES OF REVENUE

AMOUNT

Itemized Cash Match Source

City of Billings	\$1,031
City of Laurel	\$469
Yellowstone County	\$1,000

Itemized In-Kind Match Source

Room rental for board meetings	\$1,000
Large conference use @ 2 hrs/mo x \$50/hr x 10 mtgs/yr	
Preservation Member Time	\$2,457
2 hrs/mo x \$17.55 x 7 members x 10 mtgs/yr	
Preservation Member Time	
8 hrs/mo x \$17.55 x 1 member x 5 mos.	\$702
HPO Time	\$32,640
HPO #1: \$39/hr x 40 hrs/mo x 12 mos	
HPO #2: \$29/hr x 40 hrs/mo x 12 mos	
Federal HPF Grant Request from SHPO	
CLG Funds	\$5,500
 TOTAL REVENUE	 \$44,799

Certified Local Government
 Historic Preservation Commission Chairperson or President

Signature _____ Date _____

Name (typed) Emelie Eaton

Address PO Box 159, Laurel, Montana

Telephone 406-628-2164

Certified Local Government
Chief Elected Official

Signature _____ Date _____

Name (typed) Ron Tussing

Title Mayor

Address PO Box 1178, Billings, Montana 59103

Telephone 406-657-8296

(The local government administrator may sign in addition to the Chief Elected Official.)

Certified Local Government
Historic Preservation Officer

Signature _____ Date _____

Name (typed) Lora Mattox

Address 510 N Broadway, 4th Floor, Parmly Billings Library

Telephone 406-247-8622

Please attach the meeting minutes (or an alternate way in writing) at which your application was discussed and approved by the Preservation Board/Commission.

Please attach a list of the historic preservation board members' names, professional discipline or citizen membership, terms (year ending), and contact information.



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: MPO/Planning Department Public Outreach and Participation Plan
DEPARTMENT: Planning & Community Services
PRESENTED BY: Lora Mattox, AICP, Transportation Planner

PROBLEM/ISSUE STATEMENT: The Metropolitan Planning Organization/Planning Division Public Participation Plan is a compilation of the existing Transportation Public Participation Plan used by the Billings MPO and the Planning Division's Public Outreach Plan. These two plans will be combined into one plan on procedures for public participation on future planning and transportation projects. The plan was developed in accordance with the Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) to provide a clear and concise process for all long range planning activities that include specific procedures for public participation. Compliance with SAFETEA-LU also ensures that any processes that involve Federal funds are in compliance with Federal requirements.

The Yellowstone County Board of Planning conducted a 45-day public comment period on the draft plan, conducted a public hearing, and at its December 9 meeting voted to recommend the Policy Coordinating Committee adopt the plan.

ALTERNATIVES ANALYZED: The City Council may:

1. Accept the plan
2. Decline the plan

FINANCIAL IMPACT: There should be no direct financial impact from the adoption of this plan. However, the plan should assist with project procedures and completions of projects in a timely manner.

RECOMMENDATION

Staff recommends that Council approve the Public Participation Plan and forward a recommendation of adoption to the Policy Coordinating Committee.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Public Outreach and Participation Plan

**Yellowstone County Board of Planning
Participation Plan**

**draft
report**

prepared for

Yellowstone County Board of Planning

prepared by

Cambridge Systematics, Inc.

September 2008

www.camsys.com

draft report

Yellowstone County Board of Planning Participation Plan

prepared for

Yellowstone County Board of Planning

prepared by

Cambridge Systematics, Inc.
555 12th Street, Suite 1600
Oakland, California 94607

date

October 2008

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1.0 Introduction

The Yellowstone County Board of Planning (YCBP) is the designated Metropolitan Planning Organization (MPO) and oversees transportation planning for the Billings Urban Area. The City/County Planning Department provides staff support to the MPO, as well as two advisory committees that support MPO activities, the Policy Coordinating Committee (PCC), and the Technical Advisory Committee (TAC). The Yellowstone County Board of Planning is committed to the concept that planning is, of necessity, a community-based effort. In support of this, the *Yellowstone County Board of Planning Participation Plan*, referred to here on out as the Participation Plan, defines a process that ensures reasonable opportunity for all interested parties to participate in the planning process. The procedures outlined in this plan are to be used with the recognition and acknowledgment that the community's interests are best served by planning efforts that are sensitive to public goals and values.

1.1 SAFETEA-LU REQUIREMENTS

The Participation Plan is developed in accordance with the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) and the Notice of Proposed Rulemaking (NPRM) that appeared in the Federal Register on June 9, 2006. SAFETEA-LU builds upon previous Federal authorizations: the *Intermodal Surface Transportation Efficiency Act* (ISTEA) and the *Transportation Equity Act for the 21st Century* (TEA-21). Key changes to the MPO public participation requirements in SAFETEA-LU are:

- Development in consultation with all interested parties;
- Inclusion of procedures of employing visualization techniques; and
- Inclusion of procedures for making information available in electronically accessible formats and means.

The Participation Plan incorporates information from and replaces the Yellowstone County Board of Planning *Citizen Participation Program* and *Public Outreach Plan*.

1.2 PARTICIPATION PLAN PURPOSE AND OBJECTIVES

It is the intent of the YCBP to consistently inform and engage the public in the regional planning process from the conceptual stages of planning projects through the adoption of formal planning documents. The methods and guidelines in the Participation Plan have been designed to achieve the following objectives:

- Encourage and facilitate the participation of all interested parties in regional planning efforts;
- Integrate public participation into the regional planning process in a timely, constructive, and meaningful manner;
- Use techniques to increase awareness, accessibility, and understanding of planning issues;
- Seek out and consider the needs of a cross-section of the community, including the traditionally underserved, in regional planning efforts;
- Provide increased education and awareness of planning issues in order to create a higher degree of understanding, thereby enhancing the public input received; and
- Continue to build upon citizen participation so that strengthened support for planning and its products will be achieved.

These objectives also provide a valuable reference for use in evaluating the program in the future.

1.3 PARTICIPATION PLAN UPDATE

YCBP staff will periodically review the Participation Plan to ensure that the methods and guidelines effectively support the objectives defined above. Barring changes in Federal regulations, the Participation Plan will be reviewed and updated at least every four years to ensure a full and open participation process. Other situations that may warrant review and update will be considered on a case-by-case basis. The review process will include discussion and assessment of the stated objectives of the program, as well as an evaluation of the efficacy and implementation of its methodology. The level of citizen participation will be analyzed to determine if modifications to the program are warranted. In addition, staff will monitor current laws and regulations to determine if program changes are required.

2.0 Public Participation Procedures

The public participation procedures outlined below are designed to ensure that the Yellowstone County Board of Planning continues to actively inform and engage the public in the regional planning process. Planning is a continuous process and, in recognition, both ongoing and project-specific public participation procedures are included.

Ongoing public participation procedures create valuable opportunities to encourage public participation and educate interested parties prior to project initiation. Project-specific procedures provide guidelines for public participation from project inception to completion.

2.1 ONGOING PUBLIC PARTICIPATION PROCEDURES

Ongoing public participation procedures inform the public of ongoing YCBP activities. This section provides information on procedures that are used.

Standing Committees

As the MPO for the Billings Urban Area, the City/County Planning Department staff support two standing advisory committees, the Policy Coordinating Committee (PCC), and the Technical Advisory Committee (TAC). The PCC consists of members of the Montana Department of Transportation (MDT), Yellowstone County Board of Planning, City of Billings, and Yellowstone County. All PCC and TAC meeting agendas and minutes are available on the YCBP web site. In addition, advance notification of TAC and PCC meetings will be provided. A list of PCC and TAC committee members is provided in Appendix A.

Members of the YCBP will be encouraged to attend neighborhood task force meetings. The purpose of these task forces and planning groups is to inform a larger portion of the population, and to provide the YCBP members with an increased awareness of issues or concerns within their particular area of Yellowstone County. Committee members will receive quarterly reports and draft planning documents for review and comment. The committees will meet with their Planning Board representatives and the City/County Planning Department or other appropriate department or agency staff, as necessary. A list of task forces and planning group contacts is available in Appendix B.

Local Publications

The following local publications serve to inform interested parties of ongoing planning activities:

- **Annual Report** – An annual report of planning activities will be prepared by the City/County Planning Department staff. The report will be distributed to local businesses, government agencies, elected official, local board, and commission members and interested citizens. It will also be posted online for review. This extensiveness of the audience served by this report provides an excellent opportunity to present local planning issues and projects. Although the report is used primarily as an educational tool, it may also be used to encourage citizen participation in the planning process, and promote attendance at upcoming planning meetings. On occasion, the report will contain a questionnaire or clip coupon to be returned to the planning department. This coupon will enable citizens to provide their ideas and comments on local planning efforts, and to indicate if they wish additional information on how to go about participating in community planning.
- **The City Link: Official News and Information from the City of Billings** – The Planning staff provides articles on planning issues or projects to City Administration for publication. The publication is released quarterly in spring, summer, fall, and winter.
- **MDT District Design Coordination Report** – Reports on transportation activities are prepared and distributed on a quarterly basis by the Montana Department of Transportation, Billings District Office. These reports detail all of the transportation-related work completed each quarter. Reports are distributed locally by the District Office.

Television and Radio Stations

Currently, meetings of the Board of County Commissioners are regularly attended and covered by local newspaper and radio reporters, and often by one or both of the local television stations. Actions of the Billings City Council also receive regular coverage by newspaper and television reporters. In addition, City Council and Board of County Commissioners meetings are regularly televised in their entirety by the local community television station. A list of local newspaper, radio, and television contacts is included in Appendix C.

City/County Planning Department Offices and Staff

Informational handouts are readily available to the public at the City/County Planning Department offices. These include specific step-by-step instructions on zoning and subdivision processes, land use studies, traffic count information, zoning requirement illustrations, comprehensive plans, transportation plans, and copies of all land use regulations, and ordinances administered by the Yellowstone County Board of Planning. In addition, the office provides

numerous map products to the general public, as well as to other departments and agencies.

To the extent possible, the staff is provided cross-training in the various functions and responsibilities of the department. This reduces the number of return visits or calls required by the public to obtain specific planning information. Department offices are open from 8:00 a.m. to 5:00 p.m., Monday through Friday, including the "noon hour" period from 12:00 p.m. to 1:00 p.m. This provides a convenience to working citizens who are limited in their ability to take time away from their jobs.

City/County Planning Department Web Sites

The City/County Planning Department web sites, located both on the City of Billings web site and the Yellowstone County web site, provide information regarding the planning functions, upcoming projects and activities, office hours, and contact information. The web sites (<http://www.co.yellowstone.mt.gov/planning/> and <http://ci.billings.mt.us/>) are updated regularly.

2.2 PROJECT-SPECIFIC PUBLIC PARTICIPATION

Project-specific procedures and methods will be used consistently. However, the degree to which they are used will depend on the project. For example, a smaller scale planning project will not require the same level of public participation as a longer-term, more comprehensive project. Planning staff will evaluate the required level of public participation and develop a public participation procedure for each project prior to initiation. Guidance to develop project-specific public participation procedures is included in Appendix D.

The various methods will be used to increase the public's awareness and knowledge of local planning and its significance. Public participation in the planning process will be encouraged, beginning with the conceptual stages of a project and continue through completion. Following the distribution of specific plan information, public comment will be solicited and given consideration.

A summary of project-specific public participation procedures for MPO plans and programs, developed in accordance with Federal requirements, is provided in the next section.

Notification

Notification of upcoming projects and opportunities for public involvement will be made to all interested parties. Notices will be provided at least one week prior to the start of the scheduled public participation opportunities and will include:

- Project description;
- Meeting or other participation process purpose;
- Location, time, date(s), and details regarding the involvement opportunity;
- Sources for additional documentation (provide additional visuals such as maps and design plans); and
- Contact name and information for further questions.

An example meeting notification and meeting agenda are provided in Appendix D. Notification of upcoming planning projects will first be provided during the conceptual stage of the project. When appropriate, YCBP staff will solicit public comment regarding the suggested approach to completing the project. Further notifications will be provided once a planning document has reached the draft stage and is ready for review and adoption. Copies of meeting agendas for all Planning Board, Zoning Commission, transportation Technical Advisory Committee, and other related planning meetings will be provided.

All interested parties will be provided with the opportunity to participate in the regional planning process when appropriate. The following resources will be used to provide notification regarding planning projects:

- **City/County Planning Department Web Sites** – Notifications of all upcoming and ongoing regional planning projects and opportunities for public participation will be placed on both the City of Billings and the Yellowstone County web sites. Information can be included in the space provided for “current events” and may include links to documents on web.
- **Interested Party Contact List** – The YCBP maintains a contact list of individuals and agencies that are interested in regional planning projects. E-mail notifications of upcoming and ongoing projects and opportunities for public participation will be sent to these addresses.
- **Postcard Mailings** – In the case that a project will affect surrounding property, YCBP staff will identify reasonable boundaries for affected party notification. Postcard mailing notifications will be sent to all affected landowners within the influence area.
- **Local newspapers, radio, and television stations** – Local media contacts will be used to provide notification of upcoming projects and opportunities for public participation when appropriate.
- **Standing Committees** – The Technical Advisory Committee (TAC) and Policy Coordinating Committee (PCC) will be informed of and asked to participate in the scoping and review of projects, when appropriate. Additionally, citizen task force and planning group members will be notified of projects that affect their respective districts.
- **Planning Agencies and Stakeholders** – YCBP will identify other state and local planning agencies and stakeholders that may be affected or have

interest in a particular project. At project inception, representatives of these agencies will be contacted and informed of the upcoming project and provided with opportunities to coordinate. These agencies will also be notified to key project turning points, including expected review and adoption. A list of potential stakeholders is included in Appendix E.

Distribution

Copies of specific planning proposals that are in the draft or review stages will be available for public review in the following locations:

- City/County Planning Department Web Sites;
- City/County Planning Department offices where they may be checked out and returned;

Copies of draft plans, depending upon their scope, may also be made available for public review in several other convenient locations around the county. These include:

- Billings Public Library;
- Billings City Hall;
- Yellowstone County Courthouse; and
- Broadview Post Office.

Informational Public Meetings

Informational public meetings will be held to provide the public with information on specific planning projects, or the planning process in general. These meetings will be of an informal nature, and will be announced to the media at least one week prior to the meeting date. Most often, the informational meetings will be initiated by the staff or the Board of Planning, but may also be held at the request of another agency or citizen group. Typically, the planning staff will present the information; however, Board of Planning members or other City or County staff may assist in the presentations. In all cases, the information presented will be clear and concise as to generate an optimal level of understanding. Graphics and other visual aids will be used as necessary.

The location of such informational meetings will vary depending upon the specific project. All meetings will be held in handicapped-accessible buildings convenient to the identified participants (Title VI and ADA compliant accommodations). Planning projects of significance to the entire county will require several informational meetings, one of which will be held with the Board of Planning at its regularly scheduled time and date. A list of possible public meeting locations and set up checklist can be found in Appendix F.

Notification of public meetings will also be posted on the web site. The YCBP web site provides an automatic "Notify Me" procedure that will automatically

send notices of public meetings to those persons who have signed up for this service. In addition to the web site, materials should be posted conspicuously in public places where they may be seen by a large, and representative, number of persons in that district. Such places may include local schools, community halls, or post offices. Flyers may be placed on private property with the consent of the property owner. Also, Planning Board members will assist staff in setting the schedule for local public meetings in order to avoid schedule conflicts that might be unique to each area.

Staff will attend a variety of other meetings to provide information on either the general planning process or specific planning projects. Attendance at these meetings is generally solicited by an organization or group but may also be initiated by the planning staff. Examples of these meetings would include neighborhood task forces or organizations, service clubs, professional societies and organizations, chambers of commerce and local, state, or Federal board or agency meetings.

Public Hearings

Federal state, and local, laws and regulations will define what public hearings are required. Public notice of public hearing dates will be placed in the legal advertisement section of the local newspaper. Public hearings will be held on all zoning map and code amendment applications, zoning special review applications, zoning variance applications, preliminary major subdivision applications, Growth Policy adoptions or amendments, and transportation plan adoptions or amendments. Any other planning proposal which requires a local resolution or ordinance will receive a public hearing as well.

All public hearings will be held in handicapped-accessible locations. Hearings before the Board of Planning, City Zoning Commission, County Zoning Commission, City Board of Adjustment, County Board of Adjustment, City Council, and Board of County Commissioners will be held at regular times dates, and locations, unless stated otherwise in the advertised public notice.

During any public hearing, citizens interested in and/or affected by a planning-related matter will be given the opportunity to provide oral or written testimony. Persons will be allowed to speak in favor of, or in opposition to, any matter brought up for public hearing. Due process will be observed in the conduct of all public hearings.

Yellowstone County Board of Planning Staff

Considerable information is provided by the Yellowstone County Board of Planning staff directly through telephone conversations or in-office visits. The type of information provided can vary from specific project details to discussions of long range issues contained within the growth policy or transportation plan. Staffing of the planning department offices is scheduled to maximize staff availability.

3.0 Program- and Plan-Specific Procedures

Federal, state, and local laws and regulations may determine the type and level of public review required. Specific public participation procedures for the Transportation Improvement Plan (TIP) and Regional Transportation Plan (RTP) are presented below.

Documentation of public input will be maintained on a regular basis. Minutes of all meetings and tape recordings of Planning Board public hearings will be filed in the planning department offices and made available to the public upon request. All written citizen comments and/or responses will be filed appropriately in the subject case files. Copies of publications, news releases, flyers, etc., will be filed in the planning department offices, and also made available to the public upon request. Retaining copies of these materials will provide documentation of department compliance with this citizen participation process, and is essential for program review purposes.

3.1 TRANSPORTATION IMPROVEMENT PLAN (TIP)

A five-year Transportation Improvements Plan (TIP) is a fiscal planning program for federally assisted highway and transit improvements for the Billings Urban Area. The TIP assesses transportation needs and recommends actions to address those needs. The appropriate level of visualization techniques will be used to effectively communicate the recommended needs and actions included in the TIP. The Billings Urban Area TIP is available on the YCBP web site.

The Billings Urban Area TIP is to be updated at least every four years. The TIP is developed in coordination with planning processes of other planning agencies and due consideration of the planning activities of all transportation providers in the region. A list of potential agencies to contact and coordinate with when developing the TIP is provided in Appendix E.

Public notifications of a TIP update will be made available on the City/County web sites. Additionally, notification of public participation activities including opportunities of public comment and review will be made to interested parties using the methods documented above, including but not limited to City/County web sites and local media contacts, two-weeks prior to the start date. The TIP will be published and made readily available for public review on the City/County web sites.

When significant written and oral comments are received on a draft TIP as a result of participation process, a summary, analysis, and report on the disposition of comments shall be as part of final TIP.

3.2 REGIONAL TRANSPORTATION PLAN (RTP)

The Billings Urban Area Transportation Plan is the long range regional transportation plan (RTP) for the region, spanning a 20-year planning horizon. The RTP will be updated at least every 4 years and should utilize visualization techniques to clearly convey items in the plan. An electronic version of the RTP is available on the Board of Planning web site.

The RTP is developed in coordination with planning processes of other planning agencies and due consideration of the planning activities of all transportation providers in the region. A list of potential agencies to contact and coordinate with when developing the RTP is provided in Appendix E.

Public notifications of an RTP update will be made available on the City/County web sites. Additionally, notification of public participation activities including opportunities of public comment and review will be made to interested parties using the methods documented above, including but not limited to City/County web sites and local media contacts, two-weeks prior to the start date. The RTP will be published and made readily available for public review on the City/County web sites.

When significant written and oral comments are received on draft RTP as a result of participation process, a summary, analysis, and report on the disposition of comments shall be as part of final RTP.

APPENDICES

A. PCC and TAC Members

A.1 POLICY COORDINATING COMMITTEE (PCC)

Mayor, City of Billings
Chairperson, Board of Yellowstone County Commissioners
President, Yellowstone County Planning Board
District Administrator, Montana Department of Transportation
Division Manager, Federal Highway Administration

A.2 TECHNICAL ADVISORY COMMITTEE (TAC)

Chairman, TAC
Transportation Planner, City/County Planning
Vice Chairman, TAC
Transit Manager, City of Billings Met Facility
Director, Planning and Community Services, City/County Planning
Transit Planner, City of Billings Met Facility
Deputy Public Works Director, City of Billings Public Works
Director, Yellowstone County Public Works
Director of Public Works, City of Billings Engineering
District Construction Supervisor, Montana Department of Transportation
Traffic Engineer, City of Billings Engineering Division
Supervisor, Statewide and Urban Planning Section Montana Department of Transportation

B. Task Force Members and Contacts

2008 NEIGHBORHOOD TASK FORCE OFFICERS

Updated: 9/8/2008

	<u>Home/Work Phone</u> <u>e-mail Address</u>		<u>Home/Work Phone</u> <u>e-mail Address</u>
<u>Central-Terry Park</u>		<u>North Elevation</u>	
Weldon Birdwell, Chairperson 44 Yellowstone	252-9711 wibid@attglobal.net	Mike Tuss, Chairperson 1046 North 31 st Street	252-9364 / 248-7455 miket@ciagroup.com
Carina Meyer, Vice Chairperson 930 Custer Avenue	655-8973	Shauna Kerr, Secretary 907 North 31 st Street	252-5877 (after 5:00 pm) grafkpress@iml.net
Vacant, Secretary		North Elevation Task Force meets on the <u>3rd Tuesday at 7:00 pm</u> as needed. McKinley School Gym, 820 North 31 st Street	
Central-Terry Task Force meets on the <u>2nd Thursday at 8:30 pm</u> of each month. Terry Park Fire Station, Terry Avenue and 5 th Street West.		<u>North Park</u>	
<u>West End Task Force</u>		J. D. Kober, Chair 2213 Hyacinth Dr	245-9478 koberj@billings.k12.mt.us
Leo Barsanti, Chairman 3316 Pipestone Dr	652-2042 leo47@msn.com	Vacant, Vice-Chair	
Mike Kase, Co-Chair	656-5190 Coach1946@gmail.com	Patty Driscoll, Secretary	
Betty Brotzel, Secretary	656-2278 muccs@bresnan.net	Erica Sparhawk, Treasurer	
Inga Larsen, Treasurer	656-6557	North Park Task Force meets on the <u>1st Thursday at 7:00 pm</u> of each month at the North Park Center	
West End Task Force meets on the <u>3rd Tuesday at 7:00 pm</u> of each month. Faith Evangelical Church, 3145 Sweetwater Drive, Room 128 -- NW Corner of Building. Use Main South Entrance		<u>South Side</u>	
<u>Heights Community Development</u>		Mike Yakawich 206 S 32 Street	259-2445 familychurchmt@aol.com
Kim Gillan, Chair 750 Judicial Ave.	gionky@aol.com	Marion Dozier, Vice-Chairperson	
Dennis Himmelberger, Co-Vice Chair 233 Swords Lane	259-8225 ghimme1045@aol.com	Mary Westwood, Secretary	
Chris Allard, Co-Vice Chair		Jake Romero, Treasurer 3223 5 th Ave S	208-0103
Ray Tracy, Secretary		South Side Task Force meets on the <u>3rd Thursday at 7:00 pm</u> of each month. Friendship House, 3123 8 th Avenue South	
Heights Task Force meets on the <u>4th Tuesday at 7:00 pm</u> of each month. Castlerock Middle School Library, 1441 Governor's Blvd. (255-3819)		<u>Southwest Corridor</u>	
		Tom Ruschewicz, Chair 4125 Vaughn	245-5762 cell: 670-4395
		Floyd Martin, Vice-Chair	252-8809
		Alan Ponrich, Treasurer	
		Debbie Rowe, Secretary	
		Southwest Corridor Task Forces meets on the <u>4th Thursday at 7:00 pm</u> of each month. 80 Hallowell Lane	

C. Local Media Contacts

First Name	Business Street	Business City	Business State	Business Postal Code	Business Fax	Business Phone	Business Phone 2	Company Main Phone
Agri New						(406) 259-5406		
Big Sky Business Journal	716 Saint Johns Ave	Billings	MT	59101-2946		(406) 259-2309		
Big Sky Economic Development Authority	222 North 32 nd St, Ste 200	Billings	MT	59101				
Billings Gazette	401 N. Broadway	Billings	MT	59101-1243	(406) 657-1345	(800) 543-2505	(406) 657-1386	
Billings Area Newspaper Group	411 24 th St West, Ste 108	Billings	MT	59101		(406) 652-2763		
Billings Outpost	1833 Grand Ave	Billings	MT	59102-1243		(406) 248-1616		
Billings Times	2919 Montana Ave	Billings	MT	59101-2143		(406) 245-4994		
Bureau of Land Management						(406) 896-5004	(406) 896-5408	(406) 896-5408
DESCRO Neighborhood Task Force	2525 Howard Ave	Billings	MT	59101				
Downtown Partnership	2906 3 rd Ave North	Billings	MT	59103		(406) 294-5060		
Heights Community Development	1435 Wicks Lane	Billings	MT 5910					
KBLG Radio	2075 Central	Billings	MT	59102	(406) 652-4899	(406) 652-5254	(406) 652-8400	(406) 652-8499
KCTR/Cat County Radio	27 N. 27 th Street	Billings	MT	59101	(406) 252-9577	(406) 245-9700		

Cambridge Systematics, Inc.

C-1

Yellowstone County Board of Planning Participation Plan
Appendix

First Name	Business Street	Business City	Business State	Business Postal Code	Business Fax	Business Phone	Business Phone 2	Company Main Phone
KEMC Radio	1500 N. 30 th	Billings	MT	59101	(406) 657-2977	(406) 657-2941		
KGHL Radio	222 N 32 nd St	Billings	MT	59101	(406) 238-1067	(406) 238-1000		
KSVI-4 TV	445 S. 24 th St W.	Billings	MT	59102	(406) 652-6963	(406) 652-4743		
KTVQ-2 TV	3203 -3 rd Ave N.	Billings	MT	59101	(406) 252-9938	(406) 252-5611		
KULR 8 TV	2045 Overland	Billings	MT	59102	(406) 655-2688	(406) 656-8000		
KURL Radio					(406) 245-0822	(406) 245-3121		
Laurel Outlook	415 East Main	Laurel	MT	59044-3120		(406) 628-6711		
Mid-Rivers Telephone Coop								
North Elevation Task Force	1046 North 31 st St	Billings	MT	59101				
North Park Task Fore	824 North 25 th St	Billings	MT	59101				
Northern Broadcasting Radio					(406) 245-9755			
South Side Task Force	206 South 32 nd	Billings	MT	59101				
St. Vincent Healthcare	P.O. Box 35200	Billings	MT	59107-5200	(406) 237-4151	(406) 237-4114		
Western Business Times	410 N. Broadway	Billings	MT	59101-1243		(406) 657-1561		
Western Business Times	18 & Minnesota Ave	Billings	MT	59101		(406) 259-4589		
Yellowstone Boys and Girls Ranch						(406) 655-2100		

Yellowstone County Board of Planning Participation Plan
Appendix

First Name	Business Street	Business City	Business State	Business Postal Code	Business Fax	Business Phone	Business Phone 2	Company Main Phone
Yellowstone County News	113 Northern Ave P.O. Box 395	Huntley	MT	59037	(406) 348- 2302	(406) 348- 2649		

Cambridge Systematics, Inc.

C-3

D. Project-Specific Public Participation Guidance

D.1 PROJECT-SPECIFIC PROCEDURES

1. Establish Governance Criterion:
 - a. Check for Federal, State, and local regulations.
 - b. Identify appropriate governing body, PCC, TAC, or Steering Committee members.
 - c. Notify appropriate governing body, PCC, TAC, and Steering Committee members of expected role and timeline.
2. Identify Coordinating Agencies and Stakeholders:
 - a. Identify appropriate coordinating agencies and stakeholders.
 - b. Notify representatives of upcoming project and opportunities to coordinate.
3. Determine Appropriate Public Notification Procedure(s):
 - a. YCBP web site.
 - b. Interested party contact list.
 - c. Postcard Mailing:
 - i. Staff identifies a boundary for landowner notification;
 - ii. Determine cost of preparing mailing and who will prepare and mail; and
 - iii. Determine how many days prior to meeting to send post cards.
 - d. Flier posting.
 - e. Local newspapers, radio, and television stations:
 - i. Determine what type of media coverage should be included;
 - ii. Contact by fax, email or phone;
 - iii. Set up interviews if needed; and
 - iv. Determine if necessary to notify interested parties of interview.
4. Develop Visualization Tools (as appropriate)
 - a. Display Boards;
 - b. Artist Renderings;

- c. PowerPoint Presentation;
 - d. Simulations; and
 - e. Others as needed.
5. Informational Meeting – Serves to inform the public of proposed planning project and existing conditions.
- a. Send out appropriate notification materials.
 - b. Meeting Setup Materials:
 - i. Check list for supplies (supplies contained in one location for convenient access, see Appendix D.2); and
 - ii. Provide a sign up sheet with instructions to include clearly print name, address, phone, email for future follow up and mailings.
 - c. Determine next steps, these could be:
 - i. Provide a survey;
 - ii. Create a newsletter to keep public informed of progress during the project;
 - iii. Hold a second informational meeting; and
 - iv. Hold a public input meeting.
6. Public Input Meeting – Serves to gather information and receive public comments.
- a. Same as the Informational Meeting but with the addition of interested parties determined by first meeting and more solicitous of public input.
7. Public Hearing
- a. Prepare a public hearing notice for notification:
 - i. Use template (see Appendix D.3).
 - b. Email or mail notification to list of interested parties.
 - c. Prepare the following after the Public Hearing:
 - i. Final documents and outcome; and
 - ii. Summary of where information is available.

D.2 SAMPLE MEETING NOTIFICATION



Planning & Community Services Department

"Serving Billings, Broadwater and Yellowstone County"

510 North Broadway, 4th Floor
Billings, Montana 59101
Fax: (406) 657-8327
Phone: (406) 657-8246



City-County Planning Department
4th Floor, Family Library

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Billings City Council will hold a public hearing and consider a Resolution adopting the Blue Creek Transportation Plan. The Blue Creek Transportation Plan area is generally described as South Billings Boulevard (Blue Creek Road) south to the intersection of Pryor Creek Road and extending approximately 1 mile on either side of Blue Creek Road. The study will be a document with an underlying goal of guiding transportation infrastructure development of the area into the future. The study will consider future land uses and expected transportation demands to identify system deficiencies, both current and projected, for capacity and connectivity. The study will consider both motorized and non-motorized transportation elements.

The public hearing is scheduled for Monday, April 28, 2008, at 6:30 p.m. The hearing will be held in the City Council Chambers, 2nd Floor, City Hall, 220 N 27th Street, Billings, MT 59101.

For more information on the public hearing, contact Scott Walker, Transportation Planner, Planning & Community Services Department at 510 North Broadway, 4th Floor, Billings, Montana or phone at 406-247-8661 or email at walkers@ci.billings.mt.us



A copy of the plan is on file in the City Clerk's Office and available from the Planning & Community Services Department.

MDT attempts to provide accommodations for any known disability that may interfere with a person's participation in any service, program or activity of our department. If you require reasonable accommodations to participate in this meeting, please call Ed Toavs at (406) 454-5929 at least two days before the meeting. For the hearing impaired, the TTY number is (406) 444-7696 or 1-800-335-7592 or call Montana Relay at 711. Alternative accessible formats of pertinent information will be provided upon request.

Please publish 2 times:
April 10, 2008 and April 24, 2008
Return Affidavit of Publication

Dated: April 9, 2008
Cari Martin, City Clerk

D.3 SAMPLE MEETING AGENDA

	<p>Zoning Code Modification Interest Group c/o Planning & Community Services 510 N. Broadway 4th Floor Billings MT 59101</p>	<p>Volume I, Issue I January 2006</p>
<p style="text-align: center;">Meeting Agenda January 12, 2006 6:30 p.m. Parmly Library 510 N. Broadway, 4th floor meeting room</p> <ul style="list-style-type: none"> I. Call to Order II. Introductions & Agenda Review III. Approval of Minutes IV. Reports <ul style="list-style-type: none"> a. V. Old Business VI. New Business VII. Next Meeting Agenda Items Requested for Inclusion VIII. Announcements <ul style="list-style-type: none"> a. Next Meeting - February 9, 2006 IX. Adjournment <div style="text-align: right; margin-top: 20px;">  </div> <div style="border: 1px solid black; width: fit-content; margin: 10px auto; padding: 5px;"> <p>Other public announcement</p> </div> <p style="text-align: center;">WE LIVE TOGETHER - LET'S PLAN TOGETHER</p> <p style="text-align: center; font-size: small;">See us on the Web at http://www.ci.billings.mt.us</p>		<p style="text-align: center;">Staff</p> <p>Planning Director: Candi Beaudry 657-8249</p> <p>Zoning Coordinator: Nicole Cromwell 247-8662</p> <p>Staff Host:</p>

E. Potential Planning Agencies and Stakeholders

The following planning agencies and stakeholders will be notified of public participation opportunities as appropriate:

- Billings Area Chamber of Commerce;
- Billings Association of Realtors;
- Billings BikeNet;
- Billings Emergency Services;
- Billings Fire Department;
- Billings Police Department
- Billings School District 2;
- City of Billings MET Transit;
- City of Billings Bicycle and Pedestrian Advisory Committee;
- City of Billings Traffic Control Board;
- City of Billings Community Development Board;
- City of Billings Board of Adjustment;
- City of Billings Zoning Commission;
- City of Billings Aviation and Transit Board;
- City of Billings Parking Advisory Board;
- Downtown Billings Partnership, Inc;
- Housing Authority of Billings;
- Yellowstone Historic Preservation Board;
- Crow Indian Reservation;
- Yellowstone County;
- Montana Department of Transportation;
- Montana Department of Environmental Quality;
- Montana Department of Fish, Wildlife, and Parks;
- Montana Department of Natural Resources & Conservation;
- Montana Historical Society;

- Bureau of Indian Affairs;
- U.S. Fish and Wildlife Service;
- U.S. Army Corps of Engineers;
- U.S. Environmental Protection Agency;
- U.S. Bureau of Land Management;
- U.S. Forest Service;
- U.S. Bureau of Reclamation;
- Nation Park Service;
- U.S. Department of Agriculture;
- Advisory Council on Historic Preservation;
- Title 49 Assisted Agencies;
- Governmental agencies and nonprofit organizations that receive Federal assistance from a source other than the U.S. DOT to provide non-emergency transportation services; and
- Recipients of assistance under 23 U.S.C. 204.

F. Public Meeting Locations

F.1 PUBLIC MEETING LOCATION LIST

Public meetings can be held at the following locations. Meeting locations should include Title VI and ADA accommodations.

- Billings Community Center;
- Billings Depot;
- Blue Creek Elementary School;
- Castle Rock Middle School (Heights);
- Friendship House;
- Lockwood School Administration Building;
- Mansfield Center;
- MSUB;
- Parmly Billings Library, 3rd Floor Meeting Area;
- Parmly Billings Library, 4th Floor Large and Small Conference Rooms;
- Shepherd (Old Fire House or High School);
- Sheraton Hotel Meeting Rooms;
- Southwest Corridor Cop Shop;
- Zimmerman Center (Highland Neighborhood planning meetings).

F.2 PUBLIC MEETING SETUP CHECKLIST

1. Beverages:
 - a. Water;
 - b. Coffee;
 - c. Coffee pots; and
 - d. Extension cord.
2. Condiments:
 - a. Creamer;
 - b. Sugar;
 - c. Stir sticks;

- d. Napkins; and
- e. Cups.
- 3. Supplies:
 - a. Easel;
 - b. Pads;
 - c. Pens;
 - d. Pencils;
 - e. Markers;
 - f. Laser pointer;
 - g. Power strip;
 - h. Sign up sheet;
 - i. Tape;
 - j. Maps/presentation;
 - k. Name tags; and
 - l. Staff badges.
- 4. Audio/Visual:
 - a. Laptop;
 - b. Projector; and
 - c. Extension cord.

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, January 12, 2009**

TITLE: Internal Control Policy with Resolution
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City of Billings has never had written Financial Internal Control Procedures. The attached policy would authorize the City Administrator to proceed with written Financial Internal Control Procedures.

RECOMMENDATION

Staff recommends that Council approve the Internal Control Policy.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

Attachment A – Resolution for Internal Control Policy
Exhibit A – Internal Control Policy

RESOLUTION NO. 08- _____

**A RESOLUTION OF THE BILLINGS, MONTANA CITY COUNCIL
ADOPTING A CITY-WIDE INTERNAL CONTROL POLICY**

WHEREAS, the City of Billings does not currently have written financial internal controls; and

WHEREAS, the City of Billings needs to adopt an Internal Control Policy (Exhibit A) to provide that the City will use a system of written internal control procedures to protect City assets, ensure the integrity and reliability of its information, secure compliance with laws, policies, procedures, and ensure the integrity of its financial reporting.

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

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

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

Internal Control Policy

Internal control policy statement:

The City shall use both Internal Control management and accounting control measures. The internal control measures shall be designed to be detective, preventative, physical, technological, and corrective. The controls shall consist of hard controls, like testing, validating, reconciling, and measuring, and soft controls, like tone and attitude.

Internal control purpose:

The City will use a system of written internal control procedures to protect City assets, ensure the integrity and reliability of its information, secure compliance with laws, policies, procedures, and ensure the integrity of its financial reporting.

Internal control implementation authority:

Upon adoption of this Statement of Policy, the City of Billings Council authorizes the City Administrator to establish internal control procedures which may be necessary to support the policy statement and adopt such documents by Administrative Order. The City Administrator will review the procedures with the City Council at a work session every three years.

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: W.O. 08-02, 2008 Miscellaneous/Developer Related Project – Resolution of Intent to construct improvements and set a Public Hearing

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: Each year staff receives numerous complaints of defective concrete improvements, some the result of trip and fall claims, and other requests from property owners that the City construct certain public improvements adjacent to their property. Additionally, some developers do not complete the new development public improvement requirements. These improvements have historically been constructed under the annual Miscellaneous/Developer Related Program. In order to construct this year's improvements, Council must pass a Resolution of Intent and set a Public Hearing for the project in order to allow adjacent property owners to be assessed.

FINANCIAL IMPACT: The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$612,000 as follows:

Estimated Assessed Costs	\$337,000
Storm Drain Funds	\$52,500
Gas Tax Funds	\$217,500
Public Works Belknap Funds	\$5,000

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2009 budget.

RECOMMENDATION

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 08-02, 2008 Miscellaneous/Developer Related Project, and establish a Public Hearing date of February 09, 2009.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Resolution of Intent

INTRODUCTION

The proposed project represents curb, gutter, and sidewalk improvements at various locations in the city. This is a continuation of a long-standing annual program to deal with these various improvements. Council must pass a Resolution of Intent and establish a Public Hearing to have the improvements constructed.

PROCEDURAL HISTORY

- Project requested by property owners – 2007 and 2008
- Field inventory completed and estimated project cost calculated – Fall 2008
- Resolution of Intent – January 12, 2009
- Notify affected property owners of proposed project – January 22, 2009
- Public Hearing and Resolution Ordering Improvements – February 09, 2009
- Construction – Summer/Fall 2009

BACKGROUND

The proposed project represents two categories of properties. The first category is unfulfilled building permit obligations. The City of Billings Site Development and/or Subdivision Ordinances require the installation of public improvements in conjunction with the issuance of building permits. A small number of these properties either did not complete the requirements of the right-of-way permits or have requested that the improvements be completed under the City's project. Per Council policy, the uncompleted right-of-way permits are included in the next annual Developer Related Program. The costs of completing these improvements are assessed to the property owner.

The second category represents continuation of the annual improvements project for dealing with tripping hazards, drainage problems, property owner requests, citizen complaints, and other miscellaneous concrete work brought to the attention of the City Engineer's Office. This program proposes a continuation of the Council policy of allocating Gas Tax Funds for reconstruction of side street frontages on corner lots and to cover the cost of curb and gutter repair.

The proposed project also uses additional funding allocations to cover costs not normally assessed to property owners. A Storm Drain Fund allocation is used for repairing defective valley gutters, improperly graded curb and gutter, and substandard storm drain inlets; and a Public Works/Belknap Repair Fund allocation allows for minor adjustments of water lines.

RECOMMENDATION

Staff recommends that Council pass a Resolution of Intent to construct the improvements identified in Work Order 08-02, 2008 Miscellaneous/Developer Related Project, and establish a Public Hearing date of February 09, 2009.

RESOLUTION NO. 08-_____

A RESOLUTION RELATING TO W.O. 08-02, MISCELLANEOUS/DEVELOPER-RELATED IMPROVEMENTS; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND.

WHEREAS, the city is granted the power pursuant to M.C.A. 7-14-4109 to order certain improvements without creation of a special improvement district and certain sections of curb and gutter, sidewalks, drive approaches, alley approaches and/or appurtenant features have deteriorated, settled and cracked, or none exist, or some of the foregoing do not exist; and

WHEREAS, the safety and convenience of the public require installation, construction, reconstruction, repair or replacement of curbs and gutters, sidewalks, drive approaches, alley approaches, and/or appurtenant features or combinations thereof; and

WHEREAS, said improvements should be ordered as provided by law.

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits "A" and "B" attached hereto.
2. AFFECTED PROPERTIES. All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit "B" attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$326,000 as described below:

Construction Costs	\$252,165.33
Engineering & Administration (12.5%)	\$ 40,750.00
Revolving Fund (5%)	\$ 16,300.00
Bond Discount (2%)	\$ 6,520.00
Issuance Costs (3.0%)	\$ 9,780.00
Bank Fees	\$ 500.00
Roundoff	\$ (15.33)
Total Assessed Costs	\$326,000.00

Estimated unit costs for construction only, not including engineering, legal, administrative, and bond costs as follows:

<u>Removal of:</u>	<u>Unit Price:</u>
Flatwork Removal	\$11.00/SY
Curb and Gutter Removal	\$6.50/LF
<u>New Construction:</u>	
Concrete Sidewalk	\$ 5.40/SF
Curb and Gutter	\$22.00/LF
New Drive Approach	\$ 6.10/SF
New Alley Approach	\$ 6.10/SF
Street Reconstruction	\$42.00/SY

The actual cost to be assessed against any benefited property will be determined by the actual amount of work done adjacent to the property.

4. ASSESSMENT OF COSTS. All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs, will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit "B", assessments will be levied against 174 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The average total assessment, including engineering, administrative, and bond costs is estimated to be \$1,874, with a high of \$16,806, low of \$0.00, and a median of \$764.

5. PERIOD OF ASSESSMENT. The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS. In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.
7. METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS. The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount not to exceed \$326,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the Bonds by the Revolving Fund and

hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect to the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$15,191,689. The average market value is \$87,309 with a high of \$1,680,504 and a low of \$7,854 and median value of \$66,924. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 174 Tax codes in this project, there are 165 separate owners. Dennis Tresidder owns (2) parcels with (4) lots. Susan Lytle owns 2 parcels with (2) lots. John Laudon owns (2) sections of 1 lot. Charles Goldy owns (2) parcels with (2) lots. Boyer Properties LLC own (3) units of Olympic Park Subdivision. B&P Leasing own (4) units of Olympic Park Subdivision. One (1) parcel listed, is owned by School District #2, which is (D05335) Bench Elementary School. Another parcel listed is Montana Rail Link which is (D12010). All other parcels are under separate ownership, it is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.
- (c) Comparison of Special Assessments, Property Taxes and Market Value. Currently, six (6) parcels have an SID levied against them. Parcel A-01685 is being assessed under SID 9902, with a payoff amount of \$283.90 and a payoff date of 2009. Parcel A-01794 is being assessed under SID 2401, with a payoff amount of \$197.51 and a payoff date of 2017; Parcel A-07744 is being assessed under SID 9808, with a payoff amount of \$38.30 and a payoff date of 2010; Parcel A-20544 is being assessed under SID 1339, with a payoff amount of \$1562.41 and a payoff date of 2014. Parcel A-29306 is being assessed under SID 1366, with a payoff amount of \$2,234.88 and a payoff date of 2020. Parcel A-29315 is being assessed under SID 1366, with a payoff amount of \$2,181.67 and a payoff date of 2020.

As noted in Section 4, the estimated average assessment levied by this project will be \$1,873.56. With an average market value of \$87,309, and an average yearly principal payment of \$156.13 (monthly principal of \$13.01) assuming 6% interest rate, the amount of assessment versus the value of the property would appear acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "B".

- (d) Delinquencies. For tax year 2007, Zero (0) parcels were delinquent. This rate is above the average city collection rate of 95%.

Therefore, given the delinquency history of this Project area, no unusual need for loans from the Revolving Fund would be expected.

- (e) The Public Benefit of the Improvements. Current City Subdivision and Site Development Ordinances, and under City Council policies, the cost of installation of new curb, gutter, sidewalk, and drive approaches is to be borne by the adjoining property owners.

Some of the parcels have been involved in recent construction or subdivision activity. Some of these parcels have undergone recent site developments, both residential and commercial, in which a permit was taken out, but the improvements were not constructed, or the developer has requested that the improvements be included and constructed under the proposed project. Developers generally make a request to be included in the proposed project to take advantage of the financing opportunity of the 12-year assessment. Some of these parcels are lots included in recently approved subdivisions. The improvements were required as part of the Subdivision Improvements Agreements, but were not installed by the subdivider/developer.

The remaining parcels represent a continuation of an annual improvement project for repairs of tripping hazards, deteriorated sidewalks, drainage problems, property owner requests and citizen complaints.

The project improvements are located in various Task Force areas, both commercial and residential, throughout the City.

8. REIMBURSEMENT EXPENDITURES.

- (a) Regulations. 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.
- (b) Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (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 Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.
- (c) Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$326,000 after the date of payment of all or a portion of the costs of the Improvements. 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.

(d) 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 Improvements, 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.

(e) Reimbursement Allocations. The City's financial officer 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 Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

9. PUBLIC HEARING. On Monday, February 09, 2009, at 6:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, MT, the City Council will conduct a public hearing concerning this project and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.
10. NOTICE OF PASSAGE OF RESOLUTION OF INTENTION. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on January 22 and January 29, 2009, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

PASSED by the City Council and APPROVED this 12th day of January, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

Cari Martin CITY CLERK

Exhibit “A”
Location of Work

WO 08-02 Miscellaneous and Developer Related

- A) **Sidewalk:** 1410 Yellowstone Avenue * 2617 7TH Avenue North * 10 Yellowstone Avenue * 544 Crawford Drive * 928 to 936 Alderson Avenue * 929 Alderson Avenue * 1214 9th Street West * 1216 8th Street West * 44 30th Street West * 318 Berthoud Drive * 1612 thru 1624 Broadwater Avenue * 3633 Rimrock Road (Dev-Rel) * 5835 Ironwood Drive (Dev-Rel) * 5859 Ironwood Drive (Dev-Rel) * 3220 1ST Avenue North * 708 Parkhill Drive * 943 Poly Drive * 1841 Miles Avenue * 625 S 38th Street West (55 units) * 1737 Avenue D * 3970 Avenue D *
- B) **Sidewalk, Curb and Gutter:** 5 S 28th ST * 3006 4th Ave S * 3110 7th Ave S * 2717 1st Avenue North * 704 North 26th Street * 2125 Hewitt Drive * 2615 7th Avenue North * 2128 Hewitt Drive * 1415 Colton Boulevard * 3704 Corbin Street * 1739 43rd Street West * 3006 4th Avenue South * 802 South 32nd Street * 2222 Fairview Place * 851 Delphinium Drive * 2020 Glendale Lane * East Side of South 32nd Street between 7th Avenue South and 8th Avenue South * 424 South 29th Street * 2046 Avenue D * 3704 & 3712 Hayden Drive * 624 North 27TH Street * 608 North 27TH Street * 1113 & 1115 13TH Street West * 4507 Rangeview Drive * 4423 Rangeview Drive * 1819 Cody Drive *
- C) **Sidewalk, Drive Aprons:** 4103 Phillip Street (Dev-Rel) * 2026 Pryor Lane * 1034 Calico Drive * South side of Milton Road between Main Street and Rex Lane. East side of Rex Lane Between Milton Road and the Cul de Sac *
- D) **Sidewalk, curb & Gutter, Drive Aprons:** 3414 7th Ave S * #44 30th St W * 2131 Hewitt Drive * 2125 6th Street West * 104 Adams Street (Dev-Rel) * West Side of South 32nd between 8th Avenue South and 9th Avenue South * 2305 & 2309 Virginia Lane * 1444 Colton Boulevard * West Side of South 31st Street between 7th Ave South and 8th Avenue South * Both Sides of North 24th Street between 6th Avenue North and 7th Avenue North * 502 Nelson Drive * 1814 & 1818 Avenue D * Both Sides of 19TH Street West between Custer Avenue and Miles Avenue *
- E) **Sidewalk, curb & gutter Drive Aprons & Alley Aprons:** South Side of 7th Avenue South between South 31st and South 32nd Street * North Side of 8th Avenue South between South 31st and South 32nd Street *
- F) **Curb & Gutter:** 3222 Redwood Lane * 2127 Concord Drive * 1818 & 1824 Columbine Drive * 624 Avenue C * 1703 Bitterroot Drive * 2608 Yellowstone Avenue * 2649 Cody Lane *
- G) **Curb, Gutter, Drive Aprons:** * West Side of South

32nd Street between 8th Avenue South and 9th Avenue South * 1721 Mariposa Lane *
Both sides of Marguite Blvd. Between Forsythia Blvd. to the Cul De Sac to the East *

- H) **Drive Aprons :** 1721 Mariposa Lane * 2212 Elizabeth Street * 704 Calhoun Lane (Dev-Rel) * 309 South 35th Street (Dev-Rel) *
- I) **Alley Aprons:** Both sides of 5th Street West between Lewis Avenue and Clark Avenue *
- J) **Alley Paving only:** 742 Avenue B (Dev-Rel) *

WO 08-02 Misc/Developer Related
Exhibit B

Tax Code	SID #	SID Pay-off	Delinquent	WO 08-02- Assessment	SID Pay-off + Delinquent + WO 08-02- Assessment	Estimated Market Value
A00737				\$ 8,098.90	\$ 8,098.90	\$ 103,445.00
A01290				\$ 10,336.94	\$ 10,336.94	\$ 13,982.00
A01407				\$ 10,232.77	\$ 10,232.77	\$ 44,550.00
A01674				\$ 10,858.95	\$ 10,858.95	\$ 19,800.00
A01675				\$ 1,704.27	\$ 1,704.27	\$ 17,249.00
A01676				\$ 1,062.18	\$ 1,062.18	\$ 39,665.00
A01677				\$ 583.34	\$ 583.34	\$ 28,750.00
A01678				\$ 3,151.70	\$ 3,151.70	\$ 30,096.00
A01679				\$ 3,280.12	\$ 3,280.12	\$ 24,763.00
A01680A				\$ 3,913.06	\$ 3,913.06	\$ 19,931.00
A01681				\$ 3,520.75	\$ 3,520.75	\$ 25,871.00
A01682				\$ 3,155.39	\$ 3,155.39	\$ 47,783.00
A01683				\$ 1,704.27	\$ 1,704.27	\$ 25,475.00
A01684				\$ 1,704.27	\$ 1,704.27	\$ 22,373.00
A01685	9902	\$ 283.90	\$ -	\$ 583.34	\$ 867.24	\$ 38,854.00
A01686				\$ 1,749.99	\$ 1,749.99	\$ 150,237.00
A01793				\$ -	\$ -	\$ 51,150.00
A01794	2401	\$ 197.51	\$ -	\$ -	\$ 197.51	\$ 78,487.00
A01795				\$ 1,883.47	\$ 1,883.47	\$ 35,904.00
A01969				\$ 2,285.41	\$ 2,285.41	\$ 64,878.00
A01970				\$ 2,413.09	\$ 2,413.09	\$ 49,771.00
A01971				\$ 2,711.00	\$ 2,711.00	\$ 44,266.00
A01972				\$ 3,426.72	\$ 3,426.72	\$ 40,854.00
A01987				\$ 2,619.73	\$ 2,619.73	\$ 52,338.00
A01988				\$ -	\$ -	\$ 32,802.00
A01989				\$ 3,858.08	\$ 3,858.08	\$ 72,798.00
A01990				\$ 2,952.24	\$ 2,952.24	\$ 35,904.00
A01991				\$ 1,583.68	\$ 1,583.68	\$ 62,205.00
A01992				\$ 7,737.08	\$ 7,737.08	\$ 83,529.00
A03027				\$ 16,806.40	\$ 16,806.40	\$ 175,958.00
A03131				\$ 510.24	\$ 510.24	\$ 60,786.00
A03178				\$ -	\$ -	\$ 72,072.00
A04129				\$ 927.22	\$ 927.22	\$ 79,002.00
A04555				\$ -	\$ -	\$ 68,178.00
A04933				\$ 1,344.59	\$ 1,344.59	\$ 149,292.00

A05187				\$ 1,184.06	\$ 1,184.06	\$ 22,298.00
A05658				\$ -	\$ -	\$ 89,891.00
A05778				\$ -	\$ -	\$ 78,738.00
A05959				\$ -	\$ -	\$ 80,058.00
A06511				\$ 1,448.38	\$ 1,448.38	\$ 102,828.00
A06566				\$ 5,282.90	\$ 5,282.90	\$ 74,514.00
A06912				\$ 8,776.19	\$ 8,776.19	\$ 66,726.00
A07225				\$ 7,999.85	\$ 7,999.85	\$ 7,854.00
A07235				\$ 4,160.75	\$ 4,160.75	\$ 51,809.00
A07236				\$ 758.18	\$ 758.18	\$ 37,883.00
A07262				\$ 913.14	\$ 913.14	\$ 541,875.00
A07265				\$ 2,720.76	\$ 2,720.76	\$ 72,534.00
A07642				\$ 731.98	\$ 731.98	\$ 71,082.00
A07738				\$ 1,498.21	\$ 1,498.21	\$ 72,731.00
A07740				\$ 719.15	\$ 719.15	\$ 73,193.00
A07741				\$ 941.73	\$ 941.73	\$ 75,437.00
A07742				\$ 1,375.32	\$ 1,375.32	\$ 75,635.00
A07743				\$ 3,486.01	\$ 3,486.01	\$ 73,854.00
A07744	9808	\$ 38.30	\$ -	\$ 1,626.12	\$ 1,664.42	\$ 71,742.00
A07746				\$ 2,422.59	\$ 2,422.59	\$ 56,892.00
A07930				\$ 3,312.14	\$ 3,312.14	\$ 60,984.00
A07931				\$ 684.90	\$ 684.90	\$ 67,716.00
A07939				\$ 2,054.70	\$ 2,054.70	\$ 66,924.00
A08324				\$ 757.15	\$ 757.15	\$ 73,656.00
A08325				\$ 770.51	\$ 770.51	\$ 74,118.00
A08447				\$ -	\$ -	\$ 53,733.00
A09293				\$ 4,378.99	\$ 4,378.99	\$ 101,838.00
A09775				\$ 856.12	\$ 856.12	\$ 48,444.00
A09881				\$ 629.06	\$ 629.06	\$ 71,280.00
A09882				\$ 1,095.00	\$ 1,095.00	\$ 68,244.00
A10323				\$ -	\$ -	\$ 66,989.00
A10782				\$ 508.92	\$ 508.92	\$ 175,692.00
A13024A				\$ 9,458.18	\$ 9,458.18	\$ 111,870.00
A13024B				\$ 12,346.78	\$ 12,346.78	\$ 106,392.00
A13047B				\$ -	\$ -	\$ 209,022.00
A13161				\$ 5,071.01	\$ 5,071.01	\$ 115,368.00
A13333				\$ 781.54	\$ 781.54	\$ 62,172.00
A13443				\$ 499.16	\$ 499.16	\$ 54,450.00
A13444				\$ 224.62	\$ 224.62	\$ 72,204.00
A13445				\$ 2,225.01	\$ 2,225.01	\$ 61,314.00
A13448				\$ 941.74	\$ 941.74	\$ 58,872.00
A13449				\$ 1,860.62	\$ 1,860.62	\$ 68,640.00
A13450				\$ 1,670.22	\$ 1,670.22	\$ 61,380.00
A13451				\$ 1,609.37	\$ 1,609.37	\$ 62,502.00
A13468				\$ 2,715.20	\$ 2,715.20	\$ 75,306.00
A13559				\$ 1,405.27	\$ 1,405.27	\$ 89,628.00
A13568				\$ 2,715.20	\$ 2,715.20	\$ 70,290.00
A13569				\$ 2,676.68	\$ 2,676.68	\$ 67,386.00

A13570				\$ 2,701.45	\$ 2,701.45	\$ 63,690.00
A13571				\$ 1,056.93	\$ 1,056.93	\$ 71,940.00
A13572				\$ 885.21	\$ 885.21	\$ 69,432.00
A13573				\$ 483.90	\$ 483.90	\$ 70,423.00
A13574				\$ 1,969.08	\$ 1,969.08	\$ 68,310.00
A14010				\$ 2,775.32	\$ 2,775.32	\$ 71,808.00
A14733				\$ 1,853.15	\$ 1,853.15	\$ 78,870.00
A14873				\$ -	\$ -	\$ 69,498.00
A16098				\$ 3,930.11	\$ 3,930.11	\$ 98,670.00
A16654				\$ 1,745.28	\$ 1,745.28	\$ 79,332.00
A16658				\$ 2,722.47	\$ 2,722.47	\$ 77,352.00
A16659				\$ 1,121.37	\$ 1,121.37	\$ 70,158.00
A16660				\$ -	\$ -	\$ 67,122.00
A16666				\$ 1,849.22	\$ 1,849.22	\$ 76,230.00
A17675				\$ 3,197.61	\$ 3,197.61	\$ 269,365.00
A18829				\$ 2,178.37	\$ 2,178.37	\$ 43,758.00
A20195				\$ 2,716.83	\$ 2,716.83	\$ 40,656.00
A20544	1339	\$ 1,562.41	\$ -	\$ 972.47	\$ 2,534.88	\$ 66,264.00
A21582				\$ 1,509.77	\$ 1,509.77	\$ 122,760.00
A21584				\$ 1,216.52	\$ 1,216.52	\$ 110,550.00
A21585				\$ 1,201.52	\$ 1,201.52	\$ 93,588.00
A21586				\$ 2,456.97	\$ 2,456.97	\$ 98,604.00
A24846				\$ 2,524.42	\$ 2,524.42	\$ 90,156.00
A26474				\$ 1,950.78	\$ 1,950.78	\$ 285,175.00
A27989				\$ 294.59	\$ 294.59	\$ 61,908.00
A27990				\$ 294.60	\$ 294.60	\$ 60,588.00
A27991				\$ 294.60	\$ 294.60	\$ 61,776.00
A27992				\$ 294.60	\$ 294.60	\$ 65,604.00
A27993				\$ 294.60	\$ 294.60	\$ 57,486.00
A27994				\$ 294.60	\$ 294.60	\$ 60,192.00
A27995				\$ 294.60	\$ 294.60	\$ 63,228.00
A27996				\$ 294.60	\$ 294.60	\$ 61,974.00
A27997				\$ 294.60	\$ 294.60	\$ 62,370.00
A27998				\$ 294.60	\$ 294.60	\$ 61,776.00
A27999				\$ 294.60	\$ 294.60	\$ 64,680.00
A28000				\$ 294.60	\$ 294.60	\$ 57,618.00
A28001				\$ 294.60	\$ 294.60	\$ 61,644.00
A28002				\$ 294.60	\$ 294.60	\$ 58,344.00
A28003				\$ 294.60	\$ 294.60	\$ 61,248.00
A28004				\$ 294.60	\$ 294.60	\$ 57,618.00
A28005				\$ 294.60	\$ 294.60	\$ 63,690.00
A28006				\$ 294.60	\$ 294.60	\$ 61,446.00
A28007				\$ 294.60	\$ 294.60	\$ 66,396.00
A28008				\$ 294.60	\$ 294.60	\$ 64,548.00
A28009				\$ 294.60	\$ 294.60	\$ 58,674.00
A28010				\$ 294.60	\$ 294.60	\$ 58,344.00
A28011				\$ 294.60	\$ 294.60	\$ 63,822.00
A28012				\$ 294.60	\$ 294.60	\$ 60,852.00

A28013				\$ 294.60	\$ 294.60	\$ 60,984.00
A28014				\$ 294.60	\$ 294.60	\$ 61,908.00
A28015				\$ 294.60	\$ 294.60	\$ 62,172.00
A28016				\$ 294.60	\$ 294.60	\$ 58,212.00
A28017				\$ 294.60	\$ 294.60	\$ 58,080.00
A28018				\$ 294.60	\$ 294.60	\$ 58,080.00
A28019				\$ 294.60	\$ 294.60	\$ 65,406.00
A28020				\$ 294.60	\$ 294.60	\$ 64,416.00
A28021				\$ 294.60	\$ 294.60	\$ 58,080.00
A28022				\$ 294.60	\$ 294.60	\$ 67,056.00
A28023				\$ 294.60	\$ 294.60	\$ 65,802.00
A28024				\$ 294.60	\$ 294.60	\$ 67,254.00
A28025				\$ 294.60	\$ 294.60	\$ 61,842.00
A28026				\$ 294.60	\$ 294.60	\$ 71,214.00
A28027				\$ 294.60	\$ 294.60	\$ 59,466.00
A28028				\$ 294.60	\$ 294.60	\$ 72,270.00
A28029				\$ 294.60	\$ 294.60	\$ 62,700.00
A28030				\$ 294.60	\$ 294.60	\$ 70,290.00
A28031				\$ 294.60	\$ 294.60	\$ 66,528.00
A28032				\$ 294.60	\$ 294.60	\$ 69,960.00
A28033				\$ 294.60	\$ 294.60	\$ 68,112.00
A28034				\$ 294.60	\$ 294.60	\$ 75,900.00
A28035				\$ 294.60	\$ 294.60	\$ 61,974.00
A28036				\$ 294.60	\$ 294.60	\$ 69,960.00
A28037				\$ 294.60	\$ 294.60	\$ 58,740.00
A28038				\$ 294.60	\$ 294.60	\$ 63,756.00
A28039				\$ 294.60	\$ 294.60	\$ 74,514.00
A28040				\$ 294.60	\$ 294.60	\$ 66,924.00
A28041				\$ 294.60	\$ 294.60	\$ 66,924.00
A28042				\$ 294.60	\$ 294.60	\$ 72,336.00
A28043				\$ 294.60	\$ 294.60	\$ 72,336.00
A29306	1366	\$ 2,234.88	\$ -	\$ -	\$ 2,234.88	\$ 252,780.00
A29315	1366	\$ 2,181.67	\$ -	\$ -	\$ 2,181.67	\$ 199,188.00
A31677				\$ 4,188.67	\$ 4,188.67	\$ 290,697.00
A31681				\$ 8,377.34	\$ 8,377.34	\$ 324,852.00
C00135				\$ -	\$ -	\$ 101,573.00
C00436				\$ 99.55	\$ 99.55	\$ 69,894.00
C01205				\$ -	\$ -	\$ 85,074.00
C01206				\$ -	\$ -	\$ 75,966.00
C05676				\$ 910.74	\$ 910.74	\$ 73,457.00
C13198				\$ 1,421.16	\$ 1,421.16	\$ 215,952.00
D05335				\$ 15,782.26	\$ 15,782.26	\$ 1,680,504.00
D12010				\$ 12,005.52	\$ 12,005.52	\$ 22,033.00



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: SID 1384 Yellowstone Country Club Resolution of Intent to Create District and Set a Public Hearing and Repealing Resolution No. 08-18694

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Yellowstone Club Estates was served by a privately owned and maintained sanitary sewer system and treatment plant. W.O. 07-19, Yellowstone Country Club Sanitary Sewer Extension extended the existing City sewer main in Rimrock Road to a point in Yellowstone Country Club where it intercepted the private system just prior to entering the treatment plant. This connected all users of the private system to the City's main sanitary sewer system, and the treatment plant will subsequently be removed.

As when any property connects to the City's sewer system, there are sewer construction and sewer system development fees associated with the connection. At the March 10, 2008, City Council Meeting, Council approved Resolution No. 08-18694, declaring it to be the City's intent to create SID 1384. Changes have been made to SID 1384, and some property owners have paid their sewer construction and sewer system development fees in cash.

ALTERNATIVES ANALYZED:

5. Approve the Resolution of Intent to Create SID 1384 and set a public hearing for February 9, 2009, City Council Meeting; or
6. Do not approve the Resolution of Intent to Create SID 1384.

FINANCIAL IMPACT: The total costs of the Improvements, including such incidental costs, to be financed by the Bonds and included in SID 1384, are \$495,000.00.

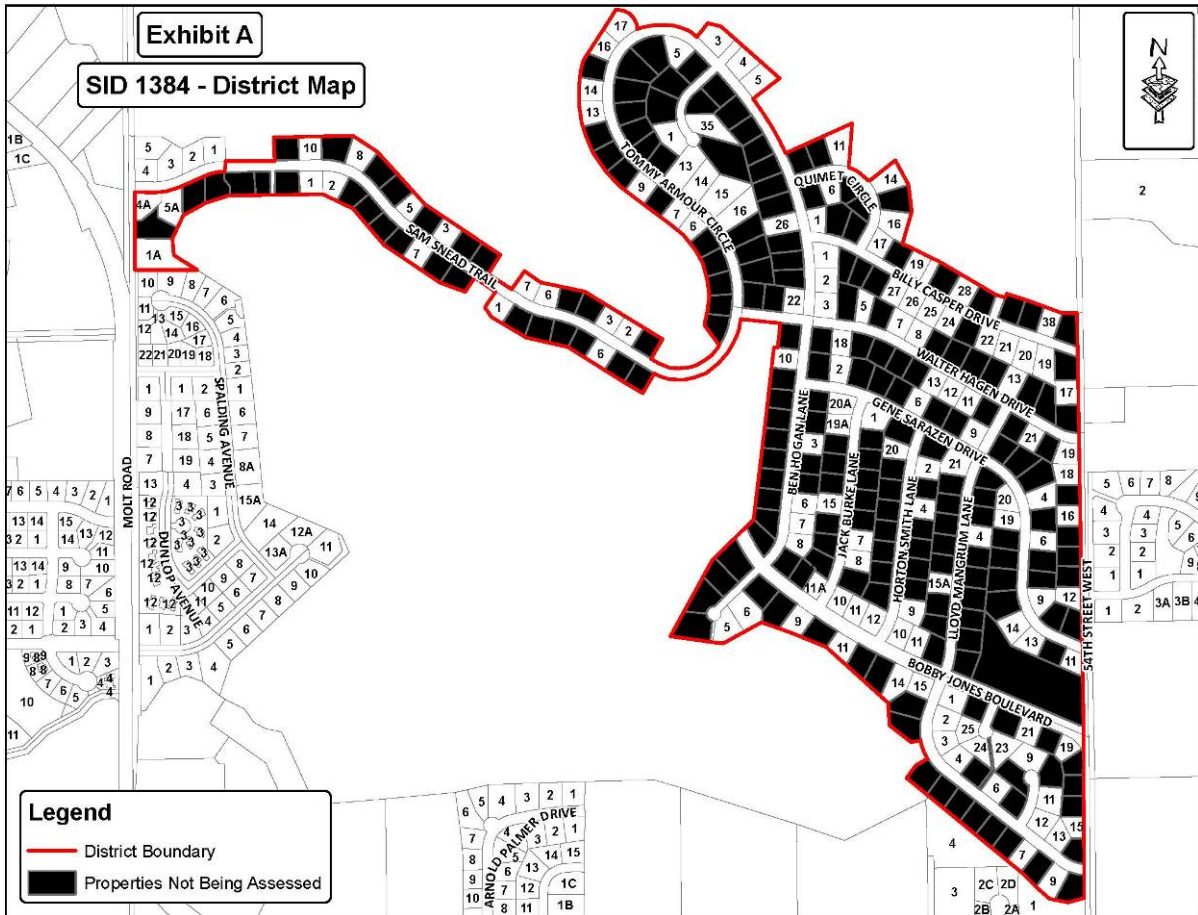
RECOMMENDATION

Staff recommends that Council repeal Resolution No. 08-18694 and approve a new Resolution of Intent to Create SID 1384 and set a public hearing date for February 9, 2009.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Boundary Map of Proposed Special Improvement District 1384
- B. SID 1384 Yellowstone Country Club Resolution of Intent



CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1384; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on January 12, 2009, 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 Councilmembers voted in favor thereof: _____;
voted against the same: _____;
or were absent: _____.

WITNESS my hand officially this _____ day of _____, 200____.

Cari Martin

City Clerk

RESOLUTION NO. 09-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1384; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

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

Section 1. Recitals; Repeal of Resolution No. 08-18694. On March 24, 2008, the City Council of the City of Billings approved Resolution No. 08-18694, declaring it to be the City's intention to create Special Improvement District No. 1384. Changes have occurred within the District that make it necessary and desirable to repeal Resolution No. 08-18694, and to proceed anew with the creation of Special Improvement District No. 1384.

Section 2. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the sewer construction fee and sewer system development fee, as more particularly described in Section 5. The costs of the Improvements, not including bonding or administration fees, are \$495,000.00. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$495,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 3. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1384 of the City of Billings, Montana.

Section 4. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown in Exhibit E hereto (which is hereby incorporated herein and made a part hereof).

Section 5. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and E are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

Section 6. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit D, is the payment of sewer construction fee and sewer system development fee for the properties within the Yellowstone Club Estates area that were connected to the privately owned and operated Yellowstone Club Estates sanitary sewer system. W.O. 07-19, Yellowstone Country Club Sanitary Sewer Extension, funded solely by the City, will extend the City's sanitary sewer system into Yellowstone Country Club, intercepting the Yellowstone Club system and making it a part of the City's system.

Section 7. Estimated Cost. The Public Works Department and City Engineer's Office has estimated that the costs of the Improvements, including all incidental costs, are \$495,000.00.

Section 8. Assessment Methods.

8.1. Property to be Assessed. All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the actual area methods described in Section 7-12-4162, M.C.A., as particularly applied and set forth in this Section 7.

8.1.1 Actual Area Method.

Assessment #1 will be the Construction Fee plus the 4% Franchise Fee. The Construction Fee plus the 4% Franchise Fee shall be assessed against each lot in within District Boundary for a total of \$313,492.85. The total of \$313,492.85 shall be assessed against each lot, tract, or parcel of land within the District Boundary for that part of the costs of the Improvements that the actual area of such lot, tract or parcel bears to the total actual area of all lots, tracts, or parcels of land within the District Boundary, exclusive of streets, avenues, and alleys. The total actual area of lots to be assessed is 2,245,428.00 square feet. The costs of the Construction Fee plus the 4% Franchise Fee and the incidental costs to be financed by the Bonds assessable to the District parcels per square foot of actual area shall not exceed a total of \$0.139614. The assessment for each of the parcels being assessed a Construction Fee plus the 4% Franchise Fee is shown on Exhibit E.

8.1.2 Equal Amount Method.

Assessment #2 will include the System Development Fee plus the 4% Franchise Fee for parcels with ¾" water meters. Each lot, tract, or parcel of land, with a ¾" water meter, shall equally bear the costs of the System Development Fee plus the 4% Franchise Fee as set forth in Part III. The total estimated cost of Assessment #2 is \$155,391.02 and shall be assessed against each lot, tract, or parcel of land within the District, with a ¾" water meter, on an equal amount basis. The costs of the System Development Fee plus the 4% Franchise Fee for ¾" water meter and incidental costs to be financed by the Bonds assessable to the District per parcel shall not exceed \$1,305.806851. The assessment for each of the parcels being assessed a System Development Fee plus the 4% Franchise Fee is shown on Exhibit E.

Assessment #3 will include the System Development Fee plus the 4% Franchise Fee for parcels with 1" water meters. Each lot, tract, or parcel of land, with a 1" water meter, shall equally bear the costs of the System Development Fee plus the 4% Franchise Fee as set forth in Part III. The total estimated cost of Assessment #3 is \$26,116.14 and shall be assessed against each lot, tract, or parcel of land within the District, with a 1" water meter, on an equal amount basis. The costs of the System Development Fee plus the 4% Franchise Fee for 1" water meter and incidental costs to be financed by the Bonds assessable to the District per parcel shall not exceed \$3,264.5171. The assessment for each of the parcels being assessed a System Development Fee plus the 4% Franchise Fee is shown on Exhibit E.

8.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

Section 9. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

Section 10. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$500,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$80,775.00 to \$292,139.00, and is set forth in Exhibit E. The average market value is \$161,673.82 with the median being \$159,266.00. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership.** There are a total of 127 parcels within the district boundaries. All of the parcels are owned by individual property owners and have an average size of 17,681 square feet.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit E.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 127 properties, zero (0) properties were delinquent, and is set forth in Exhibit F.

(e) **The Public Benefit of the Improvements.** The total estimated costs, including all incidental costs, to be financed by the Bonds are \$495,000.00. All costs of the Improvements are to be paid from the Special Improvement District bonds hereinafter described. All of the properties within the District are zoned Residential 9600.

Section 11. Reimbursement Expenditures.

11.01. Regulations. 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.

11.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (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 Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

11.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$495,000.00 after the date of payment of all or a portion of the costs of the Improvements. 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.

11.04. 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 Improvements, 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.

11.05. Reimbursement Allocations. The City's financial officer 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 Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 12. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (February 6, 2009), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 9th day of February, 2009, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 13. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on January 22 and January 29, 2009, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings,
Montana, this 12th day of January, 2009.

Mayor

Attest:

City Clerk

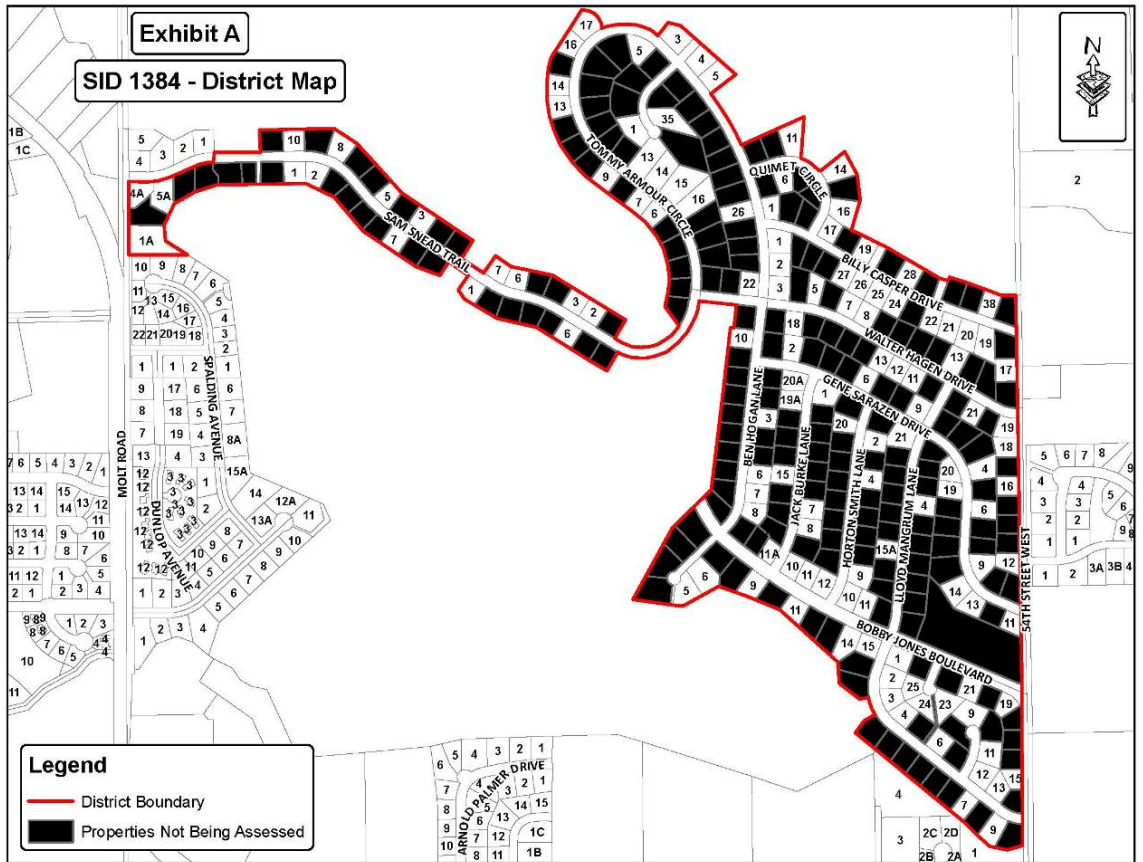


EXHIBIT C

Assessments Breakdown

Each parcel assessed a Construction Fee of \$0.1221 per square foot of lot plus 4% Franchise Fee
 Each parcel with a 3/4" meter assessed a System Development Fee of \$1142.00 plus 4% Franchise Fee
 Each parcel with a 1" meter assessed a System Development Fee of \$2,855.00 plus 4% Franchise Fee

Total Square Footage in District	2,245,428.00
Total Construction Fee	\$274,166.76
Total Franchise Fee on Construction Fee	<u>\$ 10,966.67</u>
Subtotal	<u>\$285,133.43</u>
 Total System Development Fee	 \$158,738.00
Total Franchise Fee on System Development Fee	<u>\$ 6,349.52</u>
Subtotal	<u>\$165,087.52</u>
 Total construction fee plus system development fee with Franchise Fees	 \$450,220.95
 Total Bond Cost	 \$ 44,779.05

Assessment #1

Construction Fee plus Franchise Fee plus associated bond costs

Total Square Footage in District	2,245,428.00
Total Construction Fee	\$274,166.76
Total Franchise Fee on Construction Fee	<u>\$ 10,966.67</u>
Subtotal	<u>\$285,133.43</u>
Percentage of Bond Cost	63.33%
Bond Cost of Construction Fee plus Franchise Fee	\$ 28,359.42
Total Construction Fee plus Franchise Fee plus Bond Costs	\$313,492.85
Cost per square foot including Construction Fee plus Franchise Fee plus Bond Cost	\$ 0.139614

Assessment #2

System Development Fee plus Franchise Fee plus associated bond costs for 3/4" meter

System Development Fee per parcel with 3/4" meter	\$ 1,142.00
Franchise Fee per parcel	\$ 45.68
Total number of parcels with 3/4" meters within the district	119
Total amount of System Development Fees plus Franchise Fee for 3/4" meter	\$141,333.92
Percentage of Bond Cost	31.39%
Bond Cost of System Development Fees plus Franchise Fee for 3/4" meter	\$ 14,057.10
Total System Development Fee plus Franchise Fee plus Bond Costs for 3/4" meter	\$155,391.02
Cost per parcel including System Development Fees plus Franchise Fee plus Bond Cost	\$ 1,305.81

EXHIBIT C

Assessments Breakdown

Assessment #3

System Development Fee plus Franchise Fee plus associated bond costs for 1" meter	
System Development Fee per parcel with 1" meter	\$ 2,855.00
Franchise Fee per parcel	\$ 114.20
Total number of parcels with 1" meters within the district	8
Total amount of System Development Fees plus Franchise Fee for 1" meter	\$ 23,753.60
Percentage of Bond Cost	5.28%
Bond Cost of System Development Fees plus Franchise Fee for 1" meter	\$2,362.54
Total System Development Fee plus Franchise Fee plus Bond Costs for 1" meter	\$ 26,116.14
Cost per parcel including System Development Fees plus Franchise Fee plus Bond Cost	\$ 3,264.52

EXHIBIT D
SID 1384
YELLOWSTONE COUNTRY CLUB
SEWER CONNECTIONS

PROJECT DESCRIPTION

Special Improvement District No. 1384 shall encompass the Construction and System Development Fees for all properties within Yellowstone Country Club that have been connected to the City of Billings sanitary sewer system by means of W.O. 07-19, Yellowstone Country Club Sanitary Sewer Extension.

1-Dec-08

EXHIBIT E
SID 1384
YELLOWSTONE COUNTRY CLUB
Sewer Connection Fees

TAX I.D. NUMBER	PREVIOUS SID #	PREVIOUS SID PAY-OFF	DELINQUENT	SID 1384 ASSESSMENT	SID PAY-OFF + DELINQUENT + SID 1384 ASSESSMENT	ESTIMATED MARKET VALUE	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS
C03218				\$3,740.67	\$3,740.67	\$112,589.00	\$116,329.67
C03220				\$4,474.76	\$4,474.76	\$116,520.00	\$120,994.76
C03222				\$3,483.78	\$3,483.78	\$80,775.00	\$84,258.78
C03223				\$3,434.78	\$3,434.78	\$163,793.00	\$167,227.78
C03224				\$5,447.38	\$5,447.38	\$114,629.00	\$120,076.38
C03225				\$3,504.45	\$3,504.45	\$113,493.00	\$116,997.45
C03227				\$3,494.25	\$3,494.25	\$133,376.00	\$136,870.25
C03230				\$4,362.93	\$4,362.93	\$169,631.00	\$173,993.93
C03232				\$3,879.59	\$3,879.59	\$160,892.00	\$164,771.59
C03233				\$3,779.76	\$3,779.76	\$157,064.00	\$160,843.76
C03234				\$3,488.67	\$3,488.67	\$98,993.00	\$102,481.67
C03236				\$3,488.67	\$3,488.67	\$116,679.00	\$120,167.67
C03240				\$3,465.63	\$3,465.63	\$163,526.00	\$166,991.63
C03242				\$3,400.01	\$3,400.01	\$160,913.00	\$164,313.01
C03244				\$4,235.88	\$4,235.88	\$144,096.00	\$148,331.88
C03245				\$3,652.72	\$3,652.72	\$147,171.00	\$150,823.72
C03246				\$3,584.17	\$3,584.17	\$116,688.00	\$120,272.17
C03252				\$6,313.26	\$6,313.26	\$140,359.00	\$146,672.26
C03253				\$6,668.58	\$6,668.58	\$169,634.00	\$176,302.58
C03256				\$5,697.01	\$5,697.01	\$144,724.00	\$150,421.01
C03258				\$3,511.71	\$3,511.71	\$145,411.00	\$148,922.71
C03261				\$4,408.17	\$4,408.17	\$169,747.00	\$174,155.17
C03262				\$3,518.83	\$3,518.83	\$153,654.00	\$157,172.83
C03274				\$3,416.77	\$3,416.77	\$149,105.00	\$152,521.77
C03276B				\$3,416.77	\$3,416.77	\$199,373.00	\$202,789.77
C03277B				\$3,416.77	\$3,416.77	\$150,684.00	\$154,100.77
C03278				\$3,416.77	\$3,416.77	\$133,385.00	\$136,801.77
C03278A				\$3,551.64	\$3,551.64	\$236,637.00	\$240,188.64
C03279A				\$3,404.62	\$3,404.62	\$135,505.00	\$138,909.62
C03280B				\$3,416.77	\$3,416.77	\$129,952.00	\$133,368.77
C03281B				\$3,426.40	\$3,426.40	\$168,382.00	\$171,808.40
C03281C				\$3,535.72	\$3,535.72	\$137,362.00	\$140,897.72
C03282				\$3,933.34	\$3,933.34	\$152,283.00	\$156,216.34
C03284				\$2,826.20	\$2,826.20	\$110,869.00	\$113,695.20
C03284A				\$3,429.75	\$3,429.75	\$142,294.00	\$145,723.75
C03285				\$3,516.31	\$3,516.31	\$176,962.00	\$180,478.31
C03285A				\$3,529.86	\$3,529.86	\$127,945.00	\$131,474.86
C03285B				\$3,567.83	\$3,567.83	\$132,294.00	\$135,861.83
C03288A				\$3,552.61	\$3,552.61	\$135,311.00	\$138,863.61

Exhibit E

TAX ID.	PREVIOUS	PREVIOUS			SID PAY-OFF +	ESTIMATED	ESTIMATED
NUMBER	SID #	SID	DELINQUENT	SID 1384	DELINQUENT +	MARKET	MARKET VALUE
		PAY-OFF		ASSESSMENT	SID 1384	VALUE	AFTER
					ASSESSMENT		IMPROVEMENTS
C03290				\$3,413.70	\$3,413.70	\$152,977.00	\$156,390.70
C03290B				\$3,416.77	\$3,416.77	\$195,850.00	\$199,266.77
C03292A				\$3,539.07	\$3,539.07	\$181,280.00	\$184,819.07
C03292B				\$3,451.95	\$3,451.95	\$109,328.00	\$112,779.95
C03293				\$3,539.63	\$3,539.63	\$103,901.00	\$107,440.63
C03296				\$3,330.21	\$3,330.21	\$159,367.00	\$162,697.21
C03302				\$4,058.85	\$4,058.85	\$283,784.00	\$287,842.85
C03306				\$3,514.50	\$3,514.50	\$146,870.00	\$150,384.50
C03313				\$3,559.45	\$3,559.45	\$116,066.00	\$119,625.45
C03315				\$3,746.96	\$3,746.96	\$98,667.00	\$102,413.96
C03316				\$4,213.27	\$4,213.27	\$165,801.00	\$170,014.27
C03321				\$3,731.46	\$3,731.46	\$176,481.00	\$180,212.46
C03322				\$3,701.72	\$3,701.72	\$185,344.00	\$189,045.72
C03325				\$4,091.94	\$4,091.94	\$150,307.00	\$154,398.94
C03327				\$3,675.05	\$3,675.05	\$205,012.00	\$208,687.05
C03330				\$3,735.09	\$3,735.09	\$160,186.00	\$163,921.09
C03331B				\$3,593.80	\$3,593.80	\$181,861.00	\$185,454.80
C03333				\$3,416.77	\$3,416.77	\$186,240.00	\$189,656.77
C03334				\$3,658.72	\$3,658.72	\$166,130.00	\$169,788.72
C03335				\$3,602.32	\$3,602.32	\$176,887.00	\$180,489.32
C03337				\$3,416.77	\$3,416.77	\$123,157.00	\$126,573.77
C03340				\$3,653.27	\$3,653.27	\$209,421.00	\$213,074.27
C03341				\$3,567.55	\$3,567.55	\$168,238.00	\$171,805.55
C03342				\$3,567.55	\$3,567.55	\$166,818.00	\$170,385.55
C03343A				\$3,416.77	\$3,416.77	\$123,122.00	\$126,538.77
C03344				\$3,416.77	\$3,416.77	\$160,073.00	\$163,489.77
C03345				\$3,416.77	\$3,416.77	\$214,750.00	\$218,166.77
C03346B				\$5,369.61	\$5,369.61	\$147,441.00	\$152,810.61
C03348				\$3,522.18	\$3,522.18	\$156,233.00	\$159,755.18
C03352				\$3,487.27	\$3,487.27	\$178,203.00	\$181,690.27
C03355				\$3,487.27	\$3,487.27	\$246,022.00	\$249,509.27
C03356				\$3,474.29	\$3,474.29	\$128,252.00	\$131,726.29
C03361				\$3,487.27	\$3,487.27	\$197,479.00	\$200,966.27
C03364				\$3,948.70	\$3,948.70	\$284,747.00	\$288,695.70
C03367				\$7,042.68	\$7,042.68	\$178,200.00	\$185,242.68
C03374B				\$3,487.27	\$3,487.27	\$155,542.00	\$159,029.27
C03375				\$3,501.10	\$3,501.10	\$120,743.00	\$124,244.10
C03377A				\$4,077.42	\$4,077.42	\$178,043.00	\$182,120.42
C03377C				\$3,574.53	\$3,574.53	\$149,041.00	\$152,615.53
C03379				\$3,487.27	\$3,487.27	\$109,490.00	\$112,977.27
C03380				\$3,487.27	\$3,487.27	\$137,633.00	\$141,120.27
C03382				\$3,411.88	\$3,411.88	\$174,025.00	\$177,436.88
C03383				\$3,411.88	\$3,411.88	\$128,589.00	\$132,000.88
C05693				\$3,667.24	\$3,667.24	\$244,832.00	\$248,499.24
C05694				\$3,856.69	\$3,856.69	\$166,967.00	\$170,823.69
C05695				\$4,198.61	\$4,198.61	\$190,352.00	\$194,550.61
C05697				\$3,601.20	\$3,601.20	\$166,295.00	\$169,896.20
C05699				\$3,642.11	\$3,642.11	\$105,177.00	\$108,819.11
C05700				\$4,167.89	\$4,167.89	\$139,192.00	\$143,359.89
C05705				\$3,756.03	\$3,756.03	\$157,251.00	\$161,007.03

Exhibit E

TAX ID.	PREVIOUS	PREVIOUS			SID PAY-OFF +	ESTIMATED	ESTIMATED
NUMBER	SID #	SID	DELINQUENT	SID 1384	DELINQUENT +	MARKET	MARKET VALUE
		PAY-OFF		ASSESSMENT	SID 1384	VALUE	AFTER
					ASSESSMENT		IMPROVEMENTS
C05709				\$4,551.13	\$4,551.13	\$116,713.00	\$121,264.13
C05711				\$4,210.19	\$4,210.19	\$184,000.00	\$188,210.19
C05712				\$3,794.00	\$3,794.00	\$179,460.00	\$183,254.00
C05713				\$3,646.71	\$3,646.71	\$159,266.00	\$162,912.71
C05714				\$3,642.11	\$3,642.11	\$182,300.00	\$185,942.11
C05716				\$3,642.11	\$3,642.11	\$149,542.00	\$153,184.11
C05717				\$3,642.11	\$3,642.11	\$108,387.00	\$112,029.11
C05718				\$5,600.82	\$5,600.82	\$184,467.00	\$190,067.82
C05719				\$3,650.76	\$3,650.76	\$172,934.00	\$176,584.76
C05723				\$3,724.48	\$3,724.48	\$161,303.00	\$165,027.48
C05728				\$3,912.54	\$3,912.54	\$125,885.00	\$129,797.54
C05730				\$4,247.89	\$4,247.89	\$270,859.00	\$275,106.89
C05731				\$4,771.58	\$4,771.58	\$164,592.00	\$169,363.58
C05734				\$4,365.72	\$4,365.72	\$256,931.00	\$261,296.72
C05735				\$6,523.52	\$6,523.52	\$131,674.00	\$138,197.52
C05737				\$5,575.13	\$5,575.13	\$255,498.00	\$261,073.13
C05738				\$3,646.57	\$3,646.57	\$125,075.00	\$128,721.57
C05740				\$3,478.20	\$3,478.20	\$226,040.00	\$229,518.20
C05742				\$3,609.44	\$3,609.44	\$118,225.00	\$121,834.44
C05746				\$4,170.40	\$4,170.40	\$187,834.00	\$192,004.40
C05748				\$4,275.25	\$4,275.25	\$149,786.00	\$154,061.25
C05749				\$3,694.60	\$3,694.60	\$182,564.00	\$186,258.60
C05753				\$5,108.05	\$5,108.05	\$137,419.00	\$142,527.05
C05761				\$4,807.60	\$4,807.60	\$151,748.00	\$156,555.60
C05762				\$5,890.45	\$5,890.45	\$152,711.00	\$158,601.45
C05763				\$5,474.12	\$5,474.12	\$179,555.00	\$185,029.12
C05764				\$3,771.39	\$3,771.39	\$292,139.00	\$295,910.39
C05770				\$4,425.90	\$4,425.90	\$161,123.00	\$165,548.90
C05774				\$4,863.03	\$4,863.03	\$165,960.00	\$170,823.03
C05783				\$3,379.63	\$3,379.63	\$205,784.00	\$209,163.63
C05790				\$3,401.13	\$3,401.13	\$161,607.00	\$165,008.13
C05791				\$3,401.13	\$3,401.13	\$223,499.00	\$226,900.13
C05793				\$3,465.49	\$3,465.49	\$176,928.00	\$180,393.49
C05797				\$3,465.49	\$3,465.49	\$184,718.00	\$188,183.49
C05798				\$3,541.30	\$3,541.30	\$140,763.00	\$144,304.30
C05800				\$3,977.04	\$3,977.04	\$155,063.00	\$159,040.04
C05801				\$2,953.81	\$2,953.81	\$152,780.00	\$155,733.81
C11627				\$3,711.07	\$3,711.07	\$177,076.00	\$180,787.07

AVERAGE	#DIV/0!	#DIV/0!	\$3,897.64	\$3,897.64	\$161,673.82	\$165,571.46
MEDIAN	#NUM!	#NUM!	\$3,602.32	\$3,602.32	\$159,266.00	\$162,697.21
LOW	\$0.00	\$0.00	\$2,826.20	\$2,826.20	\$80,775.00	\$84,258.78
HIGH	\$0.00	\$0.00	\$7,042.68	\$7,042.68	\$292,139.00	\$295,910.39

Note: Delinquent taxes are reported as of 2/5/08

Exhibit E

EXHIBIT F

**YELLOWSTONE CLUB ESTATES AREA
SANTARY SEWER LOCAL CONSTRUCTION AND SYSTEM DEVELOPMENT FEES**

House #	Street Name	Property Owner	Subdivision	Lot	Block	Tax Code	Meter Size	Assessable Lot Area Sq. Ft.	Sewer Constr. Fee \$	Swr. Const. Franch. Fee \$	Sewer SDF \$	Sewer SDF Franch. Fee	TOTAL FEES
3028	Lloyd Mangrum Ln.	Duvey, Carlos A & Amber Ussin	Yellowstone Club Estates, 1st	7	1	C03218	3/4	17,440	\$ 2,129.42	\$ 85.18	\$ 1,142.00	\$ 45.68	\$ 3,402.28
3012	Lloyd Mangrum Ln.	Fox, Brian	Yellowstone Club Estates, 1st	9	1	C03220	3/4	22,698	\$ 2,771.43	\$ 110.86	\$ 1,142.00	\$ 45.68	\$ 4,069.96
5450	Bobby Jones Blvd.	Swain, Joshua J	Yellowstone Club Estates, 1st	1	2	C03222	3/4	15,600	\$ 1,904.76	\$ 76.19	\$ 1,142.00	\$ 45.68	\$ 3,168.63
3131	Lloyd Mangrum Ln.	Finnegan, Donald J & Karen L.	Yellowstone Club Estates, 1st	2	2	C03223	3/4	15,249	\$ 1,861.90	\$ 74.48	\$ 1,142.00	\$ 45.68	\$ 3,124.06
3121	Lloyd Mangrum Ln.	Anders, Kevin C & Denise L.	Yellowstone Club Estates, 1st	3	2	C03224	1	15,635	\$ 1,909.03	\$ 76.36	\$ 2,855.00	\$ 114.20	\$ 4,954.59
3111	Lloyd Mangrum Ln.	Yochum, Constance S	Yellowstone Club Estates, 1st	4	2	C03225	3/4	15,748	\$ 1,922.83	\$ 76.91	\$ 1,142.00	\$ 45.68	\$ 3,187.42
3051	Lloyd Mangrum Ln.	Schwartz Family Trust	Yellowstone Club Estates, 1st	6	2	C03227	3/4	15,675	\$ 1,913.92	\$ 76.56	\$ 1,142.00	\$ 45.68	\$ 3,178.15
3055	Demaret Pl.	Slade, Matthew L & Angela M	Yellowstone Club Estates, 1st	9	2	C03230	3/4	21,897	\$ 2,673.62	\$ 106.94	\$ 1,142.00	\$ 45.68	\$ 3,968.25
3029	Demaret Pl.	Olsen, Robert L & Carole A	Yellowstone Club Estates, 1st	11	2	C03232	3/4	18,435	\$ 2,250.91	\$ 90.04	\$ 1,142.00	\$ 45.68	\$ 3,528.63
3025	Lloyd Mangrum Ln.	Smith, Scott P & Marcie Jenay	Yellowstone Club Estates, 1st	12	2	C03233	3/4	17,720	\$ 2,163.61	\$ 86.54	\$ 1,142.00	\$ 45.68	\$ 3,437.84
3015	Lloyd Mangrum Ln.	Aley, Matthew W	Yellowstone Club Estates, 1st	13	2	C03234	3/4	15,635	\$ 1,909.03	\$ 76.36	\$ 1,142.00	\$ 45.68	\$ 3,173.07
3012	54th Street West	Beringer, Ruben	Yellowstone Club Estates, 1st	15	2	C03236	3/4	15,635	\$ 1,909.03	\$ 76.36	\$ 1,142.00	\$ 45.68	\$ 3,173.07
3214	Jack Burke Ln.	Loveless, Douglas M & Shelley	Yellowstone Club Estates, 2nd	19	2	C03240	3/4	15,470	\$ 1,888.89	\$ 75.56	\$ 1,142.00	\$ 45.68	\$ 3,152.12
5420	Bobby Jones Blvd.	Hangrove, Daniel & Ruth	Yellowstone Club Estates, 1st	21	2	C03242	3/4	15,000	\$ 1,831.50	\$ 73.26	\$ 1,142.00	\$ 45.68	\$ 3,092.44
5432	Vardon Pl.	Porter, Kirk A & Nancy K	Yellowstone Club Estates, 1st	23	2	C03244	3/4	20,987	\$ 2,562.51	\$ 102.50	\$ 1,142.00	\$ 45.68	\$ 3,852.69
5436	Vardon Pl.	Swedberg, Rodney E	Yellowstone Club Estates, 1st	24	2	C03245	3/4	16,810	\$ 2,052.50	\$ 82.10	\$ 1,142.00	\$ 45.68	\$ 3,322.28
5440	Vardon Pl.	Zagel, Bruce R & Kathleen R	Yellowstone Club Estates, 1st	25	2	C03246	3/4	16,319	\$ 1,992.55	\$ 79.70	\$ 1,142.00	\$ 45.68	\$ 3,259.93
3123	Ben Hogan Pl.	Grotz, Douglas W	Yellowstone Club Estates, 2nd	5	3	C03252	1	21,837	\$ 2,666.30	\$ 106.65	\$ 2,855.00	\$ 114.20	\$ 5,742.15
3133	Ben Hogan Pl.	Okerman, Michael	Yellowstone Club Estates, 2nd	6	3	C03253	1	24,382	\$ 2,977.04	\$ 119.08	\$ 2,855.00	\$ 114.20	\$ 6,065.32
5606	Bobby Jones Blvd.	Kellier, Susan K & Gregory C	Yellowstone Club Estates, 2nd	9	3	C03256	1	17,423	\$ 2,127.35	\$ 85.09	\$ 2,855.00	\$ 114.20	\$ 5,181.64
5540	Bobby Jones Blvd.	Kazmierski, Fred & Nan A	Yellowstone Club Estates, 2nd	11	3	C03258	3/4	15,800	\$ 1,929.18	\$ 77.17	\$ 1,142.00	\$ 45.68	\$ 3,194.03
5514	Bobby Jones Blvd.	Adam, Roger L & Beth E	Yellowstone Club Estates, 2nd	14	3	C03261	3/4	22,221	\$ 2,713.18	\$ 108.53	\$ 1,142.00	\$ 45.68	\$ 4,009.39
5506	Bobby Jones Blvd.	Stanley, Barbara T &	Yellowstone Club Estates, 2nd	15	3	C03262	3/4	15,851	\$ 1,935.41	\$ 77.42	\$ 1,142.00	\$ 45.68	\$ 3,200.50
3412	Ben Hogan Ln.	Wedal, Arvid B & Esel L.	Yellowstone Club Estates, 2nd	10	4	C03274	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3311	Ben Hogan Ln.	Grill, Carmella Campanian & Le	Yellowstone Club Estates, 2nd	3	5	C03276B	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3223	Ben Hogan Ln.	Rodriguez, Daniel V & Teresa M	Yellowstone Club Estates, 2nd	6	5	C03277B	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3215	Ben Hogan Ln.	Judson, Gregory L	Yellowstone Club Estates, 2nd	7	5	C03278	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3209	Ben Hogan Ln.	Friley Montana Properties Llc	Yellowstone Club Estates, 2nd	8	5	C03278A	3/4	16,086	\$ 1,964.10	\$ 78.56	\$ 1,142.00	\$ 45.68	\$ 3,230.34
5607	Bobby Jones Blvd.	Clark, Florence L &	Yellowstone Club Estates, 2nd	11A	5	C03279A	3/4	15,033	\$ 1,835.53	\$ 73.42	\$ 1,142.00	\$ 45.68	\$ 3,096.63
3242	Jack Burke Ln.	Ward, Ronnie L & Brenda K	Yellowstone Club Estates, 2nd	15	5	C03280B	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3330	Jack Burke Ln.	Reasnor, Bryant M & Amanda J	Yellowstone Club Estates, 2nd	19A	5	C03281B	3/4	15,189	\$ 1,854.58	\$ 74.18	\$ 1,142.00	\$ 45.68	\$ 3,116.44
5606	Gene Sarazen Dr.	Wilcox, John H & Ann E	Yellowstone Club Estates, 2nd	20A	5	C03281C	3/4	15,972	\$ 1,950.18	\$ 78.01	\$ 1,142.00	\$ 45.68	\$ 3,215.87
5538	Gene Sarazen Dr.	Eiseler, Barton G & Shirley L	Yellowstone Club Estates, 2nd	1	6	C03282	3/4	18,820	\$ 2,297.92	\$ 91.92	\$ 1,142.00	\$ 45.68	\$ 3,577.52
3229	Jack Burke Ln.	Robinson, George Stephen &	Yellowstone Club Estates, 2nd	7	6	C03284	3/4	10,890	\$ 1,329.67	\$ 53.19	\$ 1,142.00	\$ 45.68	\$ 2,570.54
3225	Jack Burke Ln.	Glenn, Guy C & Lucia H	Yellowstone Club Estates, 2nd	8	6	C03284A	3/4	15,213	\$ 1,857.51	\$ 74.30	\$ 1,142.00	\$ 45.68	\$ 3,119.49
5555	Bobby Jones Blvd.	Brown-Green, Stacy L	Yellowstone Club Estates, 2nd	10	6	C03285	3/4	15,833	\$ 1,933.21	\$ 77.33	\$ 1,142.00	\$ 45.68	\$ 3,198.22
5541	Bobby Jones Blvd.	Starr, David L & Joey G	Yellowstone Club Estates, 2nd	11	6	C03285A	3/4	15,930	\$ 1,945.05	\$ 77.80	\$ 1,142.00	\$ 45.68	\$ 3,210.54
5533	Bobby Jones Blvd.	Okragly, Michael	Yellowstone Club Estates, 2nd	12	6	C03285B	3/4	16,202	\$ 1,978.26	\$ 79.13	\$ 1,142.00	\$ 45.68	\$ 3,245.07
3336	Horton Smith Ln.	Renn, Richard H	Yellowstone Club Estates, 2nd	20	6	C03288A	3/4	16,093	\$ 1,964.96	\$ 78.60	\$ 1,142.00	\$ 45.68	\$ 3,231.23
3329	Horton Smith Ln.	Loucks, Robert & Stacy	Yellowstone Club Estates, 2nd	2	7	C03290	3/4	15,098	\$ 1,843.47	\$ 73.74	\$ 1,142.00	\$ 45.68	\$ 3,104.88
3311	Horton Smith Ln.	Halsted, John L & Mary B	Yellowstone Club Estates, 2nd	4	7	C03290B	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3211	Horton Smith Ln.	Smith, Ronda S	Yellowstone Club Estates, 2nd	9	7	C03292A	3/4	15,996	\$ 1,953.11	\$ 78.12	\$ 1,142.00	\$ 45.68	\$ 3,218.92
5521	Bobby Jones Blvd.	Wiggons, Caroline	Yellowstone Club Estates, 2nd	10	7	C03292B	3/4	15,372	\$ 1,876.92	\$ 75.08	\$ 1,142.00	\$ 45.68	\$ 3,139.68
5513	Bobby Jones Blvd.	Ward, Richard A	Yellowstone Club Estates, 2nd	11	7	C03293	3/4	16,000	\$ 1,953.60	\$ 78.14	\$ 1,142.00	\$ 45.68	\$ 3,219.42
3232	Lloyd Mangrum Ln.	Hardy Builders Inc	Yellowstone Club Estates, 2nd	15A	7	C03296	3/4	14,500	\$ 1,770.45	\$ 70.82	\$ 1,142.00	\$ 45.68	\$ 3,028.95
3340	Lloyd Mangrum Ln.	Dolan, Eagen J & Marietta	Yellowstone Club Estates, 2nd	21	7	C03302	3/4	19,719	\$ 2,407.69	\$ 96.31	\$ 1,142.00	\$ 45.68	\$ 3,691.68
3313	Lloyd Mangrum Ln.	Pattice, Mark E & Teri L	Yellowstone Club Estates, 2nd	4	8	C03306	3/4	15,820	\$ 1,931.62	\$ 77.26	\$ 1,142.00	\$ 45.68	\$ 3,196.57
5404	Gene Sarazen Dr.	Rosati, Robert J & Marian M	Yellowstone Club Estates, 2nd	11	8	C03313	3/4	16,142	\$ 1,970.94	\$ 78.84	\$ 1,142.00	\$ 45.68	\$ 3,237.46
5416	Gene Sarazen Dr.	Reineking, Jeff B & Patricia	Yellowstone Club Estates, 2nd	13	8	C03315	3/4	17,485	\$ 2,134.92	\$ 85.40	\$ 1,142.00	\$ 45.68	\$ 3,408.00
5424	Gene Sarazen Dr.	Johns, Merle P & Diane M	Yellowstone Club Estates, 2nd	14	8	C03316	3/4	20,825	\$ 2,542.73	\$ 101.71	\$ 1,142.00	\$ 45.68	\$ 3,832.12
5452	Gene Sarazen Dr.	Bernhardt, Roger E	Yellowstone Club Estates, 2nd	19	8	C03321	3/4	17,374	\$ 2,121.37	\$ 84.85	\$ 1,142.00	\$ 45.68	\$ 3,393.90
5466	Gene Sarazen Dr.	Nigh, David G & Sarah P Trunte	Yellowstone Club Estates, 2nd	20	8	C03322	3/4	17,161	\$ 2,095.36	\$ 83.91	\$ 1,142.00	\$ 45.68	\$ 3,366.85
5459	Gene Sarazen Dr.	Zavitz, Richard J	Yellowstone Club Estates, 3rd	4	9	C03325	3/4	19,956	\$ 2,436.63	\$ 97.47	\$ 1,142.00	\$ 45.68	\$ 3,721.77
5445	Gene Sarazen Dr.	Melzer, Richard B & Elizabeth	Yellowstone Club Estates, 3rd	6	9	C03327	3/4	16,970	\$ 2,072.04	\$ 82.88	\$ 1,142.00	\$ 45.68	\$ 3,342.60
5425	Gene Sarazen Dr.	Hodges, David N & Kathryn L	Yellowstone Club Estates, 3rd	9	9	C03330	3/4	17,400	\$ 2,124.54	\$ 84.98	\$ 1,142.00	\$ 45.68	\$ 3,397.20
3314	54th Street West	Mitchell, Jeffrey	Yellowstone Club Estates, 3rd	12	9	C03331B	3/4	16,388	\$ 2,000.97	\$ 80.04	\$ 1,142.00	\$ 45.68	\$ 3,268.69
3406	54th Street West	Thompson, Thomas G	Yellowstone Club Estates, 3rd	16	9	C03333	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
3422	54th Street West	Burke, Jack G & Laurie L	Yellowstone Club Estates, 3rd	18	9	C03334	3/4	16,853	\$ 2,057.75	\$ 82.31	\$ 1,142.00	\$ 45.68	\$ 3,327.74
5406	Walter Hagen Dr.	Graham, Christopher	Yellowstone Club Estates, 3rd	19	9	C03335	3/4	16,449	\$ 2,008.42	\$ 80.34	\$ 1,142.00	\$ 45.68	\$ 3,276.44
5422	Walter Hagen Dr.	Tidswell, Daniel E	Yellowstone Club Estates, 3rd	21	9	C03337	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
5609	Gene Sarazen Dr.	Tjaaland, Herbert L & Mary	Yellowstone Club Estates, 3rd	2	10	C03340	3/4	16,814	\$ 2,052.99	\$ 82.12	\$ 1,142.00	\$ 45.68	\$ 3,322.79
5525	Gene Sarazen Dr.	Westerland, Christopher R	Yellowstone Club Estates, 3rd	6	10	C03341	3/4	16,200	\$ 1,978.02	\$ 79.12	\$ 1,142.00	\$ 45.68	\$ 3,244.82

Exhibit E

YELLOWSTONE CLUB ESTATES AREA SANITARY SEWER LOCAL CONSTRUCTION AND SYSTEM DEVELOPMENT FEES													
House #	Street Name	Property Owner	Subdivision	Lot	Block	Tax Code	Meter Size	Assessable Lot Area Sq. Ft.	Sewer Constr. Fee \$	Swr. Const. Franch. Fee \$	Sewer SDF \$	Sewer SDF Franch. Fee	TOTAL FEES
5503	Gene Sarazen Dr.	Cahill, Patrick J & Edna R	Yellowstone Club Estates, 3rd	9	10	C03342	3/4	16,200	\$ 1,978.02	\$ 79.12	\$ 1,142.00	\$ 45.68	\$ 3,244.82
5510	Walter Hagen Dr.	Haynes, Mark J	Yellowstone Club Estates, 3rd	11	10	C03343A	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
5518	Walter Hagen Dr.	Torres, Rudolph M & Vicki Ann	Yellowstone Club Estates, 3rd	12	10	C03344	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
5526	Walter Hagen Dr.	Bukowski, Gene W & Cynthia L	Yellowstone Club Estates, 3rd	13	10	C03345	3/4	15,120	\$ 1,846.15	\$ 73.85	\$ 1,142.00	\$ 45.68	\$ 3,107.68
5612	Walter Hagen Dr.	Carlson, Cynthia K	Yellowstone Club Estates, 3rd	18	10	C03546B	1	15,078	\$ 1,841.02	\$ 73.64	\$ 2,855.00	\$ 114.20	\$ 4,883.86
5864	Sam Sneed Trl.	Mcclintock Family Trust 1/2 (E	Yellowstone Club Estates, 4th	1	11	C03348	3/4	15,875	\$ 1,938.34	\$ 77.53	\$ 1,142.00	\$ 45.68	\$ 3,203.55
5820	Sam Sneed Trl.	Rocky Mountain Aircraft Leasin	Yellowstone Club Estates, 4th	6	11	C03352	3/4	15,625	\$ 1,907.81	\$ 76.31	\$ 1,142.00	\$ 45.68	\$ 3,171.81
6030	Sam Sneed Trl.	Cooke, Carolee F	Yellowstone Club Estates, 4th	1	12	C03355	3/4	15,625	\$ 1,907.81	\$ 76.31	\$ 1,142.00	\$ 45.68	\$ 3,171.81
6028	Sam Sneed Trl.	Green, Stacy	Yellowstone Club Estates, 4th	2	12	C03356	3/4	15,532	\$ 1,896.46	\$ 75.86	\$ 1,142.00	\$ 45.68	\$ 3,160.00
5926	Sam Sneed Trl.	Schneider, Robert S & Dorothy	Yellowstone Club Estates, 4th	7	12	C03361	3/4	15,625	\$ 1,907.81	\$ 76.31	\$ 1,142.00	\$ 45.68	\$ 3,171.81
6144	Wedgewood Ln	Gray, Michael J & Rebecca J	Yellowstone Club Estates, 5th	1A	13	C03364	3/4	41,091	\$ 5,017.21	\$ 200.69	\$ 1,142.00	\$ 45.68	\$ 6,405.58
6150	Sam Sneed Trl.	Andersen, Joel	Yellowstone Club Estates, 4th	4A	13	C03367	3/4	17,228	\$ 2,103.54	\$ 84.14	\$ 1,142.00	\$ 45.68	\$ 3,375.36
5925	Sam Sneed Trl.	Leicher, John A & Sandy	Yellowstone Club Estates, 4th	3	15	C03374B	3/4	15,625	\$ 1,907.81	\$ 76.31	\$ 1,142.00	\$ 45.68	\$ 3,171.81
5943	Sam Sneed Trl.	Grimley, Patrick F & Lisa A	Yellowstone Club Estates, 4th	5	15	C03375	3/4	15,724	\$ 1,919.90	\$ 76.80	\$ 1,142.00	\$ 45.68	\$ 3,184.38
6023	Sam Sneed Trl.	Kernal, David	Yellowstone Club Estates, 4th	8	15	C03377A	3/4	19,852	\$ 2,423.93	\$ 96.96	\$ 1,142.00	\$ 45.68	\$ 3,708.57
6043	Sam Sneed Trl.	Clark, Ernest E & Dorothy A	Yellowstone Club Estates, 4th	10	15	C03377C	3/4	16,250	\$ 1,984.13	\$ 79.37	\$ 1,142.00	\$ 45.68	\$ 3,251.17
5813	Sam Sneed Trl.	Manning, Thomas G & Christine	Yellowstone Club Estates, 4th	2	16	C03379	3/4	15,625	\$ 1,907.81	\$ 76.31	\$ 1,142.00	\$ 45.68	\$ 3,171.81
5823	Sam Sneed Trl.	Judge, Michael J & Rosemary F	Yellowstone Club Estates, 4th	3	16	C03380	3/4	15,625	\$ 1,907.81	\$ 76.31	\$ 1,142.00	\$ 45.68	\$ 3,171.81
5849	Sam Sneed Trl.	Butler, Howard T	Yellowstone Club Estates, 4th	6	16	C03382	3/4	15,085	\$ 1,841.88	\$ 73.68	\$ 1,142.00	\$ 45.68	\$ 3,103.23
5857	Sam Sneed Trl.	Mundt, Rebecca Ruth	Yellowstone Club Estates, 4th	7	16	C03383	3/4	15,085	\$ 1,841.88	\$ 73.68	\$ 1,142.00	\$ 45.68	\$ 3,103.23
5630	Billy Casper Dr.	Lindell, Scott & Jill	Yellowstone Club Estates, 6th	1	20	C05693	3/4	18,990	\$ 2,311.35	\$ 92.45	\$ 1,142.00	\$ 45.68	\$ 3,591.49
3517	Ben Hogan Ln.	King, Jack E & Mary Susan	Yellowstone Club Estates, 6th	2	20	C05694	3/4	16,914	\$ 2,065.20	\$ 82.61	\$ 1,142.00	\$ 45.68	\$ 3,335.49
5617	Walter Hagen Dr.	Green, John W & Carol L H Trus	Yellowstone Club Estates, 6th	3	20	C05695	3/4	18,271	\$ 2,230.89	\$ 89.24	\$ 1,142.00	\$ 45.68	\$ 3,507.80
5603	Walter Hagen Dr.	Shirley, Clint F	Yellowstone Club Estates, 6th	5	20	C05697	3/4	20,720	\$ 2,529.91	\$ 101.20	\$ 1,142.00	\$ 45.68	\$ 3,818.79
5549	Walter Hagen Dr.	Myssse, Arne R & Vikki L	Yellowstone Club Estates, 6th	7	20	C05699	3/4	16,441	\$ 2,007.45	\$ 80.30	\$ 1,142.00	\$ 45.68	\$ 3,275.42
5541	Walter Hagen Dr.	Martin, Bradley A	Yellowstone Club Estates, 6th	8	20	C05700	3/4	16,734	\$ 2,043.22	\$ 81.73	\$ 1,142.00	\$ 45.68	\$ 3,312.63
5503	Walter Hagen Dr.	Wing, Cheryl S	Yellowstone Club Estates, 6th	13	20	C05705	3/4	20,500	\$ 2,503.05	\$ 100.12	\$ 1,142.00	\$ 45.68	\$ 3,790.85
3516	54th Street West	Habeck, Charles J & Sally J	Yellowstone Club Estates, 6th	17	20	C05709	3/4	17,550	\$ 2,142.86	\$ 85.71	\$ 1,142.00	\$ 45.68	\$ 3,416.25
5412	Billy Casper Dr.	Pueringer, Robert Joseph &	Yellowstone Club Estates, 6th	19	20	C05711	3/4	23,245	\$ 2,838.21	\$ 113.53	\$ 1,142.00	\$ 45.68	\$ 4,139.42
5420	Billy Casper Dr.	Daines, David T & Maribeth W	Yellowstone Club Estates, 6th	20	20	C05712	3/4	20,803	\$ 2,540.05	\$ 101.60	\$ 1,142.00	\$ 45.68	\$ 3,829.33
5432	Billy Casper Dr.	Repligle, Robert E	Yellowstone Club Estates, 6th	21	20	C05713	3/4	17,822	\$ 2,176.07	\$ 87.04	\$ 1,142.00	\$ 45.68	\$ 3,450.79
5506	Billy Casper Dr.	Biggs, Brian	Yellowstone Club Estates, 6th	22	20	C05714	3/4	16,767	\$ 2,047.25	\$ 81.89	\$ 1,142.00	\$ 45.68	\$ 3,316.82
5522	Billy Casper Dr.	Smith, Cary L & Susan B	Yellowstone Club Estates, 6th	24	20	C05716	3/4	16,734	\$ 2,043.22	\$ 81.73	\$ 1,142.00	\$ 45.68	\$ 3,312.63
5530	Billy Casper Dr.	Nielsen, Michael D	Yellowstone Club Estates, 6th	25	20	C05717	3/4	16,734	\$ 2,043.22	\$ 81.73	\$ 1,142.00	\$ 45.68	\$ 3,312.63
5538	Billy Casper Dr.	Laoy, Laura J Trustee	Yellowstone Club Estates, 6th	26	20	C05718	3/4	16,734	\$ 2,043.22	\$ 81.73	\$ 1,142.00	\$ 45.68	\$ 3,312.63
5546	Billy Casper Dr.	Schmechel, Michael T & Christi	Yellowstone Club Estates, 6th	27	20	C05719	1	16,734	\$ 2,043.22	\$ 81.73	\$ 2,855.00	\$ 114.20	\$ 5,094.15
5635	Billy Casper Dr.	McLaughlin, Robert	Yellowstone Club Estates, 6th	1	21	C05723	3/4	16,796	\$ 2,050.79	\$ 82.03	\$ 1,142.00	\$ 45.68	\$ 3,320.50
3642	Quimet Cir.	Lamotte, Gregory &	Yellowstone Club Estates, 6th	6	21	C05728	3/4	17,324	\$ 2,115.26	\$ 84.61	\$ 1,142.00	\$ 45.68	\$ 3,387.55
3735	Ben Hogan Ln.	Boschini, Fernando G & Patrici	Yellowstone Club Estates, 6th	4	22	C05730	3/4	18,671	\$ 2,279.73	\$ 91.19	\$ 1,142.00	\$ 45.68	\$ 3,558.60
3729	Ben Hogan Ln.	Cain, James M Jr	Yellowstone Club Estates, 6th	5	22	C05731	3/4	21,073	\$ 2,573.01	\$ 102.92	\$ 1,142.00	\$ 45.68	\$ 3,863.61
3639	Quimet Cir.	Stutzmeier, Sol	Yellowstone Club Estates, 6th	11	22	C05734	3/4	24,824	\$ 3,031.01	\$ 121.24	\$ 1,142.00	\$ 45.68	\$ 4,339.93
3631	Quimet Cir.	Reinckling, Jon K & Glenda R	Yellowstone Club Estates, 6th	14	22	C05735	3/4	21,917	\$ 2,676.07	\$ 107.04	\$ 1,142.00	\$ 45.68	\$ 3,970.79
3615	Quimet Cir.	Stacey, Calvin J & Tamara M C	Yellowstone Club Estates, 6th	16	22	C05737	1	23,343	\$ 2,850.18	\$ 114.01	\$ 2,855.00	\$ 114.20	\$ 5,933.39
3611	Quimet Cir.	Grob, Michael & Kristi	Yellowstone Club Estates, 6th	17	22	C05738	1	16,550	\$ 2,020.76	\$ 80.83	\$ 2,855.00	\$ 114.20	\$ 5,070.79
5543	Billy Casper Dr.	Schmitt, Michael E & Lori A	Yellowstone Club Estates, 6th	19	22	C05740	3/4	16,766	\$ 2,047.13	\$ 81.89	\$ 1,142.00	\$ 45.68	\$ 3,316.69
5519	Billy Casper Dr.	Pestle, Daniel S & Rebecca L	Yellowstone Club Estates, 6th	28	22	C05742	3/4	15,560	\$ 1,899.88	\$ 76.00	\$ 1,142.00	\$ 45.68	\$ 3,163.55
5415	Billy Casper Dr.	Michelotti, Robert G Jr & Conn	Yellowstone Club Estates, 6th	38	22	C05746	3/4	16,500	\$ 2,014.65	\$ 80.59	\$ 1,142.00	\$ 45.68	\$ 3,282.92
3803	Ben Hogan Ln.	Sanders, Douglas E & Cindy	Yellowstone Club Estates, 6th	3	24	C05748	3/4	20,518	\$ 2,505.25	\$ 100.21	\$ 1,142.00	\$ 45.68	\$ 3,793.14
3708	Harry Cooper Pl.	Berg, Orley V	Yellowstone Club Estates, 6th	1	25	C05749	3/4	21,269	\$ 2,596.94	\$ 103.88	\$ 1,142.00	\$ 45.68	\$ 3,888.50
3816	Ben Hogan Ln.	Rocky Mountain Aircraft Leasin	Yellowstone Club Estates, 6th	5	25	C05753	3/4	17,110	\$ 2,089.13	\$ 83.57	\$ 1,142.00	\$ 45.68	\$ 3,360.38
3633	Tommy Armour Cir.	Battaglia, John Trustee	Yellowstone Club Estates, 6th	13	25	C05761	3/4	27,234	\$ 3,325.27	\$ 133.01	\$ 1,142.00	\$ 45.68	\$ 4,645.96
3625	Tommy Armour Cir.	Selensky, Richard F & Amy E	Yellowstone Club Estates, 6th	14	25	C05762	3/4	25,082	\$ 3,062.51	\$ 122.50	\$ 1,142.00	\$ 45.68	\$ 4,372.69
3617	Tommy Armour Cir.	Plath, R Russell & Susan L	Yellowstone Club Estates, 6th	15	25	C05763	3/4	32,838	\$ 4,009.52	\$ 160.38	\$ 1,142.00	\$ 45.68	\$ 5,357.58
3611	Tommy Armour Cir.	Schneider, Michelle Renee	Yellowstone Club Estates, 6th	16	25	C05764	3/4	29,856	\$ 3,645.42	\$ 145.82	\$ 1,142.00	\$ 45.68	\$ 4,978.91
5625	Walter Hagen Dr.	Bronson, George M & Gail F	Yellowstone Club Estates, 6th	22	25	C05770	3/4	17,660	\$ 2,156.29	\$ 86.25	\$ 1,142.00	\$ 45.68	\$ 3,430.22
3612	Ben Hogan Ln.	Hatzell, Eric Joseph	Yellowstone Club Estates, 6th	26	25	C05774	3/4	22,348	\$ 2,728.69	\$ 109.15	\$ 1,142.00	\$ 45.68	\$ 4,025.52
3709	Harry Cooper Pl.	Khos, David R & Kari M	Yellowstone Club Estates, 6th	35	25	C05783	3/4	25,479	\$ 3,110.99	\$ 124.44	\$ 1,142.00	\$ 45.68	\$ 4,423.11
3612	Tommy Armour Cir.	Ryan, M Casey	Yellowstone Club Estates, 6th	6	26	C05790	3/4	14,854	\$ 1,813.67	\$ 72.55	\$ 1,142.00	\$ 45.68	\$ 3,073.90
3620	Tommy Armour Cir.	Stuehagen, James & Chrystl	Yellowstone Club Estates, 6th	7	26	C05791	3/4	15,008	\$ 1,832.48	\$ 73.30	\$ 1,142.00	\$ 45.68	\$ 3,093.46
3704	Tommy Armour Cir.	Quarles, Timothy D	Yellowstone Club Estates, 6th	9	26	C05793	3/4	15,008	\$ 1,832.48	\$ 73.30	\$ 1,142.00	\$ 45.68	\$ 3,093.46
3736	Tommy Armour Cir.	Hammond, Steve W & Brownyn A	Yellowstone Club Estates, 6th	13	26	C05797	3/4	15,469	\$ 1,888.76	\$ 75.55	\$ 1,142.00	\$ 45.68	\$ 3,152.00
3804	Tommy Armour Cir.	Alvein, Sheldon	Yellowstone Club Estates, 6th	14	26	C05798	3/4	15,469	\$ 1,888.76	\$ 75.55	\$ 1,142.00	\$ 45.68	\$ 3,152.00
3820	Tommy Armour Cir.	Evans, Alan R & Sharon F	Yellowstone Club Estates, 6th	16	26	C05800	3/4	16,012	\$ 1,955.07	\$ 78.20	\$ 1,142.00	\$ 45.68	\$ 3,220.95

Exhibit E

YELLOWSTONE CLUB ESTATES AREA SANITARY SEWER LOCAL CONSTRUCTION AND SYSTEM DEVELOPMENT FEES													
House #	Street Name	Property Owner	Subdivision	Lot	Block	Tax Code	Meter Size	Assessable Lot Area Sq. Ft.	Sewer Constr. Fee \$	Swr. Coml. Franch. Fee \$	Sewer SDF \$	Sewer SDF Franch. Fee	TOTAL FEES
3828	Tommy Armour Cir.	Riley, Edward J	Yellowstone Club Estates, 6th	17	26	C05801	3/4	19,133	\$ 2,336.14	\$ 93.45	\$ 1,142.00	\$ 45.68	\$ 3,617.26
6140	Wedgewood Ln.	Keith, Philip D	Yellowstone Club Estates, 4th	3A, 5A, 6, 7A, 8A	13	C11627	3/4	11,804	\$ 1,441.27	\$ 57.65	\$ 1,142.00	\$ 45.68	\$ 2,686.60

TOTALS: 2,245,428 \$ 274,166.76 \$ 10,966.67 \$ 158,738.00 \$ 6,349.52 \$ **459,220.95**

Exhibit E

**CITY OF BILLINGS, MONTANA
SPECIAL IMPROVEMENT DISTRICT ASSESSMENT DATA
PART TWO**

DATE: <u>December 1, 2008</u>	DATA PROCESSING CARDS COLS																				
S.I.D. NUMBER: <u>1384</u>	A&B 2 - 5																				
S.I.D. DESCRIPTION: <u>Construction and System Development</u> <u>Fees for local sanitary sewer connections in Yellowstone</u> <u>Country Club</u>	A 6 - 39																				
YEARS TO BE ASSESSED: <u>15</u>	A 59 - 60																				
TOTAL S.I.D. AREA: <u>N/A</u>	A 61 - 71																				
MEASUREMENT: <u>EA</u> <u>X</u> <u>SF</u> <u>LF</u>																					
S.I.D. COSTS: <u>X</u> ESTIMATED PER CONCEPT PLANS <u>ESTIMATED PER BID PRICE</u> <u>FINAL PER ACTUAL CONSTRUCTION</u>																					
S.I.D. MAIN IMPROVEMENT COST: <u>\$495,000.00</u>																					
SPECIAL ADDITIONS: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">CODE</th> <th style="text-align: left;">Quantity</th> <th style="text-align: left;">Unit Cost</th> <th style="text-align: left;">Total</th> </tr> </thead> <tbody> <tr> <td>1 Assessment #1</td> <td><u>2,245,428.00</u></td> <td><u>\$ 0.139614</u></td> <td><u>\$ 313,492.85</u></td> </tr> <tr> <td>2 Assessment #2</td> <td><u>119.00</u></td> <td><u>\$ 1,305.806851</u></td> <td><u>\$ 155,391.02</u></td> </tr> <tr> <td>3 Assessment #3</td> <td><u>8.00</u></td> <td><u>\$ 3,264.5171</u></td> <td><u>\$ 26,116.14</u></td> </tr> <tr> <td colspan="2">TOTAL PROJECT COST</td> <td>=</td> <td><u>\$ 495,000.00</u></td> </tr> </tbody> </table>	CODE	Quantity	Unit Cost	Total	1 Assessment #1	<u>2,245,428.00</u>	<u>\$ 0.139614</u>	<u>\$ 313,492.85</u>	2 Assessment #2	<u>119.00</u>	<u>\$ 1,305.806851</u>	<u>\$ 155,391.02</u>	3 Assessment #3	<u>8.00</u>	<u>\$ 3,264.5171</u>	<u>\$ 26,116.14</u>	TOTAL PROJECT COST		=	<u>\$ 495,000.00</u>	A 89 - 96
CODE	Quantity	Unit Cost	Total																		
1 Assessment #1	<u>2,245,428.00</u>	<u>\$ 0.139614</u>	<u>\$ 313,492.85</u>																		
2 Assessment #2	<u>119.00</u>	<u>\$ 1,305.806851</u>	<u>\$ 155,391.02</u>																		
3 Assessment #3	<u>8.00</u>	<u>\$ 3,264.5171</u>	<u>\$ 26,116.14</u>																		
TOTAL PROJECT COST		=	<u>\$ 495,000.00</u>																		
(ALL COSTS TO INCLUDE PRORATA SHARE OF ADMINISTRATIVE COSTS)																					
CITY CENTRAL SUPPORT SERVICES TO COMPLETE																					
FIRST YEAR TO BE ASSESSED: _____	A 40 - 41																				
TYPE ASSESSMENT: <u>PENDING</u> <u>FINAL</u>	A 42																				
INTEREST RATE: _____	A 53 - 58																				
BOND ISSUE DATE: _____	A 73 - 78																				

Part II

PART III
SID 1384 - YELLOWSTONE CLUB ESTATES
TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY

SID COSTS:

 X ESTIMATE PER CONCEPT PLANS
 ESTIMATE PER BID PRICES
 FINAL PER ACTUAL CONSTRUCTION

PARCEL	OWNER	SUBDIVISION	BLK	LOT/ TRACT	TAX LD. NUMBER 6-13	LOT AREA (S.F.)	ASSESSMENT #1 SEWER CONSTRUCTION & FRANCHISE FEE			ASSESSMENT #2 SYSTEM DEVELOPMENT AND FRANCHISE FEE 3/4" METER			ASSESSMENT #3 SYSTEM DEVELOPMENT AND FRANCHISE FEE 1" METER			TOTAL COST
							CODE	UNIT RATE	1 SF \$6.19614	CODE	UNIT RATE	2 EA \$1,305.81	CODE	UNIT RATE	3 EA \$3,264.52	
							CODE	ASSESSED QUANTITY	ASSESSED VALUE	CODE	ASSESSED QUANTITY	ASSESSED VALUE	CODE	ASSESSED QUANTITY	ASSESSED VALUE	
1	Zemly, Carlos A & Amber Usain	Yellowstone Club Estates, 1st	1	7	C03218	17,440	1	17,440.00	\$2,434.87	2	1.00	\$1,305.81		0.00	\$0.00	\$3,740.67
2	Pox, Brian	Yellowstone Club Estates, 1st	1	8	C03220	22,698	1	22,698.00	\$3,168.96	2	1.00	\$1,305.81		0.00	\$0.00	\$4,474.76
3	Swain, Joshua J	Yellowstone Club Estates, 1st	2	1	C03222	15,600	1	15,600.00	\$2,177.98	2	1.00	\$1,305.81		0.00	\$0.00	\$3,483.78
4	Pinnegan, Donald J & Karen L	Yellowstone Club Estates, 1st	2	2	C03223	15,249	1	15,249.00	\$2,128.97	2	1.00	\$1,305.81		0.00	\$0.00	\$3,434.78
5	Anders, Kevin C & Denise L	Yellowstone Club Estates, 1st	2	3	C03224	15,635	1	15,635.00	\$2,182.86		0.00	\$0.00	3	1.00	\$3,264.52	\$5,447.38
6	Yochum, Constance B	Yellowstone Club Estates, 1st	2	4	C03225	15,748	1	15,748.00	\$2,198.64	2	1.00	\$1,305.81		0.00	\$0.00	\$3,504.45
7	Schwartz Family Trust	Yellowstone Club Estates, 1st	2	6	C03227	15,675	1	15,675.00	\$2,188.45	2	1.00	\$1,305.81		0.00	\$0.00	\$3,494.25
8	Blade, Matthew L & Angela M	Yellowstone Club Estates, 1st	2	8	C03230	21,897	1	21,897.00	\$3,057.12	2	1.00	\$1,305.81		0.00	\$0.00	\$4,362.93
9	Olson, Robert L & Carol A	Yellowstone Club Estates, 1st	2	11	C03232	18,435	1	18,435.00	\$2,573.78	2	1.00	\$1,305.81		0.00	\$0.00	\$3,879.59
10	Smith, Scott P & Marcie Jeray	Yellowstone Club Estates, 1st	2	12	C03233	17,720	1	17,720.00	\$2,473.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,779.76
11	Aley, Matthew W	Yellowstone Club Estates, 1st	2	13	C03234	15,635	1	15,635.00	\$2,182.86	2	1.00	\$1,305.81		0.00	\$0.00	\$3,488.67
12	Beninger, Ruben	Yellowstone Club Estates, 1st	2	15	C03236	15,635	1	15,635.00	\$2,182.86	2	1.00	\$1,305.81		0.00	\$0.00	\$3,488.67
13	Vogel, Meredith A	Yellowstone Club Estates, 1st	2	19	C03240	15,470	1	15,470.00	\$2,159.83	2	1.00	\$1,305.81		0.00	\$0.00	\$3,465.63
14	Hargrove, Daniel & Ruth	Yellowstone Club Estates, 1st	2	21	C03242	15,000	1	15,000.00	\$2,094.21	2	1.00	\$1,305.81		0.00	\$0.00	\$3,400.01
15	Potter, Kirk A & Nancy K	Yellowstone Club Estates, 1st	2	23	C03244	20,987	1	20,987.00	\$2,930.08	2	1.00	\$1,305.81		0.00	\$0.00	\$4,235.88
16	Buedberg, Rodney E	Yellowstone Club Estates, 1st	2	24	C03246	16,810	1	16,810.00	\$2,346.91	2	1.00	\$1,305.81		0.00	\$0.00	\$3,652.72
17	Zagal, Bruce R & Kathleen R	Yellowstone Club Estates, 1st	2	25	C03248	16,319	1	16,319.00	\$2,276.36	2	1.00	\$1,305.81		0.00	\$0.00	\$3,584.17
18	Sotz, Douglas W	Yellowstone Club Estates, 2nd	3	5	C03252	21,837	1	21,837.00	\$3,048.75		0.00	\$0.00	3	1.00	\$3,264.52	\$6,313.26
19	Okerman, Michael	Yellowstone Club Estates, 2nd	3	6	C03253	24,382	1	24,382.00	\$3,404.06		0.00	\$0.00	3	1.00	\$3,264.52	\$6,668.58
20	Keller, Susan K & Gregory G	Yellowstone Club Estates, 2nd	3	9	C03256	17,423	1	17,423.00	\$2,432.49		0.00	\$0.00	3	1.00	\$3,264.52	\$5,697.01
21	Kazmierski, Fred & Nan A	Yellowstone Club Estates, 2nd	3	11	C03258	15,800	1	15,800.00	\$2,205.90	2	1.00	\$1,305.81		0.00	\$0.00	\$3,511.71
22	Adem, Roger L & Beth E	Yellowstone Club Estates, 2nd	3	14	C03261	22,221	1	22,221.00	\$3,102.36	2	1.00	\$1,305.81		0.00	\$0.00	\$4,408.17
23	Stanley, Barbara T &	Yellowstone Club Estates, 2nd	3	15	C03262	15,851	1	15,851.00	\$2,213.02	2	1.00	\$1,305.81		0.00	\$0.00	\$3,518.83
24	Wesul, Arvid B & Erel L	Yellowstone Club Estates, 2nd	4	16	C03274	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
25	Grill, Carmela Campanan & Le	Yellowstone Club Estates, 2nd	5	3	C03276B	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
26	Rodriguez, Daniel V & Teresa M	Yellowstone Club Estates, 2nd	5	6	C03277B	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
27	Judson, Gregory L	Yellowstone Club Estates, 2nd	5	7	C03278	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
28	Fraser Montana Properties Llc	Yellowstone Club Estates, 2nd	5	8	C03278A	16,086	1	16,086.00	\$2,245.83	2	1.00	\$1,305.81		0.00	\$0.00	\$3,551.64
29	Clark, Florence L &	Yellowstone Club Estates, 2nd	5	11A	C03278A	15,033	1	15,033.00	\$2,098.82	2	1.00	\$1,305.81		0.00	\$0.00	\$3,404.62
30	Ward, Ronnie L & Brenda K	Yellowstone Club Estates, 2nd	5	15	C03280B	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
31	Pearson, Bryant M & Amanda J	Yellowstone Club Estates, 2nd	5	19A	C03281B	15,189	1	15,189.00	\$2,120.59	2	1.00	\$1,305.81		0.00	\$0.00	\$3,426.40

PART III
SID 1384 - YELLOWSTONE CLUB ESTATES
TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY

SID COSTS:

 X ESTIMATE PER CONCEPT PLANS
 ESTIMATE PER BID PRICES
 FINAL PER ACTUAL CONSTRUCTION

PARCEL	OWNER	SUBDIVISION	BLK	LOT/ TRACT	TAX LD. NUMBER 6-13	LOT AREA (S.F.)	ASSESSMENT #1 SEWER CONSTRUCTION & FRANCHISE FEE			ASSESSMENT #2 SYSTEM DEVELOPMENT AND FRANCHISE FEE 3/4" METER			ASSESSMENT #3 SYSTEM DEVELOPMENT AND FRANCHISE FEE 1" METER			TOTAL COST
							CODE	UNIT	1 SF \$6,196.14	CODE	UNIT	2 EA \$1,305.81	CODE	UNIT	3 EA \$3,264.52	
							CODE	QUANTITY	ASSESSED VALUE	CODE	QUANTITY	ASSESSED VALUE	CODE	QUANTITY	ASSESSED VALUE	
32	Wilson, John H & Ann E	Yellowstone Club Estates, 2nd	5	20A	C032810	15,972	1	15,972.00	\$2,229.91	2	1.00	\$1,305.81		0.00	\$0.00	\$3,535.72
33	Eiselle, Barton G & Shirley L	Yellowstone Club Estates, 2nd	6	1	C03282	18,820	1	18,820.00	\$2,627.53	2	1.00	\$1,305.81		0.00	\$0.00	\$3,933.34
34	Robinson, George Stephen &	Yellowstone Club Estates, 2nd	6	7	C03284	10,890	1	10,890.00	\$1,520.39	2	1.00	\$1,305.81		0.00	\$0.00	\$2,826.20
35	Glenn, Gay C & Lucia H	Yellowstone Club Estates, 2nd	6	8	C03284A	15,213	1	15,213.00	\$2,123.95	2	1.00	\$1,305.81		0.00	\$0.00	\$3,429.75
36	Brown-Green, Stacy L	Yellowstone Club Estates, 2nd	6	10	C03285	15,833	1	15,833.00	\$2,210.51	2	1.00	\$1,305.81		0.00	\$0.00	\$3,516.31
37	Starr, David L & Joey G	Yellowstone Club Estates, 2nd	6	11	C03285A	15,930	1	15,930.00	\$2,224.05	2	1.00	\$1,305.81		0.00	\$0.00	\$3,529.86
38	Okragly, Michael	Yellowstone Club Estates, 2nd	6	12	C03285B	16,202	1	16,202.00	\$2,262.02	2	1.00	\$1,305.81		0.00	\$0.00	\$3,567.83
39	Henn, Richard H	Yellowstone Club Estates, 2nd	6	20	C03286A	16,093	1	16,093.00	\$2,246.81	2	1.00	\$1,305.81		0.00	\$0.00	\$3,552.61
40	Loucks, Robert & Stacy	Yellowstone Club Estates, 2nd	7	2	C03290	15,098	1	15,098.00	\$2,107.89	2	1.00	\$1,305.81		0.00	\$0.00	\$3,413.70
41	Halsbrecht, John L & Mary B	Yellowstone Club Estates, 2nd	7	4	C03290B	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
42	Smith, Ronda S	Yellowstone Club Estates, 2nd	7	9	C03292A	15,696	1	15,696.00	\$2,233.26	2	1.00	\$1,305.81		0.00	\$0.00	\$3,539.07
43	Haggoner, Caroline	Yellowstone Club Estates, 2nd	7	10	C03292B	15,372	1	15,372.00	\$2,146.14	2	1.00	\$1,305.81		0.00	\$0.00	\$3,451.95
44	Ward, Richard A	Yellowstone Club Estates, 2nd	7	11	C03293	16,000	1	16,000.00	\$2,233.82	2	1.00	\$1,305.81		0.00	\$0.00	\$3,539.63
45	Hardy Builders Inc	Yellowstone Club Estates, 2nd	7	15A	C03296	14,500	1	14,500.00	\$2,024.40	2	1.00	\$1,305.81		0.00	\$0.00	\$3,330.21
46	Dolan, Eugen J & Marietta	Yellowstone Club Estates, 2nd	7	21	C03302	19,719	1	19,719.00	\$2,753.05	2	1.00	\$1,305.81		0.00	\$0.00	\$4,058.85
47	Platte, Mark E & Teri L	Yellowstone Club Estates, 2nd	8	4	C03306	15,820	1	15,820.00	\$2,208.69	2	1.00	\$1,305.81		0.00	\$0.00	\$3,514.50
48	Hosatt, Robert J & Marian M	Yellowstone Club Estates, 2nd	8	11	C03313	16,142	1	16,142.00	\$2,253.65	2	1.00	\$1,305.81		0.00	\$0.00	\$3,559.45
49	Reinering, Jeff E & Patricia	Yellowstone Club Estates, 2nd	8	13	C03315	17,485	1	17,485.00	\$2,441.15	2	1.00	\$1,305.81		0.00	\$0.00	\$3,746.96
50	Johns, Marie P & Diane M	Yellowstone Club Estates, 2nd	8	14	C03316	20,825	1	20,825.00	\$2,907.46	2	1.00	\$1,305.81		0.00	\$0.00	\$4,213.27
51	Bernhardt, Roger E	Yellowstone Club Estates, 2nd	8	19	C03321	17,374	1	17,374.00	\$2,425.65	2	1.00	\$1,305.81		0.00	\$0.00	\$3,731.46
52	Nigh, David G & Sarah P Truete	Yellowstone Club Estates, 2nd	8	20	C03322	17,161	1	17,161.00	\$2,395.91	2	1.00	\$1,305.81		0.00	\$0.00	\$3,701.72
53	Zavitz, Richard J	Yellowstone Club Estates, 3rd	9	4	C03325	19,956	1	19,956.00	\$2,786.13	2	1.00	\$1,305.81		0.00	\$0.00	\$4,091.94
54	Meizer, Richard B & Elizabeth	Yellowstone Club Estates, 3rd	9	6	C03327	16,970	1	16,970.00	\$2,369.25	2	1.00	\$1,305.81		0.00	\$0.00	\$3,675.05
55	Hodges, David N & Kathryn L	Yellowstone Club Estates, 3rd	9	9	C03330	17,400	1	17,400.00	\$2,429.28	2	1.00	\$1,305.81		0.00	\$0.00	\$3,735.09
56	Mitchell, Jeffrey	Yellowstone Club Estates, 3rd	9	12	C03331B	16,388	1	16,388.00	\$2,287.99	2	1.00	\$1,305.81		0.00	\$0.00	\$3,593.80
57	Thompson, Thomas G	Yellowstone Club Estates, 3rd	9	16	C03333	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
58	Burke, Jack G & Laurie L	Yellowstone Club Estates, 3rd	9	18	C03334	16,853	1	16,853.00	\$2,352.91	2	1.00	\$1,305.81		0.00	\$0.00	\$3,658.72
59	Graham, Christopher	Yellowstone Club Estates, 3rd	9	19	C03335	16,449	1	16,449.00	\$2,296.51	2	1.00	\$1,305.81		0.00	\$0.00	\$3,602.32
60	Tidwell, Daniel E	Yellowstone Club Estates, 3rd	9	21	C03337	15,120	1	15,120.00	\$2,110.96	2	1.00	\$1,305.81		0.00	\$0.00	\$3,416.77
61	Hjalrand, Herbert L & Mary	Yellowstone Club Estates, 3rd	10	2	C03340	16,814	1	16,814.00	\$2,347.47	2	1.00	\$1,305.81		0.00	\$0.00	\$3,653.27
62	Weestlund, Christopher R	Yellowstone Club Estates, 3rd	10	6	C03341	16,200	1	16,200.00	\$2,261.74	2	1.00	\$1,305.81		0.00	\$0.00	\$3,567.55

PART III
SID 1384 - YELLOWSTONE CLUB ESTATES
TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY

SID COSTS:

 X ESTIMATE PER CONCEPT PLANS
 ESTIMATE PER BID PRICES
 FINAL PER ACTUAL CONSTRUCTION

X. ESTIMATE PER CONCEPT PLANS ESTIMATE PER BID PRICES FINAL PER ACTUAL CONSTRUCTION							ASSESSMENT #1 SEWER CONSTRUCTION & FRANCHISE FEE		ASSESSMENT #2 SYSTEM DEVELOPMENT AND FRANCHISE FEE 3/4" METER		ASSESSMENT #3 SYSTEM DEVELOPMENT AND FRANCHISE FEE 1" METER					
PARCEL	OWNER	SUBDIVISION	BLK	LOT/ TRACT	TAX LD. NUMBER 6-13	LOT AREA (S.F.)	CODE	UNIT	CODE	UNIT	CODE	UNIT	TOTAL COST			
							RATE	ASSESSED QUANTITY	RATE	ASSESSED QUANTITY	RATE	ASSESSED QUANTITY				
63	Zahrl, Patrick J & Edna R	Yellowstone Club Estates, 3rd	10	9	C03342	15,200	1		16,200.00	\$2,261.74	2	1.00	\$1,305.81	0.00	\$0.00	\$3,567.55
64	Haynes, Mark J	Yellowstone Club Estates, 3rd	10	11	C03343A	15,120	1		15,120.00	\$2,110.96	2	1.00	\$1,305.81	0.00	\$0.00	\$3,416.77
65	Torres, Rudolph M & Vicki Arun	Yellowstone Club Estates, 3rd	10	12	C03344	15,120	1		15,120.00	\$2,110.96	2	1.00	\$1,305.81	0.00	\$0.00	\$3,416.77
66	Bukowski, Gene W & Cynthia L	Yellowstone Club Estates, 3rd	10	13	C03345	15,120	1		15,120.00	\$2,110.96	2	1.00	\$1,305.81	0.00	\$0.00	\$3,416.77
67	Carlson, Cynthia K	Yellowstone Club Estates, 3rd	10	18	C03346B	15,078	1		15,078.00	\$2,105.10	0.00	\$0.00	3	1.00	\$3,264.52	\$5,369.61
68	McCintock Family Trust 1/2 JE	Yellowstone Club Estates, 4th	11	1	C03348	15,875	1		15,875.00	\$2,216.37	2	1.00	\$1,305.81	0.00	\$0.00	\$3,522.18
69	Rocky Mountain Aircraft Leasing	Yellowstone Club Estates, 4th	11	6	C03352	15,625	1		15,625.00	\$2,181.47	2	1.00	\$1,305.81	0.00	\$0.00	\$3,487.27
70	Cooke, Carolee F	Yellowstone Club Estates, 4th	12	1	C03355	15,625	1		15,625.00	\$2,181.47	2	1.00	\$1,305.81	0.00	\$0.00	\$3,487.27
71	Green, Stacy	Yellowstone Club Estates, 4th	12	2	C03356	15,532	1		15,532.00	\$2,168.48	2	1.00	\$1,305.81	0.00	\$0.00	\$3,474.29
72	Schneider, Robert S & Dorothy	Yellowstone Club Estates, 4th	12	7	C03361	15,625	1		15,625.00	\$2,181.47	2	1.00	\$1,305.81	0.00	\$0.00	\$3,487.27
73	Gray, Michael J & Rebecca J	Yellowstone Club Estates, 5th	13	1A	C03364	41,091	1		41,091.00	\$5,736.87	2	1.00	\$1,305.81	0.00	\$0.00	\$7,042.68
74	Andersen, Joel	Yellowstone Club Estates, 4th	13	4A	C03367	17,228	1		17,228.00	\$2,405.27	2	1.00	\$1,305.81	0.00	\$0.00	\$3,711.07
75	Leitchner, John A & Sandy	Yellowstone Club Estates, 4th	15	3	C03374B	15,625	1		15,625.00	\$2,181.47	2	1.00	\$1,305.81	0.00	\$0.00	\$3,487.27
76	Grimsey, Patrick F & Lisa A	Yellowstone Club Estates, 4th	15	5	C03375	15,724	1		15,724.00	\$2,195.29	2	1.00	\$1,305.81	0.00	\$0.00	\$3,501.10
77	Kemall, David	Yellowstone Club Estates, 4th	15	8	C03377A	19,852	1		19,852.00	\$2,771.61	2	1.00	\$1,305.81	0.00	\$0.00	\$4,077.42
78	Clark, Ernest E & Dorothy A	Yellowstone Club Estates, 4th	15	10	C03377C	16,250	1		16,250.00	\$2,268.73	2	1.00	\$1,305.81	0.00	\$0.00	\$3,574.53
79	Manning, Thomas G & Christine	Yellowstone Club Estates, 4th	16	2	C03379	15,625	1		15,625.00	\$2,181.47	2	1.00	\$1,305.81	0.00	\$0.00	\$3,487.27
80	Judge, Michael J & Rosemary F	Yellowstone Club Estates, 4th	16	3	C03380	15,625	1		15,625.00	\$2,181.47	2	1.00	\$1,305.81	0.00	\$0.00	\$3,487.27
81	Butler, Howard T	Yellowstone Club Estates, 4th	16	6	C03382	15,085	1		15,085.00	\$2,106.07	2	1.00	\$1,305.81	0.00	\$0.00	\$3,411.88
82	Mundt, Rebecca Ruth	Yellowstone Club Estates, 4th	16	7	C03383	15,085	1		15,085.00	\$2,106.07	2	1.00	\$1,305.81	0.00	\$0.00	\$3,411.88
83	Lindell, Scott & Jill	Yellowstone Club Estates, 6th	20	1	C05693	18,930	1		18,930.00	\$2,642.89	2	1.00	\$1,305.81	0.00	\$0.00	\$3,948.70
84	King, Jack E & Mary Susan	Yellowstone Club Estates, 6th	20	2	C05694	16,914	1		16,914.00	\$2,361.43	2	1.00	\$1,305.81	0.00	\$0.00	\$3,667.24
85	Green, John W & Carol L H Trust	Yellowstone Club Estates, 6th	20	3	C05695	18,271	1		18,271.00	\$2,550.88	2	1.00	\$1,305.81	0.00	\$0.00	\$3,856.69
86	Shirley, Clint F	Yellowstone Club Estates, 6th	20	5	C05697	20,720	1		20,720.00	\$2,892.80	2	1.00	\$1,305.81	0.00	\$0.00	\$4,198.61
87	Wyse, Arne R & Vicki L	Yellowstone Club Estates, 6th	20	7	C05698	16,441	1		16,441.00	\$2,295.39	2	1.00	\$1,305.81	0.00	\$0.00	\$3,601.20
88	Martin, Bradley A	Yellowstone Club Estates, 6th	20	8	C05700	16,734	1		16,734.00	\$2,336.30	2	1.00	\$1,305.81	0.00	\$0.00	\$3,642.11
89	Wing, Cheryl S	Yellowstone Club Estates, 6th	20	13	C05705	20,500	1		20,500.00	\$2,862.08	2	1.00	\$1,305.81	0.00	\$0.00	\$4,167.89
90	Habeck, Charles J & Sally J	Yellowstone Club Estates, 6th	20	17	C05709	17,550	1		17,550.00	\$2,450.22	2	1.00	\$1,305.81	0.00	\$0.00	\$3,756.03
91	Pueringer, Robert Joseph &	Yellowstone Club Estates, 6th	20	19	C05711	23,245	1		23,245.00	\$3,245.32	2	1.00	\$1,305.81	0.00	\$0.00	\$4,551.13
92	Daines, David T & Maribeth W	Yellowstone Club Estates, 6th	20	20	C05712	20,803	1		20,803.00	\$2,994.39	2	1.00	\$1,305.81	0.00	\$0.00	\$4,210.19
93	Repiogle, Robert E	Yellowstone Club Estates, 6th	20	21	C05713	17,822	1		17,822.00	\$2,488.20	2	1.00	\$1,305.81	0.00	\$0.00	\$3,794.00

PART III
SID 1384 - YELLOWSTONE CLUB ESTATES
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PARCEL	OWNER	SUBDIVISION	BLK	LOT/ TRACT	TAX ID NUMBER 6-13	LOT AREA (S.F.)	ASSESSMENT #1 SEWER CONSTRUCTION & FRANCHISE FEE			ASSESSMENT #2 SYSTEM DEVELOPMENT AND FRANCHISE FEE 3/4" METER			ASSESSMENT #3 SYSTEM DEVELOPMENT AND FRANCHISE FEE 1" METER			TOTAL COST
							CODE	UNIT	ASSESSED	CODE	UNIT	ASSESSED	CODE	UNIT	ASSESSED	
							RATE	SF	VALUE	RATE	EA	VALUE	RATE	EA	VALUE	
								\$0.19614			\$1.30581			\$3.26452		
94	Biggs, Brian	Yellowstone Club Estates, 6th	20	22	C05114	16,767	1		\$2,340.91	2	1.00	\$1,305.81		0.00	\$0.00	\$3,646.71
95	Smith, Cary L & Susan B	Yellowstone Club Estates, 6th	20	24	C05116	16,734	1		\$2,336.30	2	1.00	\$1,305.81		0.00	\$0.00	\$3,642.11
96	Neisen, Michael D	Yellowstone Club Estates, 6th	20	25	C05117	16,734	1		\$2,336.30	2	1.00	\$1,305.81		0.00	\$0.00	\$3,642.11
97	Lacey, Laura J Trustee	Yellowstone Club Estates, 6th	20	26	C05118	16,734	1		\$2,336.30	2	1.00	\$1,305.81		0.00	\$0.00	\$3,642.11
98	Schmechel, Michael T & Christi	Yellowstone Club Estates, 6th	20	27	C05119	16,734	1		\$2,336.30		0.00	\$0.00	3	1.00	\$3,264.52	\$5,600.82
99	McLaughlin, Robert	Yellowstone Club Estates, 6th	21	1	C05123	16,796	1		\$2,344.95	2	1.00	\$1,305.81		0.00	\$0.00	\$3,650.76
100	Lamotte, Gregory &	Yellowstone Club Estates, 6th	21	6	C05128	17,324	1		\$2,418.67	2	1.00	\$1,305.81		0.00	\$0.00	\$3,724.48
101	Blochman, Fernando G & Patricia	Yellowstone Club Estates, 6th	22	4	C05130	16,671	1		\$2,606.73	2	1.00	\$1,305.81		0.00	\$0.00	\$3,912.54
102	Cain, James M Jr	Yellowstone Club Estates, 6th	22	5	C05131	21,073	1		\$2,942.08	2	1.00	\$1,305.81		0.00	\$0.00	\$4,247.89
103	Stutzmeier, Sol	Yellowstone Club Estates, 6th	22	11	C05134	24,824	1		\$3,465.77	2	1.00	\$1,305.81		0.00	\$0.00	\$4,771.58
104	Reinering, Jon K & Glenda R	Yellowstone Club Estates, 6th	22	14	C05135	21,917	1		\$3,059.92	2	1.00	\$1,305.81		0.00	\$0.00	\$4,365.72
105	Stoney, Carkin J & Tamara M C	Yellowstone Club Estates, 6th	22	16	C05137	23,343	1		\$3,259.01		0.00	\$0.00	3	1.00	\$3,264.52	\$6,523.52
106	Grob, Michael & Krell	Yellowstone Club Estates, 6th	22	17	C05138	16,550	1		\$2,310.61		0.00	\$0.00	3	1.00	\$3,264.52	\$5,575.13
107	Schmitt, Michael E & Lori A	Yellowstone Club Estates, 6th	22	19	C05140	16,766	1		\$2,340.77	2	1.00	\$1,305.81		0.00	\$0.00	\$3,646.57
108	Pestle, Daniel S & Rebecca L	Yellowstone Club Estates, 6th	22	28	C05142	15,560	1		\$2,172.39	2	1.00	\$1,305.81		0.00	\$0.00	\$3,478.20
109	Michelsdt, Robert G Jr & Corni	Yellowstone Club Estates, 6th	22	38	C05148	16,500	1		\$2,303.63	2	1.00	\$1,305.81		0.00	\$0.00	\$3,609.44
110	Henders, Douglas E & Cindy	Yellowstone Club Estates, 6th	24	3	C05148	20,518	1		\$2,864.60	2	1.00	\$1,305.81		0.00	\$0.00	\$4,170.40
111	Berg, Orley V	Yellowstone Club Estates, 6th	25	1	C05149	21,269	1		\$2,969.45	2	1.00	\$1,305.81		0.00	\$0.00	\$4,275.25
112	Rocky Mountain Aircraft Leasin	Yellowstone Club Estates, 6th	25	5	C05153	17,110	1		\$2,388.79	2	1.00	\$1,305.81		0.00	\$0.00	\$3,694.60
113	Battaglia, John R trustee	Yellowstone Club Estates, 6th	25	13	C05161	27,234	1		\$3,802.24	2	1.00	\$1,305.81		0.00	\$0.00	\$5,108.05
114	Selensky, Richard F & Amy E	Yellowstone Club Estates, 6th	25	14	C05162	25,082	1		\$3,501.79	2	1.00	\$1,305.81		0.00	\$0.00	\$4,807.60
115	Plath, R Russell & Susan L	Yellowstone Club Estates, 6th	25	15	C05163	32,838	1		\$4,584.64	2	1.00	\$1,305.81		0.00	\$0.00	\$5,890.45
116	Schneider, Michelle Renee	Yellowstone Club Estates, 6th	25	16	C05164	29,856	1		\$4,168.31	2	1.00	\$1,305.81		0.00	\$0.00	\$5,474.12
117	Bronson, George M & Gail F	Yellowstone Club Estates, 6th	25	22	C05170	17,880	1		\$2,465.58	2	1.00	\$1,305.81		0.00	\$0.00	\$3,771.39
118	Hatzell, Eric Joseph	Yellowstone Club Estates, 6th	25	26	C05174	22,348	1		\$3,120.69	2	1.00	\$1,305.81		0.00	\$0.00	\$4,425.90
119	Knox, David R & Kari M	Yellowstone Club Estates, 6th	25	35	C05183	25,479	1		\$3,557.22	2	1.00	\$1,305.81		0.00	\$0.00	\$4,863.03
120	Ryan, M Casey	Yellowstone Club Estates, 6th	26	6	C05190	14,854	1		\$2,073.82	2	1.00	\$1,305.81		0.00	\$0.00	\$3,379.63
121	Hinehagen, James & Chrysal	Yellowstone Club Estates, 6th	26	7	C05191	15,008	1		\$2,095.32	2	1.00	\$1,305.81		0.00	\$0.00	\$3,401.13
122	Stanley, Timothy D	Yellowstone Club Estates, 6th	26	9	C05193	15,008	1		\$2,095.32	2	1.00	\$1,305.81		0.00	\$0.00	\$3,401.13
123	Hammond, Steve W & Bronwyn A	Yellowstone Club Estates, 6th	26	13	C05197	15,469	1		\$2,159.69	2	1.00	\$1,305.81		0.00	\$0.00	\$3,465.49
124	Alweis, Sheldon	Yellowstone Club Estates, 6th	26	14	C05198	15,469	1		\$2,159.69	2	1.00	\$1,305.81		0.00	\$0.00	\$3,465.49

PART III
SID 1384 - YELLOWSTONE CLUB ESTATES
TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY

SID COSTS:

☒ ESTIMATE PER CONCEPT PLANS
☐ ESTIMATE PER BID PRICES
☐ FINAL PER ACTUAL CONSTRUCTION

X ESTIMATE PER CONCEPT PLANS					ASSESSMENT #1 SEWER CONSTRUCTION & FRANCHISE FEE		ASSESSMENT#2 SYSTEM DEVELOPMENT AND FRANCHISE FEE 3/4" METER				ASSESSMENT #3 SYSTEM DEVELOPMENT AND FRANCHISE FEE 1" METER									
ESTIMATE PER BID PRICES							CODE UNIT RATE		1 SF \$0.19614		CODE UNIT RATE		2 EA \$1,305.81		CODE UNIT RATE		3 EA \$3,264.52			
FINAL PER ACTUAL CONSTRUCTION							CODE		ASSESSED QUANTITY		ASSESSED VALUE		CODE		ASSESSED QUANTITY		ASSESSED VALUE		TOTAL COST	
PARCEL	OWNER	SUBDIVISION	BLK	LOT/ TRACT	TAX LD. NUMBER	LOT AREA (S.F.)														
125	Evans, Alan R & Sharon F	Yellowstone Club Estates, 6th	26	16	G05608	16,012	1	16,012.00	\$2,235.50	2	1.00	\$1,305.81		0.00	\$0.00				\$3,541.30	
126	Riley, Edward J	Yellowstone Club Estates, 6th	26	17	C05601	19,133	1	19,133.00	\$2,671.23	2	1.00	\$1,305.81		0.00	\$0.00				\$3,977.04	
127	Keith, Philip D	Yellowstone Club Estates, 4th	13	3A, 5A, 6, 7A, 8A7	C11627	11,804	1	11,804.00	\$1,648.00	2	1.00	\$1,305.81		0.00	\$0.00				\$2,953.81	
TOTALS					Totals		127	2,245,428.00		127	2,245,428.00	\$313,492.85	119	119	\$156,391.02	8	8	\$26,116.14	\$495,000.00	

1-Dec-08

RECOMMENDED BONDING COST ANALYSIS
SID 1384 - YELLOWSTONE COUNTRY CLUB
Sanitary Sewer Local Connections

CONSTRUCTION AND SYSTEM DEVELOPMENT FEES	\$ 450,220.95
SID COSTS	
ADMINISTRATION / FINANCE FEES (2.5%)	\$ 12,375.00
ENGINEERING FEE (1.0%)	\$ 4,950.00
SID REVOLVING FUND (5%)	\$ 24,750.00
LEGAL FEES (0.5%)	\$ 2,475.00
ROUND OFF	\$ 229.05
TOTAL BONDING COST	\$ 495,000.00
BONDS AWARDED TO:	
INTEREST RATE _____ %	DATE BONDS ISSUED: _____
_____ BONDS @ \$ _____	TOTAL ISSUE \$ _____
PREMIUM \$ _____	BONDS TO BE PAID ANNUALLY COMMENCING JANUARY 1, _____
AND SHALL MATURE JANUARY 1, _____	
APPROVED THIS _____ DAY OF _____	20 _____

ENGINEER FOR THE DISTRICT

DIRECTOR OF FINANCE

CITY ENGINEER



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Revisions to Boards and Commissions Ordinance – Second Reading

DEPARTMENT: City Attorney/City Administrator

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

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

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

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

RECOMMENDATION

Staff recommends that Council consider and adopt on second reading the attached ordinance. It provides consistency in procedural areas for advisory boards, commissions and committees and reorganizes ordinances into one Article of the Code. At the December 8th meeting, it was passed without amendment on first reading.

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

Attachment:

A. Boards and Commissions Ordinance

INTRODUCTION

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

PROCEDURAL HISTORY

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

Consistent General Provisions

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

Rules of Procedure

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

Appointment, vacancy, and limitations on authority

The terms of members of a board or commission run on a calendar year basis, unless specifically set otherwise in the Billings Code, statute or interlocal agreement. Section 2-505, BMCC. Vacancies that occur during the term are only filled during the months of July or January, unless the Mayor determines that the vacancy must be filled sooner due to lack of a quorum. We propose in new section 2-504 that vacancies be filled within 60 days. We also propose setting limits on the authority of advisory board members. (Section 2-508).

Liaisons to the various committees and subcommittees

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

Removal from boards and committees

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

Relocating all boards into one article of the code

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

ALTERNATIVES ANALYSIS

Advantages of New Ordinance

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

Disadvantage to Enacting Ordinance

There is no disadvantage to enacting the proposed ordinance.

STAKEHOLDERS

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

RECOMMENDATION

Staff recommends that Council adopt the attached ordinance upon second reading. It was adopted on first reading without amendment. If the ordinance is passed, then staff proposes implementing the new application form and Advisory Board Handbook, drafts of which were given to the Council at previous work sessions.

ATTACHMENTS

A. Boards and Commissions Ordinance

ORDINANCE NO. _____

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

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

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

ARTICLE 2-500. BOARDS, COMMISSIONS AND COMMITTEES

DIVISION 1. GENERALLY

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

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

Sec. 2-501.1 Qualifications for Membership

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

- (1) resident of the City of Billings for at least 2 years;

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

Sec. 2-501.2. Appointment

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

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

Sec. 2-502 Compensation, expenses.

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

Sec. 2-503. Loss of membership.

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

Sec. 2-503.1. Forfeiture of office.

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

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

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

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

Sec. 2-504. Filling unexpired term.

Vacancies occurring for any reason during the member's term shall be filled within sixty (60) days in the same manner as the original appointment. The appointment shall be for the

~~remainder of the unexpired term. Upon loss of membership on a board or commission by default, the unexpired term shall be filled in the same manner as other vacancies.~~

Sec. 2-505. Terms of office.

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

Sec. 2-506. Staff liaison.

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

~~Sec. 2-506. Vacancies.~~

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

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

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

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

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

B. Location; calling to order; quorum.

The advisory boards, commissions or committees shall hold regular meetings for the transaction of city business as required. A majority of the meetings held by each board, commission or committee in any calendar year shall be located in a public facility owned by a governmental entity. Any regular meeting may be canceled or rescheduled by majority vote of the advisory board, commission or committee at any time prior to the last business day

before the scheduled meeting. The presiding officer or any three (3) members may request that a special meeting be called. The request shall be submitted to the staff liaison who shall prepare the agenda and notice in writing, which notice shall be delivered or mailed to all members. All meetings shall be held in accordance with the public notice and public meeting laws.

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

C. Meetings open to the public.

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

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

D. Proposed agenda.

(a) The presiding officer through the staff liaison shall prepare a draft regular meeting agenda and shall provide the same to the members in accordance with an agreed process designed to provide them with sufficient time and opportunity to review the draft agenda and request changes therein prior to its finalization.

(b) The staff liaison shall prepare the final agenda of business to be considered at the regular meeting and shall transmit copies of the same to the members on or before close of business on the Monday preceding the regular meeting at which the matters are to be considered. Agenda items may only be removed from the agenda by the consent of a three-fourths majority of the members present.

(c) Only matters that appear on the agenda shall be considered by the members at its regular meeting. Matters that are ministerial or deemed not of significant interest to the public may be added by consent of a three-fourths (3/4) majority of all members present.

E. Order of business for regular meetings.

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

- (1) Call to Order;
- (2) Roll call;
- (3) Correcting, if necessary, and approving minutes of the last meeting or meetings;
- (4) Staff liaison reports;

(5) Public comment on the published agenda or non-agenda items. Speakers are requested to indicate their desire to speak and which item or items on which they wish to offer comment by filling in their name, address and agenda item number or subject on a prepared "sign in" sheet. The length of time a speaker may speak is limited and is set by the presiding officer.

(6) Agenda. The agenda constitutes an individually numbered listing of business items either:

- a. Requiring a public hearing prior to action,
- b. Giving a special informational presentation, or
- c. Any item that requires separate time by the board, commission or committee to fully discuss the matter prior to rendering a decision.

(7) Adjourn.

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

F. Minutes.

(a) Appropriate minutes of all meetings of advisory boards, commissions and committees shall be kept by the staff liaison and shall be available for inspection by the public.

(b) Such minutes shall include without limitation:

(1) Date, time, and place of meeting;

(2) A list of the individual members of the board, commission or committee in attendance;

(3) The substance of all matters proposed, discussed, or decided; and

(4) At the request of any member, a record by individual members of any votes taken.

G. Distribution of minutes.

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

H. Rules of procedure for meetings.

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

(1) Decorum.

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

b. Every member, previous to speaking, shall address the presiding officer, but shall not proceed until recognized and named by the presiding officer. The provisions of Robert's Rules of Order Newly Revised concerning assigning the floor are superseded by this rule of procedure.

c. When two (2) or more members address the presiding officer, the first to have precedence shall be decided by the presiding officer. The provisions of Robert's Rules of Order Newly Revised concerning assigning the floor are superseded by this rule of procedure.

- d. While a question is being placed on the floor, no member shall speak or walk across the meeting room or leave the same.
- e. When any member is addressing the group, no other member shall engage in private conversation or do any other act to divert attention or interrupt the speaker.
- f. At meetings all questions relating to the priority of business shall be decided without debate.
- g. To preserve meeting decorum and minimize distractions, television cameras are to be confined to designated areas. Interviews in the chamber are permissible after meetings. No interview or live narration will be allowed in the chamber prior to or during the proceedings of a meeting.
- (2) Meeting protocol.
 - a. A member shall not speak more than twice on the same subject without leave of a majority of the group, nor more than once until every member desiring to speak on the pending question has had an opportunity to do so.
 - b. No motion shall be debated or put to a vote unless the same shall be seconded. The motion and second shall then be stated by the presiding officer.
 - c. All motions shall be stated in clear, concise and definite terms, beginning with the language: "I move that . . . ". "I so move" or any other abbreviated language does not constitute correct form for a motion and is out of order.
 - d. After a motion has been stated by the presiding officer it shall be deemed in possession of the group, but may be withdrawn at any time before amendment or decision, by the mover with consent of the second.
 - e. If a question under consideration contains more than one distinct proposition any member may demand a division.
 - f. When a question is under debate, no motion shall be entertained, except: First, to adjourn; second, to lay on the table; third, for the previous question; fourth, to postpone to a day certain; fifth, to refer to a committee; sixth, to amend; and seventh, to postpone indefinitely. These motions shall have precedence in the order stated.
 - g. Amendment of a question may take the form of a motion to substitute. Adoption of a motion to substitute shall be deemed approval of the substitute motion itself and further debate and amendment of the adopted substitute motion are not in order. The provisions of Robert's Rules of Order Newly Revised concerning substitute motions are superseded by this rule of procedure.
 - h. A motion to adjourn shall always be in order, except when a member is addressing the chair, or a vote is being taken. Motions to adjourn and lay on the table shall not be debatable.
 - i. No motion on a subject different from that under consideration shall be permitted.
 - j. After a vote is announced, no member shall change his vote without following the procedure for reconsideration.
 - k. No motion for reconsideration shall be in order unless made at the same meeting or the meeting following that on which the decision was made, nor shall such motion be made except by a member who voted with the majority. If the motion for reconsideration is approved by a majority vote of the board, commission or committee, then the decision on which the vote is to be reconsidered is placed back on the agenda at a location specified by the presiding officer for further consideration and another vote.
 - l. In case a voice vote is indeterminate, a roll call vote shall be taken.
 - m. In case of a tie vote on any proposal, the proposal shall be considered lost/failed.
 - n. The staff liaison shall rule on all questions of parliamentary procedure and the staff liaison's decision shall be final.

o. Every member present shall vote upon every question submitted, unless excused or unless the member has a financial or personal interest as defined in section 2-702. If a member has a financial or personal interest, the member shall, immediately after the motion has been made and seconded, or as soon thereafter as the member may be recognized by the presiding officer, publicly disclose the nature and extent of such interest and disqualify himself or herself from participation in the deliberation and voting on the question.

(3) Documentation of proceedings.

a. In all cases the name of the member proposing a motion and seconding the motion shall be entered in the minutes.

b. Any member may demand the roll call of ayes and noes upon any question pending. Except as provided in this subsection, a vote on all matters shall be by voice vote.

c. All reports or proposals shall be reduced to writing before being submitted to a vote.

d. Application of Robert's Rules of Order. In all parliamentary practice not herein prescribed, Robert's "Rules of Order Newly Revised" shall govern so far as applicable.

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

Sec. 2-508. Limitations of powers

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

- (a) Incur city expense or obligate the city in any way without prior authorization of the mayor and city council.
- (b) Make any written or oral report of any board, commission or committee activity to any individual or body unless (1) to the mayor and city council, or (2) authorized to do so by majority vote of the entire membership of the board, commission or committee, or (3) allowed by law.
- (c) Independently investigate citizen complaints against departments or individual employees or volunteers by questioning witnesses or otherwise.
- (d) Conduct any activity which might constitute or be construed as establishment of city policy.

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

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

Sec. 2-510. Reports.

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

DIVISION 2. ~~PARKS, RECREATION AND CEMETERY BOARD~~ ANIMAL CONTROL BOARD

Sec. ~~4-201~~ 2-511. Created.

There is hereby created an animal control board.

Sec. ~~4-202~~ 2-512. Composition, appointment.

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

Sec. ~~4-203.~~ Organization.

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

Sec. ~~4-204~~ 2-513. Powers and duties.

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

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

DIVISION 3. ~~HUMAN RELATIONS COMMISSION~~ AVIATION/TRANSIT BOARD

Sec. ~~5-201~~ 2-518. Created.

There is hereby created an aviation/transit board.

Sec. ~~5-202~~ 2-519. Composition appointment.

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

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

~~Sec. 5-203. Organization.~~

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

~~Sec. 5-204 2-520. Duties and responsibilities.~~

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

~~DIVISION 4. PUBLIC UTILITIES BOARD~~ COMMUNITY DEVELOPMENT BOARD

~~Sec. 9-201 2-525. Created.~~

There is hereby created a community development board.

~~Sec. 9-202 2-526. Composition, appointment.~~

The community development board shall be composed of nine (9) members ~~who will possess the qualification for office required for the office of mayor and shall be appointed by the mayor with the consent of the council.~~ Six (6) members shall be appointed from lower-income neighborhoods of the city as defined by federal regulations for the community development block grant program and three (3) additional members from the community at large.

~~Sec. 9-203. Organization.~~

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

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

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

DIVISION 5. EMERGENCY SERVICES BOARD

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

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

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

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

Sec. ~~15-710~~. Organization.

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

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

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

DIVISION 6. ETHICS BOARD

Sec. ~~2-721~~ 2-540. Created.

There is hereby created a board of ethics.

Sec. ~~2-722~~ 2-541. Composition, appointment.

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

~~Sec. 2-723. Organization; rules.~~

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

~~Sec. 2-724 2-542. Review of allegations.~~

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

~~Sec. 2-725 2-543. Hearings.~~

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

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

~~Sec. 2-726 2-544. Decisions.~~

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

DIVISION 7. HUMAN RELATIONS COMMISSION

~~Sec. 2-524 2-550. Created.~~

There is hereby created a human relations commission.

~~Sec. 2-525 2-551. Composition, appointment.~~

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

~~Sec. 2-526. Organization.~~

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

Sec. ~~2-527~~ 2-552. Functions and duties.

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

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

DIVISION 8. LIBRARY BOARD

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

There is hereby created a library board.

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

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

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

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

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

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

DIVISION 9. PARKING ADVISORY BOARD

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

There is hereby created a parking advisory board.

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

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

Sec. ~~24-1103.~~ Organization.

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

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

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

DIVISION 10. PARKS, RECREATION AND CEMETERY BOARD

Sec. ~~2-511~~ 2-572. Created.

A parks, recreation and cemetery board is hereby created.

Sec. ~~2-512~~ 2-573. Composition, appointment.

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

Sec. ~~2-513~~ 2-574. School appointee.

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

Sec. ~~2-514.~~ Organization.

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

Sec. ~~2-515~~ 2-575. Powers and duties.

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

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

DIVISION 11. PUBLIC UTILITIES BOARD

Sec. ~~2-536~~ 2-580. Created.

There is hereby created a public utilities board.

Sec. ~~2-537~~ 2-581. Composition, appointment.

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

Sec. ~~2-538~~. Organization.

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

Sec. ~~2-539~~ 2-582. Powers and duties.

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

DIVISION 12. TRAFFIC CONTROL BOARD

Sec. ~~24-201~~ 2-585. Created.

There is hereby created a traffic control board.

Sec. ~~24-202~~ 2-586. Composition, appointment.

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

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

Sec. 24-203. Organization.

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

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

The traffic control board shall serve in an advisory capacity to the city council in all aspects of traffic control, except that all issues involving parking in the central business district will be handled by the parking advisory board. The purpose of the board is to provided citizen input to the policy decisions of the city council. The primary responsibilities of the board are to review existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out and further to report any shortcomings and to make recommendations to the city council in the area of traffic control.

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

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

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

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

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

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk



ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Zone Change #848, 2nd Reading CORRECTING Ordinance #08-5480, East 80 Cardwell Ranch property

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: On October 14, 2008, the City Council passed Ordinance #08-5480 on 2nd reading for the Planned Development zone change for the East 80 Cardwell Ranch development at 3144 Grand Avenue. After the ordinance was approved, the legal description within the heading of the ordinance was discovered to be incorrect. This ordinance has corrected the error in the legal description. The correction does not materially change the approved Planned Development or zone change. The City Council held a public hearing and approved the corrected ordinance on first reading on December 15, 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 CORRECTED ordinance
2. Deny the CORRECTED ordinance
3. Delay action for up to thirty (30) days

FINANCIAL IMPACT: There should be no financial impact from the corrected ordinance.

RECOMMENDATION

Approve the CORRECTED Ordinance #08-5480.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Ordinance

ATTACHMENT A
Zone Change #848

ORDINANCE NO. 08-5480

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract 6-A-1 of Amended Tract 6-A, Certificate of Survey No. 2314 Amended; Tract 7-A, Certificate of Survey No. 2314, Amended; and Tract 1-A-1 of Amended Tracts 1-A and 2, Certificate of Survey No. 2702, less deeded ROW along Zimmerman Trail an approximately 46.099 acre parcel of land.

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

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

2. DESCRIPTION. A tract of land known as Tract 6-A-1 of Amended Tract 6-A, Certificate of Survey No. 2314 Amended; Tract 7-A, Certificate of Survey No. 2314, Amended; and Tract 1-A-1 of Amended Tracts 1-A and 2, Certificate of Survey No. 2702, less deeded ROW along Zimmerman containing approximately 46.099 acres of land and is presently zoned Agriculture Open-Space and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Agriculture Open-Space** to **Planned Development as described in Exhibit A attached here to** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Development** as set out in the Billings, Montana City Code.

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

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

PASSED by the City Council on first reading September 22, 2008.

PASSED, ADOPTED AND APPROVED on second reading October 14, 2008.

PASSED AS CORRECTED on first reading December 15, 2008

PASSED, AND ADOPTED AS CORRECTED on second reading January 12,
2009

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

Cari Martin, City Clerk
ZC #848 – CORRECTED LEGAL DESCRIPTION for East 80 at Cardwell Ranch
Planned Development 3144 Grand Avenue

EXHIBIT A

Return to: William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

**PLANNED DEVELOPMENT AGREEMENT FOR
THE EAST 80 AT CARDWELL RANCH**

BY AND BETWEEN:

YEGEN GRAND AVENUE FARM, INC.

AND

THE CITY OF BILLINGS, MONTANA

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PLANNED DEVELOPMENT AGREEMENT FOR
THE EAST 80 AT CARDWELL RANCH

This PLANNED DEVELOPMENT AGREEMENT (“Agreement” or “PDA”) is made and entered into this _____ day of _____, 2008, by and between Yegen Grand Avenue Farm, Inc. (“YGAF, Inc.”), a Montana limited liability company, of P. O. Box 959, Billings, MT 59103 and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, MT 59101.

RECITALS

NOW WHEREAS:

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

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

The foregoing property shall be known as “The East 80 at Cardwell Ranch,” or a related name that may be assigned at a later date.

B. The East 80 at Cardwell Ranch may consist of a mixture of commercial, retail, office, professional, medical and related uses, and multi-family residential housing.

C. YGAF, Inc. desires to place certain building and use restrictions on the property, specify certain land use and design regulations, and create a pattern of development that promotes economy, convenience, and amenity in The East 80 at Cardwell Ranch.

D. YGAF, Inc. enters into this Agreement with the City to ensure that The East 80 at Cardwell Ranch will be developed and maintained as a first-class development consistent with the standards described in this Agreement.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for The East 80 at Cardwell Ranch as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

ARTICLE I – PURPOSES

A. This planned development is intended to create a multi-use, interactive neighborhood with its own recognizable identity that integrates well with the surrounding community. Circulation patterns will encourage easy pedestrian access and limit vehicular congestion and pedestrian/vehicular conflicts. The development will encourage smart building development in terms of orientation, access, energy consumption and efficiency and create great places to live and work with many necessary services and businesses that are well-integrated and within easy walking distance of each other and adjacent residential areas.

B. This Agreement shall permit flexibility sufficient to meet the demands of commercial, professional and residential markets as they change over time. In accordance with that goal, this Agreement is intended to afford the future owner of each Lot within The East 80 at Cardwell Ranch latitude to design and construct in a way that meets the needs and desires of the time while still ensuring responsible and enduring development for the benefit of the remaining Lots, The East 80 at Cardwell Ranch, and Cardwell Ranch generally.

C. The parties understand, acknowledge and agree that the plan for The East 80 at Cardwell Ranch includes and promotes the following:

1. Creates a planned development zone that permits commercial, retail, office, professional, medical and related uses, and multi-family residential housing in proximity to one another, while protecting and respecting the character and quality of adjacent uses.
2. Encourages flexibility in design and use of commercial and residential zones to allow for economy, convenience, variety and amenity.
3. Enhances the aesthetics of the west Grand Avenue area.
4. Ensures adequate provision of public services such as water, sewer, public safety, open space, storm water control, and vehicular and pedestrian/bicycle circulation consistent with the 2004 Heritage Trail Plan, as updated.
5. Promotes traffic movement and circulation and as many pedestrian connections as possible.

D. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements found in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, bulk, height, parking, signage, traffic circulation, landscaping, or other land use conditions, the City has determined, in accordance with Sec. 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise required by law or regulation. Some of these that shall be incorporated into The East 80 at

Cardwell Ranch and/or Cardwell Ranch include:

1. Construction and landscaping of a functional and attractive pedestrian and bicycle underpass under Shiloh Road to be located south of Grand Avenue and north of Broadwater Avenue that will promote the safe and convenient transportation of children and adults in west Billings while interfacing with the Heritage Trail and other bicycle and pedestrian pathways.
2. Construction and maintenance of trails, landscaping, benches, lighting, signage and other pedestrian and bike pathways, including along the Heritage Park Trail System, at the expense of YGAF, Inc. or subsequent developers and without cost to local taxpayers; and
3. Developed Park Land and Open Space in excess of required minimums, constructed and maintained at the expense of YGAF, Inc. or subsequent developers in conjunction with the City of Billings.

ARTICLE II – DEFINITIONS

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. The following definitions shall apply to this Agreement:

A. Association: “Association” means the association established to own, operate, and/or maintain the various Heritage Park Trail System segments, Park Land and Open Space, and other improvements.

B. Cardwell Ranch: “Cardwell Ranch” refers to a group of parcels located generally contiguous to The East 80 at Cardwell Ranch and including The East 80 at Cardwell Ranch that YGAF, Inc. believes will eventually be developed to create a single development area featuring the same or complementary zoning requirements, private covenants, and consistent design themes as well as substantial vehicular and pedestrian interconnectivity between the various parcels.

C. Design Review Committee: “Design Review Committee” means the person, entity, or committee appointed by the Association to exercise the rights, duties and responsibilities assigned to it by the Association.

D. Lot. “Lot” means a portion of The East 80 at Cardwell Ranch depicted as a separately identified parcel of land on a recorded subdivision plat or survey that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Park Land and Open Space, as defined below, or property dedicated to the public.

E. Manufacturing. “Manufacturing” means to produce something industrially or to make something into a finished product using raw materials, especially on a large industrial scale.

F. Master Plan: “Master Plan” means a concept plan and drawing showing existing Lots and zones as well as proposed streets, access points, and Park Land and Open Space and other site improvements intended for The East 80 at Cardwell Ranch. The current Master Plan of The East 80 at Cardwell Ranch is attached to this Agreement and marked “Exhibit A.”

G. Park Land and Open Space: “Park Land and Open Space” means any property or facility that the Association owns or in which it holds possessory, use, or maintenance rights for the common use or benefit of property owners in The East 80 at Cardwell Ranch. Park Land and Open Spaces may include but are not limited to park areas, open spaces, common areas, water amenities, community gardens, athletic fields, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, community sign areas, and community centers.

H. Special Review approval: “Special Review approval” means approval by the City of Billings pursuant to the Special Review approval process established in the Unified Zoning Regulations and as modified by this Agreement, including the requirement that applicants for special review first obtain approval from YGAF, Inc., which YGAF, Inc. may grant or deny in its discretion, before submitting an application for Special Review Approval to the City.

ARTICLE III – PERSONS BOUND BY THIS AGREEMENT

The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within The East 80 at Cardwell Ranch shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land.

ARTICLE IV – REGULATION OF USES ACCORDING TO PLANNING AREA

A. Land Use Classifications. Lots located within The East 80 at Cardwell Ranch shall be classified according to use. Uses shall be limited to the locations shown on the Master Plan. No use shall be permitted on any Lot outside the areas indicated on the Master Plan and as permitted by this Agreement. If the actual boundaries of any proposed Lot referenced in the Master Plan or in this Agreement changes upon final platting or thereafter for any reason, including, but not limited to, as a result of re-platting, road dedication, or boundary line adjustment, the zoning classification and other Lot-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area where the change occurred has the same zoning classification and restrictions as the successor Lot or Lots of which the area becomes a part. Nothing in this

paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with this Agreement to specifically address any issue created as a result of a change in the external boundaries of any Lot.

B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial). The uses listed below are permitted in Planning Area 1 of The East 80 at Cardwell Ranch. Planning Area 1 shall consist of proposed Lots 1 and 2 of Block 1, and proposed Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Block 2. These uses, which are generally commercial in nature, are also permitted in Planning Area 2. Planning Area 2 shall consist of proposed Lot 4 of Block 2. Multi-family uses are only allowed in Planning Area 2, and then only upon Special Review approval. No uses are permitted other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F. Uses followed by “SR” (Special Review) may only be permitted with consent of YGAF, Inc. and after Special Review approval as described in Article IV.D. Some uses may also be subject to a special level of review by YGAF, Inc. or the Association under private covenants or other agreements, including in particular, but not limited to, those designated with an asterisk (*).

- Accessory detached structures associated with a permitted principal structure *
- Adult foster family care homes (up to four aged or disabled adults) *
- Animal boarding facilities (SR) *
- Administrative and research facilities *
- Animal groomers
- Art galleries
- Assisted living facilities (SR) *
- Auto parts supply (SR) *
- Bakeries
- Banks, credit unions, and savings and loan facilities
- Barber and beauty shops
- Bicycle sales, rental, and repair shops
- Boarding, lodging and bed and breakfast houses
- Bookstores
- Breweries associated with eating establishments (SR) *
- Broadcast station offices (but all antennae and satellite dishes must comply with other provisions of this Agreement) *
- Building supply stores and hardware stores (but no lumber yards) (SR)
- Bus stops
- Camera, hobby, toy, and gift stores
- Car wash, only if incidental to fuel sales (SR) *
- Casinos and gambling activity, as defined in M.C.A. § 23-5-112, if incidental to another permitted use and with written consent of YGAF, Inc. *
- Ceramics and pottery shops
- Charitable, educational or nonprofit institutions
- Child day care centers (up to 13 children)
- Churches, synagogues, and places of worship (SR) *

- Clinics, medical, dental, and surgical for the care of human patients
- Clothing and apparel stores
- Community centers
- Convalescent, nursing, and retirement homes
- Convenience and specialty food stores (but no fuel sales except upon Special Review)
- Cultural, educational, and instructional facilities
- Denturists
- Department stores *
- Drive-through facility (SR) *
- Drug stores (SR) *
- Eating establishments (alcohol served) (SR) *
- Eating establishments (no alcohol served) (SR) *
- Educational and instructional facilities including public and private elementary and secondary schools, colleges, universities, professional schools, and junior colleges (but not trade schools) (SR) *
- Finance and loan companies
- Fire stations (SR) *
- Florists
- Flower shops and nurseries (provided that there is no outside storage)
- Food and grocery stores
- Fuel stations – gas or diesel (but not to include truck stops as defined by Section 27-201 of the Unified Zoning Regulations and prohibited below) (SR) *
- Furniture – retail only
- Greenhouses for on-site, retail sales if incidental to another permitted use
- Hardware and appliance – retail only
- Health clubs and fitness related businesses
- Hospitals *
- Hotels and motels
- Jewelry stores
- Laundry and/or dry cleaning drop-off and pickup store without drive-through facility
- Laundry and/or dry cleaning drop-off and pickup store with drive-through facility (SR) *
- Libraries, museums, and art galleries
- Liquor stores
- Medical clinics
- Membership organization offices
- Minor component assembly incidental to another permitted use
- Multi-family residential (Planning Area 2 only) (SR)
- Offices – all, including business professional, medical, and dental
- Office equipment stores – retail only
- Office supply and equipment, copying and mail services stores – retail only

- Open spaces, park areas, water amenities, community gardens, athletic fields, bike trails, playgrounds, and walking paths
- Park Land and Open Space
- Parking facilities, including above or below ground parking garages *
- Pet stores
- Pharmacies
- Photo studios, shops, and processing – retail only
- Physical therapy facilities
- Police stations (SR) *
- Postal service facilities without truck terminal facilities
- Public administration facilities, including government facilities, except correctional institutions
- Rehabilitation centers
- Rental car dealerships (SR) *
- Retail stores
- Retirement homes *
- Same-day medical care centers
- Sports medicine and rehabilitation facilities
- Surgery centers *
- Theaters
- Veterinary clinics and hospitals *
- Wine stores
- Any additional use permitted in a Community Commercial zoning district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not otherwise limited or prohibited herein. *

C. Permitted Uses in Planning Area 3 (Residential Multi-family). Residential multi-family use is permitted in Planning Area 3 of The East 80 at Cardwell Ranch. Planning Area 3 shall consist of proposed Lots 5 and 6 of Block 2. This area is intended primarily to accommodate apartments, townhomes, condominiums, multi-plexes, and other multi-family complexes (but not detached single family homes) and uses permitted in the Residential Multi-Family district as defined in the Unified Zoning Regulations. Multi-family residential use may also be permitted in Planning Area 2 (proposed Lot 4 of Block 2) upon Special Review approval. No uses are permitted in these areas other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F.

- Accessory detached structures associated with a permitted principal structure
- Bus stops
- Community centers
- Home occupations
- Multi-family residential buildings
- Park Land and Open Space
- Any additional use permitted in a Residential Multi-Family district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning

Regulations and after Special Review approval, provided that such use is not limited or prohibited herein.

D. Special Review Procedure and Criteria.

1. Procedure. The City of Billings may authorize the uses described in Article IV by granting Special Review approval if the proposed use conforms to the following standards and criteria. All applications for special review shall include the information required by the Unified Zoning Regulations. The procedure for reviewing the request shall conform to the Unified Zoning Regulations.

2. Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

a. YGAF, Inc. has given its written consent to the special review request.

b. The proposed use is consistent with the terms, intent and objectives of this Agreement.

c. The proposed use is compatible with surrounding uses or is otherwise sufficiently screened and separated from adjacent land in such a way that any adverse effects are adequately mitigated.

d. The proposed use will not attract large volumes of vehicular traffic that will create traffic congestion that cannot be safely and effectively managed and regulated with proper design and traffic control equipment.

e. The proposed use meets architectural design guidelines or will use an existing building for its purposes.

f. Minimum visual and functional conflict will be created between the proposed use and nearby uses.

g. Anticipated noise and congestion created by the use will be comparable to the levels created by other uses in the vicinity.

h. The use shall not require servicing or deliveries of materials, stocks, or supplies by trucks having more than three (3) axles.

i. The proposed use will not be materially detrimental to other properties.

E. Prohibited Uses in All Areas. The following operations and uses shall not be

permitted on any property in The East 80 at Cardwell Ranch, regardless of where the property is located:

- Amusement park services or facilities
- Apparel fabrication and fabrication of products made from fabrics and similar materials
- Arcades, including but not limited to video arcades
- Auction houses or auction yards
- Auto body and collision repair
- Automotive sales, leasing, repair, service, salvage, or storage
- Beverage bottling plant or wholesaling operations
- Billboard signs
- Body alternation salons – any establishment engaged in body painting, body piercing, or tattooing
- Building fabrication except construction of buildings for use on-site
- Building subcontractor operations other than offices only
- Bus terminal and maintenance facilities
- Campground
- Casinos and gambling or gambling activity, as defined in M.C.A. § 23-5-112, unless incidental to another permitted use with written consent of YGAF, Inc.
- Cellular towers not included in building structures
- Crematoriums
- Dry cleaning or laundry plant or public Laundromat, (not applicable to facilities for pickup and delivery by the ultimate consumer)
- Drug paraphernalia – any business engaging in the sale of so-called drug paraphernalia
- Dumping of concrete, cement residue, refuse, dirt, garbage or fill materials without authority of property owner
- Electronic component manufacturing, unless light manufacturing and incidental to a permitted use
- Equipment rental shop
- Excavation – businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction
- Exotic dancing – any establishment permitting exotic dancing, including semi-nude and nude clubs
- Fire sale or bankruptcy sale
- Fireworks – fireworks manufacture and/or sales
- Flea markets
- Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations
- Foundries and plant operations
- Furniture fabrication
- Garbage – any dumping, disposing, incineration or reduction of garbage provided, however this prohibition shall not be applicable to garbage

compactors located near the rear of any building

- Go-cart tracks
- Greenhouses for wholesale purposes
- Gun and archery range
- Guns and ammunition – the sale of firearms and ammunition, unless ancillary to a general retail store or sporting goods store
- Heavy equipment sales, service, and storage
- Ice manufacturing for resale of ice if not intended for use on-site
- Illegal drugs – the sale, manufacture, or possession of illegal drugs
- Industrial production or manufacturing facilities
- Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities
- Junk shops
- Labor or migrant worker camps
- Lumber yards
- Machine and welding shops
- Manufactured housing – the sale, maintenance, and repair and/or storage of manufactured housing, mobile homes, boats, trailers, or recreational vehicles
- Manufacturing
- Massage parlors (excluding therapeutic massage)
- Metal fabrication and manufacturing
- Mill work and cabinet shops
- Mineral extraction – any non-office sale, extraction, or storage of sand, gravel, or minerals
- Mini storage facilities
- Motorized sports vehicle repair, storage, and/or sales (including parts sales)
- Mining and related activities – mining, drilling for, or removing oil, gas, or other hydrocarbon substances
- Motocross tracks
- Motorcycle racing
- Obnoxious odors, etc. – any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in The East 80 at Cardwell Ranch
- Paper warehouses
- Pawn shops
- Power poles and overhead power lines – installing new power poles and overhead power and above-ground utility lines as well as upgrading any existing poles to larger structures; provided, however, this shall not prohibit any existing power poles and above-ground lines, and shall not prohibit adding new lines to any existing poles
- Propane sales unless incidental to a fueling station as permitted by special review, or as incidental to hardware sales
- Race tracks
- Recreational vehicles – the commercial sale, maintenance, rental or repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles.

The private repair or storage of such vehicles must comply with other provisions of this Agreement.

- Recycling centers
- Repair shops, if the shop facilities include open or visible storage
- Roller skating rinks
- Roping and rodeo arenas
- Sanitary dumps
- Scrap or waste material processing
- Septic systems
- Sexually oriented businesses – sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations
- Stables – not to be construed to exclude existing farming operations or a continuation of existing farming operations
- Storage facilities other than garages associated with residential structures
- Super Stores – defined as any structure over 40,000 square feet in total useable area
- Surplus store
- Taxidermists
- Tire sales, except as incidental to the operation of a general retail store
- Title loan businesses
- Towers and dishes – freestanding communication towers and satellite dishes greater than 98 inches in diameter
- Trailer parks and campgrounds – mobile home parks, trailer parks, or recreational vehicle campgrounds or any commercial establishment that permits overnight parking of recreational vehicles
- Truck stop as defined by Section 27-201 of the Unified Zoning Regulations
- Truck terminals cartage operations, and similar uses
- Truck wash as defined by Section 27-201 of the Unified Zoning Regulations
- Trucks – sale, leasing, manufacture, and repair of trucks
- Trucking operation warehouses
- Utility sub-stations, utility maintenance facilities or buildings, and other utility installations other than utility lines, utility boxes, and other facilities used to serve an individual Lot
- Warehouses
- Wholesale lumber and building materials
- Wholesale distribution and sales

F. Analogous Uses. If a use is not specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by YGAF, Inc.

G. Procedure for Obtaining YGAF, Inc. Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of YGAF, Inc. prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the developer first presents written evidence of YGAF, Inc.'s approval. Neither YGAF, Inc. nor the City shall approve the developer's application unless the proposed development complies with the requirements of this Agreement.

ARTICLE V – OTHER REGULATIONS GOVERNING USE

A. Continued Farming Operations. YGAF, Inc. may, in its sole and unreviewable discretion, permit farming operations and livestock grazing on undeveloped parcels. Permission shall be granted exclusively for the continuation of prior and existing livestock and farming operations, whether on ground leased or owned, and shall allow the use of stables, machinery, storage, and any other uses, infrastructure or equipment incidental to or necessary for operations associated with approved or existing farming operations.

B. Parking Limitations. No parking shall be permitted on any street or any place other than in paved and designated parking spots. Each owner of property within The East 80 at Cardwell Ranch shall be responsible for compliance with the foregoing by all tenants, customers, visitors and employees. Adequate parking sufficient to meet City requirements shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, and employees. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscaping and screening elements as provided in this Agreement.

C. Storage of Inoperable, Junk and Recreational Vehicles. Owners and residents of The East 80 at Cardwell Ranch shall comply with Section 27-601 of the Unified Zoning Regulations and all other laws or regulations governing vehicle storage. In addition, no inoperable or junk vehicle shall be permitted to park on any property within The East 80 at Cardwell Ranch outside an enclosed structure for a period of more than two days, and after this period it shall be deemed abandoned. No snowmobiles, all-terrain vehicles, off-road motorcycles, trailers (utility, horse, boat, snowmobile, etc.), boats, campers, motorhomes, recreational vehicles, or other equipment generally associated with recreation and leisure time activity shall be permitted to operate within the confines of The East 80 at Cardwell Ranch, except while being transported into and out of The East 80 at Cardwell Ranch, and all such vehicles shall only be stored within an enclosed structure and shall not be parked on the street or in any driveway, parking lot, or other area visible to neighboring properties for a period of more than two days.

D. Outside Storage. Outside storage of junk shall not be permitted on any Lot in The East 80 at Cardwell Ranch for any period of time. Outside storage of merchandise on any non-residential property shall comply with Section 27-601(b) of the Unified Zoning Regulations governing storage and display of merchandise in certain commercial districts.

E. Maintenance of Lots.

1. Maintenance of Property Generally. The owner of any property within The East 80 at Cardwell Ranch shall at all times keep and maintain the owner's property and buildings, improvements, and appurtenances thereon in a good, safe, clean, and attractive condition and comply in all respects, at the property owners' sole expense, with this Agreement, and all applicable governmental, health, fire, and safety laws, ordinances, regulations, requirements, and directives. The property owner shall at regular and frequent intervals remove, at the property owner's sole expense, any garbage or rubbish that may accumulate upon such property.

2. Maintenance of Buildings. It shall be the sole responsibility of the owner of any property within The East 80 at Cardwell Ranch to maintain all buildings and structures, improvements, and appurtenances located thereon in a good and clean state of repair and condition and in accordance with this Agreement, and all applicable laws, ordinances, regulations, requirements and directives applicable to the property.

3. Maintenance of Unimproved Sites. Property that is not improved or built upon shall be maintained in a good, safe, clean, and attractive condition by the property owner. Weeds, brush, trash, and rubbish must be removed at least every three months. Nothing in this paragraph shall prevent YGAF, Inc. or its agents from carrying on existing or approved agricultural activities consistent with this Agreement.

F. Utilities to be Buried. All utilities, including but not limited to electrical distribution and transmission lines, shall be buried. Any above-ground junction boxes or other surface elements that cannot be buried shall be screened by structural or landscaping elements. Any existing overhead power lines shall be permitted to remain in their present location. Additional lines may be added to any existing power poles so long as the poles remain in substantially the same location. However, if such power poles or power lines are ever moved or their size is changed, or if substantial repairs or replacement is undertaken, the owners of the property and the owner(s) of the power lines shall bury all lines, including the lines being moved, repaired or replaced.

G. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by subsequent developers or covenants, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations. A Home Occupation is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

1. The Home Occupation should not generate, on average, more than one (1) vehicle trip during any hour measured between 7:30 A.M. and 6:00 P.M.;
2. The activity must constitute use permitted outright in Planning Area 1 or Planning Area 2 established in this Agreement; and
3. Residents and property owners are advised that carrying on certain Home

Occupations may require compliance with special code requirements applicable to commercial establishments. All residents and property owners are advised to consult with local building officials before establishing a Home Occupation. Residents and property owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

ARTICLE VI - SITE DEVELOPMENT, BUILDING & LANDSCAPE STANDARDS

A. Development Standards Generally. These standards are provided to establish minimum guidelines for the development of facilities in The East 80 at Cardwell Ranch, including site work, buildings and accessory structures, landscaping, and signage. These guidelines will not define specific styles of architectural character for the various uses possible in The East 80 at Cardwell Ranch. They are intended to establish a minimum level of quality for the physical settings within The East 80 at Cardwell Ranch and for the basic architectural design of the structures while allowing flexibility to adjust and evolve with changes in technology and architectural standards. These guidelines will specifically control the treatment of the public areas, streetscape, pedestrian areas, landscaping and signage to create a setting in which a wide variety of individual buildings of high quality can exist in harmony. They will provide developers with a guide that will define the aesthetic quality of The East 80 at Cardwell Ranch's architecture yet allow latitude for unique, individual expressions of the architectural requirements and image of each building development. Subsequent developers and property owners are advised that covenants and other private agreements may also control development in The East 80 at Cardwell Ranch and that it may be necessary to obtain written consent from YGAF, Inc. and/or the Association prior to application for land use approvals and construction.

B. Site Development Standards.

1. Street Types and Standards. In the absence of a contrary agreement with the City of Billings, all streets shall be developed to the standards of the City of Billings for width, curb, gutter, sidewalk, cross-section, and surface treatment. All streets shall be developed as required to accommodate the traffic loads contributed by development within The East 80 at Cardwell Ranch and adjacent properties.

2. Access. Shared driveway accesses between adjacent non-residential Lots are encouraged. If a traffic accessibility study is required for a proposed use on a Lot, the study shall include traffic from an adjacent Lot if the driveway is proposed to be shared.

3. Lot Coverage. The total combined lot coverage for all structures on any non-residential Lot shall not exceed fifty (50) percent of the total square footage of the Lot. The total combined lot coverage for all structures on any residential multi-family Lot shall not exceed fifty-five (55) percent of the total square footage of the Lot.

4. Setbacks.

a. Community Commercial area. The minimum building "front yard" setback from the property line for all non-residential development shall be

25 feet, providing, however, that the clear vision triangle is maintained as required by the Unified Zoning Regulations. The “front yard” shall be determined by the Association’s Design Review Committee based on the specific use and site plan for each Lot. Side and rear yard setbacks shall be at least 20 feet from the property line where a residential use abuts a commercial use. There shall be a minimum 10 feet wide side and rear yard setback for all other non-residential Lots. All arterial setbacks as outlined in the Unified Zoning Regulations must also be maintained, but the minimum front setback along Grand Avenue and Zimmerman Trail shall be at least 80 feet (measured from center-line).

b. Residential Multi-family area. Setbacks for multi-family residential Lots must comply with the Unified Zoning Regulations. Setback areas must be landscaped except for driveways and parking areas, which may not exceed 20% of any setback area. All developments are required to landscape adjacent to and along the length of all public rights-of-way, excluding driveways. A lot owner may request a variance from these setback requirements after obtaining the written consent of YGAF, Inc. by following the variance procedures established by the Unified Zoning Regulations.

5. Zone Boundaries. It is recommended that the transitional areas between different use classifications be designed to complement the adjacent land uses. Use of buffering landscaping elements and building mass that approximates that of the adjacent zone in these areas is encouraged to help achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

6. Parking. Adequate parking shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, employees and residents. All parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein. Minimum parking requirements shall meet the standards of the City of Billings for each use proposed for a Lot but shall not exceed 110% of the City's minimums. Joint parking and reciprocal access agreements are encouraged.

7. Loading, Storage and Service Areas. No loading, storage or service area shall be permitted in the front portion of any Lot within The East 80 at Cardwell Ranch. All loading and service areas shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with all applicable building setbacks.

8. Garbage Collection. Lots used for commercial purposes and multi-family housing that includes more than two (2) dwelling units shall store garbage only in an approved garbage collection area. Lots used for other residential purposes may place a garbage container on the sidewalk or driveway on the designated pickup day. At all other

times, all residential garbage containers shall be stored in an enclosed garage or in an approved garbage collection area. Garbage collection areas shall adhere to the following standards:

- a. All outdoor garbage containers and collection areas shall be screened visually with at least a six foot (6') enclosure so that they are not visible from adjacent properties, streets, or Park Land or Open Space.
- b. No garbage containers or collection areas shall be located between a street and the front of a building.
- c. Deposited garbage shall not be visible from outside the garbage container or collection area.
- d. Garbage containers and collection areas shall be designed with durable structural materials, finishes and colors that coordinate with the overall architectural scheme of the adjacent buildings.
- e. Garbage collection areas and containers shall regularly be cleaned, repaired and painted to prevent the accumulation of garbage, grime, grease, and other unsightly or unpleasant conditions.

9. Pedestrian Walkways and Bikeways. All property development shall provide for pedestrian access along or through each Lot to create a system of pedestrian paths and walkways. Pedestrian paths shall be a minimum of five feet (5') wide, constructed of hard surface materials such as concrete or asphalt meeting the requirements of the City of Billings. The location, layout and construction features of bike paths shall conform to the Heritage Trail Plan of the City of Billings and may be extended through The East 80 at Cardwell Ranch to connect to other development at the perimeter of The East 80 at Cardwell Ranch. Bike paths shall be constructed according to the design standards established by The Heritage Trail Plan and shall be located as determined by the developer with the consent of YGAF, Inc. All pedestrian and bikeway access along roads shall be separated from the paved road surface by a landscaped boulevard at least five (5) feet wide.

10. Bicycle Parking. Each non-residential and multi-family residential Lot accommodating more than three (3) Dwelling Units shall provide at least one bike parking space equipped with bicycle racks permanently anchored in marked areas.

11. Accessory Structures, Fences, and Walls. Construction of accessory structures, fences, and walks shall follow these standards:

- a. All fences shall comply with the City of Billings, Montana clear vision standards.
- b. No chain link fencing shall be installed without the express written approval of YGAF, Inc.

c. No fence or wall shall exceed a height of six feet (6'), except in garbage collection areas.

d. Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings, shall coordinate with the overall architectural scheme of the adjacent buildings, and shall be integrated into the landscaping of the Lot.

12. Snow Storage. Parking lots or areas adjacent to parking lots shall provide for on-site snow storage. Snow storage areas shall not be adjacent to streets. Common storage areas between adjacent Lots are encouraged. Landscaping shall be maintained if the storage is not done in a paved parking area. Parking spaces needed to satisfy minimum parking requirements shall not be used for snow storage.

13. Site Lighting Standards.

a. All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.

b. All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

14. Exterior Mechanical and Electrical Equipment and Transformers. All exterior mechanical and electrical equipment and transformers used to service a building or group of buildings shall be screened or enclosed within the structure of a building or otherwise screened from view. Screening may consist of year-round plantings, shrubbery, or durable enclosures of such height and density as may be deemed sufficient by the zoning coordinator and YGAF, Inc.

C. Building Design. The following standards shall govern building design for all property within The East 80 at Cardwell Ranch.

1. Temporary Structures. Temporary structures are not allowed, except temporary structures may be used for construction only during the period of construction and shall be removed from The East 80 at Cardwell Ranch immediately following substantial completion of the permanent structure in accordance with the CCRs.

2. Impact on Other Structures. No building shall be built in a manner that will adversely affect the structural integrity of another building.

3. Building Height Limits. Structures in The East 80 at Cardwell Ranch shall not exceed a height limit of forty-five (45) feet from ground level. This height limitation applies to the uppermost, enclosed portion of the structure. Antennae, satellite

receivers, mechanical equipment and other non-enclosed portions of a structure that otherwise comply with this Agreement shall be appropriately screened and may extend no more than ten (10) feet above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

4. Building Size Limits. The enclosed portion of any structure in The East 80 at Cardwell Ranch shall not exceed 40,000 square feet (footprint). Buildings over 40,000 square feet (footprint) may be permitted upon Special Review approval.

The enclosed portion of a structure is the portion that is contained on all sides and overhead and does not include decks, patios, walkways, driveways, etc.

5. Roof-mounted Mechanical Equipment. Mechanical equipment placed on a roof shall be screened to a height at least the height of the mechanical equipment. All roof-mounted equipment, including, but not limited to, HVAC units, exhaust vents, exhaust vent stacks, and miscellaneous penetrations must be integrated into the overall roof design. Equipment shall be enclosed or screened from view with materials and forms designed into the shape and character of the building's design.

6. Communication Towers, Antennae, and Satellite Receivers. No free-standing communication towers, antennae, or satellite receivers are allowed. No structure-mounted antennae with visible components greater than 60 inches in height or satellite receivers greater than 24 inches in diameter are allowed unless they are screened from the view of adjacent streets and properties by structural components or year-round landscaping elements. No satellite receivers more than 96 inches in diameter are allowed. Satellite receivers more than 24 inches but less than 96 inches are subject to special review under Article IV.B.

7. Metal Buildings. Pre-engineered metal buildings or prefabricated metal buildings are not permitted on any property within The East 80 at Cardwell Ranch.

8. Sloped Roof Elements. Any building with sloped roof elements shall provide protection to pedestrians and other properties from the effects of sliding snow.

D. Landscape Design Standards. The following standards shall govern landscaping for all property within The East 80 at Cardwell Ranch.

1. Minimum Requirements. All landscaping shall, at a minimum, comply with the requirements of the City of Billings and be completed within thirty (30) days after the substantial completion of the building(s) constructed on the property; provided, however, that if weather conditions do not permit such landscaping to be completed within thirty (30) days then such landscaping shall be completed as soon thereafter as weather conditions permit. Bonds shall be required if landscape completion is delayed.

2. Right-of-Way and Setback Areas. The area between any street to the property line and from the property line to the minimum setback line shall be landscaped

with a combination of trees, shrubbery, foliage, and grass or ground cover. These areas shall be maintained by the adjacent property owner unless responsibility for maintaining the same has been assumed by the Association.

3. Irrigation. All landscaping must be irrigated with an underground sprinkler system, which must be maintained so as to provide sufficient water for landscaping growth, or by use of a joint or community irrigation plan.

4. Parking Lot Landscaping – Perimeter. The perimeter of all parking areas shall be landscaped with plants that provide intermittent screening but allow some visual penetration into these areas when viewed from adjacent streets, service areas, major building entrances, and significant outdoor spaces. Such screens shall consist of deciduous and evergreen plant material at least two feet (2') in height.

5. Parking Lot Landscaping – Interior. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space. Two (2) canopy or evergreen trees and five (5) shrubs shall be required for every eight (8) parking spaces. All landscaped areas shall contain ground cover such as sod, shrubs, flower beds, or living plant material. No more than twenty-five (25) percent of the total landscaped area measured by square footage shall consist of fountains, rock, bark chips, stepping stones, or similar non-living material. Each parking lot landscaped area shall include at least one dimension (width or length) that is at least eight (8) feet. Internal parking lot landscaping shall be proportionately disbursed at the developer's discretion in order to define aisles and limit the length of unbroken rows of parking. The maximum width or length of any unbroken length of paved parking area shall be one hundred (100) feet. Landscaped areas shall be on a scale proportionate to the parking lot. The parking lot landscaping shall, at a minimum, meet all landscaping requirements of the City of Billings. All landscaped areas shall be irrigated, maintained, and kept free of weeds, debris, and litter. Dead or dying materials shall be replaced immediately. Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt, or other approved, permanent barriers. Evergreen trees are discouraged for internal parking areas if they will limit sight lines at full maturity.

6. Non-Parking Lot Landscaping. All areas not covered by structures, parking, circulation surfaces, pedestrian or bicycle paths shall be landscaped. At least seventy-five percent (75%) of this landscaped area should be living plant material. The remaining portion may include: stone, rock, bark ground cover; decorative structures; water features; benches and other landscape features appropriately dispersed and coordinated throughout the live vegetation. The use of native, drought-tolerant plant materials is strongly encouraged and may be required under applicable covenants, conditions, or restrictions. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

7. Landscaping Loading and Service Areas. Loading and service areas shall be enclosed either with solid screen walls not to exceed six feet (6'), or landscaping

elements planted in such a manner to create a visually opaque screen when mature. The plant material screen must develop its maturity within three (3) years from the time of planting.

- Canopy Tree. A canopy tree is a species of tree that normally bears crown foliage no lower than six feet (6') above ground level upon maturity. The minimum size of canopy trees shall be two and one-half inches (2 1/2") in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.
- Evergreen. An evergreen tree or shrub is a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be six feet (6') in height at the time of installation.
- Shrubs. The minimum size of a shrub shall be at least 2 gallons but preferably 5 gallons.

ARTICLE VII – PARK LAND AND OPEN SPACES

A. Park Land and Open Spaces Generally. The statutory park dedication requirement for The East 80 at Cardwell Ranch shall be satisfied either by making a donation of cash in lieu of land or the City will waive the park dedication requirement for this planned development if the land permanently set aside for park and recreational use by the residents meets the requirements of M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009. The Park Land and Open Spaces available to residents and users of The East 80 at Cardwell Ranch shall include privately or publicly owned or accessible open space, potentially including parks, plazas, gardens, trails, and/or bikeways. Such Park Land and Open Spaces may be located within The East 80 at Cardwell Ranch or outside The East 80 at Cardwell Ranch in accordance with M.C.A. § 76-3-621(6)(d)(i). All Park Land and Open Spaces shall be maintained to meet or exceed any then-existing City maintenance standards. All Park Land and Open Spaces shall be built and maintained in order to fulfill the purposes set forth in Article I of this Agreement. Park Land and Open Spaces will be developed and constructed at the cost and expense of the property owners.

B. Park Land and Open Space Maintenance. The maintenance of Park Land and Open Spaces will be funded by the Association with possible participation by individual property owners or the City through a park maintenance district for any park land dedicated to the public.

ARTICLE VIII – SIGNS

A. Signage. The following standards shall govern signage for all property within The East 80 at Cardwell Ranch and shall apply to all ground-mounted, pole-mounted, and building-mounted signs.

B. Purpose, Intent and Scope. The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial areas.

C. Exempt Signs. This section of the Agreement shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lot; merchandise displays; national flags; legal notices required by law; or historic site monuments/plaques.

D. Definitions. The definitions used in this Agreement may be found below or in the Unified Zoning Regulations.

Individual Business. One business on one parcel, provided that the parcel is not part of a multiple business complex; and also provided the parcel is not part of a group of multiple contiguous parcels under the same ownership.

Monument Sign. A sign and supporting structure constructed as a solid structure, or one that gives the appearance of a continuous, non-hollow, unbroken mass.

Multiple Businesses. Multiple businesses include businesses that may be located in a single building or in multiple buildings on a single site.

Support Structure(s). Posts or columns and their anchors and bolts that structurally support the sign attached to it.

E. General Provisions.

1. City Ordinances. All signage shall comply with the Unified Zoning Regulations unless further limited herein, or as addressed in the CCRs.

2.

3. Types of Signs. The following standards shall govern the types of signs permitted within The East 80 at Cardwell Ranch:

a. Collective Signage. Adjacent property owners in The East 80 at Cardwell Ranch are encouraged, when appropriate, to utilize collective signage which contains the names of more than a single owner, business, tenant, or store;

b. Wall Signage. Wall signs are limited to no more than one (1) per façade facing a street and two (2) signs per building. All wall signs shall be placed parallel and attached firmly to the building's façade.

F. Exempt Activities. The following shall not require approval, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this Agreement or any other law or ordinance, including the Uniform Zoning Regulations.

1. The changing of the advertising copy or message on a lawfully erected sign that is currently in compliance with this Agreement, reader board, or similar sign specifically designed for replaceable copy;

2. Painting, repainting, or normal maintenance, unless a structural, electrical, aesthetic, or color change is made;

G. Prohibited Signs. The following signs are prohibited in all zones unless otherwise specifically permitted:

1. Flashing, blinking, moving, exposed light, iridescent colors, outdoor signs with visible neon or gas tubing, fluorescent materials, animated or audible signs, streamers, balloons and searchlights;

2. Bench signs;

3. Signs which by coloring, shape, working resemble or conflict with traffic control signs or devices;

4. Signs that create a safety hazard for pedestrian or vehicular traffic;

5. All electronic signs, video boards;

6. Portable signs, trailer signs and signs attached to structures with one or more wheels;

7. Rooftop signs;

8. Billboard or off-premises signs;

9. Pole signs;

10. Banner signs unless specifically permitted as addressed in the CCRs.

H. Temporary Signs:

- a. Temporary signs can be used for development, construction, design team, sale or leasing information on a temporary basis. Typically such signs are freestanding, ground-mounted signs though banner signs may be approved as specified in the CCRs. Such signs will be unlit and limited in size to 32 square feet and 8 feet in height above grade for commercial uses and five square feet and five feet above grade for residential and agricultural uses.

I. Sign Location and Setback.

b. Freestanding identity signs shall be setback a minimum of 8 feet from the face of curb or edge of pavement of a public street, and shall not be placed within the right-of-way.

J. Sign Area and Calculation.

1. Sign area for wall signs is equal to the message area of a sign, including graphics, letters, figures, symbols, trademarks or written copy per the standards established by the City of Billings for sign area calculation;

2. The sign area of a monument sign consisting of one sign shall be calculated the same as for wall signs;

3. The sign area of a freestanding sign consisting of more than one sign shall be computed by adding together the total area(s) of all signs. Any portion of the sign not necessary for structural support of the sign or any structural support greater than two (2) feet in width shall be considered in the determination of the square footage of the sign. Area calculation does not include decorative rocks or landscaping adjacent to a monument sign;

4. The sign area for multiple-sided signs shall be calculated as follows:

a. The total sign area for a two-sided sign shall be calculated using one face, therefore allowing both faces to be of equal size (for example a two-sided sign has two faces with 18 square feet per side, therefore the sign area is 18 square feet);

b. The sign area for a three-sided sign shall be equal to the total amount of sign area a one-sided or two-sided sign is allowed. (For example, in item 4A above, a two-sided sign is allowed 18 square feet of sign area per side, which equals 36 total square feet. If a three-sided sign is used instead of a one-sided or two-sided sign, the three-sided sign may allocate the 36 square feet among three sides, therefore allowing three sides with 12 square feet per face for a total of 36 square feet of sign area.);

K. Maintenance of Signs.

1. Any sign that has been approved or that has been issued a permit shall be maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and this Agreement;

2. Any damaged sign, including signs with burned out lights, shall be repaired or replaced within ten (10) business days;

3. Any signage which has been damaged to such extent that it may pose a

hazard to passersby shall be repaired or removed immediately;

L. Nonconforming Signs. Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to the sign standards in this Agreement are nonconforming and shall be removed or changed to conform to these standards. Any sign not removed within ten (10) business days of notice of nonconformance will be removed by the YGAF, Inc. or its assigns, and the costs for removal plus a handling fee to be assessed by the YGAF, Inc. or its assigns shall be the responsibility of the owner of the sign.

M. Landscaping for Monument Signs. All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

N. Sign Illumination. Externally illuminated signs shall have low intensity lighting, confined to the sign, and positioned and shielded to minimize impacts to the surrounding area(s). Internally illuminated signs shall have low intensity lighting.

O. Sign Approval. All signage in The East 80 at Cardwell Ranch shall first be approved by YGAF, Inc. as a condition of any zoning approval issued by the City of Billings.

ARTICLE IX - CROSS EASEMENTS FOR VEHICLES AND PEDESTRIANS

At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all property owners in The East 80 at Cardwell Ranch and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the part of any Park Land, Open Space, or Lot devoted to pedestrian walkways, bike paths, and private roadways intended for common use. At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all developers and property owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of The East 80 at Cardwell Ranch intended for common use.

ARTICLE X – ENFORCEMENT

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, YGAF, Inc., property owners, the Association, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of

cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

B. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided for in the Unified Zoning Regulations.

C. Right to Enforce by Property Owners and the Association. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within The East 80 at Cardwell Ranch and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as future property owners within The East 80 at Cardwell Ranch. The parties further agree that the Association shall have standing to enforce the terms of this Agreement relative to the City or any property owner or other property owners' association regardless of whether the Association owns property in The East 80 at Cardwell Ranch. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

D. Right of Abatement and Suit. If at any time YGAF, Inc., the City, or the Association objects ("the objecting party") to any property owner's or other party's breach of its obligations under this Agreement ("the defaulting party"), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party's breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of its objection. If within thirty (30) days of receipt of such notice the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a reasonable period, the objecting party may perform whatever reasonable maintenance, repair, operation, or other curative action is needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation, or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party's obligations under this Agreement. The objecting party may also prosecute a proceeding at law or in equity against the defaulting party to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied, or to recover damages for said violation.

ARTICLE XI – AMENDMENTS AND VARIANCES

A. Amendments or Changes. This Agreement may not be amended, modified, or terminated, in whole or in part, except with the unanimous written consent of YGAF, Inc. (or its assignee) and the City. The consent of landowners who purchase property within The East 80 at Cardwell Ranch shall not be required to amend, modify, or terminate this Agreement. Any modifications requested by YGAF, Inc. shall be processed using the same procedures as for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would

not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent;
3. Change additional allowed uses;
4. Reduce open space greater than two (2) percent; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations. Upon receiving written consent of YGAF, Inc., property owners may apply for a variance from the following required special building features:

1. Increase in the maximum allowed height under Article VI.C.3 of any structure in any planning area from 34 feet to 45 feet.
2. In accordance with Article VI.C.6, increase in the maximum diameter of satellite dishes from 24 inches up to 96 inches.

Covenants or private agreements may also require that an applicant obtain the written consent of YGAF, Inc. for other variances.

C. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

ARTICLE XII - ARBITRATION

A. Agreement to Arbitrate. Except as otherwise provided in this Agreement and subject to the provisions of the next paragraph below, all property owners and the City agree, upon receipt of written request by any party to the dispute, to submit to binding arbitration any and all claims, disputes, and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents) whether in tort, contract, or otherwise arising out of or relating to in any way this Agreement. YGAF, Inc. may, in its sole and exclusive discretion, elect not to participate in arbitration requested by another party, in which case the dispute shall be resolved by means not involving arbitration.

B. Other Remedies. Nothing in the preceding paragraph, nor the exercise of any right to arbitrate thereunder, shall limit the right of any party hereto to: (1) exercise abatement or other self-help remedies, (2) obtain provisional or ancillary judicial remedies such as injunctive

relief, or (3) impose fines as permitted by law before, during, or after the pendency of any arbitration proceeding. The authority of the City to levy and impose fines shall not be limited by this arbitration agreement. The institution and maintenance of any action for such judicial relief, the pursuit of provisional or ancillary remedies, or the exercise of self-help remedies shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration, including those claims or disputes arising from or related to those addressed as part of the exercise of any such judicial relief, pursuit of provisional or ancillary remedies, or exercise of self-help remedies.

C. Arbitration Procedure. Any arbitration proceeding shall proceed in Billings, Montana, and shall be governed by the Montana Uniform Arbitration Act and all applicable Montana statutes of limitation, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding shall be before a single arbitrator selected according to the Commercial Arbitration Rules of the AAA. The arbitrator shall decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions that are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication. Discovery shall be permitted, but shall be subject to scheduling by the arbitrator, and any discovery disputes shall be subject to final determination by the arbitrator. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with this Agreement. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction.

ARTICLE XIII - GENERAL PROVISIONS

A. Appointment of Agent. YGAF, Inc. may, in its sole and exclusive discretion, hire, appoint, or designate an individual or entity to act as its agent to fulfill the duties and obligations of YGAF, Inc. hereunder. Although not required to be effective, notice of such appointment may be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the appointment. Notice of appointment shall also be provided to the City at the address specified herein. YGAF, Inc. may, in its sole and exclusive discretion, revoke an agent's appointment or make an additional appointment at any time.

B. Assignment by YGAF, Inc. YGAF, Inc. may, in its sole and exclusive discretion, assign its rights and delegate its duties arising under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, YGAF, Inc. shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all property owners shall look exclusively to the appointed person or entity.

C. Neutral Interpretation. YGAF, Inc. and the City hereby stipulate and agree that

this Agreement has been prepared and negotiated by both parties and shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party based on authorship.

D. Coordination with Other Regulations. In the event that there is any conflict between this Agreement and other zoning regulations or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of The East 80 at Cardwell Ranch either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently amended, the amended version of such regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement.

E. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore. All notices or demands to YGAF, Inc. or the City shall be given at the following addresses or such other addresses as YGAF, Inc. or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to YGAF, Inc.:

Peter Yegen III
P. O. Box 959
Billings, MT 59101

With copies to:

William A. Cole
Cole Law Firm, PLLC
3860 Avenue B, Suite C West
Billings, MT 59102-7550

If to the City:

City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

With Copies to:

City-County Planning Department
510 N. Broadway, 4th Floor Parmly Library
Billings, MT 59101

City Attorney's Office
P.O. Box 1178
Billings, MT 59103-1178

F. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

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

H. Limitation on Enforcement. This Agreement is for the benefit of YGAF, Inc., the City, the property owners within The East 80 at Cardwell Ranch, the Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce restrictions contained herein, judicially or otherwise.

I. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

J. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity or in arbitration, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court or arbitration costs, if any, from the other party.

K. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

L. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more

than one person, the obligations of said party shall be joint and several.

P. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

Q. Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon YGAF, Inc., the City, the property owners, and their heirs, successors, and assigns.

R. Contact Person. YGAF, Inc. hereby designates a contact person whom may be contacted with respect to any questions, comments, or concerns. The contact person shall be Charles Yegen, P. O. Box 959, Billings, Montana 59101.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

YEGEN GRAND AVENUE FARM, INC.:

YEGEN GRAND AVENUE FARM, INC.

By: _____

Its: _____

CITY:

CITY OF BILLINGS

By: _____

Ron Tussing

Its: Mayor

By: _____

Cari Martin

Its: City Clerk

STATE OF _____)

)ss.

County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2008, by ____
_____ known to me to be _____
_____ of YGAF, Inc.

[signature]

[typed/printed name]

Notary Public for the State of _____

Residing at: _____, _____

My Commission Expires: _____, 20__

STATE OF MONTANA)

)ss.

County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2008, by
Ron Tussing, known by me to be the Mayor of the City of Billings.

[signature]

[typed/printed name]

Notary Public for the State of Montana

Residing at: _____, Montana

My Commission Expires: _____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2008, by Cari Martin, known by me to be the City Clerk of the City of Billings.

[signature]

[typed/printed name]

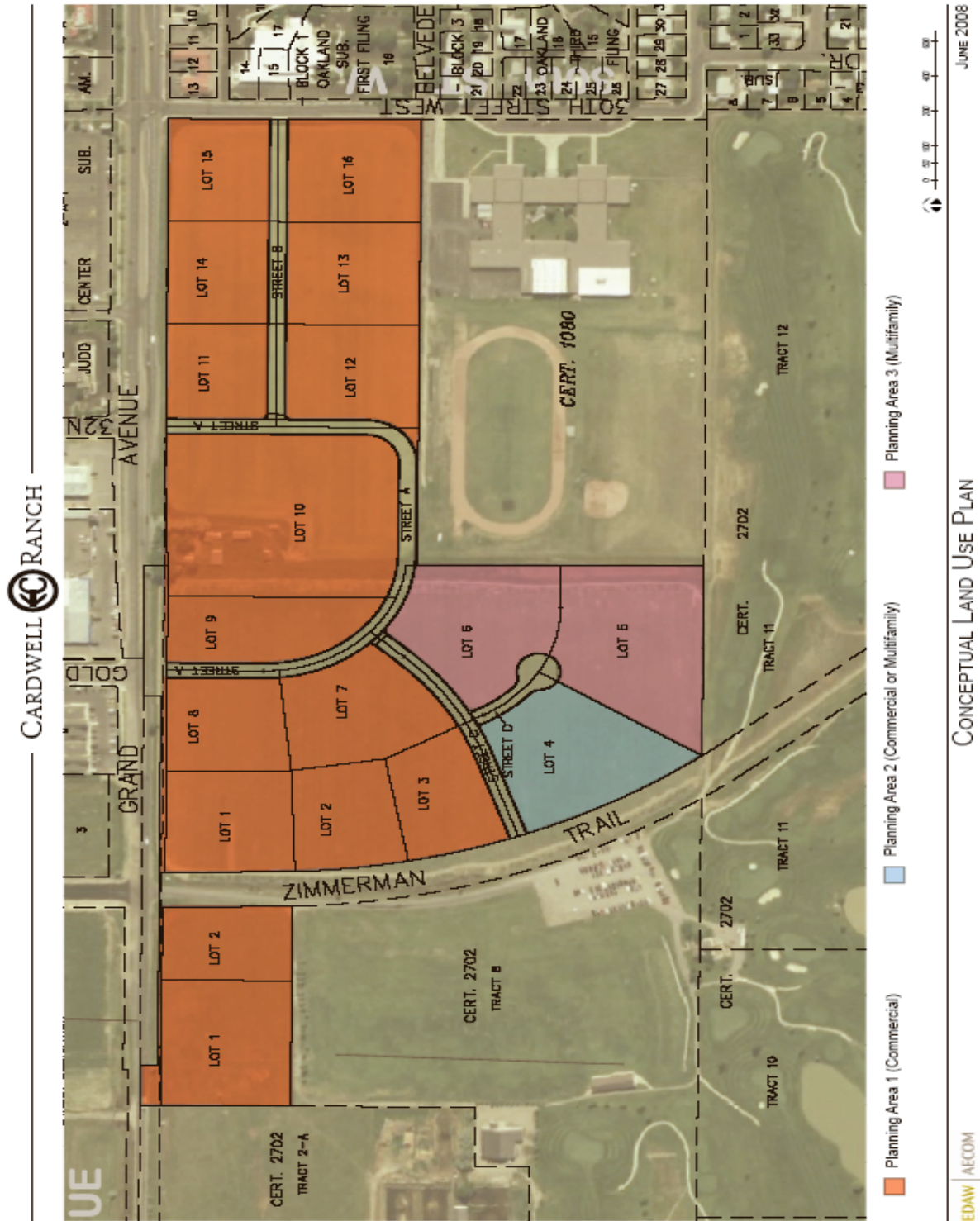
Notary Public for the State of Montana

Residing at: _____, Montana

My Commission Expires: _____, 20__

EXHIBIT A

MASTER PLAN OF THE EAST 80 AT CARDWELL RANCH





ITEM:

CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: Final Plat of Gabel Subdivision, 4th Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Gabel Subdivision, 4th Filing is being presented to the City Council for approval. The subject property is zoned Controlled Industrial (CI) and is located on the south side of Gabel Road directly south of the intersection of Transtech Way and Gabel Road. On August 25, 2008, the City Council conditionally approved the 5-lot subsequent minor plat on approximately 11.35 acres of land for commercial development. There is currently a building under construction on proposed Lot 3. The owner is Bottrell Family Investments, LP, and Engineering, Inc. is the agent.

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

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

RECOMMENDATION

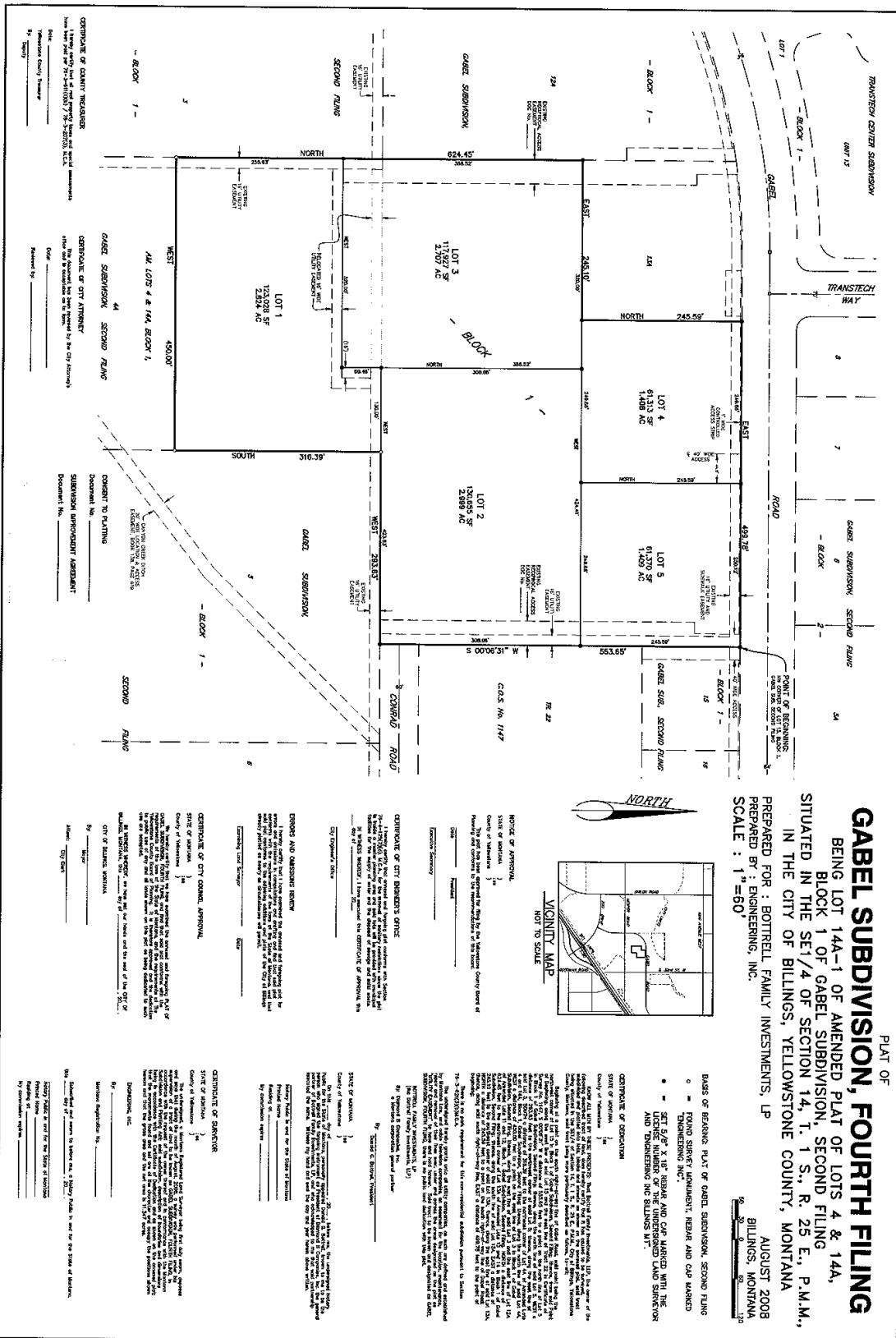
Staff recommends that the City Council approve the final plat of Gabel Subdivision, 4th Filing.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Final Plat

ATTACHMENT A
Final Plat





CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: Final Plat of an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3rd Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3rd Filing is being presented to City Council for approval. On September 8, 2008, the City Council conditionally approved two lots on approximately 15,000 square feet for residential development. The subject property is zoned Residential 6000 (R-60) and is located on the southwest corner of the intersection of 10th Avenue North and North 22nd Street. The property owner is Steve Kerns and the representing agent is Tom Kelly, North Star Land Services, Inc.

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

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of an Amended Fractional Lot of Block 305, First Addition to the City of Billings and Block 13, Sunnyside Subdivision, 3rd Filing.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Final Plat

This map shows a portion of Section 36, Township 36N, Range 12E. The map includes a north arrow, a scale bar (1 inch = 40 feet), and a legend. Lot 7 is 7900 sq ft and Lot 8 is 7900 sq ft. The railroad is labeled 'RAILROAD' and 'RAILROAD CROSSING'. The map also shows 'NORTH 2ND STREET' and 'MAIN STREET'. A 'PLAT' is indicated in the upper right corner. The map is dated 'JAN 19 1900' and 'JAN 19 1900'.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 12, 2009

TITLE: Final Plat of Cardwell Ranch Subdivision, 1st Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Cardwell Ranch Subdivision, 1st Filing is being presented to Council for approval. On September 22, 2008, the City Council conditionally approved 18 lots on approximately 45 acres for commercial and multi-family residential development. The subject property is located on the south side of Grand Avenue, west of 30th Street West, to just beyond Zimmerman Trail. The property is zoned as a Planned Unit Development with commercial and multi-family residential uses prescribed. The owner is Yegen Grand Avenue Farm, Inc. and the subdivider is East 80, LLC. The representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

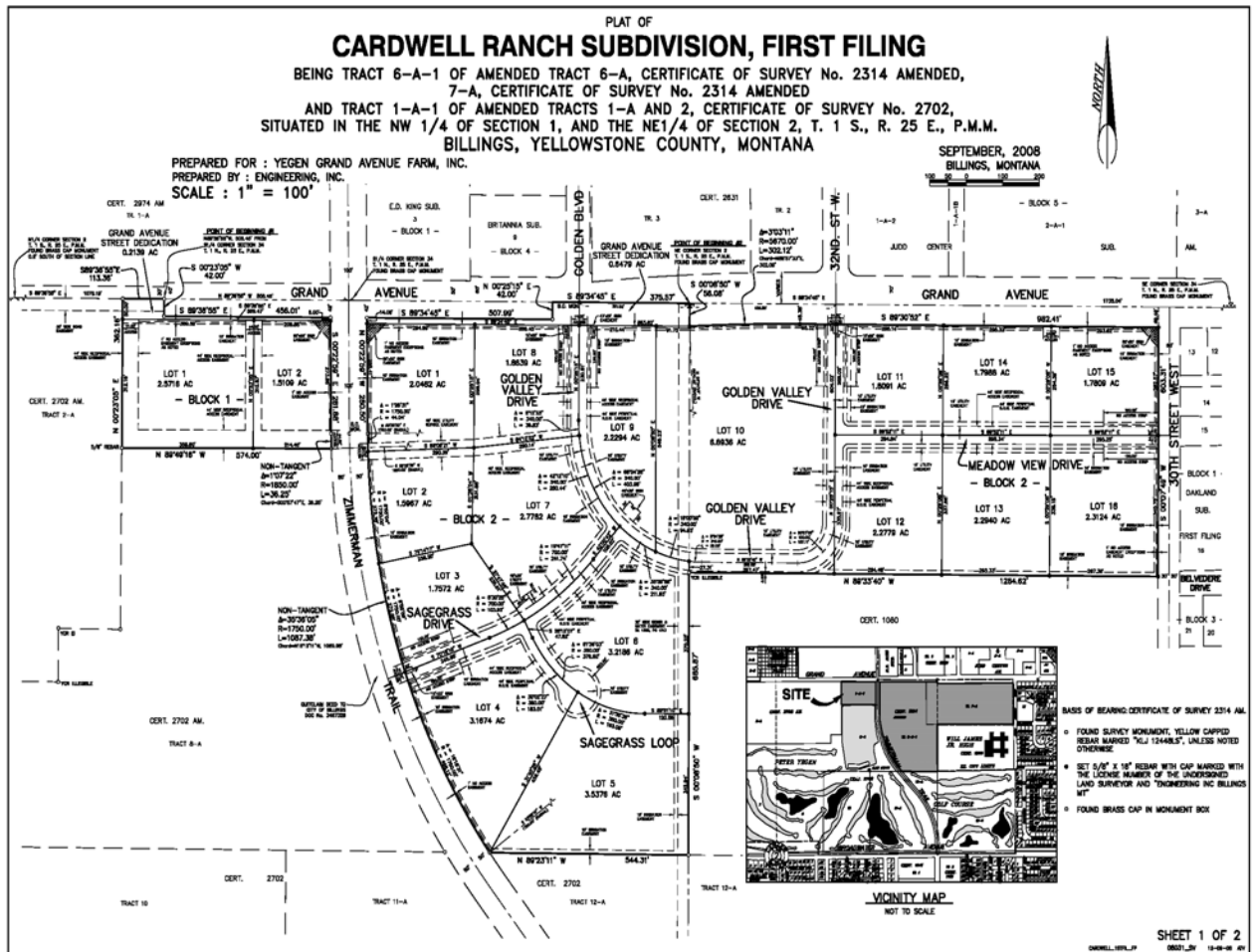
Staff recommends that the City Council approve the final plat of Cardwell Ranch Subdivision, 1st Filing.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Plat

ATTACHMENT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 12, 2009

TITLE: Final Plat of Lake Hills Subdivision, 14th Filing, Amended
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Lake Hills Subdivision, 14th Filing, Amended, is being presented to Council for approval. On July 14, 2008, the City Council conditionally approved 10 lots on approximately 2.25 acres for single-family residential development. The subject property is located on the north side of Cherry Hills Road between Clubhouse Way and Annandale Road in the Heights. The property is zoned Residential-9600, was previously platted as 6 lots, and is being replatted into 10 lots for single-family residences. The owner and subdivider is Ron Hill, of Specialized Construction, Inc. and the representing agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Lake Hills Subdivision, 14th Filing, Amended.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Plat

PLoS ONE | <https://doi.org/10.1371/journal.pone.0240499.g002>

LAKE HILLS SUBDIVISION, FOURTEENTH FILING

SITUATED IN THE NW 1/4 OF SECTION 16, T. 1 N., R. 26 E., P.M.M.
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: RON S. HILL LIVING TRUST
PREPARED BY: ENGINEERING, INC.
SCALE: 1" = 50'

SEPTEMBER, 2008
BILLINGS, MONTANA

BASED ON RECORD PLAT OF LAKE HILLS SUBDIVISION, FOURTEENTH FILING

- FOUND SURVEY INFORMATION, 1908 FILE, ON FILE WITH THE CITY OF BILLINGS
- LOCAL NUMBER OF THE UNDERGROUND LAKES SURVEY OR
- FROM BUREAU OF LAND SURVEY

YOUNG MAP
NO. 10-2008

CERTIFICATE OF CITY ENGINEER'S OFFICE

I hereby certify that I have examined the plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, and find that the same conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

CITY ENGINEER'S OFFICE

ENGINEER AND ENGINEERS' REVIEW

The undersigned hereby certify that the plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

ENGINEER'S REVIEW

CERTIFICATE OF CITY ATTORNEY

The foregoing has been reviewed by the City Attorney, and he is of the opinion that it is in conformity with the laws of the State of Montana.

CITY ATTORNEY

CERTIFICATE OF COUNTY INSURER

The undersigned hereby certify that the plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

COUNTY INSURER

By: _____

BASED ON RECORD PLAT OF LAKE HILLS SUBDIVISION, FOURTEENTH FILING

- FOUND SURVEY INFORMATION, 1908 FILE, ON FILE WITH THE CITY OF BILLINGS
- LOCAL NUMBER OF THE UNDERGROUND LAKES SURVEY OR
- FROM BUREAU OF LAND SURVEY

NOTICE OF APPROVAL

CITY OF BILLINGS

This plat has been approved for filing by the Yellowstone County Board of Planning and Estimates for the reason stated herein.

By: _____

City Engineer

CERTIFICATE OF CITY COUNCIL, APPROVAL

CITY OF BILLINGS

We hereby certify that we have approved the proposed plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, and find that the same conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

By: _____

City Council

By: _____

City Clerk

CERTIFICATE OF SURVEYOR

CITY OF BILLINGS

The undersigned hereby certify that the plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

By: _____

Surveyor

ENGINEERING, INC.

By: _____

Engineer

CONSENT TO PLATING

By: _____

Owner

By: _____

City Clerk

CERTIFICATE OF RECORDATION

CITY OF BILLINGS

The undersigned hereby certify that the plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

By: _____

Recorder

NOTICE OF RECORDATION

CITY OF BILLINGS

The undersigned hereby certify that the plat containing the description of the Lake Hills Subdivision, Fourteenth Filing, conforms to the requirements of the City of Billings for the laying out of streets and the division of land into lots.

By: _____

Recorder

CONSENT TO RECORDING

By: _____

Owner

By: _____

City Clerk

7/15/08 10:00 AM

V1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,671,854.90 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 28, 2008, are on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

V2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$972,709.84 audited and are presented for your approval for payment. A complete listing of the claims dated December 5, 2008 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

V3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$951,802.33 audited and are presented for your approval for payment. A complete listing of the claims dated December 12, 2008 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

V4

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$806,167.80 audited and are presented for your approval for payment. A complete listing of the claims dated December 19, 2008 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

V5



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
January 12, 2009

SUBJECT: Payment of Claims
DEPARTMENT: Municipal Court
PRESENTED BY: Melinda Balter, Acting Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$312,060.23 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 1, 2008, to November 30, 2008, is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Public Hearing and Resolution for the Sale of the South 132 ft. of Lot 4 in the SW ¼ Section 9, Township 1 S, Range 26 E

DEPARTMENT: Public Works Department

PRESENTED BY: David Mumford, P.E.

PROBLEM/ISSUE STATEMENT: Two parties have inquired about the possibility of purchasing property on South Billings Boulevard that currently contains storm drain piping owned and maintained by the City of Billings Public Works Department. The property is described as the South 132 feet of Lot 4 in the SW ¼ Section 9, Township 1 S, Range 26 E.

Selling the property provides the City of Billings an opportunity to dispose of excess property and place the property on the tax rolls. The Public Work Department will require a 40 foot easement be placed on the property, centered on the storm drain pipe.

ALTERNATIVES ANALYZED:

1. Do not approve the attached resolution and do not proceed with the disposal of the property on South Billings Blvd.
2. Approve the resolution and proceed with the disposal of the property on South Billings Blvd. to one of the following parties who have already submitted a Buy/Sell Agreement:
 - **Paul & Rachel Cox:** The Buy/Sell Agreement is for \$125,000 with the following conditions:
 - The City of Billings will agree to ingress/egress to both South Billings Blvd. and Newman Lane.
 - The City of Billings will rezone the property from R-6000 to Controlled Industrial within 60 days of acceptance of offer.
 - **Hanser Properties, LP:** The Buy/Sell Agreement is for \$125,300 with a request that they be able to make three annual installment payments with 6.5% interest. Note that the installment payments request is not a requirement of the sale.

3. Approve the resolution and proceed with the disposal of the property on South Billings Blvd. to a party submitting a Buy/Sell Agreement during the January 12, 2009, City Council meeting.

FINANCIAL IMPACT: The Public Works Department contracted for a market analysis of the property, which determined the value of the parcel at \$125,000. Additionally, an appraisal was provided by the Cox's that showed the parcel's value at \$123,000. Both offers exceed the property valuation.

RECOMMENDATION

Staff recommends that the City Council accept the Buy/Sell Agreement from Hanser Properties, LP for \$125,300 and place the funds in the City's Storm Water Maintenance fund to be used to improve the City's storm drain system.

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

ATTACHMENTS

- A. Resolution
- B. Map of parcel
- C. Market Analysis
- D. Paul & Rachel Cox Buy/Sell Agreement
- E. Hanser Properties, LP Buy/Sell Agreement

ATTACHMENT A

RESOLUTION 09-

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900; SALE, DISPOSAL, OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on **South Billings Boulevard** and described as South 132 ft. of Lot 4 in the SW ¼ Section 9, Township 1S, Range 26 E in the City of Billings, Yellowstone County, Montana.

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 12th day of January 2009;

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

That the City staff is authorized to proceed with disposal of the property described as the South 132 feet of Lot 4 in the SW ¼ Section 9, Township 1 S, Range 26 E, under the requirements of Section 2-902 of the Billings Montana City Code.

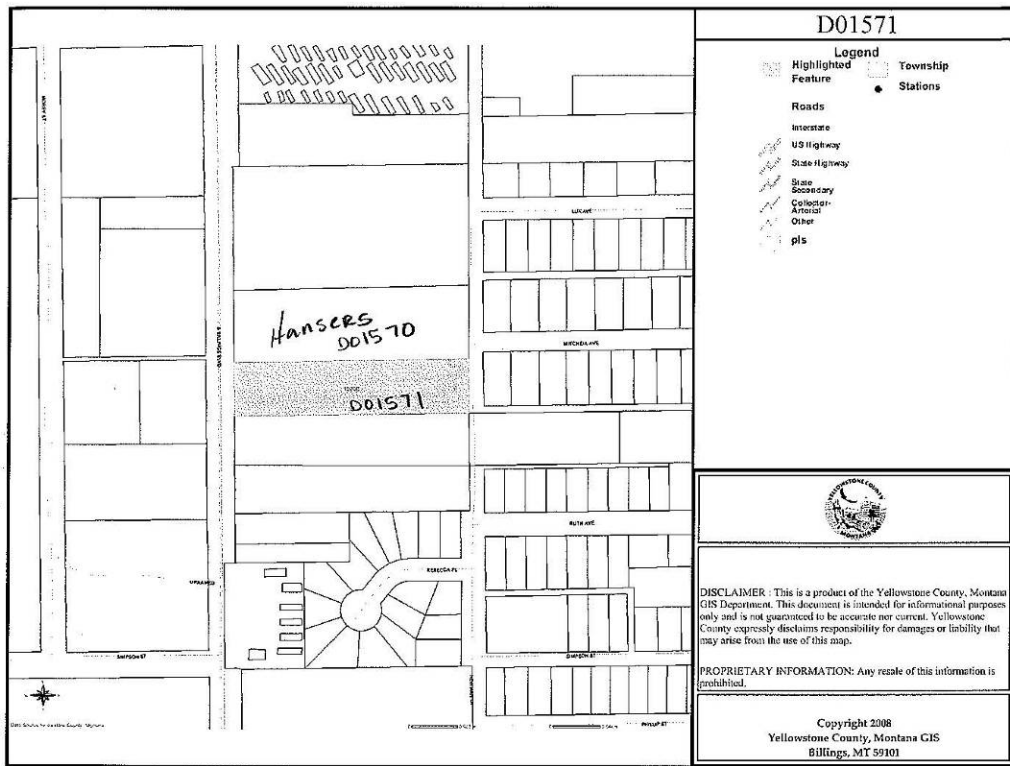
APPROVED AND PASSED by the City Council of the City of Billings this 12th day of January 2009.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk





Comparative Market Analysis

Prepared for
City of Billings

For property at
425 S BILLINGS BLVD

H. Thomas Llewellyn
The Yellowstone Group
1655 Shioh Rd. Ste. C
BILLINGS, MT 59106
Phone: 406-655-9455
Cell: 406-855-9455
Fax: 406-655-9459
Email: tom@yellowstonegroup.com
www.yellowstonegroup.com



Subject Property

Owner of Record: City of Billings

Address: 425 South Billings Blvd.
(Approximate street address)

Legal: South 132' of Lot 4 in SW ¼ of
Section 9, Township 1 South,
Range 26E.

Tax Code: D01571

Taxes: Exempt

Zoning: R-6000

Lot Size: 2 acres – usable due to easement
81,840 Square Feet

Services: Available
Water – Public
Sewer – Public
Private Utilities – All Available
Roads – Paved

Comments: R-6000 zoning places special requirements on
land use.

- May have multi family uses with a special review
- As one lot, 10 units allowed
- If divided in multiple lots density can increase, again with special review
- This zoning classification has limited uses because of the special review requirement
- The general location of this land has only one other property for sale; all other comps are commercial in nature and need to be adjusted accordingly.

Subject Property

Address: Between South Billings Blvd. and Newman Avenue

Current Conditions:

- Relatively level
- Easement along north property line
- Access on the East is to Newman, an undeveloped one-way street going South
- Below grade of South Billings Blvd.

Size: 2 Acres — usable due to easement
81,840 Square Feet

Ground Water: Unknown in this area

Evaluation

Income Approach: N/A

Cost Approach: N/A

Costs for construction are basic normal costs for curb cut and extension of water and sewer.
Fill may be necessary depending on ground water since this property is below the South Billings Blvd. grades.

Market Approach:

Active:

510 Jackson Street \$375,000.

3.5 acres

This property has a ditch along the Southern boundary.

On the market since January 2008, increased price.

Larger than the subject property, same conditions of R6000 zoning.

Indicated value \$215,000.

Closed:

525 N. Lakeview \$69,900. 04/11/08

½ Acre, allows 10 units with special review: \$3.21/S.F. or \$6,990./Unit

Indicated Value: \$262,700./S.F. or \$69,900.on a per unit cost

North 16th Street \$75,000. 11/30/07
14,400 Square Feet, allows 6 units
with special review: \$5.21/S.F. or \$12,500./Unit

Indicated Value \$12,500. Based on units

North 16th Street \$75,000. 05/19/08
13,500 Square Feet, allows 6 units
with special review: \$5.56/S.F. or \$12,500./Unit

Indicated Value \$125,000.

South Billings Blvd. \$200,000. 03/22/07
North of subject property
Zoned R-9600 – 2.87 acres \$1.60/S.F.
Now rezoned

Indicated Value \$139,400.

South Billings Blvd. \$125,000. 09/05
South of subject property
1.59 acres, unit basis, \$12,500. or \$2.44/S.F.

Indicated Value \$125,000.

It is my opinion that the value is set number of units allowed "as is" without conditions
for zone change, therefore the value is \$125,000.

(LAND) BUY-SELL AGREEMENT



This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally binding contract. If not understood, seek competent advice.

Billings, Montana, (date) December 4, 2008,
Paul L Cox, Rachel E Cox, as

☐ joint tenants with rights of survivorship, ☒ tenants in common, ☐ single in his/her own right, ☐ Other _____
(hereinafter called "Buyer") agrees to purchase, and the Seller agrees to sell the following described real property (hereinafter referred to as "Property"), commonly known as Lot on South Billings Blvd. 2.00 Ac

in the City of Billings, County of Yellowstone.
Montana, legally described as: South 132 Feet of Lot 4 Located in the SW 1/4 Sec 9, Twp 1 S, Rge 26E, PMM

TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, uncut timber and non-harvested crops and all improvements thereon except: n/a

PERSONAL PROPERTY: The following items of personal property, free of liens and without warranty of condition, are included and shall be transferred by the bill of sale: n/a

PURCHASE PRICE AND TERMS:

Total purchase price is One Hundred Twenty-Five Thousand

U.S. Dollars (\$ 125,000.00) payable as follows:

\$ 500.00 earnest money to be applied at closing.

\$ _____ as additional cash payment, payable on or before closing.

\$ 124,500.00 balance of the purchase price will be financed as follows:

☐ Conventional ☒ Other Financing ☐ Seller Financing ☐ Assumption ☐ Home equity

Cash at closing;

Purchaser is preapproved for financing at First Interstate Bank in Billings, MT.
(Jeremiah Rouane 406-255-6104);

CLOSING DATE: The date of closing shall be (date) January 30, 2009. The parties may, by mutual agreement, agree to close the transaction at any time prior to the date specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the purchase in accordance with this Agreement.

POSSESSION: Seller shall deliver to Buyer possession of the property and allow occupancy:
☒ when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase; OR
☐ on the date of recording the deed, notice of purchaser's interest, OR
☐

Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms, garage door opener(s), and Homeowner's Association facilities, if applicable.

©MONTANA ASSOCIATION OF REALTORS®
Land Buy-Sell Agreement, May 2008

Page 1 of 7
Seller's Initials

55 **RECEIPT OF EARNEST MONEY:** Buyer agrees to provide Earnest Money in the amount of Five Hundred
56 U.S. Dollars (\$ 500.00) as evidenced by ☐ Cash,
57 the receipt of which is acknowledged by the undersigned Broker/Salesperson; OR ☒ Check, the receipt of which is
58 acknowledged by the undersigned Broker/Salesperson; ☐ OR, _____

59 _____
60 If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall be
61 entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be forfeited.

62 _____
63 All parties to this transaction agree, unless otherwise provided herein, that the earnest monies will be deposited
64 pursuant to Montana Law OR within (five) business days of the date all parties have signed the Agreement or

65 _____
66 and such funds will be held in a trust account by First Montana Title Co. of Billings

67 Parties agree that interest accruing on earnest money, if any, while deposited shall be payable to: _____

68 _____
69 If interest is payable to the Broker it is agreed that sums so paid are consideration for services rendered.

70 Rachel Cox (406) 248-3641 Rachel Cox
71 (Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson)

72 To be signed only if in actual receipt of Cash or Check.

73 _____
74 The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any
75 portion of the earnest money required to complete the closing of the transaction.

76 _____
77 **FINANCING CONDITIONS AND OBLIGATIONS:**

78 _____
79 **BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that they have sufficient funds for the down
80 payment and closing costs to close this sale in accordance with this Agreement and are not relying upon any
81 contingent source of such funds unless otherwise expressly set forth herein.

82 _____
83 **LOAN APPLICATION:** If Buyer fails to make written application for financing and pay to the lender any
84 required fees, apply for assumption of an existing loan or contract, or initiate any action required for
85 completion of a contract for deed by 5:00 P.M. (Mountain Time) (date) completed
86 Buyer will be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.

87 _____
88 **CONTINGENCIES:** The contingencies set forth in this Agreement or on attached addenda shall be deemed to have
89 been released, waived, or satisfied, and the transaction shall continue to closing, unless, by 5:00 p.m. (Mountain Time)
90 on the date specified for each contingency, the party requesting that contingency has notified the other party or the
91 other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has
92 notified the other party on or before the release date that a contingency is not released, waived, or satisfied, the
93 transaction is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other terms
94 or provisions.

95 _____
96 **FINANCING CONTINGENCY:**

97 ☒ This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement
98 entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Time for Completion
99 (defined below), this Agreement is terminated and the earnest money will be refunded to the Buyer. If
100 third-party financing of a type specified herein is required by the terms of this Agreement (including
101 assumptions, contracts for deed, and lender financing) the closing shall occur on the date specified or as
102 soon thereafter as financing is completed, but no later 30 days after the stated closing date (the
103 "Time for Completion"); OR

104 ☐ This Agreement is contingent upon the Buyer obtaining financing for the Property on terms acceptable to
105 Buyer. Release Date: _____

106 _____
107 **APPRAISAL CONTINGENCY:**

108 ☐ Property must appraise for at least (\$ _____). If the Property does not appraise for at least the
109 specified amount, this Agreement is terminated and earnest money refunded to the Buyer unless the Buyer
110 elects to proceed with closing this Agreement without regard to appraised value. Written notice of Buyer's
111 election to proceed shall be given to Seller or Seller's Broker/Salesperson within _____ days of Buyer or
112 Buyer's Broker/Salesperson receiving notice of appraised value; OR

113 ☐ Property must appraise for at least (\$ _____). Release Date: _____

114 **TITLE CONTINGENCY:** This offer is contingent upon Buyer's receipt and approval (to Buyer's satisfaction) of
 115 the preliminary title commitment. Release Date: five business days from Buyer's
 116 or Buyers representative's receipt of preliminary title commitment.
 117

118 **PROPERTY INVESTIGATION:** This offer is contingent upon Buyer's independent investigation of the following
 119 conditions relating to the property, including but not limited to; covenants, zoning, access, easements, well
 120 depths, septic and sanitation restrictions, surveys or other means of establishing the corners and boundaries,
 121 special improvement districts, restrictions affecting use, special building requirements, future assessments,
 122 utility hook up and installation costs, environmental hazards, airport affected area or anything else Buyer
 123 deems appropriate. Buyer agrees that any investigations or inspections undertaken by Buyer or on his/her
 124 behalf shall not damage or destroy the property, without the prior written consent of Seller. Further, Buyer
 125 agrees to return the property to its original condition and to indemnify Seller from any damage or destruction to
 126 the property caused by the Buyer's investigations or inspections, if Buyer does not purchase the property.
 127 Release Date: within 14 days of seller's accept

128 **This offer is contingent upon** seller providing ingress and egress via South Billings Blvd.
 129 (curb cut granted prior to closing); Seller also providing ingress and egress by
 130 undeveloped Newman Lane along easterly boundary of the property. Seller providing
 131 purchasers a zone change from R-6000 to Controlled Industrial within 60 days of
 132 acceptance of both parties.
 133 Release Date: closing

134 **This offer is contingent upon** seller providing corner pin locations of subject property &
 135 verifying that attached appraisal assumptions are correct in regards to subject parcel
 136 dimensions;
 137
 138
 139 Release Date: 14 days of seller's accept

140 **ADDITIONAL PROVISIONS:** Paul (inactive) & Rachel Cox (active) are licensed real estate
 141 agents in the state of Montana;
 142 Seller to verify that public water and sewer hook-ups are available and all SID's will
 143 be paid off in full by seller at closing;
 144 Buyer and seller may extend stated closing date by mutual agreement if needed;
 145
 146

147 **CONVEYANCE:** The Seller shall convey the real property by Warranty
 148 deed, free of all liens and encumbrances except those described in the title insurance commitment, as approved by
 149 Buyer. The Seller shall convey the personal property by Bill of Sale.
 150

151 **WATER:** All water, including surface water or ground water, any legal entitlement to water, including statements of
 152 claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches,
 153 ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the
 154 Property, except registered wells or ditch rights (if any)
 155

156 Filing or transfer fees will be paid by ☐ Seller, ☐ Buyer, ☒ split equally between Buyer and Seller.
 157 Documents for transfer will be prepared by Title Company
 158

159 **WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:** By Montana law, failure of the parties at closing or transfer
 160 of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for
 161 updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in
 162 the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424,
 163 MCA, could result in a penalty against the transferee and rejection of the deed for recording.
 164

165 **CLOSING AGENTS FEES:** Closing agents fees will be paid by ☐ Seller ☐ Buyer ☒ Equally Shared.
 166

167 **TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer with an ALTA Standard Coverage Owners Title
 168 Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an
 169 amount equal to the purchase price. Buyer may purchase additional owner's title insurance coverage in the form of
 170 "Extended Coverage" or "Enhanced Coverage" for an additional cost to the buyer. It is recommended that buyer
 171 obtain details from a title company.

Buyer's Initials

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 Land Buy-Sell Agreement, May 2008

Page 3 of 7 1
 Seller's Initials

Produced with ZipForm™ by RE FormsNet, LLC 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipform.com

City of Billin

172 **CONDITION OF TITLE:** All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to
173 closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or
174 other adverse title conditions will be placed against the title to the property subsequent to the effective date of the
175 preliminary title commitment approved by the Buyer.

176
177 **SPECIAL IMPROVEMENT DISTRICTS:** Special Improvement Districts (including rural SIDs), including those that
178 have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be:

- 179 ☒ paid off by Seller at closing;
180 ☐ assumed by Buyer at closing; OR
181 ☐

182 All perpetual SIDs shall be assumed by Buyer.

183
184 **ASSOCIATION SPECIAL ASSESSMENTS:** Any special or non-recurring assessments of any non-governmental
185 association, including those that have been approved but not yet billed or assessed, will be:

- 186 ☒ paid off by Seller at closing;
187 ☐ assumed by Buyer at closing; OR
188 ☐

189
190 **PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement
191 District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, heating fuel
192 and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees, if any, as
193 of the date of closing unless otherwise agreed and: _____

194 _____
195 _____
196 _____
197

198 **CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear
199 excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property.
200 Seller will remove all personal property not included in this sale prior to closing.

201
202 **NOXIOUS WEEDS DISCLOSURE:** Buyers of property in the state of Montana should be aware that some properties
203 contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to
204 the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an
205 owner of property, contact either your local County extension agent or Weed Control Board.

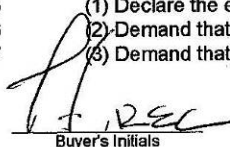
206
207 **MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code
208 Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of
209 Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the
210 information concerning registered offenders available to the public. If you desire further information please contact the
211 local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers
212 assigned to the area.

213
214 **BUYER'S REMEDIES:** (A) If the Seller fails to accept the offer contained in this Agreement within the time period
215 provided in the BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer. (B) If the Seller
216 accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time
217 period provided in this Agreement, the Buyer may:

- 218 (1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of
219 such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated; OR
220 (2) Demand that Seller specifically perform Seller's obligation under this Agreement; OR
221 (3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

222
223 **SELLER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to
224 consummate the transaction within the time period provided in this Agreement, the Seller may:

- 225 (1) Declare the earnest money paid by Buyer be forfeited; OR
226 (2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; OR
227 (3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.


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Land Buy-Sell Agreement, May 2008

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Seller's Initials

228 **BUYER'S AND SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this
229 Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and
230 legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation,
231 partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such
232 entity.

233
234 **FOREIGN PERSON OR ENTITY:** Sellers are not foreign persons, non-resident aliens, foreign corporations, foreign
235 partnerships, foreign trusts, or foreign estates, as those terms are defined in the Internal Revenue Code and the
236 Income Tax Regulations promulgated thereunder. Unless the purchase price of the Property does not exceed
237 \$300,000 and the Buyer is purchasing the Property for use by Buyer as a personal residence, Sellers shall deliver to
238 Buyer a certificate of non-foreign status in the form required by the Income Tax Regulations and reasonably
239 acceptable to Buyer and/or Buyer's attorney. In the event Sellers do not deliver the certificate to Buyer at or before
240 closing, Sellers acknowledge and agree that Buyer may withhold ten percent (10%) of the Purchase Price and submit
241 this amount to the Internal Revenue Service, pursuant to Section 1445 of the Internal Revenue Code.

242
243 **CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by
244 Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this
245 Agreement, of any and all information reasonably necessary to consummate the transaction described in this
246 Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar
247 documents concerning this property or underlying obligations pertaining thereto.

248
249 **RISK OF LOSS:** All loss or damage to any of the above-described real property or personal property to any cause is
250 assumed by Seller through the time of closing unless otherwise specified.

251
252 **TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this agreement.

253
254 **BINDING EFFECT AND NON-ASSIGNABILITY:** This Agreement is binding upon the heirs, successors and assigns
255 of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the Seller's
256 express written consent.

257
258 **ATTORNEY FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the
259 prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall
260 determine just.

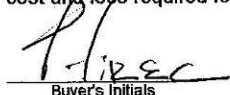
261
262 **COMMISSION:** The Seller's and/or Buyer's commitment to pay a commission in connection with this transaction is an
263 integral part of this Agreement.

264
265 **FACSIMILE:** The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the
266 parties' signatures may be used as the original.

267
268 **ENTIRE AGREEMENT:** This Agreement, together with any attached exhibits and any addenda or amendments
269 signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other
270 written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the
271 Seller and Buyer.

272
273 **COUNTERPARTS:** A copy of this document may be executed by each individual/entity separately, and when each
274 has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete contract between
275 the parties.

276
277 **EARNEST MONEY DISPUTES:** Buyer and Seller agree that, in the event of any controversy regarding the earnest
278 money and things of value held by the Broker, closing agent, or any person or entity holding such money or property,
279 unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or
280 closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing
281 agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of
282 competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the
283 cost and fees required for filing such action.


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Seller's Initials

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284 ADDENDA AND/OR DISCLOSURES ATTACHED: (Check all that apply.)

285 ☐ Sale of Buyer's Property ☐ 1031 Tax Deferred Exchange

286 ☐ Addendum for Additional Provisions ☐ Back-up Offer

287 ☐ Water Rights Acknowledgement

288 ☒ Seller's property disclosure statement

289
290 RELATIONSHIP CONFIRMATION: The parties to this agreement confirm that the real estate licensees identified
291 hereafter have been involved in this transaction in the capacities indicated below and the parties have previously
292 received the required statutory disclosures setting forth the licensees duties and the limits of their obligations to each
293 party:

294
295 _____ of n/a
(name of licensee) (name of Brokerage company)

296 is acting as ☐ Seller's Broker/Salesperson; ☐ Dual Broker/Salesperson; ☐ Statutory Broker.

298
299 Rachel Cox of Oakland & Co. Realtors
(name of licensee) (name of Brokerage company)

300 is acting as ☒ Buyer's Broker/Salesperson; ☐ Dual Broker/Salesperson; ☐ Statutory Broker;
302 ☐ Seller's Broker/Salesperson (includes Seller's Sub-Broker or Salesperson).

303
304 BUYER'S ACKNOWLEDGMENT: Buyer acknowledges that he/she has examined the real and personal property, that
305 Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgement, that prior
306 verbal representations by the Seller or Seller's agent or representatives do not modify or affect this Agreement, and
307 that by signing this Agreement Buyer acknowledges having read and understood this entire Agreement.

308
309 BUYER'S COMMITMENT: I/We agree to purchase the above-described Property on the terms and conditions set
310 forth in the above offer and grant to said Salesperson until (date) city council approval
311 at Jan. 2009 ☐ a.m. ☐ p.m. (Mountain Time) to secure Seller's written acceptance, whether or not that
312 deadline falls on a Saturday, Sunday or holiday. Buyer may withdraw this offer at any time prior to Buyer being
313 notified of Seller's written acceptance. If Seller has not accepted by the time specified, this offer is automatically
314 withdrawn.

315 The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic
316 means in accordance with the Montana Uniform Electronic Transaction Act.

317
318 I/WE HEREBY ACKNOWLEDGE receipt of a copy of this Agreement bearing my/our signature(s).

319
320 Buyer's Address: 2015 Azalea Lane City Billings

321
322 State MT, Zip Code 59102 Phone Number (406) 698-1648

323
324 Buyer's Name Printed: Paul L Cox, Rachel E Cox

325
326 Dated this December 4, 2008, at 8:00 ☒ a.m. ☐ p.m. (Mountain Time).

327
328 _____
329 (Buyer's Signature) (Buyer's Signature)


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Land Buy-Sell Agreement, May 2008

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330 **OFFER PRESENTATION:** This offer was presented to the Seller(s) on

331

332 Date: _____ Time _____ ☐ am ☐ pm By: _____

333

(Signature of person presenting the offer)

334 **SELLER'S COMMITMENT:** I/We agree to sell and convey to Buyer the above-described Property on the terms
335 and conditions herein above stated. I/We acknowledge a receipt of a copy of this Agreement bearing my/our
336 signature(s) and that of the Buyer(s) named above.

337

338 Seller's Address: _____ City _____

339

340 State _____, Zip Code _____ Phone Number _____

341

342 Seller's Name Printed: _____

343

344 Dated this _____, at _____ ☐ am ☐ pm (Mountain Time).

345

346 _____

347 (Seller's Signature)

(Seller's Signature)

348

349 **ACTION TAKEN, IF OTHER THAN ACCEPTANCE:**

350

351 ☐ Rejected by Seller _____ / _____ / _____ ☐ Modified per Attached Counter _____ / _____ / _____
352 Seller's Initials Date Seller's Initials Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.



**(LAND) SELLER'S PROPERTY DISCLOSURE STATEMENT
MONTANA ASSOCIATION OF REALTORS® STANDARD FORM**

1 The undersigned Seller, having entered into a listing with _____ n/a
2 as Broker, dated _____, and involving certain real property located at
3 Lot on South Billings Blvd. 2.00 Ac _____ in the City of Billings
4 County of Yellowstone _____, Montana, which real property is legally described as
5 South 132 Feet of Lot 4 Located in the SW 1/4 Sec 9, Twp 1 S, Rge 26E, PMM
6 _____
7 _____
8 _____

9 _____ (the Property). Seller
10 executes this Disclosure Statement, in order to assist the Broker in disclosing all adverse material facts
11 which concern the Property to prospective purchasers. Montana law defines an adverse material fact as a
12 fact that should be recognized as being of enough significance as to affect a person's decision to enter into
13 a contract to buy or sell real property and may be a fact that materially affect the value of the Property, that
14 affects the structural integrity of the Property, or that present a documented health risk to occupants of the
15 Property.

SELLER'S DISCLOSURE

16
17
18 The Seller declares that the Seller has prepared this Disclosure Statement and any attachments thereto
19 based on any adverse material facts known to the Seller. Seller hereby authorizes the Broker to provide a
20 copy of this Statement to any person or entity in connection with any actual or anticipated sale of the
21 Property. Seller further agrees to indemnify and hold the Broker harmless from all claims for damages
22 based upon the disclosures made in this Disclosure Statement along with the failure of the Seller to
23 disclose any adverse material facts known to Seller.

24
25 THIS INFORMATION IS A DISCLOSURE BY THE SELLER OF ADVERSE MATERIAL FACTS
26 CONCERNING THE PROPERTY AS OF THE ABOVE DATE. IT IS NOT A WARRANTY OR
27 REPRESENTATION OF ANY KIND BY THE SELLER, THE BROKER OR THE SALESPERSONS AND IS
28 NOT A CONTRACT BETWEEN SELLER AND BUYER. THIS DISCLOSURE STATEMENT IS NOT A
29 SUBSTITUTE FOR ANY INSPECTIONS THE BUYER MAY WISH TO OBTAIN.

30
31 Please describe any Adverse Material Facts affecting the property and concerning the matters noted below
32 or other matters. If the space provided is inadequate, please attach additional sheets.

33
34 Easements (written or unwritten): _____
35 _____

36 Boundaries or Property Lines: _____
37 _____

38 Encroachments or similar matters that may affect your interest in the subject property including but not
39 limited to buildings, fences, etc.: _____
40 _____

41 Access to the property: _____
42 _____

43 Setting, slippage, sliding or other soil problems: _____
44 _____

45 Flooding, drainage or grading problems: _____
46 _____

47 Location of the property in a flood plain, shoreline master plan, wetland or other environmentally sensitive
48 area: _____
49 _____

(Land) Seller's Property Disclosure Page 1 of 3

Buyer's Initials

Seller's Initials

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Oakland & Company REALTORS® Wells Fargo Center 175 N. 27th Street, Billings MT 59101
Phone: (406) 248-3641 Fax: (406) 248-1159 Rachel Cox

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- 50 Water rights and private wells: _____
 51 _____
 52 Restrictive Covenants and Deed restrictions: _____
 53 _____
 54 Septic system approval or existing septic system: _____
 55 _____
 56 Major damage to the property from fire, earthquakes, floods, slides, etc.: _____
 57 _____
 58 Zoning violations, non-conforming uses: _____
 59 _____
 60 Neighborhood noise problems or other nuisances: _____
 61 _____
 62 Property Owner's association obligations (dues, lawsuits, etc.): _____
 63 _____
 64 Notice of abatement or citations against the property: _____
 65 _____
 66 Lawsuits against the Seller threatening or affecting the real property: _____
 67 _____
 68 Waste dump or disposal or landfill or commercial use in the vicinity of the property which causes smoke,
 69 smell, noise or other pollution: _____
 70 _____
 71 Street or utility improvement planned that may affect or be assessed against the property: _____
 72 _____
 73 Zoning or land use change planned or being considered by the city or county: _____
 74 _____
 75 Proposed increase in tax assessment value or property owner's association dues for the property: _____
 76 _____
 77 Underground storage tanks or class II injection wells: _____
 78 _____
 79 Property leases, crop shares, mineral or hydrocarbon leases or other such agreements: _____
 80 _____
 81 Mineral or hydrocarbon reservations: _____
 82 _____
 83 Conservation Easements (existing or proposed): _____
 84 _____
 85 Landfill (compacted or otherwise) on the property or any portion thereof: _____
 86 _____
 87 Environmental issues affecting the property: _____
 88 _____
 89 Noxious Weeds: _____
 90 _____
 91 Airport affected area: _____
 92 _____
 93 Other matters: _____
 94 _____
 95 _____
 96 _____
 97 _____
 98 _____
 99 _____
 100 _____

 Buyer's Initials

(Land) Seller's Property Disclosure Page 2 of 3

 Seller's Initials

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101 Seller certifies that the information herein is true, correct and complete to the best of the Seller's knowledge
102 and belief as of the date signed by Seller.

103
104 Seller _____ Date _____

105
106 Seller _____ Date _____

107
108
109 Please note the following changes to the foregoing disclosure: _____

110 _____
111 _____
112 _____
113 _____
114 _____
115 _____
116 _____
117 _____
118 _____
119 _____
120 _____
121 _____

122
123 Date: _____ Seller's Signature: _____

124
125
126
127

BUYER'S ACKNOWLEDGMENT

128 Subject Property Address: Lot on South Billings Blvd. 2.00 Ac, Billings, MT

129
130 BUYER(S) UNDERSTAND THAT THE FOREGOING DISCLOSURE STATEMENT SETS FORTH ANY
131 ADVERSE MATERIAL FACTS CONCERNING THE PROPERTY THAT ARE KNOWN TO THE SELLER.
132 THE DISCLOSURE STATEMENT DOES NOT PROVIDE ANY REPRESENTATIONS OR WARRANTIES
133 CONCERNING THE PROPERTY, NOR DOES THE FACT THIS DISCLOSURE STATEMENT FAILS TO
134 NOTE AN ADVERSE MATERIAL FACT CONCERNING A PARTICULAR FEATURE, FIXTURE OR
135 COMPONENT IMPLY THAT THE SAME IS FREE OF DEFECTS. BUYER(S) IS/ARE ENCOURAGED TO
136 OBTAIN PROFESSIONAL ADVICE, INSPECTIONS OR BOTH OF THE PROPERTY AND TO PROVIDE
137 FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH
138 RESPECT TO ANY ADVICE, INSPECTIONS OR DEFECTS. BUYER(S) ARE NOT RELYING UPON THIS
139 PROPERTY DISCLOSURE STATEMENT FOR BUYER(S)' DETERMINATION OF THE OVERALL
140 CONDITION OF THE PROPERTY IN LIEU OF OTHER INSPECTIONS REPORTS OR ADVICE.

141
142 I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

143
144 Buyer _____ Date _____

145 Paul L Cox
146 Buyer _____ Date _____

Rachel E Cox

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

(Land) Seller's Property Disclosure Page 3 of 3

**RELATIONSHIPS/CONSENTS IN REAL ESTATE TRANSACTIONS
(COMBINED EXPLANATION AND DISCLOSURE)**

Definition of Terms and Description of Duties



1 A "Seller Agent" is obligated to the Seller to:

- 2 ● act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and
3 with the seller's written consent, may represent multiple sellers of property or list properties for sale that may
4 compete with the seller's property without breaching any obligation to the seller;
5 ● obey promptly and efficiently all lawful instructions of the seller;
6 ● disclose all relevant and material information that concerns the real estate transaction and that is known to
7 the seller agent and not known or discoverable by the seller unless the information is subject to confidentiality
8 arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;
9 ● safeguard the seller's confidences;
10 ● exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the
11 terms established in the listing agreement;
12 ● fully account to the seller for any funds or property of the seller that comes into the seller agent's
13 possession; and
14 ● comply with all applicable federal and state laws, rules, and regulations.

15 A "Seller Agent" is obligated to the Buyer to:

- 16 ● disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are
17 known to the seller agent, except that the seller agent is not required to inspect the property or verify any
18 statements made by the seller;
19 ● disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of
20 information regarding adverse material facts that concern the property;
21 ● act in good faith with a buyer and a buyer agent; and
22 ● comply with all applicable federal and state laws, rules, and regulations.

23 A "Buyer Agent" is obligated to the Buyer to:

- 24 ● act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and
25 with the buyer's written consent, may represent multiple buyers interested in buying the same property or similar
26 properties to the property in which the buyer is interested or show properties in which the buyer is interested to
27 other prospective buyers without breaching any obligation to the buyer;
28 ● obey promptly and efficiently all lawful instructions of the buyer;
29 ● disclose all relevant and material information that concerns the real estate transaction and that is known to
30 the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality
31 arising from a prior existing agency relationship on the part of the buyer agent with another buyer or seller;
32 ● safeguard the buyer's confidences;
33 ● exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the
34 terms established in the Buyer/Broker agreement;
35 ● fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's
36 possession; and
37 ● comply with all applicable federal and state laws, rules and regulations.

38 A "Buyer Agent" is obligated to the Seller to:

- 39 ● disclose any adverse material facts that are known to the buyer agent and that concern the ability of the
40 buyer to perform on any purchase offer;
41 ● disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of
42 information regarding adverse material facts that concern the buyer;
43 ● act in good faith with a seller and a seller agent; and
44 ● comply with all applicable federal and state laws, rules and regulations.

45 **DUAL AGENCY** IF A SELLER AGENT IS ALSO REPRESENTING A BUYER, OR A BUYER AGENT IS ALSO
46 REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY
47 BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH
48 THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING
49 EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF
50 REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT
51 WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER.

Initial _____

Page 1 of 2 agency disclosure

58 A "Dual Agent" is obligated to a Seller in the same manner as a seller agent and is obligated to a buyer in the
59 same manner as a buyer agent, except that a dual agent:

- 60 • has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent
61 regardless of any confidentiality considerations; and
62 • may not disclose the following information without the written consent of the person whom the information
63 is confidential;
64 (i) the fact that the buyer is willing to pay more than the offered purchase price;
65 (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking
66 for the property;
67 (iii) factors motivating either party to buy or sell; and
68 (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.
69

70 A "Statutory Broker" is not the agent of the Buyer or Seller but nevertheless is obligated to them to:

- 71 • disclose to:
72 (i) a buyer or a buyer agent any adverse material facts that concern the property and that are
73 known to the statutory broker, except that the statutory broker is not required to inspect the
74 property or verify any statements made by the seller; and
75 (ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and
76 that concern the ability of the buyer to perform on any purchase offer;
77 • exercise reasonable care, skill, and diligence in putting together a real estate transaction, and
78 • comply with all applicable federal and state laws, rules and regulations.
79

80 An "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of
81 enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be
82 a fact that:

- 83 (i) materially affects the value, affects structural integrity, or presents a documented health risk to
84 occupants of the property; and
85 (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or
86 existing contract.

87 "Adverse material fact" does not include the fact that an occupant of the property has or has had a communicable
88 disease or that the property was the site of a suicide or felony.
89

90 **Disclosures/Consents**

91 The undersigned Broker or Salesperson hereby discloses the relationship(s) as checked below, and the undersigned
92 Seller or Buyer acknowledges receipt of such disclosure(s) and consents to the relationship(s) disclosed.
93

94 **Check all the Applicable Relationship(s):**

- 95 ☐ Seller Agent
96 ☐ By checking this box, the undersigned consents
97 to the licensee representing multiple sellers.
98

- ☒ Buyer Agent
99 ☐ By checking this box, the undersigned consents
100 to the licensee representing multiple buyers.

- 101 ☐ Statutory Broker
102 ☐ Dual Agent (by checking this box, the undersigned
103 consents to the licensee acting as a dual representative.)
104

105 Oakland & Co. Realtors
106 Broker and/or Salesperson

Rachel Cox
107 Rachel Cox

12/04/2008
108 Date

109 ☐ Seller ☒ Buyer Paul L Cox

Rachel E Cox
110 Rachel E Cox

12/04/2008
Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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SALE AND PURCHASE AGREEMENT

THIS AGREEMENT is made this 12th day of December, 2008, by and between the CITY OF BILLINGS, a body politic and corporate organized under the laws of the State of Montana ("Seller"), and HANSER PROPERTIES, LP, a Montana limited partnership ("Buyer").

RECITALS:

A. Seller owns certain real property located in the City of Billings, Yellowstone County, Montana. Buyer has determined that the real property owned by Seller may be suitable for the intended uses of Buyer.

B. Seller desires to sell and Buyer desires to purchase certain real property as more particularly provided in this Agreement.

FOR VALUABLE CONSIDERATION, IT IS HEREBY AGREED:

1. **Sale of Real Property.** Seller agrees to grant, sell and convey to Buyer good and marketable title to the unimproved real property described on **Exhibit A**, together with all appurtenances thereto and fixtures thereon, if any (the "Property"), free and clear of all liens and encumbrances, excepting only reservations and exceptions in patents from the United States and the State of Montana, easements of record and all building, use, zoning, sanitary and environmental restrictions (collectively, the "Permitted Exceptions") as provided in this Agreement. The Property shall be conveyed by warranty deed (the "Deed"), subject to the Permitted Exceptions and expressing the covenants set forth in Section 30-11-110, Montana Code Annotated delivered by the record owner.

2. **Purchase Price.**

- (a) For and in consideration of conveyance of the Property, Buyer shall pay to Seller the sum of ONE HUNDRED TWENTY-FIVE THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$125,300.00) (the "Purchase Price"). The Purchase Price shall be payable pursuant to the terms and conditions of a promissory note providing for payment of the Purchase Price in three (3) equal annual installments commencing on the Closing Date (as defined below) and bearing interest at the rate of six and one-half percent (6.5%) per annum. The promissory note shall contain full rights of prepayment without penalty or premium and otherwise be in a commercially reasonable form as shall be approved by Seller and Buyer. The promissory note shall be secured by a first priority mortgage on the Property granted by Buyer to Seller in a commercially reasonable form as shall be approved by Seller and Buyer.

Notwithstanding anything to the contrary, Seller may, at Seller's option, require that the entire amount of the Purchase Price be paid on the Closing Date by giving Buyer notice of such requirement at least ten (10) days in advance of the Closing Date.

- (b) In addition to the Purchase Price, Buyer shall be solely responsible for payment on the Closing Date of the following:
 - (1) The title insurance premium for an ALTA owner's title insurance policy on the Property, in an amount equal to the Purchase Price.
 - (2) Closing fees and expenses, including recording fees; and
 - (3) The escrow fee and other charges of the Title Company acting in its capacity as closing agent.

3. Representations and Warranties. Seller represents and warrants to Buyer that:

- (a) Seller is a municipal corporation duly organized, validly existing and authorized to conduct business under the laws of the State of Montana.
- (b) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement have been or will be, prior to the Closing Date, duly authorized by all requisite action of the Council of the City of Billings (the "City Council") and constitutes the legal, valid and binding obligation of Seller.
- (c) Neither the execution of this Agreement nor the consummation of any of the transactions contemplated by this Agreement will constitute an event of default or other breach under any contract or agreement to which Seller is a party or by which Seller or the Property is bound or affected.
- (d) Seller has not been notified of, and has no knowledge of, any pending or threatened legal proceedings affecting the Property, or any part thereof, including, without limitation, any pending or threatened condemnation or similar proceeding or other legal or administrative claim affecting the Property.
- (e) Seller has no knowledge of any violation of any statute, ordinance, code, zoning, building, subdivision, pollution, environmental protection, water disposal, health, fire, safety or engineering code, rule or regulation with respect to the Property.
- (f) As of the Closing Date, no person or entity (other than Buyer) will have the right, by purchase agreement, option agreement, right of first refusal, lease, permit, license agreement or otherwise, to purchase or to possess the Property or any portion thereof.
- (g) Seller has not used, and Seller has no knowledge of any use of, Hazardous Materials (defined below) in, under or upon the Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies or permits governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. Seller has not received any notice of any violation of federal or state laws, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture,

refinement, handling, production or disposal of Hazardous Materials. For purposes of this Agreement, the term "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substance or waste or related material as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as now or hereafter amended, the Hazardous Materials Transportation Act as now or hereafter amended, the Resource Conservation and Recovery Act as now or hereafter amended, and in the regulations promulgated under such laws, or any other federal and state governmental law, rule or regulation (collectively, the "Environmental Laws and Regulations").

- (h) Seller (1) will, as of the Closing Date, own, and convey to Buyer, good and marketable title to the Property free and clear of all liens, encumbrances or interests of other persons or entities (other than the Permitted Exceptions); and (2) is the sole owner of the Property and the conveyance of the Property by Seller does not require the consent, approval or action of any other person or entity.

4. **Buyer Representations and Warranties.** Buyer represents and warrants to Seller that:

- (a) Buyer is a Montana limited partnership duly organized, validly existing and in good standing and is authorized to do business under the laws of the State of Montana.
- (b) The execution and delivery by Buyer of this Agreement and the performance of its obligations hereunder, are within Buyer's powers and have been duly authorized by all requisite action of Buyer's partners. This Agreement constitutes the legal, valid and binding obligation of Buyer.
- (c) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute a breach under any contract or agreement to which Buyer is a party or by which Buyer is bound or affected.

5. **Closing.** The closing of the sale and purchase of the Property shall occur on January 30, 2009, or such earlier date reasonably acceptable to Seller and Buyer (the "Closing Date"). Closing shall be held at 10:00 a.m. (MST) on the Closing Date at the offices of First Montana Title Company of Billings, with offices at 204 North 29th Street, Billings, Montana 59102 ("Title Company"), or at such other time and place as Seller and Buyer may agree upon.

- (a) At the closing, Seller shall deliver or cause to be delivered to Buyer the following:
 - (1) The duly executed and acknowledged Deed conveying the Real Property to Buyer reasonably acceptable to Buyer and subject only to the Permitted Exceptions;
 - (2) Such documentary and other evidence as may be reasonably required by the Title Company evidencing the approval of the conveyance of the

Property to Buyer by the City Council and the authority of the person or persons executing documents on behalf of Seller;

- (3) An affidavit evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986; and
 - (4) Such other documents and instruments as may be reasonably necessary or convenient to effectuate the intent of this Agreement with respect to the Property.
- (b) At the closing, Buyer shall deliver or cause to be delivered to Buyer the following:
- (1) Cash or immediately available funds necessary to close; and
 - (2) The duly executed promissory note and the duly executed and acknowledged mortgage, if applicable, and such documentary or other evidence as may be reasonably required by Seller or the Title Company evidencing the status and capacity of Buyer and the authority of the person or persons executing the various documents on behalf of Buyer in connection with this Agreement.
- (c) The release of any lien or encumbrance (other than a Permitted Exception) may be obtained by the Title Company at or in connection with the closing by payment of all or any portion of the Purchase Price.
- (d) Subject to the provisions of Section 1.2, above, Seller shall deliver sole and exclusive possession of the Property to Buyer on the Closing Date and shall remove from the Property all personal property, if any. Risk of loss or damage to the Property, shall remain upon Seller until delivery of possession under this Agreement.

6. Miscellaneous.

- (a) Default and Remedies.
- (1) If Buyer shall fail to purchase the Property when and as required under this Agreement, Seller may (i) terminate this Agreement, or (ii) demand specific performance of this Agreement by Buyer.
 - (2) If Seller shall fail to perform its obligations to Buyer under this Agreement, then Buyer may, in addition to and not in limitation of any other right available at law or in equity, (i) terminate this Agreement, or (ii) demand specific performance of this Agreement by Seller.
- (b) Real Estate Commissions and Broker Disclosure. Buyer and Seller each represent and warrant that they have not utilized any real estate broker, agent or salesman in connection with the contemplated transactions, and agree to indemnify and hold

each other harmless from and against any and all claims, losses, damages, costs or expenses (including attorneys' fees) of any kind or character arising out of or resulting from any agreement or arrangement with any broker or finder in connection with this Agreement or the contemplated transactions hereby.

- (c) Notices. Any notices or communication required or permitted hereunder shall be given by hand delivery, in writing or sent by facsimile transmission or electronic mail with confirmation or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested or by national overnight or similar courier, addressed as set forth on **Exhibit B** attached. Any such notice or communication shall be deemed delivered upon receipt. Any party may change its address for notice by giving notice to the other party in the manner above.
- (d) Assignment. This Agreement shall not be assignable by Seller or Buyer without the prior written consent of the other party or parties, which consent shall not be unreasonably withheld.
- (e) Complete Agreement. This Agreement represents the entire agreement of the parties with respect to the contemplated transactions and supersedes any prior agreements or negotiations, oral or written. This Agreement may be amended only by a writing signed by the affected parties.
- (f) Time. Time is of the essence of this Agreement.
- (g) Choice of Law. This Agreement shall be governed by Montana law.
- (h) Survival of Agreement. This Agreement shall not be deemed to merge with and into the deed or title to the Property, and each term of this Agreement shall survive the closing and delivery of the Deed to Buyer.
- (i) Attorneys' Fees. In the event of any suit or other proceeding for the interpretation or enforcement of this Agreement, the prevailing party in such suit or other legal proceeding shall be entitled to recover its costs and expenses incurred, including, without limitation, reasonable attorneys' fees.
- (j) Further Assurances. The parties agree to execute such further documents, instruments and certificates and take such further actions as may be reasonably necessary or convenient to effectuate the intention of this Agreement.
- (k) Counterparts; Facsimile. This Agreement may be executed in several counterparts as deemed necessary or convenient, each of which, when so executed, shall be deemed an original, provided that all such counterparts shall be regarded as one and the same document, and either party to this Agreement may execute this Agreement by executing a counterpart hereof. It shall not be necessary when making proof of this Agreement to produce counterparts with original signatures, it being agreed that photocopies of signatures, or signatures received by facsimile transmission, shall have the same effect as original

signatures.


- (l) Term and Acceptance of Offer. Buyer agrees to purchase the Property on the terms and conditions set forth in this Agreement. If Seller has not accepted Buyer's offer and delivered written notice of acceptance to Buyer by January 16, 2009, at 5:00 p.m. (MST), then Buyer's offer shall expire and be void.

BUYER'S SIGNATURE: Buyer hereby agrees to the terms of this Agreement.

DATED: December 12 2008.

BUYER:

HANSER PROPERTIES, LP

By: 
Ralph E. Hanser, Managing Partner

SELLER'S SIGNATURE: Seller hereby agrees to the terms of this Agreement and acknowledges receipt of a copy of this Agreement bearing Seller's signature and that of Buyer.

DATED: January __, 2009, at __ a.m./p.m. (MST).

SELLER:

CITY OF BILLINGS

By: _____

Print Name: _____

Title: _____

**EXHIBIT A
PROPERTY**

Yellowstone County, Montana

South 132' of Lot 4 located in the SW1/4 of Section 9, Township 1 South, Range 26 East

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, January 12, 2009

TITLE: Public Hearing and Resolution for the Sale of City-owned property within the boundaries of the Billings Regional Landfill and described as Tract 1, a portion of the NE ¼ NE ¼ of Section 29 in Township 1 South, Range 26 East, PMM, Yellowstone County, Montana.

DEPARTMENT: Public Works Department

PRESENTED BY: David Mumford, P.E.

PROBLEM/ISSUE STATEMENT: Yellowstone Valley Electric Cooperative (YVEC) has inquired about the possibility of purchasing property currently within the boundaries of the Billings Regional Landfill, which is owned and operated by the City of Billings. The property is described as Tract 1, a portion of the NE ¼ NE ¼ of Section 29 in Township 1 South, Range 26 East, PMM, Yellowstone County, Montana.

YVEC plans to use the site to improve electrical service to YVEC consumers in the Blue Creek area.

ALTERNATIVES ANALYZED:

4. Do not approve the attached resolution and do not proceed with the disposal of the property at the landfill.
5. Approve the resolution and proceed with the disposal of the property to YVEC.

FINANCIAL IMPACT: YVEC contracted for an appraisal of the property with Chuck Robbins, Certified Appraiser. Mr. Robbins determined the value of the parcel at \$17,700.

RECOMMENDATION

Staff recommends that the City Council accept the offer from YVEC for \$17,700 and place the funds in the City's Solid Waste fund to be used for future landfill expansion.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- F. Resolution
- G. Map of parcel
- H. Appraisal

ATTACHMENT A

RESOLUTION 09-

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900; SALE, DISPOSAL, OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located within the boundaries of the Billings Regional Landfill and described as Tract 1, a portion of the NE ¼ NE ¼ of Section 29 in Township 1 South, Range 26 East, PMM, Yellowstone County, Montana.

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 12th day of January 2009;

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

That the City staff is authorized to proceed with disposal of the property described Tract 1, a portion of the NE ¼ NE ¼ of Section 29 in Township 1 South, Range 26 East, PMM, Yellowstone County, Montana, under the requirements of Section 2-902 of the Billings Montana City Code.

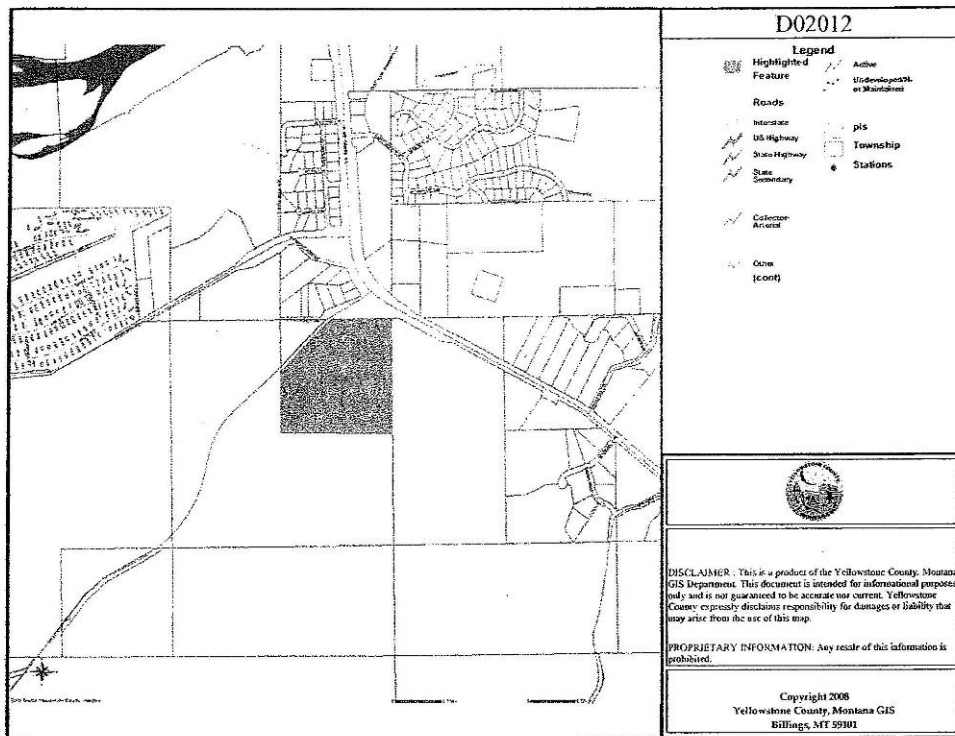
APPROVED AND PASSED by the City Council of the City of Billings this 12th day of January 2009.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, MMC, City Clerk



9/10/2008

Terry Holzer
Yellowstone Valley Electric Cooperative
150 Cooperative Way
Huntley, MT 59037-0249

File Number: Hillcrest

In accordance with your request, I have appraised the real property at:

Hillcrest Road/Across from Blue Creek Salvage
Billings (BlueCreek), MT 59101

The purpose of this appraisal is to develop an opinion of the market value of the subject property, as vacant.
The property rights appraised are the fee simple interest in the site.

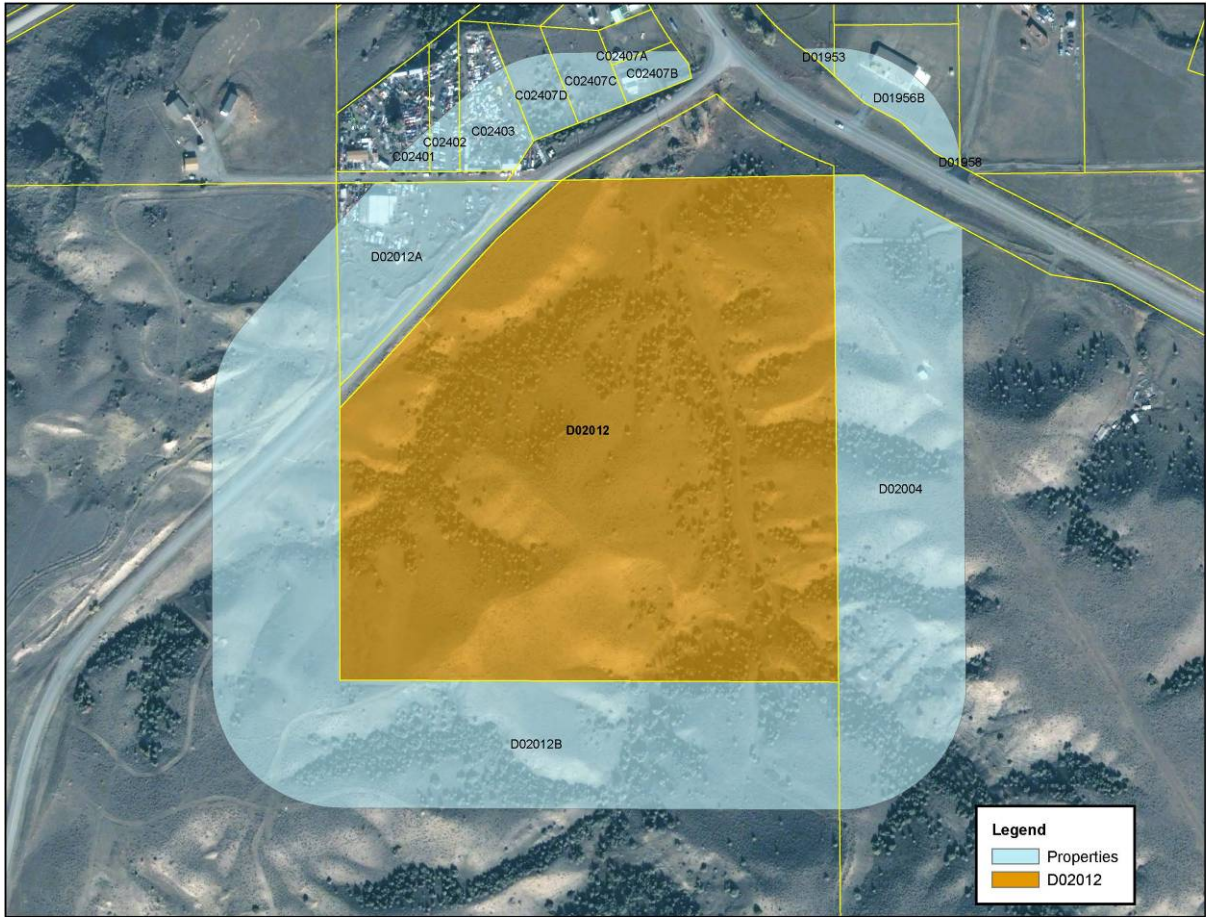
In my opinion, the market value of the property as of August 26, 2008 is:

\$17,700
Seventeen Thousand Seven Hundred Dollars

The attached report contains the description, analysis and supportive data for the conclusions,
final opinion of value, descriptive photographs, limiting conditions and appropriate certifications.



Chuck Robbins
Certified Appraiser





150 Cooperative Way • PO Box 249
Huntley, MT 59037-0249
(406) 348-3411 • 1-800-736-5323
FAX (406) 348-3414
www.yvec.com

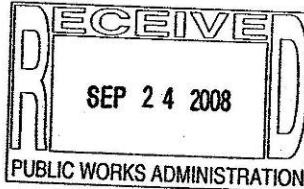
Your Touchstone Energy Partner



*Wynette - Pls copy to Dave Humford,
then file on top of my credenz.
Thanks, Tina*

September 10, 2008

Christina F. Volek
City Administrator
City of Billings
P.O. Box 1178
Billings, MT 59103



RECEIVED

SEP 11 2008

City Administrator

RE: Electrical Substation

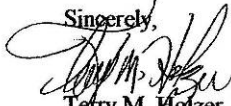
Dear Ms. Volek:

I have enclosed a copy of the property appraisal report that I just received from Mr. Chuck Robbins, who represents Appraisal & Property Tax Consultants. Yellowstone Valley Electric Cooperative engaged the services of Mr. Robbins to conduct a property appraisal on the 1.363 acre parcel of land that our cooperative would like to purchase from the City of Billings.

With the enclosed property appraisal report, the preliminary due diligence work should be completed. If you are able to meet on October 2nd or 3rd, we can discuss at that time any additional items that need to be done before we can make our presentation to the Billings City Council.

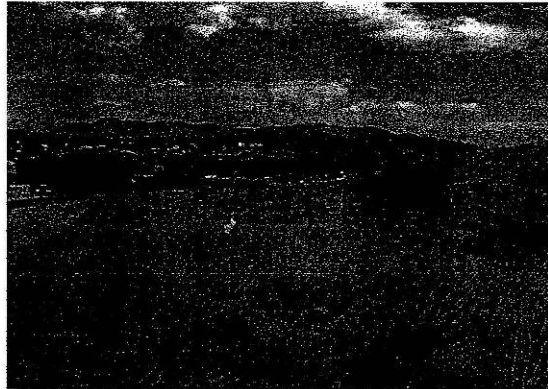
Please let me know if any of the above meeting dates will work or if an alternate date needs to be considered. I look forward to advancing this project to a point where Yellowstone Valley Electric Cooperative is able to purchase the tract of land from the City of Billings.

Sincerely,


Terry M. Holzer
General Manager

Enc.

APPRAISAL OF



LAND

LOCATED AT:

Hillcrest Road/Across from Blue Creek Salvage
Billings (BlueCreek), MT 59101

FOR:

Yellowstone Valley Electric Cooperative
150 Cooperative Way
Huntley, MT 59037-0249

BORROWER:

N/A

AS OF:

August 26, 2008

BY:

Chuck Robbins
Certified Appraiser

9/10/2008

Terry Holzer
Yellowstone Valley Electric Cooperative
150 Cooperative Way
Huntley, MT 59037-0249

File Number: Hillcrest

In accordance with your request, I have appraised the real property at:

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The purpose of this appraisal is to develop an opinion of the market value of the subject property, as vacant.
The property rights appraised are the fee simple interest in the site.

In my opinion, the market value of the property as of August 26, 2008 is:

\$17,700
Seventeen Thousand Seven Hundred Dollars

The attached report contains the description, analysis and supportive data for the conclusions,
final opinion of value, descriptive photographs, limiting conditions and appropriate certifications.


Chuck Robbins
Certified Appraiser

Land Appraisal **LAND APPRAISAL REPORT**

File No. Hillcrest

Property Address <u>Hillcrest Road/Across from Blue Creek Salvage</u> Census Tract <u>N/A</u>		LENDER DISCRETIONARY USE Sale Price \$ <u>N/A</u> Date <u>N/A</u> Mortgage Amount \$ <u>N/A</u> Mortgage Type <u>N/A</u> Discount Points and Other Concessions Paid by Seller \$ <u>N/A</u> Source <u>N/A</u>																																																																																																
City <u>Billings (BlueCreek)</u> County <u>Yellowstone</u> State <u>MT</u> Zip Code <u>59101</u>		Legal Description <u>Less Road & C/S 2168 (35.39 ac) New Legal to Follow Approx 1.363 acres</u>																																																																																																
Owner/Occupant <u>City of Billings</u> Map Reference <u>To Follow</u>		Property Rights Appraised <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leashold <input type="checkbox"/> Condominium (HUD/VA) <input type="checkbox"/> PUD																																																																																																
Sale Price \$ <u> </u> Date of Sale <u> </u> Loan charges/concessions to be paid by seller \$ <u>N/A</u> R.E. Taxes \$ <u>Not Spread</u> Tax Year <u>2007</u> HOA \$/Mo. <u>N/A</u>		REMARKS Lender/Client <u>Yellowstone Valley Electric Cooperative</u> 150 Cooperative Way, Huntley, MT 59037-0249																																																																																																
LOCATION <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Under 3 Mos. <input checked="" type="checkbox"/> 3-6 Mos.		NEIGHBORHOOD ANALYSIS Employment Stability <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Convenience to Employment <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Convenience to Shopping <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Convenience to Schools <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Adequacy of Public Transportation <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Recreation Facilities <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Adequacy of Facilities <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Property Compatibility <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Protection from Detrimental Cond. <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Police & Fire Protection <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> General Appearance of Properties <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Appeal to Market <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>																																																																																																
PRESENT LAND USE % Single Family 40% 2-4 Family 0% Multi-Family 0% Commercial 0% Industrial 0% Vacant 60%		LAND USE CHANGE Not Likely <input type="checkbox"/> Likely <input type="checkbox"/> In process <input checked="" type="checkbox"/> Te: Single family on acre sites & Golf 60% Course (Briarwood)																																																																																																
PREDOMINANT OCCUPANCY Owner <input checked="" type="checkbox"/> Tenant <input type="checkbox"/> Vacant (0-5%) <input type="checkbox"/> Vacant (over 5%) <input type="checkbox"/>		SINGLE FAMILY HOUSING PRICE \$ <u>(000)</u> AGE <u>18</u> Low <u>1976</u> 430 High <u>2007</u> Predominant <u>257 - 1985/+/-</u>																																																																																																
Note: Race or the racial composition of the neighborhood are not considered reliable appraisal factors. COMMENTS: The subject site is located approximately 4 miles southeast from the Billings Business District & 1 +/- miles south from the Yellowstone River.																																																																																																		
Dimensions Please refer to plat. Site Area <u>1.363 Acres</u> Corner Lot <u>No</u> Zoning Classification <u>Agricultural Open</u> Zoning Compliance <u>Yes</u> HIGHEST & BEST USE: Present Use <u>Vacant</u> Other Use <u>building site</u>		Topography <u>Level</u> Size <u>1.363+/- Acres</u> Shape <u>Irregular</u> Drainage <u>Adequate</u> View <u>Country/Auto Salvage Yard</u> Landscaping <u>Natural</u> Driveway <u>N/A</u> Apparent Easements <u>None Noted</u> FEMA Flood Hazard <u>Yes</u> <u>No</u> <u>XXX</u> FEMA Map/Zone																																																																																																
UTILITIES Public <input checked="" type="checkbox"/> Other <input type="checkbox"/> Electricity <input checked="" type="checkbox"/> Gas <input type="checkbox"/> Water <input type="checkbox"/> Cisterns/Wells <input type="checkbox"/> Sanitary Sewer <input type="checkbox"/> Septics/In Area <input type="checkbox"/> Storm Sewer <input type="checkbox"/> Street Lights <input type="checkbox"/> Alley <input type="checkbox"/>																																																																																																		
Comments (Apparent adverse easements, encroachments, special assessments, slide areas, etc.): <u>No apparent adverse easements or encroachments noted or were made apparent to the appraiser.</u>																																																																																																		
The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.																																																																																																		
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Comments of Sales Comparison: A thorough search for comparable sales was made in this area of Billings. The sales value of the sales are from \$ 22 to \$ 62. At the present time there are 2 sites listed for sale on Hillcrest Road (Snow Berry Sub) Lt 2 Blk 1 - 1.45 ac listed for \$44900 & Lt 2B Blk 1 - 1.21 ac listed for \$43900. These lots are approx 2 miles from the subject and considered view lots.																																																																																																		
Comments and Conditions of Appraisal: The subject is located in an area south of Billings that has easy access to Billings. The subject is zoned Agricultural Open which does not allow home sites on less than 10 acres.																																																																																																		
Final Reconciliation: The 6 sales best support my opinion of value. In my opinion, the highest and best use of the subject land would be a building site if zoning permitted. The site is not large enough and would need a zone change. All sales allow for a home site. Most consideration was given to the sales in the Blue Creek area of Billings.																																																																																																		
(WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE SUBJECT PROPERTY AS OF <u>August 26, 2008</u> to be \$ <u>17,700</u>																																																																																																		
I (we) certify: that to the best of my (our) knowledge and belief, the facts and data used herein are true and correct; that I (we) personally inspected the subject property and inspected all comparable sales cited in this report; and that I (we) have no undisclosed interest, present or prospective therein.																																																																																																		
Appraiser(s) <u>Chuck Robbins</u> Certified Appraiser		Review Appraiser <u> </u> (if applicable) <input type="checkbox"/> Did <input type="checkbox"/> Did Not Inspect Property																																																																																																

Land Appraisal
LAND APPRAISAL REPORT

File No. Hillcrest

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.

ITEM	SUBJECT	COMPARABLE NO. 4		COMPARABLE NO. 5		COMPARABLE NO. 6	
Address	Hillcrest Road BlueCreek	Blk 1 Lot 25 Blue Creek Views Blue Creek		Blk 1 Lot 18 Vista View Blue Creek		Blk 3 Lot 3 Southridge Blue Creek	
Proximity to Subject		1+/- Miles SW		1+/- Miles SW		3+/- Miles SW	
Sales Price	\$	\$.22 per sf.		\$.29 per sf.		\$.23 per sf.	
Price/0	\$	\$ 36500.00		\$ 39500.00		\$ 51250.00	
Data Source	Inspection	Billings MLS# 163998		Billings MLS# 172227		Billings MLS# 181389	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+/- Adjustment	DESCRIPTION	+/- Adjustment	DESCRIPTION	+/- Adjustment
Sales or Financing Concessions		Cash		Cash		Cash	
Date of Sale/Time	N/A	DOM 220 Days		DOM 44 Days		DOM 94 Days	
Location	Suburban	Suburban		Suburban		Suburban	
Site/View	Country/Auto Sal	Country		Country		Country	
Utilities/Electricity	In Area	163350 sf	-22,875	134382 sf	-21,752	217800 sf	-36,438
Access to Billings.	Good	In Area		In Area		In Area	
Appeal.	Fair	Good		Good		Good	
		Average		Average		Average	
Net Adj. (total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 22,875	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 21,752	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 36,438
Indicated Value of Subject		Gross: 62.7		Gross: 55.1		Gross: 71.1	
		Net: -62.7	\$ 13,625	Net: -55.1	\$ 17,748	Net: -71.1	\$ 14,812

SALES COMPARISON ANALYSIS

ADDITIONAL COMMENTS

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the Appraiser's judgment.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

APPRAISERS CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and Limiting Conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: Hillcrest Road/Across from Blue Creek Salvage, Billings (BlueCreek), MT, 59101

APPRAISER:**SUPERVISORY APPRAISER (only if required)**

Signature: <u>Chuck Robbins</u>	Signature: _____
Name: <u>Chuck Robbins</u>	Name: _____
Date Signed: <u>9/10/2008</u>	Date Signed: _____
State Certification #: <u>44 Residential Certified Appraiser</u>	State Certification #: _____
or State License #: _____	or State License #: _____
State: <u>MT</u>	State: _____
Expiration Date of Certification or License: <u>3/31/2009</u>	Expiration Date of Certification or License: _____

☐ Did ☐ Did Not Inspect Property

Certified Appraiser

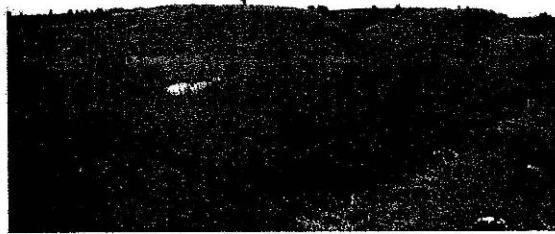
SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: N/A	File No.: Hillcrest
Property Address: Hillcrest Road/Across from Blue Creek Salvage	Case No.:
City: Billings (BlueCreek)	State: MT Zip: 59101
Lender: Yellowstone Valley Electric Cooperative	



**FRONT VIEW OF
SUBJECT PROPERTY**

Appraised Date: August 26, 2008
Appraised Value: \$ 17,700



**REAR VIEW OF
SUBJECT PROPERTY**



STREET SCENE

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: N/A	File No.: Hillcrest
Property Address: Hillcrest Road/Across from Blue Creek Salvage	Case No.:
City: Billings (BlueCreek)	State: MT Zip: 59101
Lender: Yellowstone Valley Electric Cooperative	



COMPARABLE SALE #1

Lt 8 Blk 14 Emerald Hills 2nd
Lockwood
Sale Date: 3/19/2008
Sale Price: \$.44 per sf.



COMPARABLE SALE #2

Lt 11 Blk 13 Emerald Hills 2nd
Lockwood
Sale Date: 5/22/2008
Sale Price: \$.64 per sf



COMPARABLE SALE #3

Block 1 Lots 6 & 7 Falcon Hgts
Blue Creek
Sale Date: 9/29/2006
Sale Price: \$.29 per sf.

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: N/A	File No.: Hillcrest
Property Address: Hillcrest Road/Across from Blue Creek Salvage	Case No.:
City: Billings (BlueCreek)	State: MT Zip: 59101
Lender: Yellowstone Valley Electric Cooperative	



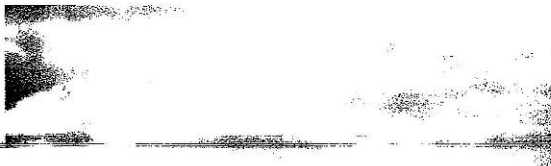
COMPARABLE SALE #4

Blk 1 Lot 25 Blue Creek Views
Blue Creek
Sale Date: 3/15/2007
Sale Price: \$.22 per sf.



COMPARABLE SALE #5

Blk 1 Lot 18 Vista View
Blue Creek
Sale Date: 6/29/2007
Sale Price: \$.29 per sf.



COMPARABLE SALE #6

Blk 3 Lot 3 Southridge
Blue Creek
Sale Date: 7/15/2008
Sale Price: \$.23 per sf.



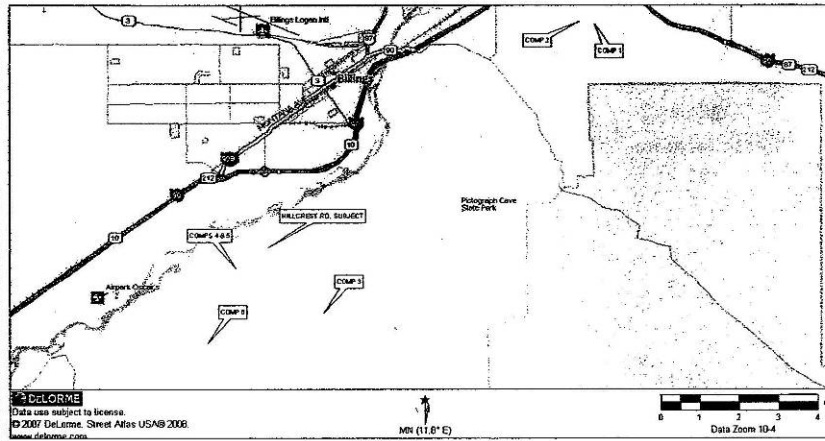
PLAT MAP

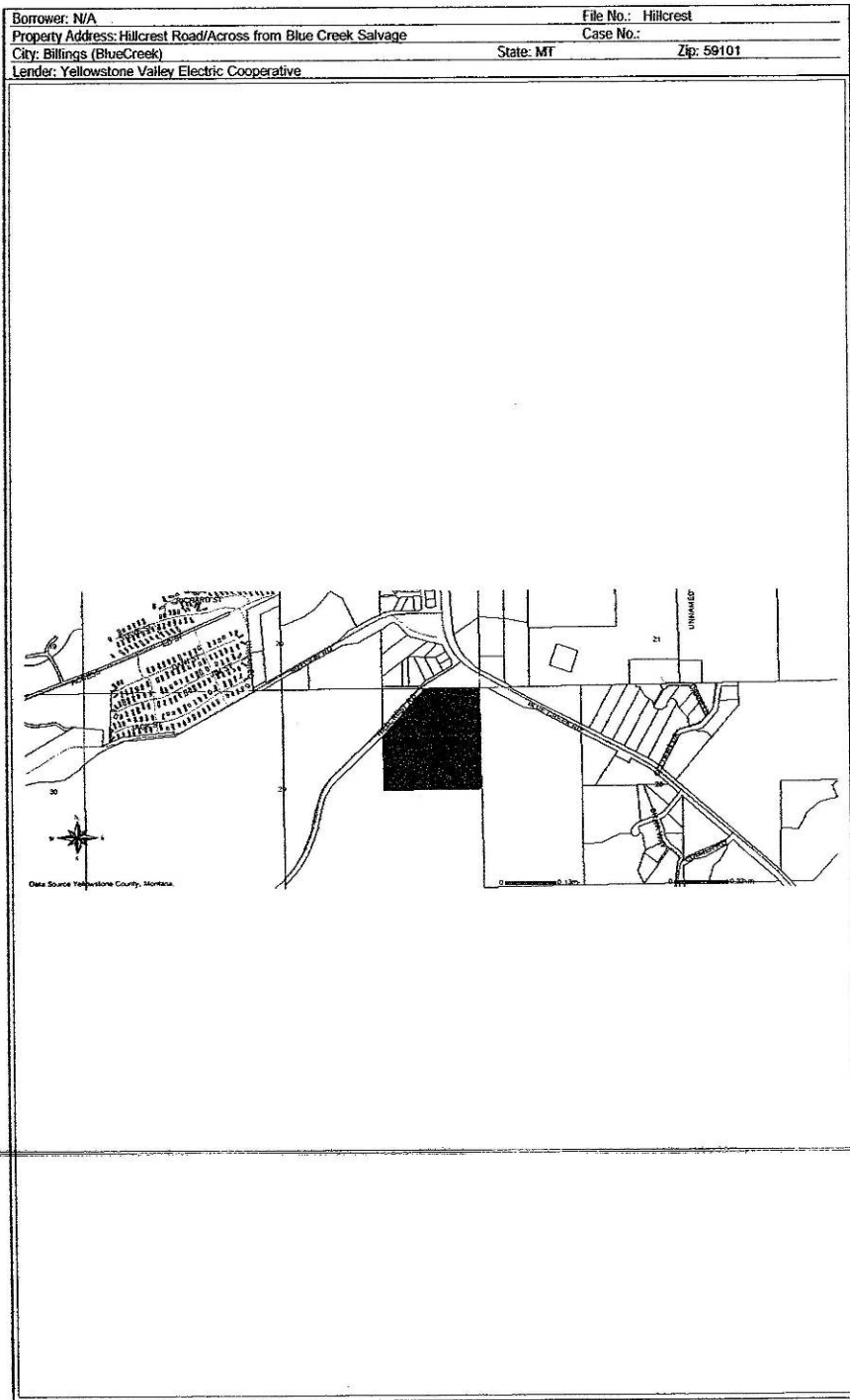
Borrower: N/A	File No.: Hillcrest
Property Address: Hillcrest Road/Across from Blue Creek Salvage	Case No.:
City: Billings (BlueCreek)	State: MT Zip: 59101
Lender: Yellowstone Valley Electric Cooperative	



LOCATION MAP

Borrower: N/A	File No.: Hillcrest
Property Address: Hillcrest Road/Across from Blue Creek Salvage	Case No.:
City: Billings (BlueCreek)	State: MT Zip: 59101
Lender: Yellowstone Valley Electric Cooperative	






Borrower: N/A	File No.: Hillcrest
Property Address: Hillcrest Road/Across from Blue Creek Salvage	Case No.:
City: Billings (BlueCreek)	State: MT Zip: 59101
Lender: Yellowstone Valley Electric Cooperative	

Yellowstone County Property Tax Information

Page 1 of 2



Yellowstone County, Montana

Disclaimer: Not all fields are currently maintained. The accuracy of the data is not guaranteed. Please notify the Appraisal/Assessment Office of any inaccuracies.

[Back to Search Form](#)
[Full Camu Detail](#)

Owner Information

Ownership Data Last updated: 7/21/2008

Tax ID: D02012 Tax Status: Active

Primary Owner Name: CITY OF BILLINGS

Mailing Address: CITY OF BILLINGS
PO BOX 1178
BILLINGS, MT 59103

Property Address:

Township: 01, S Range: 26, E Section: 29

Full Legal: S29, T01 S, R26 E, NENE4 (LESS RD & C/S 2168) 35.39 AC

GeoCode: 03-0927-29-1-17-01-0000

[Show on Map](#)

Property Assessment Information

Levy District: BLUE CREEK SCHOOL DIST.

Assessed value (Base date 1/1/2002)

Assessed Land Value = \$ 1,636.00

Assessed Building(s) Value = \$ 0.00

Total Assessed Value = \$ 1,636.00

Taxable Market Value*

Tax Year: 2008

Class Code	Amount
EXMPT NON-QUAL AG 20-160	= \$ 1,636.00
Total	= \$ 1,636.00

* The values shown are for the given tax year as supplied by the Department of Revenue. This value is used to calculate the property tax and is not the true market value of the property. The most recent market value is not allowed to be used by the Legislature. For questions regarding how the taxable market value is derived, please contact the Montana Department of Revenue, Appraisal/Assessment Office at 405-896-4000.

Rural SID Payoff Information

NONE

Property Tax Billing History

Year	1st Half	2nd Half	Total
(P) indicates paid taxes.			
Click on year for detail.			

Jurisdictional Information

Commissioner Dist: 1 - John Ostlund (R)	School Attendance Areas
Senator: 29 - Daniel McGee (R)	High: SENIOR
House: 57 - Penny Morgan (R)	Middle: RIVERSIDE
Ward: Outside City Limits	Elem: BLUE CREEK
Precinct: 64	
Zoning: Agricultural Open	
Click Here to view Regulations	

<http://www.cn.yellowstone.mt.gov/gis/csaprop.asp?tid=D02012>

9/10/2008

***** INVOICE *****

File Number: Hillcrest

9/10/2008

Terry Holzer
Yellowstone Valley Electric Cooperative
150 Cooperative Way
Huntley, MT 59037-0249

Borrower : N/A

Invoice # :
Order Date : 8/18/2008
Reference/Case # :

Hillcrest Road/Across from Blue Creek Salvage
Billings (BlueCreek), MT 59101

Appraisal Land	\$	400.00
	\$	-----
Invoice Total	\$	400.00
Deposit	(\$)
Deposit	(\$	-----)
Amount Due	\$	400.00

Please Make Check Payable To:

Appraisal & Property Tax Consultants
Chuck Robbins

Fed. I.D. #: 26-1726023

Thank you for allowing us to be of service to you!

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, January 12, 2009

TITLE: Unnamed Certificate of Survey for Yellowstone Valley Electric Co-op, located on the southeast corner of the intersection of Bollinger Lane and Hillcrest Road.

DEPARTMENT: Planning and Community Services

PRESENTED BY: Dave Green, Planner I

PROBLEM/ISSUE STATEMENT: On November 12, 2008, Yellowstone Valley Electric Co-op (YVEC) and Essex Surveying, Incorporated submitted an Unnamed Certificate of Survey (COS) located in the Northeast ¼ of Section 29, Township 1 South, Range 26 East, located on the southeast corner of the intersection of Bollinger Lane and Hillcrest Road. The survey is an exempt plat and the proposed site is a 1.363 acre parcel of City land to be sold to YVEC for a utility site. The applicant is YVEC, Essex Surveying Inc, is providing engineering services.

ALTERNATIVES ANALYZED: Pursuant to Section 73-3-101, MCA, certain divisions of land, which would otherwise constitute a subdivision, are exempt from local subdivision review, provided that they meet the criteria of the exemption being requested. In this case, Section 73-3-201 (1)(h) applies to this division of land to create rights-of-way or utility sites.

FINANCIAL IMPACT: The financial impact will be minimal because this parcel of land is outside the city limits there will be no tax revenue for the City. The City is expected to receive some benefit from the sale of the land.

RECOMMENDATION

Pursuant to Section 73-3-201 (1)(h), staff recommends that the City Council approve the exempt plat creating a utility parcel and authorizing the mayor to sign the Unnamed COS.

Approved By: City Administrator ____ City Attorney ____

INTRODUCTION

On November 12, 2008, Yellowstone Valley Electric Co-op (YVEC) and Essex Surveying, Incorporated submitted an Unnamed Certificate of Survey (COS) located in the Northeast ¼ of Section 29, Township 1 South, Range 26 East, located on the southeast corner of the intersection of Bollinger Lane and Hillcrest Road. The survey is an exempt plat and the proposed site is a 1.363 acre parcel of City land to be sold to YVEC for a utility site. The applicant is YVEC, Essex Surveying Inc, is providing engineering services.

BACKGROUND

Pursuant to Section 73-3-101, MCA, certain divisions of land, which would otherwise constitute a subdivision, are exempt from local subdivision review, provided that they meet the criteria of the exemption being requested. In this case, the exemption is creating a lot for a utility site.

City Engineering staff will be bringing a request to the City Council that the land defined with this exempt plat be made available for sale to YVEC. YVEC is proposing to use the parcel as a utility site for its electrical operations. At this time, the parcel has been defined by a surveyor and has been reviewed by County Staff to determine the plats compliance with State and County code for recording of the proposed exempt plat. The City Council must approve the plat so the mayor can sign for the City of Billings as the current owner of the parcel. The plat will be held at the City Clerk's office until the sale of the land has been presented to the City Council at a public hearing. After the public hearing process, if the City Council approves the sale of the land, the plat will then be signed by the mayor and then sent to the County Clerk and Recorder's office to be recorded.

This plat is being presented to the City Council for approval and signature to complete the platting portion of the sale of land to YVEC.

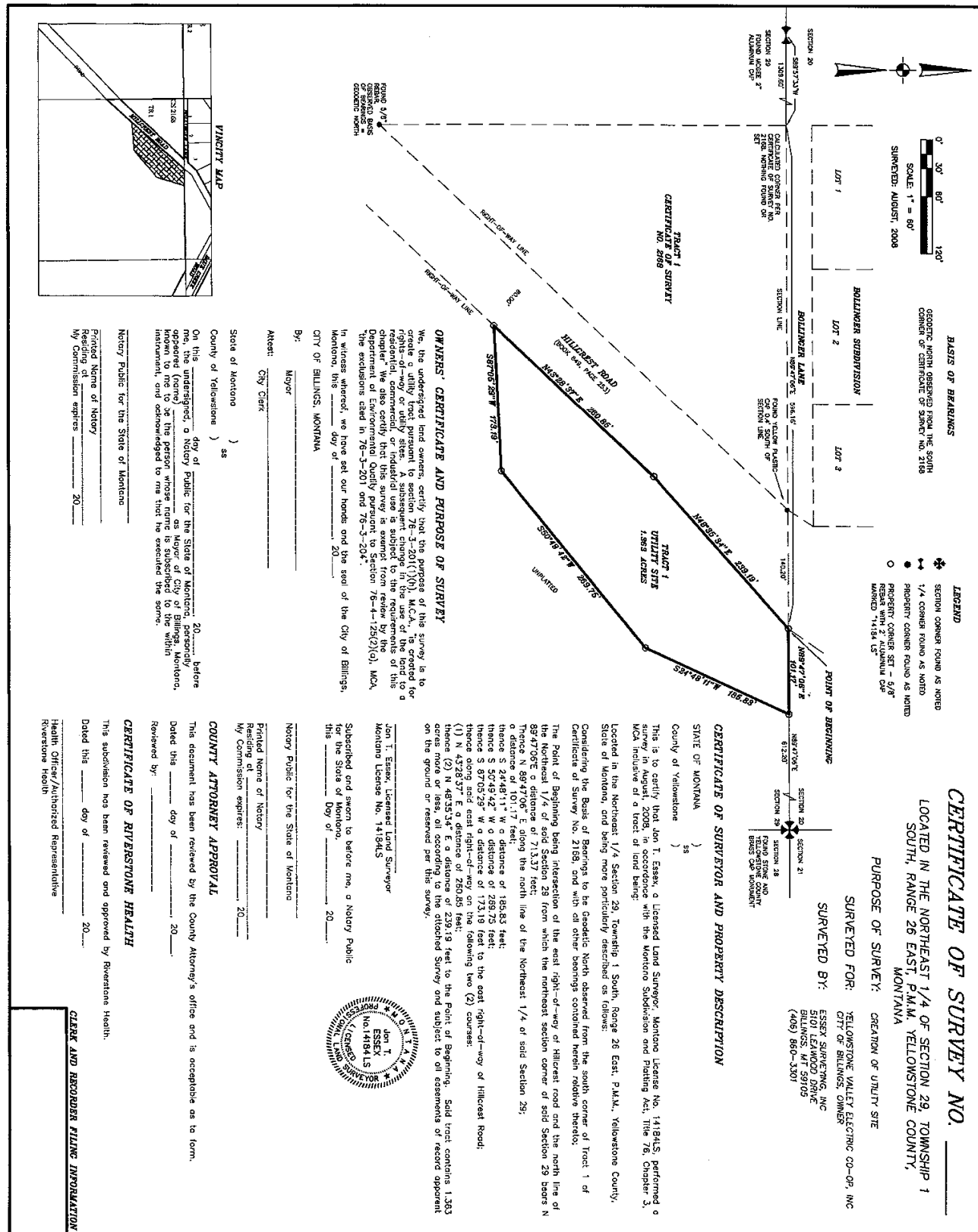
RECOMMENDATION

Pursuant to Section 76-3-207(1)(h), staff recommends that the City Council approve the creation of a lot for a utility site.

ATTACHMENT

A: Final Plat

ATTACHMENT A
Final Plat



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: Public Hearing and Resolution for Annexation #08-09

DEPARTMENT: Planning and Community Services Division

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Brumar Corporation, represented by Bruce E. Sunwall, is requesting annexation of a property legally described as Lots 1-3, Block 1, Cereus Subdivision into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the north side of Midland Road east of the Motor Power Equipment business. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property. Part of the subject property is a parking lot for Motor Power Equipment with the remaining property undeveloped. A concurrent zone change application from Entryway General Commercial (EGC) to Highway Commercial (HC) is being considered for the property.

Pursuant to State of Montana Code Annotated 7-2-4211, enacted by the 2003 session of the Montana Legislature, it states; "In all instances of annexation the municipality shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed". With the proposed annexation of the subject parcels, the city will also annex the remaining portions of the Interstate 90 (I-90) and South Billings Boulevard interchange. On May 29, 2007 the north east exit ramp on this interchange was annexed at the same time as a portion of the Miller Crossing property. With the annexation of the subject property the remaining un-annexed portions of the I-90 interchange will be annexed (See Exhibit A of Attachment A). This annexation will annex a total of 28.222 gross acres and 5.027 net acres.

At its December 15, 2008 meeting, the Council acknowledged receipt of this annexation petition and set a public hearing date for this meeting.

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 Lots 1-3, Block 1, Cereus Subdivision, and the adjacent I-90 right-of-way 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

Resolution and Exhibit A

Approval letter from MDT for I-90 right-of-way annexation

INTRODUCTION

Owner and petitioner, Brumar Corporation, represented by Bruce E. Sunwall, is requesting annexation of a property legally described as Lots 1-3, Block 1, Cereus Subdivision into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the north side of Midland Road east of the Motor Power Equipment business. The petitioner is requesting annexation in order to obtain city water and sewer services for development of the property. Part of the subject property is a parking lot for Motor Power Equipment with the remaining property undeveloped. A concurrent zone change application from Entryway General Commercial (EGC) to Highway Commercial (HC) is being considered for the property.

Pursuant to State of Montana Code Annotated 7-2-4211, enacted by the 2003 session of the Montana Legislature, it states; “In all instances of annexation the municipality shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed”. With the proposed annexation of the subject parcels, the city will also annex the remaining portions of the Interstate 90 (I-90) and South Billings Boulevard interchange. On May 29, 2007 the north east exit ramp on this interchange was annexed at the same time as a portion of the Miller Crossing property. With the annexation of the subject property the remaining un-annexed portions of the I-90 interchange will be annexed (See Exhibit A of Attachment A). This annexation will annex a total of 28.222 gross acres and 5.027 net acres.

PROCEDURAL HISTORY

- On November 13, 2008, the annexation petition was submitted to the Planning Division.
- On December 15, 2008, the City Council acknowledged receipt of the annexation petition and set a public hearing date for January 12, 2009.
- On January 12, 2009, the City Council will conduct the public hearing for the annexation and may take action on the request.
- On January 26, 2009, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to expand the Ward I City Council boundary will be conducted.
- On February 9, 2009, the City Council will conduct the second and final reading for the ordinance expanding the ward boundary.

BACKGROUND

The 5.027-acre subject property owned by Brumar Corporation is on the north side of Midland Road east of the Motor Power Equipment business and across the street from the west end of the City of Billings Operation Center. It is surrounded by properties within the City limits to the east and the south, and is within the red boundary of the limits of annexation as specified by the Annexation Map adopted by the City Council on March 10, 2008. Annexing the property would allow it to be developed most efficiently for a variety of uses and therefore increase the taxable value of the property. There is a concurrent zone change application for the property in process at this time from EGC to HC.

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 or SIA, the owners will sign a Waiver of Right to Protest the creation of any future Special Improvement Districts.
5. The proposed land use conforms to some goals of the City of Billings and Yellowstone County Growth Policy. This criterion is discussed later this report and also has been further analyzed with the zoning request.

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 Southwest Corridor Task Force were given the opportunity to comment on this annexation. All City departments responded favorably. There were no responses from the County Departments that were informed.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** The City can provide needed water services to the subject property. The Public Works Department has indicated that there is currently a 16-inch water main in Midland Road that fronts the property. The developer will be responsible for construction of the interior mains on the property at the time of development and any existing System Development fees.
- **Sewer:** The City can provide sewer service to the property using the 24-inch sanitary sewer main located in Midland Road that fronts the property. The developer will be responsible for construction of the interior mains on the property at the time of development.
- **Stormwater:** All storm water 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 Division. There is currently a 48-inch diameter storm drain in Midland Road that fronts the property.

- **Transportation:** The subject property has approximately 355 feet of street frontage on Midland Road which is the south end of the subject property. Midland Road is a minor arterial street. All proposed accesses and required improvements will be discussed at the time of development of the property. Driveway locations and additional traffic impacts for the property will be reviewed during the subdivision or site development review process.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. Fire Station #4 at 476 6th St. West is the closest station to the subject property.
- **Parks:** Pursuant to the City of Billings Subdivision Regulations, commercial developments are not required to contribute parkland. Parkland dedication requirements will be determined at the time the subject property is developed and dependant on the type of development that is proposed.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Midland Road is identified as a Primary On-Street Bikeway. Future improvements to Midland Road could include a striping and signage for a bike lane.

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:** MET transit system operators have no objections with the annexation request. There is not currently a bus route providing service to the subject property.
- **Fire:** The Fire Department currently provides fire protection to the County parcel as it is within the BUFSAs. Upon annexation and development, the required services may be increased. The Fire Department staff indicates that they have no issues or concerns with the annexation of this property.
- **Police:** The Police Department states that the subject property is located in a well established patrol area.
- **Public Utilities:** The Public Works-- Distribution and Collection Division had no objection with the annexation request.

Public Works -Street and Traffic Division: The Street and Traffic Division expressed concerns over the ability to adequately service this property due to budget reductions. However, the Billings Operation Center is across Midland Road from this property on the south side and makes travel to the area very efficient for City staff.

- **Public Works-Solid Waste:** There currently appears to be no private trash collection service to this property. The Solid Waste Division would serve this area when developed after annexation. If service is already provided at the time of annexation by private trash collection, in accordance with State Statute, City Public Works-- Solid Waste Division can not serve the property for five years.
- **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 the Legal and Finance Departments have indicated that they will not be negatively impacted. However, the Assistant City Administrator indicated a lack of support of the proposed zone change from EGC to HC. It is felt that the plots should remain EGC.
- **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 December 19, 2008, and published in the Billings Times on December 24, 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*:

- 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).
- Coordinated economic development efforts that target business recruitment, retention, and expansion (Economic Development Goal, page 6).

The *South Billings Boulevard Interchange Master Plan*, adopted in 2002, also established planning goals and objectives for this general area. According to the plan, there are four objectives outlined for the area off of the I-90 interchange. Annexation of the property can facilitate proper planning and redevelopment of this highly visible subject property. The objectives are as follows:

- To encourage the development of large, well-planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area.
- To limit the number of drive approaches along major arterial streets in order to preserve the functional integrity that such arterial systems are intended to provide.
- To present a favorable and attractive image of Billings from Interstate 90, King Avenue and South Billings Boulevard.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Lots 1-3, Block 1, Cereus Subdivision, and the adjacent I-90 right-of-way 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

Resolution and Exhibit A

Approval letter from MDT for I-90 right-of-way annexation

RESOLUTION NO. 09-

**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:

Tracts of land situated in the NW1/4 of Section 16, and the NE1/4 of Section 17, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Lots 1-3, Block 1, Cereus Subdivision, Recorded May 19, 1995, under Document No. 1784237, Records of Yellowstone County; Including all adjacent right-of-way of Midland Road.

Also the east bound on ramp, the east bound exit ramp and the west bound on ramp of Exit #447 (South Billings Boulevard) Interstate Highway 90, described as follows:

Tract 1A of Certificate of Survey 2244, Recorded April 5, 1984, Under Document No. 1302820, Records of Yellowstone County, also being Parcel 13 of Montana Highway Project No. IR 90-8(120)447;

Tract 1B of Certificate of Survey 2244, Recorded April 5, 1984, Under Document No. 1302820, Records of Yellowstone County, also being Parcel 14 of Montana Highway Project No. IR 90-8(120)447, Recorded June 14, 1991, in Book 1361, Page 2155, Under Document No. 1598192, Records of Yellowstone County;

Parcel 15 of Montana Highway Project No. IR 90-8(120)447, Recorded June 14, 1991, in Book 1361, Page 2157, Under Document No. 1598193, Records of Yellowstone County;

Parcel 17 of Montana Highway Project No. IR 90-8(120)447, Recorded June 14, 1991, in Book 1361, Page 2161, Under Document No. 1598194, Records of Yellowstone County;

Parcel 11 of Montana Highway Project No. IR 90-8(120)447, Recorded September 13, 1991, in Book 1364, Page 4805, Under Document No. 1608169, Records of Yellowstone County;

Parcel 16 of Montana Highway Project No. IR 90-8(120)447, Recorded September 18, 1991, in Book 1365, Page 0282, Under Document No. 1608605, Records of Yellowstone County;

Containing 28.222 gross acres and 5.027 net acres.

(# 08-09) 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 12th day of January, 2009.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

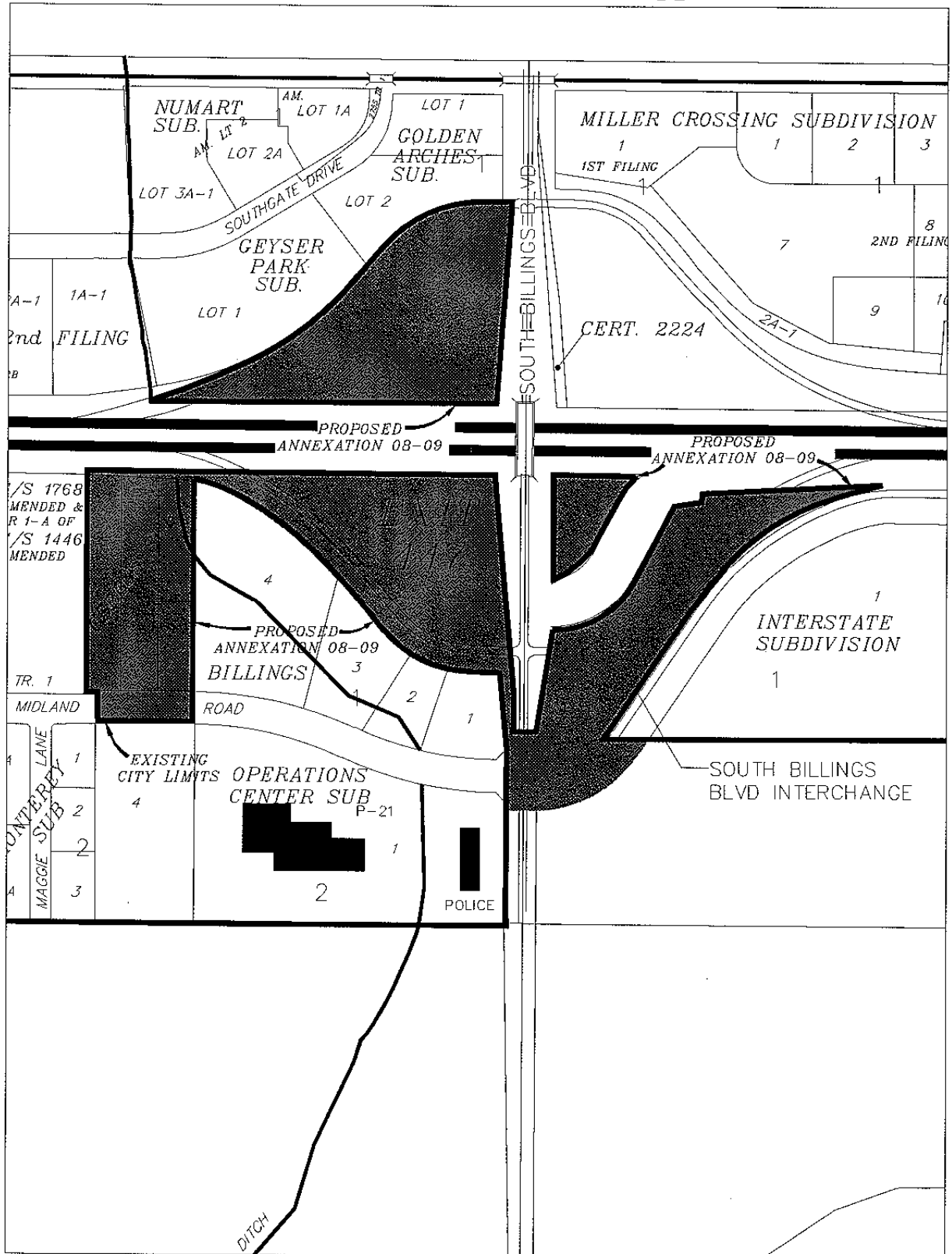
ATTEST:

BY: _____

CITY CLERK

(AN 08-09)

EXHIBIT A

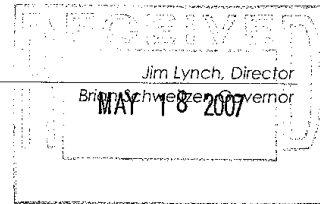


Attachment B
Approval letter from MDT for I-90 right-of-way annexation



Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001



May 17, 2007

Tim Grant
City of Billings
500 North Broadway
Billings MT 59102

Subject: I 90-8(120)447
South Billings Blvd Interchange
1256-120-000

Enclosed you will find the original Request for Annexation from the Montana Department of Transportation (MDT) to City of Billings (City).

Please let me when this property is annexed into the City.

If you have any questions, please call me at the number listed below.

Carla J. Haas
Property Manager
Real Estate Services Section
(406)-444-6387

Cc: Bruce H. Barrett, District Administrator-Billings

BA0720-666

IR 90-8(120)447, South Billings Blvd Interchange, 1256-120-000**REQUEST FOR ANNEXATION**

WHEREAS, the STATE OF MONTANA, Department of Transportation is the owner of the hereinafter described property/right-of-way; and

WHEREAS, the hereinafter described property is the on/off ramps for the South Billings Blvd Interchange along Interstate 90 as follows:

Being part of the NW $\frac{1}{4}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, Township 1 South, Range 26 East, P.M., Yellowstone County, Montana, and as shown by the shaded area on Exhibit A, consisting of 1 sheet attached hereto and made a part hereof.

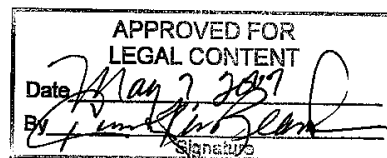
NOW, THEREFORE, pursuant to Title 7, chapter 2, part 44, Montana Code Annotated, the STATE OF MONTANA, Department of Transportation, formally advises the City of Billings, Montana that it desires to have the aforementioned land annexed to the City of Billings, Montana.

IT IS FURTHER understood by the STATE OF MONTANA, Department of Transportation, and by annexing said premises to the City of Billings pursuant hereto, the City of Billings does agree, that said property shall not be subject to assessment for any present or future Special Improvement District created by the City of Billings, including or affecting such property. Further, said property shall not be subject to present or future zoning restrictions created by the City of Billings. This request does not, however, in any way further diminish or add to the rights or duties of the STATE OF MONTANA, Department of Transportation, in relation to said property. The request shall also constitute a waiver of any notice of annexation that may be required per section 7-2-4405, MCA, AS AMENDED.

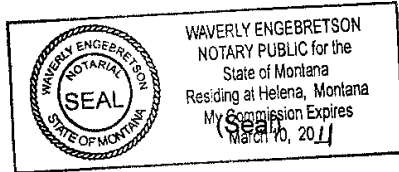
Dated this 14 day of May, 2007.

STATE OF MONTANA
Department of Transportation

By Jim Lynch
Jim Lynch
Director, Department of Transportation



Signed and sworn to before me on 5/16/07
by Jim Lynch



Waverly Engbretson
Notary Signature Line
Waverly Engbretson
Notary Printed Name
Notary Public for State of Montana
Residing at: Helena
My Commission Expires: 3/10/11

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, January 12, 2009

TITLE: Zone Change #852 Public Hearing and 1st Reading of Ordinance – @5019 Midland Road

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Entryway General Commercial (EGC) to Highway Commercial (HC) on Lots 1 – 3, Block 1, Cereus Subdivision located immediately east of 5021 Midland Road. The applicant is Brumar Corporation (Motor Power Equipment) and the agent is Engineering, Inc. A pre-application neighborhood meeting was held at Motor Power Equipment at 4941 Midland Road on October 27, 2008. The Zoning Commission conducted a public hearing on December 2, 2008, and is forwarding a recommendation of approval on a 4-0 vote.

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

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

FINANCIAL IMPACT: The proposed zone change should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #852 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

INTRODUCTION

The applicant is requesting to rezone three lots adjacent to its existing building at 4941 Midland Road. The applicant has owned these parcels since 1995 and Lots 1 and 2 are currently developed for parking. Lot 3 is not developed at this time. The main building for Motor Power Equipment is on a lot immediately to the west outside Cereus Subdivision and was developed in 1981. In 1995, the parking area was expanded on to Lots 1 and 2. The owners wish to expand the building and intend to use part of Lot 1 and possibly Lot 2. The building is located in a HC zone and the adjacent lots are zoned EGC. Expansion of the building into this differently zoned area creates an inherent conflict in site development standards not applicable to other property in the area. There are several truck service facilities in the area including the new Billings Operation Center, Cummins Rocky Mountain, C & L Truck Repair and Craig's Auto Service.

PROCEDURAL HISTORY

- On October 27, 2008, the pre-application neighborhood meeting for the proposed zoning application was conducted at Motor Power Equipment at 4941 Midland Road.
- On November 3, 2008, a zone change application was submitted to the Planning Division.
- On December 2, 2008, the City Zoning Commission conducted a public hearing on the proposed zone change and forwarded a recommendation of approval to the City Council on a 4-0 vote.
- On January 12, 2009, the City Council will conduct the public hearing for the the zone change.
- On January 26, 2009, if the zone change is approved on first reading, the second reading of the zone change will be conducted.

BACKGROUND

The 2003 Growth Policy encourages compact commercial development where arterial streets exist to handle increased traffic. The proposed HC zoning district for these three lots adjacent to developed commercial property on a minor arterial street meets these policy goals. The applicant conducted a pre-application neighborhood meeting to discuss the zone change. None of the surrounding property owners attended the meeting. The Planning Division has not received any comments or concerns from the surrounding property owners.

The proposed zoning will allow the property owner to develop the property under a single zoning designation. Lot 3 is the only undeveloped portion of the property. There were no concerns expressed at the pre-application neighborhood meeting. The Planning Division has not received any phone calls or letters regarding the application.

Midland Road is a minor arterial street and most property is zoned HC with the exception of lots on the north side of street from the intersection of South Billings Boulevard west to Lot 1 of Cereus Subdivision that are zoned EGC (See Attachment A). Midland Road carries approximately 4,000 vehicle trips per day. The applicant is not proposing any development that would significantly add to this average traffic load.

The property is located within the South Billings Boulevard Master Plan area. The South Billings Boulevard Master Plan was first adopted by the City and County in 1993. In 1995, a zone change

from HC to EGC was initiated by the previous owner of the subject property, Robert Studer. Mr. Studer subsequently sold the property to Brumar and it was developed for parking. There is some landscaping along both the Midland Road street frontage and the property adjacent to I-90. The South Billings Boulevard Master Plan indicates this area should be zoned EGC. These lots are on the western boundary of the 1993 master plan area. The master plan is similar to a neighborhood or area plan and is considered a part of the overall Growth Policy. The adopted master plan is intended to inform and guide decisions on zone changes but is not intended to have a regulatory effect. The purposes of the South Billings Boulevard Master Plan is to provide interstate related goods and services to the traveler as well as maintain the aesthetic qualities of the surrounding area, encourage creativity in design, and provide for harmonious land design. Changing the zoning from EGC to HC will not have a significant impact on the surrounding property nor will it result in a development that is detrimental to the purposes of the South Billings Boulevard Master Plan.

The lots to the west and northwest are zoned HC and have been fully developed for commercial uses. The property directly south of the subject property is zoned Public and is the site of the Billings Operation Center. Additional property to the south is HC and is the location of Americlean, a property restoration service and several other small businesses. The zone change should assist in maintaining a continuous building design for the property owner and promote in-fill on the remaining undeveloped lot adjacent to the Police Department Impound.

Planning staff forwarded a recommendation of approval to the Zoning Commission for this application. The subject property is adjacent to an arterial street and the property is appropriate for Highway Commercial uses and development. The zone change will not alter the character of the South Billings Boulevard Master Plan area since 2 of the 3 lots have already been developed for Motor Power Equipment. The proposed zoning is compatible with the surrounding zoning and neighborhood character. The Zoning Commission concurred with this recommendation. Staff based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change 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 6)*

The proposed zoning would allow commercial development on an arterial street that is consistent with all surrounding land uses and zoning. Land uses on Midland Road are primarily to serve the interstate traveler and the HC zone is specifically designed for uses and services for highway travelers.

- *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 proposed zoning is consistent with the surrounding character of Midland Road. City development codes will require some upgrades to landscaping if a building addition is 25% or more of the existing floor area.

2. *Is the new zoning designed to lessen congestion in the streets?*

Midland Road is a minor arterial that carries approximately 4,000 vehicle trips per day. No significant increase in traffic load is anticipated from this zone change since 2 of the 3 lots have already been developed for Motor Power Equipment.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by City Fire and Police. Any development will require a minimum width for access drives; turn around areas, and provision of water for fire protection. The property is proposed for annexation which will provide those city services.

4. *Will the new zoning promote health and general welfare?*

The current and proposed zoning have slightly different building heights. HC allows 45 foot buildings and EGC only allows 40 feet. There are no residential uses within the immediate area. The proposed HC zone will unify the zoning codes that apply to all the land under single ownership of Brumar Corporation on Midland Road. There are no significant differences in allowed uses between HC and EGC.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The current EGC zone allows 50% lot coverage and the proposed HC zone allows 75% lot coverage. The proposed increase in lot coverage should not overcrowd the property.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning would allow multi-family residences at the same density as RMF-R. The maximum density on this parcel would be 143 dwelling units or 28 dwelling units per acre. It is not likely this density could be achieved based on the maximum building height of 45 feet, requirements for off-street parking, drive aisles and landscaping. In any event, the applicant has already developed 2 of the 3 lots for parking lot, intends to expand the existing business with a building addition, and does not intend to construct residential units on the property.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation:	The proposed zoning should have no significant impact on the arterial street. If an application for a building permit is submitted in the future the City Traffic Engineer will evaluate the site for traffic impacts.
-----------------	--

Water and Sewer:	The City will provide water and sewer to the property through existing lines on the applicant's property and in Midland Road.
Schools and Parks:	There should be no impact on schools or parks from this commercial development.
Fire and Police:	The subject property is currently served by the City of Billings Fire Department and will be served by the police department upon annexation of the property.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will permit commercial uses to expand on property under a single zoning district rather than split zoning for one property owner with one development. The South Billings Boulevard Master Plan has allowed the development of many facilities for interstate travelers in this area. The property will continue to serve those policy goals and future development of Lot 3 will enhance the character of the existing developments in the area. The new zoning gives reasonable consideration to the existing character of the district.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. Many properties directly west and north of the subject property are zoned HC and there are no significant differences in uses allowed in EGC and HC zones.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. As development continues along Midland Road, land and building values should increase as infrastructure is installed and improved.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will encourage the most appropriate use of this land on a minor arterial street in the South Billings Boulevard Master Plan area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan and discussed within the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on December 2, 2008, and forwarded a recommendation of approval to the City Council on a 4-0 vote. The agent, Tim Pirtz, P.E. from Engineering, Inc. and applicant Brumar Corporation were present at the Zoning Commission meeting and explained the application. There was no further public comment at the meeting and no discussion by the Zoning Commission.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #852 and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

Attachment A

Site Photographs, Zone Change #852 – 5019 Midland Road

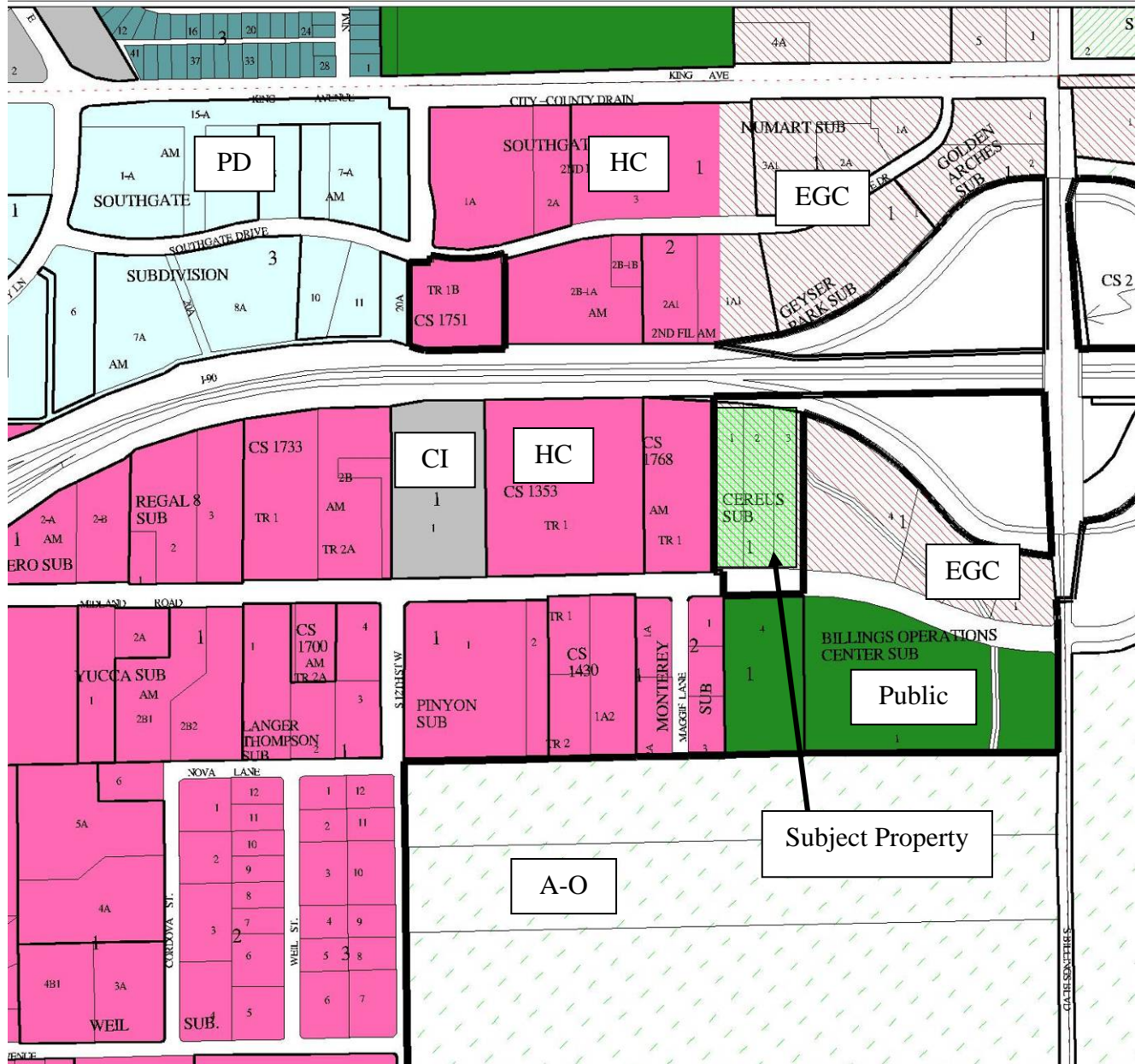


Subject Property with existing parking area



View northwest from Midland Road

Attachment B
Surrounding Zoning - Zone Change #852 – 5019 Midland Road



Attachment C

Zone Change #852

ORDINANCE NO. 08-_____

AN ORDINANCE AMENDING THE ZONE
CLASSIFICATION FOR Lots 1, 2 & 3 of Block 1,
Cereus Subdivision containing 5.03 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 Lots 1, 2 & 3 of Block 1, Cereus Subdivision containing 5.03 acres and is presently zoned **Entryway General Commercial (EGC)** 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 **Entryway General Commercial (EGC)** to **Highway Commercial (HC)** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Highway Commercial (HC)** 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 12, 2009.

PASSED, ADOPTED AND APPROVED on second reading January 26, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
January 12, 2009

TITLE: 2008 Growth Policy Update – Public Hearing and Resolution to Adopt
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The 2003 Yellowstone County and City of Billings Growth Policy has been in place as a guiding document for growth-related issues in this County for five years. Under Section 76-1-601, Montana Code Annotated (MCA), communities are required to review and revise their growth policies every five years. The review is to determine what updates need to be made to the document to keep it current and to ensure that the goals and objectives outlined in the Policy are still in alignment with the community's desires. Over the past six months, Planning staff has been preparing an update to the 2003 Growth Policy by incorporating up-to-date community background data, holding public meetings, collecting public opinion and preferences, and drafting a new 2008 Growth Policy document. Additionally, the Planning Board held a public hearing to take public testimony on the proposed draft on October 28th, and afterward continued to review and refine the document at subsequent special meetings. On November 25th, the Planning Board voted 8-0 to recommend adoption of the 2008 Growth Policy Update to the City Council. On December 15, 2008, City Council held a public hearing and voted 7-4 to adopt a resolution of intent to adopt the 2008 Yellowstone County and City of Billings Growth Policy Update and hold a public hearing at its next meeting. A second public hearing was scheduled for January 12, 2009 and a resolution to adopt the Growth Policy Update will be considered at this meeting.

ALTERNATIVES ANALYZED:

As outlined in 76-1-604, MCA, a governing body may revise its growth policy by adopting a resolution of intent to adopt, adopt with revisions, or reject the proposed amended growth policy. The Council adopted such resolution on December 15, 2008, and now may consider adopting a resolution to adopt the amended growth policy at the January 12, 2009 meeting.

FINANCIAL IMPACT: Adoption of the 2008 Growth Policy Update should not have a direct financial impact on the City.

RECOMMENDATION

The Yellowstone County Board of Planning recommends that the City Council hold the public hearing and adopt the resolution to adopt the 2008 Growth Policy Update.

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

ATTACHMENTS

- A. Resolution of Intent to Adopt the 2008 Growth Policy Update
- B. Citizen written comments received since December 15, 2008

ATTACHMENT A

RESOLUTION. 09-_____

**RESOLUTION TO ADOPT THE YELLOWSTONE COUNTY - CITY OF BILLINGS
2008 GROWTH POLICY UPDATE**

WHEREAS, pursuant to Title 76, Chapter 1, PART 6, Montana Code Annotated, the Billings City Council desires to adopt a Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction;

WHEREAS, the Growth Policy contains those elements listed in subsection (3) §76-1-601, MCA;

WHEREAS, on the 28th day of October, 2008, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Growth Policy and on the 15th day of December, 2008, and 12th day of January, 2009, the Billings City Council held public hearings for the same purpose;

WHEREAS, The Yellowstone County Board of Planning by Resolution 08-01, recommends the Billings City Council adopt the proposed Growth Policy and any ordinances and resolutions for its implementation, and;

WHEREAS, The City Council by Resolution 08-18780, intended to adopt the proposed Growth Policy and any ordinances and resolution for its implementation;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Billings City Council adopts the Yellowstone County – City of Billings 2008 Growth Policy Update.

APPROVED AND PASSED by the City Council of the City of Billings this 12th day of January, 2009.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

ATTACHMENT B

Spalding, Juliet

From: Brad McCall [brad@mccalldevelopment.com]
Sent: Thursday, December 18, 2008 11:47 AM
To: Spalding, Juliet
Subject: Trails in the Growth Policy

To whom it may concern:

It has come to my attention that some of the wording in the growth policy namely:

5. Consider amending local subdivision or site development regulations to require nonmotorized trail/access connections for all new development where either trails are identified on the Heritage Trail Plan or an existing trail or park area already abuts the development.

has been removed by the county commissioners. I believe this is a foolish move. A few years ago, when I was on the subdivision regulations update committee, I was amazed that this wasn't a part of the regulations. It stated that developers would be "encouraged" to dedicate trail corridors. The trouble with this is simply that if the developer decides not to allow the trail corridor to cross the land, and there is no other way around, that corridor is dead. You could even have one developer who builds (or dedicates) a trail corridor, and have the next development decide not to allow the trail corridor, thereby rendering the existing trail useless, because it is a dead end. We need a trail system, not trail chunks. A road that leads from nowhere to nowhere is of no use. It's the same with trails.

Trails need to be included as a part of the subdivision regulations if a trail system is going to be a reality. New subdivisions are required to give land for parkland dedication. Requiring that this land is of use, i.e. as a trail corridor, is just good policy for all stakeholders: City, residents, and the builders/developers. People are seeking trails and other amenities in the place where they live. Trails add value to development!! There have been some vocal opponents to trails who have tried to assert the idea that identified trail corridors are somehow a "taking" or a detriment of some kind against the values of the land around or under the identified corridor. I would assert that exactly the opposite is true. As a developer, and a resident of our community I support the development of a TRAIL SYSTEM, not just small trail chunks, in our community. A true linked Trail system would be of benefit to our Environment, Public health, and Economic development.

Thank you for your consideration.

Sincerely,

Brad McCall

McCall Development
Office: 406.651.5354
Fax: 406.651.5364
Cell: 406.591.4748
brad@mccalldevelopment.com

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THE CITY OF BILLINGS NEEDS TO UPDATE IT'S ANIMAL CONTROL LAWS IN ORDER TO BRING IT IN LINE WITH WHAT OTHER CITIES ITS SIZE HAVE DONE, TO PROTECT ITS CITIZENS AND PETS.

IN THE LAST YEAR THERE HAS BEEN A 25% INCREASE IN THE NUMBER OF REPORTED ANIMAL BITES IN BILLINGS BASED ON THE CITY STATS. THIS DOES NOT INCULD THE NON REPORTED ONES.

ALSO THE NUMBER OF CERTAIN DOG BREEDS (THAT A LARGE NUMBER OF CITIES ACROSS THE COUNTY HAVE CLASSIFIED AS DANGEROUS BREEDS AND HAVE BANNED SOME OF THE BREEDS), HAVE INCREASED IN BILLINGS.

IT'S GETTING TO THE POINT WERE IT ISN'T SAFE TO WALK IN SOME RESIDENTIAL NEIGHBORHOODS AND PARKS ANY MORE.

SOME THINGS TO LOOK AT, WOULD BE:

1.SPECIFY CERTAIN BREEDS (THAT HAVE BEEN LABELED AS DANGEROUS BREEDS), IN A CODE AS SUCH. OTHER CITIES HAVE DONE THIS. A EVER INCREASING NUMBER OF HOMEOWNER INSURANCE COMPANIES ARE REFUSING TO INSURE HOMES THAT HAVE; PRESA CANARIO, PIT BULL[STAFFORDSHIRE TERRIER], ROTTWEILER, SOME OTHER BREEDS OR ANY MIX INCLUDING THESE BREEDS. BY NOT ENACTING LAWS FOR PROVEN DANGEROUS OR POTENTIALLY DANGEROUS ANIMALS, THE CITY/COUNTY MAY POSSIBLY BE HELD LIABLE WHEN THERE IS A INJURY FROM A UNISURED DANGROUS BREED.

2. KEEPING CATEGORIZE RECORDS OF THE BREEDS AND OWNERS THAT HAVE CAUSED SERIOUS INJURYS AND ALSO THE TYPES OF CITATIONS THAT ARE ISSUED OUT. THEN MAKE ADJUSTMENTS TO THE CODES TO ADDRESS THE PROBLEM AREAS.

3.MUZZLE AND LEASH LAWS FOR THE DANGEROUS BREEDS AND THE ONES THAT HAVE A BITE/AGGRESSIVENESS HISTORY.

4.SPECIFIC CONSTRUCION REQUIREMENTS FOR CONTAINMENT AREA FENCING AND INCLOSURES USED FOR ANIMALS THAT HAVE ORDERED TO BE QUARANTINE OR FOR DOGS THAT HAVE BEEN IDENTIFIED AS A DANGEROUS BREED.

5.CHANGING THE WAY THAT A PERSON IS REFERED TO CALL FOR HELP WHEN THE ANIMAL CONTROL OFFICE IS CLOSED. ONE WAY WOULD BE FOR THE RECORDING TO TELL THE CALLER TO PRESS A NUMBER IN CASE OF A EMERGENCY, THAT THEN WOULD CONNECT THEM WITH THE POLICE DEPT. WHO THEN CONTACTS THE ON DUTY ANIMAL CONTROL OFFICER. RIGHT NOW THE CALLER HAS TO REMEMBER THE NUMBER GIVEN OUT AND THEN REDIAL THE POLICE NUMBER (WHICH IS THE NUMBER GIVEN OUT IN THE PRESENT RECORDING).

6.GANGS HAVE A PREFERENCE FOR CERTAIN TYPES OF BREEDS. THEY USE THEM FOR EARLY WARNING SYSTEMS AND AS PART OF THEIR IDENTITY. THEY ARE A PART OF THE GROWING GANG ACTIVITY. THOSE BREEDS NEED TO BE INCORPORATED AS PART OF THE PLAN TO CONTROL THE GROWTH OF GANGS.

7.LOOK INTO MAKING IT ILLEGAL FOR CONVICTED FELONS TO OWN ONE OF THE LISTED DANGEROUS BREEDS.

8. 49 STATES HAVE LAWS AGAINST BEING A SPECTATOR AT DOG FIGHTS, IT'S LEGAL IN MONTANA.

9. HAVING THE ANIMAL CONTROL BOARD MEET AT LEAST ONCE A MONTH TO COME UP WITH WAYS TO AMEND THE CODE AND THEN HAVE A PUBLIC MEETING OR CITY MEETING ON THE CHANGES PURPOSED.

BY PRIVATIZING THE SHELTER, ANIMAL CONTROL MAY HAVE LOST ITS RIGHT TO EUTHANIZE DOGS THAT THEY BELIEVE TO BE A POTENTIAL DANGER IF ADOPTED OUT. THAT RIGHT MUST REMAIN ANIMAL CONTROLS DECISION FOR THE SAFETY OF THE PUBLIC.

SUBMITTED BY; DOUGLAS RUEBKE

BOX 30834

BILLINGS, MT. 59107

PH. # (406) 248-1775

LIVES AT 110 SOUTH 31 st STREET

BILLINGS, MT.

2009 Montana Legislature

UNAPPROVED DRAFT BILL -- Subject to Change Without Notice!

[Additional Bill Links](#) [PDF \(with line numbers\)](#)

BILL NO.

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PIT BULLS; PROHIBITING OWNERSHIP OF PIT BULLS AFTER A CERTAIN DATE; ALLOWING EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Pit bull dogs prohibited -- definition -- exceptions -- registration required. (1)

Except as provided in subsection (3), it is unlawful for any person to own, harbor, or keep a pit bull dog.

(2) As used in [sections 1 through 3], "pit bull dog" means:

(a) a Staffordshire bull terrier;

(b) an American Staffordshire terrier;

(c) an American pit bull terrier;

(d) an American bulldog; or

(e) any dog that has been registered at any time as a pit bull terrier or has the physical characteristics that substantially conform to the standards established for the breeds listed in this subsection (2) by the American kennel club or the united kennel club.

(3) The prohibition in this section does not apply to a person who:

(a) owned a pit bull dog and registered the ownership of the dog with the county government and obtained a license tag identifying the dog as a registered pit bull dog on or before [the effective date of this act];

(b) is temporarily transporting a securely confined pit bull dog through the state; or

(c) is showing a pit bull dog in a place of public exhibition, contest, or show sponsored by a dog club, association, or similar organization when the sponsor of the exhibition or show has:

(i) obtained written permission from the county for the showing of pit bull dogs; and

(ii) provided protective measures to prevent a pit bull dog from escaping or injuring the public.

(4) A pit bull dog registered under subsection (3)(a) must at all times wear the license tag identifying the dog as a

registered pit bull dog.

NEW SECTION. Section 2. Removal of pit bull dog -- destruction. (1) A person who owns, keeps, or harbors a pit bull dog in violation of [section 1(1)] shall surrender the dog to any peace officer or representative of a county or municipal agency with authority for animal control unless the owner provides proof that the dog:

- (a) is registered in accordance with [section 1(3)]; or
- (b) is not a pit bull dog.

(2) Pursuant to a search warrant supported by probable cause and issued by a district court judge, municipal court judge, or justice of the peace, a peace officer may seize a pit bull dog and place the dog with the county or municipal agency with authority for animal control.

(3) Within 10 days of receiving a pit bull dog, the county or municipal agency with authority for animal control shall euthanize the dog unless the owner provides proof that the dog is not a pit bull dog or that the dog was registered and exempt from the provisions of [section 1(1)].

(4) The county may establish a fair hearing process for an appeal of a determination that a dog is a pit bull dog.

(5) Expenses incurred by the animal control agency under this section must be paid by the owner of the pit bull dog.

NEW SECTION. Section 3. Control of pit bull dogs. The owner of a pit bull dog that is exempt from the provisions of [section 1(1)] shall:

- (1) keep an unleashed, unmuzzled dog confined to the owner's premises;
- (2) keep the dog muzzled and on a leash when the dog is outside of the owner's premises;
- (3) within 30 days of registering ownership with the county, provide the county with proof from a licensed veterinarian that the pit bull dog has been neutered or spayed or is incapable of being neutered or spayed.

NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 7, chapter 23, part 1, and the provisions of Title 7, chapter 23, apply to [sections 1 through 3].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of LC 1087 (LC1087.01)

Processed for the Web on December 19, 2008 (9:56am)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2009 Legislature](#) | [Leg. Branch Home](#)

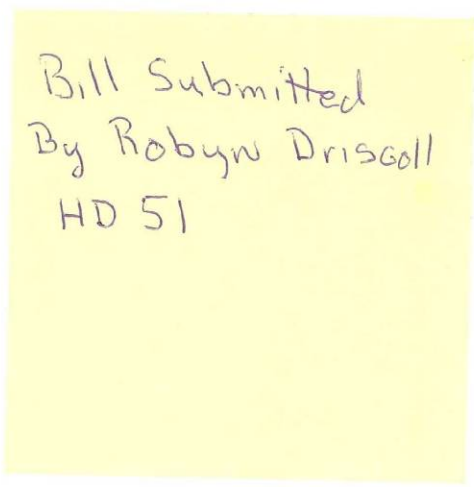
[This bill in WP 5.1](#) | [All versions of all bills \(WP 5.1 format\)](#)

[Authorized print version w/line numbers \(PDF format\)](#)

[[NEW SEARCH](#)]

Prepared by Montana Legislative Services

(406) 444-3064



Bill Submitted
By Robyn Driscoll
HD 51

COMMENTS ON 2008 GROWTH POLICY UPDATE

GENERAL COMMENTS

1. It is lamentable that the Growth Policy update does not in any way address the issue of climate change. This issue is going to significantly affect every community in the Nation including Billings. Climate change was brought up at least once during the public meetings and during discussion of specific elements such as the need to encourage green buildings and more mass transit. Arguably, climate change should have been given the status of a new element in the update such as was afforded community health. There are numerous occasions in the update where this issue would have been relevant and important to the discussion. At ground level, we are all aware there is political resistance in Billings to even talking about climate change. But that is not going to get us off the hook. There were occasions during the public meetings when perhaps a little more staff initiative could have resulted in better coverage of this important issue. That it was not leaves one with the impression it somehow is a taboo subject. If this is so, it will only make the issue harder to deal with when it comes our turn. And we will have to deal. The quality of this Growth Policy update suffers accordingly and a grand opportunity has been missed.

2. The City-County Planning staff is to be commended for their fine effort on this update, such as it is. They are not paid nearly enough considering the quality of their work and contribution to our community.

SPECIFIC COMMENTS

Implementation Strategies: Economic Development Element

1. **POLICY # I** This policy statement leaves one guessing as to who is expected to collaborate. Is it directed to all city and county agencies? Can this be stated better?
2. **ISSUE # IX** This discussion of TIFs in the Heights needs to add a strategy: "Examine if and how much TIFs are accepted by the broader community." The reason is these mechanisms are inherently unfair to other taxpayers because they divert tax revenues to special areas and special interests and leave less tax revenue for public needs. Almost all appear directed to business interests; few are used for developments that benefits the public. There has been little or no public discussion about the pros and cons of TIFs.

Implementation Strategies: Aesthetic Element

3. **ISSUE # I, section 2. Yellowstone River**
Strategy a. would sound better if revised to read: "Restrict further industrial development adjacent to the Yellowstone River through zoning."

Implementation Strategies: Natural Resources Element

4. ISSUE # I

Need to add a most important strategy that is missing: Enforce existing state and federal laws intended to protect riparian resources. (Comment: There have been glaring violations of Section 404 of the federal Clean Water Act by at least on big landowner (Blaine) along the Yellowstone. This includes constructing unpermitted levees in the channel of the river to force the river to flow away from “threatened” private property.)

5. POLICY # VI

Strategy 3 has been blurred by replacing “environmentally sensitive areas” with an extremely vague term called “open space”. What is gained by defining and mapping the former (strategy #1) if you then water down the best means of protection which is acquisition. Should change back to the original wording.

Implementation Strategies: Open Space and Recreation Element

6. **ISSUE # 1** This could be better worded. How about: inadequate instead of tight?

7. Implementation Strategy # 4 has been completely eliminated. It should be reinstated. This strategy is intended to address the fact that the County Park Fund holds tens of thousands of dollars of cash-in-lieu money that is dedicated to specific communities for park development. As of 2004, the Blue Creek area alone had available over \$26,000. State subdivision law requires these monies be used in the area or communities where the contributing subdivisions are located. Strategy #4, if implemented, would alert the affected communities about the existence of this money. Most residents aren’t aware the money exists and may be available to their neighborhoods. A major reason for this state of affairs is there has never been a public accounting for these funds, which should have been done on an ongoing basis under good accounting practices. A public accounting was called for in the 2003 Growth Policy but was ignored by the County Commissioners and county financial managers. The reason for this is unclear. Perhaps no accounting is wanted because it would show that money for parks is not as scarce as issue statement #1 and the County Commissioners would have us believe. A fair question to ask is: What does the County plan to do with these funds since, by state law, they can only be used in designated neighborhoods?

8. Strategy #7 is good because at one time there were over 200 tracts of undeveloped parkland in the city and county. However, another strategy needs to be added to supplement strategy #7 because neighborhood residents are very sensitive to disposal of undeveloped parkland. The new strategy should state in effect: “Hold public meetings in all neighborhoods and communities county-wide asking residents what should be done with undeveloped parkland “. (Unless strategy #5 would serve the same purpose).

POLICY # II

9. Strategy #1 changes the wording from “Submit” to “Consider asking the voters...” The former leaves little wiggle room. But the latter can be dispensed with in a brief bureaucratic discussion. Such editing changes indicate fear of the democratic process. Why not go ahead and ask the people?

POLICY #III

10. Strategy #4 could use some more commas.

POLICY # IV

11. Suggest rewording strategy #2 as follows: Provide shoulders or bike lane improvements on City streets and County Roads where appropriate and feasible.

12. There is no good rationale for totally eliminating what was previously strategy #5. I believe this was proposed during the recent updating of city and county subdivision regulations. Was it eliminated then also? To totally eliminate this strategy strongly suggests an anti trail mindset and is detrimental to other efforts in this Growth Policy towards improving the quality of life in new subdivisions.

13. Re strategy #6, it is unclear why one would only wish to “consider adopting” such procedures and design standards that are obviously needed. Why not be definite?

POLICY # VI

14. Suggest reword strategy #1 to read: “Where feasible and appropriate, acquire dedicated land or easements.....”

Implementation Strategies: Transportation Element

POLICY # XI

15. Regarding the elimination of strategy #1: If such reallocation is legal, why not keep this option for the sake of flexibility?

Implementation Strategies: Public Facilities and Services Element

POLICY # II

16. Strategy #5 and #6. Use of the word “may” amounts to giving permission to do these things. Is that the proper role of the Growth Policy?

POLICY # IV

17. Suggest rewording this policy as follows: “Provided adequate funding is available, strive to provide safe, functional.....”

ISSUE # VI

18. This issue reads like a strategy. Suggest reword as follows: “The allocation of public funds among city and county neighborhoods is not done fairly or equitably.”

19. Consider (there, you've got me doing it too!) adding as a strategy: "Review the methodology used to distribute public funds."

POLICY #VIII

20. Suggest reword this policy as follows: "The City and County should strive to ensure equitable provision of community programs and services."

POLICY IX

21. Strategy #1 should start as: "Any revision of zoning..."

Implementation Strategies: Cultural and Historic Resources Element

POLICY IV

22. The third line in strategy #1 should be corrected to read: "...probability of such sites..."

23. As way of comment, there are several professional archeologists in and around Billings. Conduct of archeological surveys is a new concept in the area except for federal actions which require them for ground disturbing activities. Suggest adding a strategy as follows: "Encourage professional archeologists to organize and conduct archeological surveys using local volunteers such as retired persons, and high school and college students, whenever funding for a proper survey is unavailable and development threatens critical or sensitive areas."

Comments by: Auzie Blevins
December 23, 2008

