

**Note: Supporting documents follow agenda.**

# CITY OF BILLINGS

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

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

## AGENDA

## **CALL TO ORDER – Mayor Tussing**

## **PLEDGE OF ALLEGIANCE – Mayor Tussing**

## **INVOCATION – Councilmember Brewster**

## ROLL CALL

## MINUTES – January 12, 2009

## MANNERS AND COURTESIES

## COURTESIES PROCLAMATIONS

## PROCLAMATIONS ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 8 ONLY.**

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

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

## **CONSENT AGENDA:**

## 1. A. Bid Awards:

(1) **High Speed Runway Broom** (Opened 1/13/09) Recommend M-B Companies, \$503,298.

B. **Change Order No. 2**, W.O. 06-22, L-Structure Improvements, Williams Brother Construction, \$19,235; and authorize increasing the City Administrator's authority to approve change orders by \$100,000 to \$201,600.

C. **Amendment #1**, W.O. 07-15, General Engineering Services Contract, HDR Engineering, Inc., \$215,000.

D. **Approval** of 5-year Airport Business Park Building and Ground Lease with the State of Montana Department of Natural Resources and Conservation (11/1/08 through 10/31/2013); \$62,828.52 revenue first year; subsequent years adjusted according to the CPI-U.

E. **Perpetual Right-of-Way Easement** with South Billings Center, LLC; Cabela's Retail, Inc.; and Sam's Real Estate Business Trust for Lots 1-7 and Lots 9-10, Block 1, Miller Crossing Subdivision and Lots 2A through 3A and 2A through 4A, Block 1, Amended Miller Crossing Subdivision.

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

G. **Approval** of Misdemeanor Probation Domestic Violence Grant application; required 25% City of Billings match – approximately \$18,000 to be paid for in soft match and from the 2010 Police Department Training Fund.

H. **Approval and acceptance** of FY2008 Assistance to Firefighters Grant Award for purchase of trench and confined space equipment - \$137,535. FEMA's share - \$110,028; City's share - \$27,507, to be paid from the Fire Department budget.

I. **Approval and acceptance** of Pass Thru Grant Funds from the State of Montana for Hazmat Regional Response Team; \$44,167 with no required match from the City.

J. **Resolution of Intent** creating SILMD 306; and setting a public hearing date of February 23, 2009.

K. **Second/Final 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.

L. **Bills and Payroll**

- (1) December 29, 2008
- (2) January 2, 2009

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

**REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION** establishing a Public Works Department Master Site Plan Review Fee in the amount of \$331. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
3. **PUBLIC HEARING** on the proposed Neighborhood Stabilization Plan, approval of the funding application to the State Of Montana Department of Commerce, and approval to amend the FY2008-2009 Annual Action Plan to include the Neighborhood Stabilization Program. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING FOR SPECIAL REVIEW #871:** A special review to add an all-beverage license without gaming within the existing Rock Creek Coffee Roasters business located in the Babcock Building in the Central Business District zone; addressed as 124 North Broadway and legally described as Block 93, Lots 6-12, Billings Original Town. The Babcock, LLC, owner; Randy Heiser, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)
5. **PUBLIC HEARING FOR SPECIAL REVIEW #872:** A special review to allow a sandblasting operation in an existing building in a Controlled Industrial zone located at 2224 Minnesota; legally described as Lots 7-18, Block 134, Billings Original Town. Midland West Manufacturing, owner; PowderKote Unlimited, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)
6. **PUBLIC HEARING AND SPECIAL REVIEW #873:** A special review to allow a drive-through window for Albertson's Pharmacy in a Community Commercial zone adjacent to a Residential 7000 zone, described as Tract A of Certificate of Survey 2192, and located at 1212 Grand Avenue. Albertsons, applicant; CTA Architects and Engineers, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)
7. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward I to include recently annexed property in 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 approval. (Action: approval or disapproval of staff recommendation).
8. **CITY ADMINISTRATOR CONTRACT** with Tina Volek. (Action: approval or disapproval of contract.)

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

**Council Initiatives**

**ADJOURN**

*Additional information on any of these items is available in the City Clerk's Office.*

*Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.*

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

# A1

AGENDA ITEM:



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, January 26, 2009

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**TITLE:** Award of the High Speed Runway Broom for Billings Logan International Airport

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** This project is for the purchase of a new High Speed Runway Broom to be used to clear the runways, taxiways, and ramp areas of snow, ice, and other debris, and was approved in the City's Budget process. This equipment is critical to ensuring safe air carrier flight operations, since "brooming" the runways and taxiways soon after the snowfall begins can prevent ice from developing on these surfaces thereby providing a safer surface for aircraft landing and takeoffs. On January 13, 2009, the following bids on this equipment were received:

<u>COMPANY</u>	<u>PRICE</u>
M-B Companies	\$503,298
Oshkosh Corporation	\$529,631
ESTIMATE	\$540,000

**FINANCIAL IMPACT:** The total cost of this equipment is \$503,298, and will be paid for with Passenger Facility Charge (PFC) Funds.

### **RECOMMENDATION**

Staff recommends that City Council approve the award of the High Speed Runway Broom to the low bidder M-B Companies, for the amount of \$503,298.

**Approved By:** City Administrator City Attorney

# B

AGENDA ITEM:



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** W.O. 06-22—L-Structure Improvements, Change Order Number Two  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** HDR Engineering, the designer and consultant for W.O. 06-22, improvements to the L-Structure at the Water Treatment Facility (WTF), has submitted Change Order Number Two to modify the construction contract with Williams Brother Construction (WBC). Change Order No. Two involves labor and materials related to moving the freeze wall into the channel of Intake No. 1 and shortening the apron in the bottom of the channel. No additional time is requested, but additional costs result from the recommended changes, as outlined below.

Some problems were encountered with the L-Structure Improvements project at the WTF. The original project plan was to take the L-Structure and associated Intake No. 1 out of service during construction, and Intake No. 2 would be used to bring water from the river into the WTF pretreatment system. However, due to low water levels and icing problems, Intake No. 2 would not provide a sufficient amount of water to meet the WTF daily requirements. The L-Structure and Intake No. 1 had to be put back in service, and the inlet had to be excavated deeper to remove an ice jam, allowing ample amounts of water to be brought from the river. The original project plan was to install a "freeze wall" at the inlet of Intake No. 1 to prevent river water from entering the channel during construction. However, the emergency excavation of the inlet resulted in too deep of a hole to utilize the original configuration of the "freeze wall". The "freeze wall" must be moved four feet into the channel, and the method of constructing the "freeze wall" must be modified. The new reinforced concrete apron to be installed in the bottom of the channel will be four feet shorter than originally designed, but an unreinforced concrete seal will be installed in the four-foot area at the end of the project, resulting in the channel meeting original design parameters. The labor and materials required for this change result in additional costs of \$19,235.00.

In summary, Change Order Number Two creates an increase of \$19,235.00 to the contract amount, but no change to the schedule for time of completion. This puts the total amount of change orders for this project over 10 percent of the original contract amount, so Council approval is required. The Change Order Cover Sheet is shown in Attachment A.

Under Section 13-502 of the City Code, Ordinance No. 07-5397 authorizes the City Administrator to execute amendments or change orders to all contracts if, among other things, the increase in contract amount does not exceed the lesser of 10 percent of the contract price, \$500,000, or the original budgeted contingency. Council approved this ordinance January 8, 2007, and it became effective February 8, 2007.

The original contract amount for W.O. 06-22 was \$1,016,000.00, so Administrative approval is limited to \$101,600.00. Change Order No. One, approved January 2, 2009, essentially approved emergency measures to allow sufficient amounts of water to be obtained from the river to meet the City's daily water requirements. CO #1 increased the contract amount by \$96,575.00, nearly equaling the limit for Administrative approval.

This project is still in the very preliminary stages of construction, so, in addition to approving Change Order No. Two, Staff is requesting Council to grant the City Administrator additional change order authority of \$100,000 above the total of Change Orders 1 and 2.

**FINANCIAL IMPACT:** This project is being funded by water revenues, account #416-7493-603-9340. CO #2 represents an addition to the project's costs. The approved project budget includes a contingency to pay for unforeseen circumstances characteristic with those depicted above. There are adequate funds available to cover the additional costs of CO #2 as well as future costs requested to be approved by the City Administrator. The table below summarizes the financial impact to the project.

ORIGINAL CONSTRUCTION CONTRACT:	\$1,016,000.00		
	Amount	% of Contract	Total % of Contract
Change Order 1 (Addition)	\$ 96,575.00	9.51%	
Change Order 2 (Addition)	\$ 19,235.00	1.89%	
TOTALs to date: \$ 115,810.00			11.40%

### **RECOMMENDATION**

Staff recommends that Council approve Change Order Number Two to the construction contract with Williams Brother Construction for W.O. 06-22—L-Structure Improvements, adding \$19,235.00 to the contract, and that the City Administrator's change order authority be increased by \$100,000.00.

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

### **ATTACHMENT**

A.      Cover sheet of Change Order Number Two

# ATTACHMENT 'A'

## CHANGE ORDER

No. Two (2)

DATE OF ISSUANCE January 8, 2009

EFFECTIVE DATE January 8, 2009

OWNER City of Billings Montana  
CONTRACTOR Williams Brother Construction  
Contract: N/A  
Project: L-Structure Improvements  
OWNER's Contract No. W.O. 06-22  
ENGINEER HDR Engineering, Inc.

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

See attached CPR (Change Proposal Request) No. 2

Reason for Change Order:

See attached CPR (Change Proposal Request) No. 2

Attachments: (List documents supporting change)

See attached CPR (Change Proposal Request) No. 2

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price \$ 1,016,000.00	Original Contract Times: Substantial Completion: April 1, 2009 Ready for final payment: (days or dates)
Net Increase (Decrease) from previous Change Orders No. 0 to 1: \$ 96,575.00	Net change from previous Change Orders No. 0 to No. 1: Substantial Completion: 30 Calendar Days Ready for final payment: (days)
Contract Price prior to this Change Order: \$ 1,112,575.00	Contract Times prior to this Change Order: Substantial Completion: May 1, 2009 Ready for final payment: (days or dates)
Net increase (decrease) of this Change Order: \$ 19,235.00	Net increase (decrease) this Change Order: Substantial Completion: 0 Calendar Days Ready for final payment: (days)
Contract Price with all approved Change Orders: \$ 1,131,810.00	Contract Times with all approved Change Orders: Substantial Completion: May 1, 2009 Ready for final payment: (days or dates)

RECOMMENDED:  
By Mark Leip  
(ENGINEER - Signature)  
Date: 1/9/09

APPROVED:  
OWNER (Authorized Signature)  
Date: \_\_\_\_\_

ACCEPTED:  
CONTRACTOR(Authorized Signature)  
Date: 1-9-09

EJCDC 1910-8-B  
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** W.O. 07-15 General Engineering Services Contract Amendment No. 1  
**DEPARTMENT:** Public Works/engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** At the February 11, 2008, City Council Meeting, HDR Engineering and Brown and Caldwell Engineering were each awarded a W.O. 07-15 General Engineering Services Contract. The contracts have three year durations and \$250,000.00 ceiling amounts. HDR has completed numerous projects for the City and has reached the contract ceiling amount. In order to complete additional projects under this contract, a Contract Amendment needs to be executed to increase the contract ceiling amount. This will be HDR's last amendment for this contact before a new Statement of Qualifications for Engineering Services is issued.

**ALTERNATIVES ANALYZED:**

- Approve the General Engineering Services Contract Amendment No. 1 for HDR Engineering.
- Do not approve the General Engineering Services Contract Amendment No. 1 for HDR Engineering.

**FINANCIAL IMPACT:**

The Contract Amendment will add an additional \$215,000.00 to the original contract amount. Engineering fees will be paid out of each individual project budget.

**RECOMMENDATION**

Staff recommends that Council approve the General Engineering Services Contract Amendment No. 1 for HDR Engineering.

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

**ATTACHMENTS**

- A. HDR Engineering Contract Amendment No.1

Amendment No. 1  
To  
Contract for Professional Architectural and Engineering Services

W.O. 07-15 – General Engineering Services

THIS AGREEMENT, made and entered into on \_\_\_\_\_, 2009, by and between the following:

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

and

HDR Engineering, Inc  
2913 Millennium Circle  
Billings, MT 59102  
hereinafter designated the CONTRACTOR

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated February 11, 2008, for Contractor to provide general engineering services to the City for W.O. 07-15 General Engineering Services and;

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

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

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

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

Part I Special Provisions, Section 4.A. is amended to add the following:

Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Two hundred fifteen thousand dollars (\$215,000.00) in accordance with this Section.



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Airport Business Park Building and Ground Lease with the State of Montana Department of Natural Resources and Conservation

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** The State of Montana Department of Natural Resources and Conservation (DNRC) currently rents all of the office space on the first and second floors in the east wing of IP-9, the City owned office building located in the Airport Business Park. The DNRC also rents storage space in the basement of IP-9, as well as some ground space for vehicle storage and a garage/shop area attached to IP-9. The leased premises include 9,992.98 square feet of building space and 22,680 square feet of ground space. This State of Montana agency desires to renew the Lease for this space for another five (5) year term.

**FINANCIAL IMPACT:** This Lease will generate \$62,828.52 in the first year with subsequent years adjusted by the Consumer Price Index for All Urban Consumers (CPI-U) for the previous twelve-month period.

**RECOMMENDATION**

Staff recommends that Council approve a new five (5) year Airport Business Park Building and Ground Lease with the State of Montana Department of Natural Resources and Conservation for the term beginning November 1, 2008, and terminating on October 31, 2013.

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

# E

AGENDA ITEM:



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Perpetual Right of Way Easement from Walmart  
**DEPARTMENT:** Public Works Department – Engineering Division  
**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** With the Miller Crossing Subdivision and the proposed Sam's Club located on King Avenue East, a new public water main was constructed to serve the properties. An easement for the public utilities was granted to the city with the Miller Crossing Subdivision, and it becomes necessary to obtain an easement from Walmart for water main to be constructed with their property in front of the proposed Sam's Club.

**ALTERNATIVES ANALYZED:**

- Approve easement from Walmart for water main.
- Do not approve easement from Walmart for water main.

**FINANCIAL IMPACT:** There is no significant costs associated with approval of the easement.

**RECOMMENDATION**

Staff recommends that Council approve this easement from Walmart for a public water main.

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

**ATTACHMENT**

A. Perpetual Right of Way Easement

Return to:  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

Billings, MT (Sam's) #4805-00

**PERPETUAL RIGHT-OF-WAY EASEMENT**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the undersigned, SOUTH BILLINGS CENTER, LLC, of the address of 5850 Avenida Encinas, Suite A, Carlsbad, California 92088; CABELO'S RETAIL, INC, a Nebraska corporation of the address of 1 Cabela Drive, Sidney, Nebraska 69160; and SAM'S REAL ESTATE BUSINESS TRUST, a Delaware statutory trust of the address of 702 SW 8th Street, Bentonville, AR 72716, hereinafter called "Grantors," hereby grant and convey unto the CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee," a perpetual non-exclusive easement and right-of-way over, across, under, and through the following described tracts of real property in Yellowstone County, Montana:

An easement on Lots 1, 2, 3, 4, 5, 6, 7, 9 and 10, Block 1, Miller Crossing Subdivision and Lots 2A through 3A and 2A through 4A, Block 1, Amended Miller Crossing Subdivision as shown on the attached Public Utility Easement, Exhibit "A".

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

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

1. Grantors and their successors agree not to construct, nor cause to be constructed within the easement right-of-way, any type of building or structure such as, but not limited to, houses, garages, sheds, kennels, fences, or any other fixed objects of any kind, shape or form without Grantee's express consent. Notwithstanding the foregoing, Grantors is expressly allowed to a) pave and use the easement right of way for any pedestrian and vehicular ingress and egress such as drive aisles, drive ways, sidewalk, cross walk, and parking areas, and b) to install landscaping and landscaping facilities within the easement right-of-way, such as irrigation, berms, trees, bushes, shrubs, hedges, grass, or any other facilities or plantings of a similar nature that will be operated and maintained by Grantors.
3. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties.
4. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way; and all such work shall be done at the Grantor's expense and without expense to the City.
5. The Restrictions, Covenants, and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder. The Addendum in Exhibit B attached hereto is incorporated by this reference and made a part of this easement. In the case of any conflicts between any provisions of this easement and the Exhibit B provisions, the Exhibit B provisions control in all aspect.

(SIGNATURE PAGES FOLLOW)

## "GRANTORS"

## SOUTH BILLINGS CENTER, LLC

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

Its: \_\_\_\_\_

STATE OF MONTANA )  
County of Yellowstone ) : ss

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who signed the foregoing instrument as the \_\_\_\_\_ of SOUTH BILLINGS CENTER, LLC, and who acknowledged to me that said company executed the same.

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

Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## "GRANTORS"

## CABELA'S RETAIL, INC.

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

Its: \_\_\_\_\_

STATE OF MONTANA )  
County of Yellowstone ) : ss

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who signed the foregoing instrument as the \_\_\_\_\_ of CABELA'S RETAIL, INC., and who acknowledged to me that said company executed the same.

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

Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

"GRANTORS"

SAM'S REAL ESTATE BUSINESS TRUST

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title: Regional Vice President  
Date \_\_\_\_\_

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2008, by \_\_\_\_\_, a Regional Vice President of  
Sam's Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

"CITY"

## CITY OF BILLINGS

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

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
: ss  
County of Yellowstone )

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

Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT A

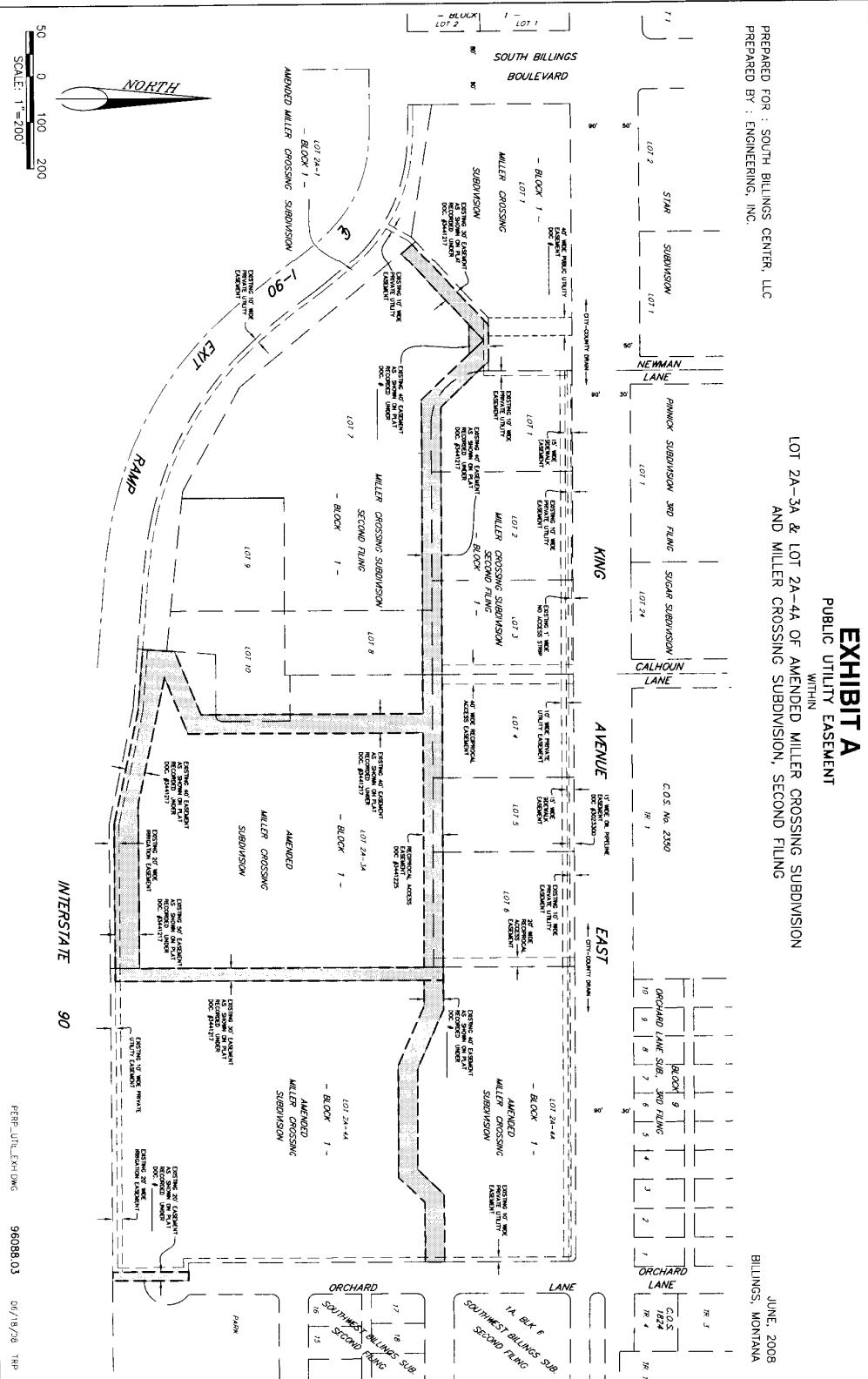
### PUBLIC UTILITY EASEMENT

WITHIN

### LOT 2A-3A & LOT 2A-4A OF AMENDED MILLER CROSSING SUBDIVISION AND MILLER CROSSING SUBDIVISION, SECOND FILING

BILLINGS, MONTANA  
JUNE, 2008

PREPARED FOR : SOUTH BILLINGS CENTER, LLC  
PREPARED BY : ENGINEERING, INC.



## EXHIBIT B

### Addendum to Easement Agreement

Notwithstanding anything to the contrary in the attached document:

Grantee agrees to use due care in any use of the easement herein granted and in the construction, installation, repair, replacement and maintenance either Grantee's improvements or the easement area as provided for herein so as not to unreasonably disturb Grantors' use of its property. At the Grantee's sole cost and expense, Grantee agrees to return and cover the easement area to asphalt surface, provided that Grantee's return and cover of the easement area must be suitable for any pedestrian and vehicular ingress and egress such as drive aisles, drive ways, sidewalk, cross walk, and parking areas.

Grantee will forever waive and hold Grantors harmless for, and defend Grantors against, any claims, losses, causes of action, and suits which arise from Grantee's, its agents', employees' or invitees' acts or omissions, including but not limited to the use of the easement herein granted and will indemnify Wal-Mart for any losses suffered due to any such claims, losses, causes of action or suits.

The easement granted hereunder is a permanent easement and will continue in full force and effect so long as the easement is used by the Grantee, its successors and assigns. Notwithstanding, Grantors shall have the right at its sole option and expense to relocate said easement upon Grantors' property. Upon fifteen (15) days written notice Grantee shall release and extinguish all its rights granted pursuant to this easement.

Grantee shall not interfere with Grantors' business operations while utilizing this easement except for repair and maintenance in emergency situations.

In exercising any rights and privileges under this easement, Grantee shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements").

Grantee shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the construction, installation, repair, replacement and maintenance of either Grantee's improvements or the easement area as provided for herein. Grantee shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those

governing the prevention, abatement and elimination of pollution and/or protection of the environment and the employment of its workers.



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
Monday, January 26, 2009

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

**DEPARTMENT:** Administration-Finance Division

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

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

On December 31, 2008, the City had a certificate of deposit at First Interstate Bank for \$1,514,795; also \$21,784,254.97 invested in the U.S. Bank Municipal Investor Accounts; and \$10,600,638.74 in the US Bank Repurchase Account. The City has \$3,500,000 in two certificates of deposit at US Bank, Billings.

Because First Interstate Bank and US Bank's net worth ratio to total assets ratio is over 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. First Interstate Bank has collateralized the City's deposits with 99% in pledged securities. US Bank has collateralized the City's Municipal Investor Account and two certificates of deposit with 113% in pledged securities. The Repurchase Account is collateralized with 102% in pledged securities.

**RECOMMENDATION**

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

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



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Application Submittal and Finalization of Grant – Misdemeanor Probation – Domestic Violence – RFP #09-06M

**DEPARTMENT:** Billings Police Department

**PRESENTED BY:** Chief Rich St. John

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**PROBLEM/ISSUE STATEMENT:** An RFP from the Montana Board of Crime Control was posted in late December, 2008. We would like to pursue this subgrant for Domestic Violence training and continuation of the “Domestic Violence Investigator” program for the 8<sup>th</sup> year. The amount for this grant totals \$62,862.00. The application is due by February 20, 2009. Staff is asking Council’s approval to submit application and finalize the grant.

**FINANCIAL IMPACT:** This grant requires a 25% match of hard and/or soft cash. The City of Billings will contribute approximately \$18,000.00, which includes a hard match of \$1,600 and a soft match of \$16,400.00. The hard match will be included in the FY 10 Training budget and consists of the City paying \$1,300 toward the instructor cost and \$300 for refreshments for the training. The soft match includes supervision, data analysis, and case management of the grant; cost of a leased vehicle, telephone cost, office space for DV Investigator; and rental of training facility for domestic violence investigator training.

**RECOMMENDATION**

Staff recommends Council’s approval in pursuing the Misdemeanor Probation – Domestic Violence grant application and when notified of its acceptance, City staff be authorized to finalize the grant.

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

## **INTRODUCTION**

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

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

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

## **BACKGROUND**

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

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

## **RECOMMENDATION**

Staff recommends Council's approval in pursuing the Misdemeanor Probation – Domestic Violence grant application and when notified of its acceptance, City staff be authorized to finalize the grant.



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Approval and Acceptance of FY2008 Assistance to Firefighters Grant Award – Trench/Confined Space Rescue Training & Equipment

**DEPARTMENT:** Fire

**PRESENTED BY:** Paul A. Dextrus, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** In July 2008, the Billings Fire Department submitted a grant application to FEMA under the Department of Homeland Security's program of assistance to firefighters.

We have received notice from R. David Paulison, Administrator, U.S. Department of Homeland Security (FEMA) that our grant application (Grant #EMW-2008-FO-10125) for the purchase of Technical Rescue/Trench/Confined Space Equipment and Training was approved. The approved project costs total \$137,535.00.

The period of performance for this grant is 10-Nov-08 to 09-Nov-09.

**ALTERNATIVES ANALYZED:** None

**FINANCIAL IMPACT:** The Federal share is eighty (80%) percent or \$110,028.00 of the approved amount and the City's share of the costs is twenty (20%) percent or \$27,507.00. The City's share is part of the funds currently earmarked for the replacement of Fire Department Technical Rescue Vehicle (Rescue 2/Unit #4072) in the FY2009 budget.

**RECOMMENDATION**

Staff recommends that Council approval acceptance of the funds to be used to purchase trench and confined space equipment.

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



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Approval and Acceptance of HSGP FY06 Pass Thru Grant Funds from the State of Montana for the Hazmat Regional Response Team.

**DEPARTMENT:** Fire

**PRESENTED BY:** Paul A. Dextras, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** In 2003, Billings was selected as one of six sites responsible for regional hazardous material/weapons of mass destruction response to rural Montana. All regional responses will be funded by the State of Montana. The guidelines of the original grant received from the State dictated that it would retain the responsibility of replacement costs in the future.

The Fire Department received notice from Sheri Lanz, Homeland Security Coordinator, MT Disaster & Emergency Services that our request, in the amount of \$12,934.94 for reimbursement of supplies and equipment for the Regional Response HazMat Trailer was approved. Funding for this reimbursement was made available as part of the FY06 US Department of Homeland Security Grant Program (HSGP), Grant #2006-GE-T6-0062. There is no match required by the city.

**ALTERNATIVES ANALYZED:** None

**FINANCIAL IMPACT:** None to the City.

**RECOMMENDATION**

Staff recommends that Council approve acceptance of the funds from the State of Montana under the 100% federally funded FY06 US Department of Homeland Security Grant Program.

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

**ATTACHMENT:**

- A. Letter from Sheri Lanz, Homeland Security Coordinator



DEPARTMENT OF MILITARY AFFAIRS  
DISASTER & EMERGENCY SERVICES DIVISION  
— STATE OF MONTANA —

(406) 841-3911 1956 Mt Majo Street, P.O. Box 4789 Fort Harrison, MT 59636-4789

July 21, 2008

AMENDMENT

Terry Larson  
Billings Fire Department  
2305 8<sup>th</sup> Ave N  
Billings MT 59101

Dear Terry,

This is the formal amendment to the award of your 100% federally funded FY06 US Department of Homeland Security Grant Program (HSGP).

The amendment is to extend the grant period until September 30, 2008. All activities must be completed by September 30, 2008. All requests for reimbursements must be submitted by October 30, 2008. Requests for reimbursement received after October 30, 2008 will not be reimbursed.

All other terms and conditions of the award letter dated July 25, 2007 and the amended award letter dated September 21, 2007 are still in effect.

All grant related correspondence or questions, should be sent to Sheri Lanz (406) 841-3969 [sheris@mt.gov](mailto:sheris@mt.gov) MT Disaster & Emergency Services, 1956 MT Majo Street, PO Box 4789, Fort Harrison MT 59636-4789.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheri Lanz".

Sheri Lanz  
Homeland Security Coordinator  
MT Disaster & Emergency Services

cc: File Copy



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** SILMD 306 – Resolution of Intent to Create a Special Improvement Lighting Maintenance District for King Avenue East from S. Billings Blvd. to Orchard Lane and set a Public Hearing for Creation of the District at the February 23<sup>rd</sup> Council Meeting

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** With the expansion of King Avenue East from S. Billings Boulevard to Orchard Lane, street lighting is proposed to provide for driver and pedestrian safety. In order to pay the costs of energy and maintenance for this street lighting it is necessary to create a Special Improvement Lighting Maintenance District (SILMD) to assess the energy and maintenance costs to abutting and benefiting property owners. Passage of the Resolutions of Intent is the first step in the legal process of creating an SILMD. Passage of the Resolutions of Intent will trigger the mailing of legal notices to the affected property owners and set a Council public hearing for the February 23, 2009, City Council meeting.

**ALTERNATIVES ANALYZED:**

1. Create the SILMD to provide a source of funding for operation and maintenance of the streetlights and set a public hearing for February 23, 2009.
2. Do not create an SILMD nor set a public hearing.

**FINANCIAL IMPACT:** All maintenance and energy costs for this proposed light district will be paid for by assessments against properties within the district.

**RECOMMENDATION**

Staff recommends that Council pass Resolutions of Intent to create SILMD 306 and set a public hearing date for February 23, 2009, where action will be taken for the creation of this SILMD.

**Approved By:** City Administrator        City Attorney       

**ATTACHMENTS**

- A. Resolution of Intent to Create SILMD 306

## **INTRODUCTION**

As a City-Wide Arterial Lighting District has not yet been approved by Council, staff has traditionally assessed abutting properties owners for the costs to light arterial streets. With the expansion of King Avenue East from S. Billings Boulevard to Orchard Lane, street lighting is proposed to provide for driver and pedestrian safety. In order to pay the costs of energy and maintenance for this street lighting it is necessary to create a Special Improvement Lighting Maintenance District (SILMD) to assess the energy and maintenance costs to abutting and benefiting property owners. Passage of the Resolutions of Intent is the first step in the legal process of creating an SILMD. Passage of the Resolutions of Intent will trigger the mailing of legal notices to the affected property owners and set Council public hearings for the February 23, 2009, City Council meeting.

## **PROCEDURAL HISTORY BACKGROUND**

1. January 26<sup>th</sup> (this meeting), approve Resolution of Intent to create SILMD 306
2. January 29<sup>th</sup>, legal notices mailed to all affected property owners, 15-day protest period begins
3. January 29<sup>th</sup> and February 5<sup>th</sup>, legal notices published in the *Billings Times*
4. February 13<sup>th</sup>, 15-day protest period ends
5. February 23<sup>th</sup> Council meeting, Public hearing and creation of SILMD 306
6. November 2009, initial assessments appear on tax statements

## **BACKGROUND**

The street lights in the proposed district are City owned lights and were installed with the King Avenue East widening project (W.O. 07-22.) Therefore the SILMD assessments pay only the cost of energy and maintenance. The monthly energy fees paid for street lighting are established by the Montana Public Service Commission and are subject to change in the future. The first year assessment for each of these districts will be higher than the annual estimates given below because the assessments collected on the first year's taxes have to cover a period of time longer than 12 months. The first year assessment has to cover energy and maintenance until assessments are sent out in November.

The estimated annual assessments in this district will range from \$21.45 assessed to residential properties to \$2,154.89 assessed to commercial properties.

## **ALTERNATIVES ANALYSIS**

1. Create the SILMD to provide a source of funding for operation & maintenance of the streetlights. This is the standard method of paying the cost of energy & maintenance for all street lighting in Billings.
2. Do not create an SILMD. In the case of King Avenue East, a potential safety hazard would be created if the lights were not installed because of the raised median.

3. Development of some other source of funding to pay for street light energy & maintenance. As mentioned above, Council has entertained discussions of creating a City-Wide Arterial Lighting District several times, but has directed staff not to pursue this option.

### **RECOMMENDATION**

Staff recommends that Council pass Resolutions of Intent to create SILMD 306 and set a public hearing date for February 23, 2009, where action will be taken for the creation of this SILMD.

### **ATTACHMENTS**

- A. Resolution of Intent to Create SILMD 306

SILMD 306

RESOLUTION NO. 09-\_\_\_\_\_

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 306 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

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

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

SECTION 1:

That it is the intention to create Special Improvement Lighting Maintenance District (SILMD) 306. That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new street lights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 306" hereinafter called the District, and the boundaries of the District are hereby declared to include: All lots, parcels and pieces of land either abutting King Avenue East from South Billings Boulevard to Orchard Lane, or all lots, parcels and pieces of land which receive a direct benefit from said District, as shown on the map designated as Exhibit "A" attached hereto, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto.

SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated within the boundaries of the District, will be especially benefited and affected by said improvements, and that all of the property included

within the District is hereby declared to be the property to be assessed for the cost and expense of obtaining the electrical energy for and maintenance of said street lights.

**SECTION 4:**

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of thirty-three (33) 250-watt high-pressure sodium fixtures mounted on steel, mast arm style poles and served by underground wiring. The City of Billings shall own and install the streetlights and all associated appurtenant structures and materials.

**SECTION 5:**

The City of Billings intends to establish the contract rate for supplying electrical energy in accordance with the rate schedule approved by the Montana Public Service Commission. Said rate is currently estimated at \$10.27 per unit, per month, and that NorthWestern Energy Company shall provide energy to the lighting fixtures. That the City of Billings shall provide normal maintenance to lighting fixtures, poles, cables and other incidental equipment, and shall at all times own said lighting fixtures, poles, cables and other incidental equipment.

**SECTION 6:**

The estimate of the cost of the District per year, including City administrative costs, is the sum of \$8,665.78; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys and public places. The estimated cost of the District per year for property owners is on the basis of approximately \$0.00327854 per square foot of assessable area. Due to the difference in the time the lighting service started and the time assessments can be levied, the first assessment will cover a period of operation of the District greater than one year and is estimated to total \$9,984.98 or approximately \$0.00377763 per square foot.

**SECTION 7:**

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt this resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 306 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefore.

**SECTION 8:**

That on the 23rd day of February, 2008, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 306 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest

with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

**SECTION 9:**

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in "The Billings Times", a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 306. Said notice is to be published and mailed on the same date.

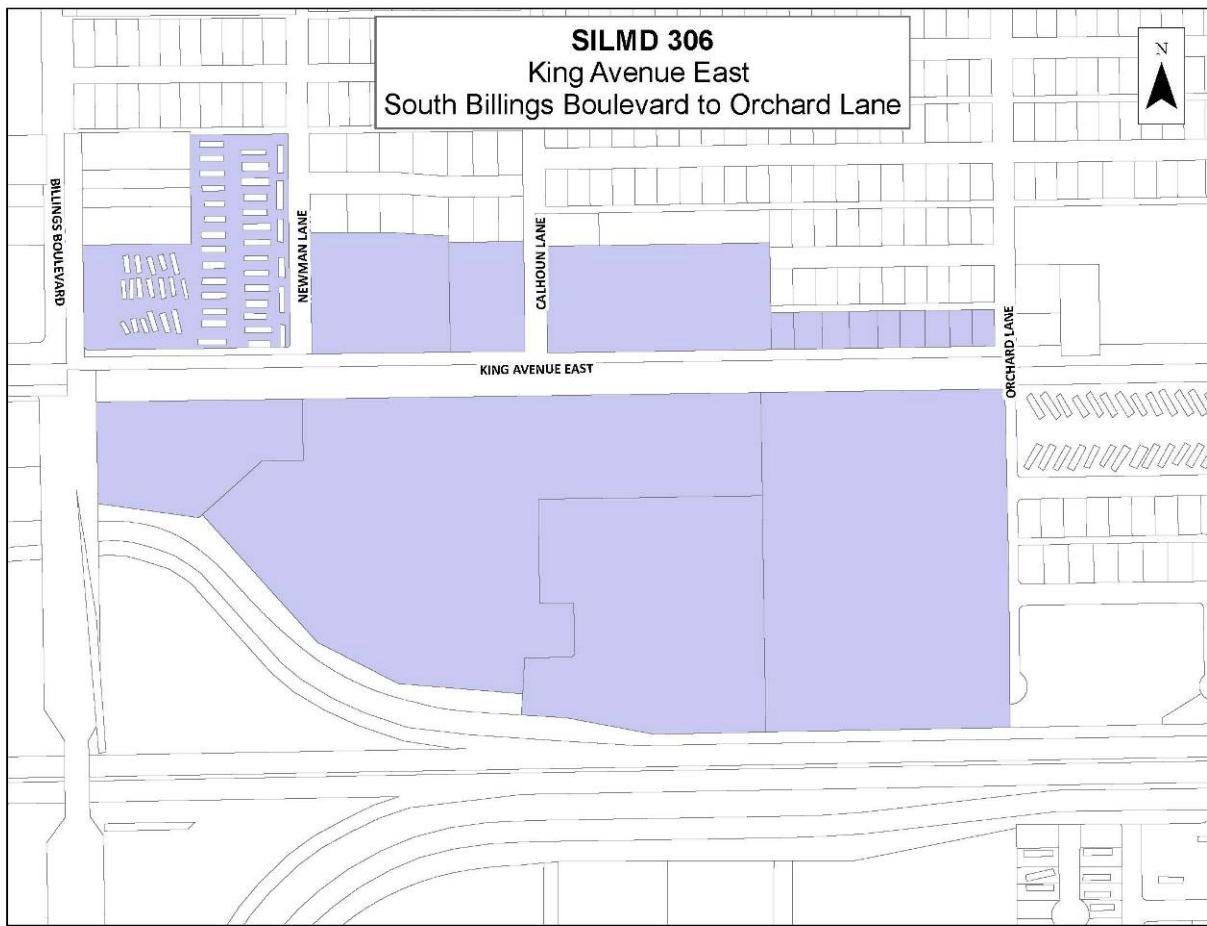
PASSED by the City Council and APPROVED this 26th day of January 2009.

CITY OF BILLINGS

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

ATTEST:

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



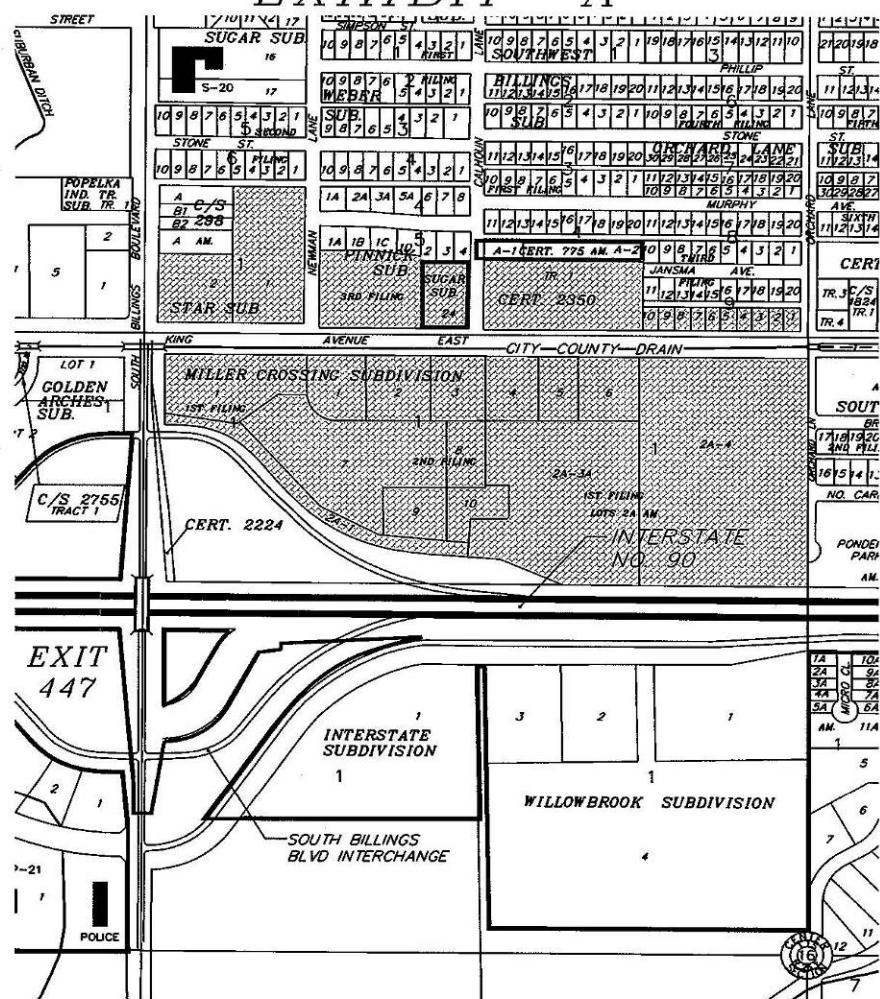


SILMD 306  
South Billings Boulevard to Orchard Lane  
Legal Description of Property

Tracts of land situated in the SW1/4 of Section 9, T.1S., R.26E., and the NW1/4 of Section 16, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:  
Star Subdivision, Recorded July 14, 1976, under Document No. 1023306, Records of Yellowstone County;  
Lot 1, Block 5, Pinnick Subdivision, Third Filing, Recorded June 7, 1966, under Document No. 779769, Records of Yellowstone County, less Lots 1A, 1B, 1C and 1D, Block 5, Amended Plat of Lot 1 Block 5, Pinnick Subdivision, Third Filing, Recorded December 19, 1978, under Document No. 1114044, Records of Yellowstone County;  
Lot 24, Sugar Subdivision, Recorded March 25, 1909, under Document No. 15135, Records of Yellowstone County, less portions of said Pinnick Subdivision, Third Filing and portions of Weber Subdivision, Second Filing, Recorded October 8, 1955, under Document No. 550738, Records of Yellowstone County;  
Tract 1, Certificate of Survey 2350, Recorded November 18, 1985, under Document No. 1372518, Records of Yellowstone County;  
Lots 1 through 10, Block 9, Orchard Lane Subdivision, Third Filing, Recorded February 5, 1955, under Document No. 537746, Records of Yellowstone County;  
Miller Crossing Subdivision, Recorded June 5, 1997, under Document No. 1880131, Records of Yellowstone County, including all Amendments thereof;  
Miller Crossing Subdivision, Second Filing, Recorded August 8, 2008, under Document No. 3475747, Records of Yellowstone County, including all Amendments thereof.

See Exhibit "A" Attached

*EXHIBIT "A"*





**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, January 26, 2009**

**TITLE:** Zone Change #852, 2<sup>nd</sup> Reading of Ordinance

**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. The City Council held a public hearing and approved the first reading of the zone change on January 12, 2009.

**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: Ordinance

ORDINANCE NO. 09-\_\_\_\_\_

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



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$762,915.02 audited and are presented for your approval for payment. A complete listing of the claims dated December 29, 2008 in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$2,472,707.87 audited and are presented for your approval for payment. A complete listing of the claims dated January 2, 2009 in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Public Hearing and Resolution for Fee Associated with Master Site Plan Review Process provided by the Public Works Department

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The Public Works Department is presenting a proposed fee of \$331.00 for the new Master Site Plan Review Process to the City Council for approval. This proposed fee will be in addition to the \$240 fee approved by City Council on December 15, 2008 for the Planning Division. Note that the Fire Department has indicated they will not be imposing a review fee. This proposed fee follows the Council's final adoption on November 10, 2008, of Zone Change #849: Master Site Plan Review Process for Condominiums and Multi-Unit Developments – Amending Section 27-201, Section 27-310 (b), and Section 27-622 BMCC. This text amendment is to coordinate City review of certain multi-unit commercial and residential projects to make the review and permitting process more efficient and ensure that the City's applicable zoning, site development, building code, and fire safety regulations are followed.

The Public Works Department has estimated the amount of time it will take staff to complete a Master Site Plan Review as shown on attachment A. Staff time, supervisory time, and overhead costs total \$331.00.

**FINANCIAL IMPACT:** Should the City Council approve the new fee for the Master Site Plan Review Process, the services rendered by the Public Works Department for this process will reflect the costs to provide the service and result in additional revenues for the Public Works Department.

**RECOMMENDATION**

Staff recommends that the City Council approve the \$331.00 fee for the Master Site Plan Review Process provided by the Public Works Department.

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

**ATTACHMENTS**

- A. Fee Table
- B. Resolution

## ATTACHMENT A

### Public Works Cost Analysis for Master Site Plan Review Fees

Residential/Commercial	Salary and Benefits/Hourly	Estimated Hours per Plan Review	Total Cost Per Plan Review
Senior Engineering			
Tech	\$ 35.00	4	\$140.00
Engineer I	\$ 36.00	2	\$ 72.00
Engineer II	\$ 37.00	1	<u>\$ 37.00</u>
subtotal			\$249.00
Supervisory Review Per Plan			subtotal
			\$ 27.00
Overhead Costs			subtotal
			\$ 55.00
TOTAL FOR RESIDENTIAL PERMITS			\$331.00
Anticipated Annual Revenues			
30 Master Site Plan Reviews			\$9,930.00

ATTACHMENT B  
RESOLUTION

RESOLUTION NO. 09-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA PURSUANT TO ORDINANCE NO. 4314, AMENDED BY ORDINANCE NO. 4494 FOR FEES ASSOCIATED WITH VARIOUS APPLICATIONS AND SERVICES PROVIDED BY THE PUBLIC WORKS DEPARTMENT.

WHEREAS, Ordinance No. 4314, amended by Ordinance No. 4494 provides that application fees shall be established by Resolution;

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

1. FEES. The following fee is hereby established for the Public Works Department and is payable upon application:

Master Site Plan Review	\$331.00
-------------------------	----------

2. EFFECTIVE DATE. The fee established herein shall become effective upon passage of this resolution and remain in effect thereafter until changed by resolution.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009

THE CITY OF BILLINGS

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

ATTEST:

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Cari Martin, City Clerk



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Public Hearing on the proposed Neighborhood Stabilization Program, approve application for funds and Substantially Amend the FY2008-2009 Annual Action Plan for CDBG and HOME Programs

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** Brenda Beckett, Community Development Manager

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**PROBLEM/ISSUE STATEMENT:** The Montana Department of Commerce (MDOC) has received notification from the U.S. Department of Housing and Urban Development (HUD) regarding an award of \$19.6 million in Community Development Block Grant (CDBG) funding for the Neighborhood Stabilization Program (NSP). Funding for this program has been made available through the Housing and Economic Recovery Act of 2008. Funding can be used throughout Montana to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight.

The City Council is scheduled to hold a public hearing on a substantial amendment to the FY2008-2009 Consolidated Plan – Annual Action Plan for CDBG and HOME funding on January 26, 2009, to include NSP funding. The public hearing will conform to regulations established by the U.S. Department of Housing and Urban Development requirements for Title III, Section 2310 of the Housing and Economic Recovery Act of 2008. The public hearing will result in additional public input on the use of NSP resources in Billings. Action is also required to approve an application to MDOC for the reservation of NSP funding for activities in Billings.

If MDOC approves the City's NSP plan, the City would be required to propose individual projects by property address and estimated costs in order to secure funding. As the projects would be approved by MDOC on a first-come-first-served basis, it is difficult to estimate the amount of funding the City will receive due to state-wide competition for funds.

**ALTERNATIVES ANALYZED:** 1) Hold a public hearing, amend the FY2008-2009 Annual Action Plan for CDBG and HOME funds and approve an application to MDOC for NSP funding; 2) Do not hold a public hearing, do not amend the FY2008-2009 Annual Action Plan for CDBG and HOME funds and do not approve an application to MDOC for NSP funding.

**FINANCIAL IMPACT:** No match is required to apply for NSP funding through MDOC. Administration funding totaling five percent of approved project activities is allowed to be submitted for reimbursement. An additional CDBG application will be submitted to the Community Development Board and to City Council through the FY2009-2010 allocation process to support NSP activities including consultant staffing to assist in program management. If the CDBG application is not approved, existing staff will reduce NSP activities to utilize available resources.

**RECOMMENDATION**

Staff recommends that the City Council hold a public hearing on January 26, 2009, to gather public input on the proposed Neighborhood Stabilization Plan, approve application to the State of Montana's Department of Commerce for funding and to substantially amend the FY2008-2009 Annual Action Plan to include the Neighborhood Stabilization Program.

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

**ATTACHMENTS**

A. Drafted Neighborhood Stabilization Plan (24)

## **INTRODUCTION**

The City of Billings is required by the HUD to prepare a Consolidated Plan to address the use of federal funding through the CDBG and HOME programs. Focused on CDBG and HOME activities, the Consolidated Plan combines the planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME Programs allows program planning and citizen participation to take place in a comprehensive context covering both programs.

This Substantial Amendment to the City of Billings Annual Action Plan for FY2008-2009 documents how the City plans to utilize funds provided under the Housing and Economic Recovery Act of 2008 (HERA) (Pub.L.110-289, 122 Stat. 2654, enacted July 30, 2008) through HUD's Neighborhood Stabilization Program (NSP). The geographic area covered in the Action Plan and amendment is the City of Billings municipal boundaries, with priority emphasis on areas with a high foreclosure risk in low income task force areas.

The NSP provides \$19.6 million in CDBG funds to the MDOC to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. In addition, the funds can be used to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.

The City of Billings intends to utilize granted funding in a manner that complies with regulations established by HUD as published in the Federal Register on October 6, 2008. This includes obligating funding via contract for service within 18 months of HUD's approval of the MDOC's Action Plan Amendment and full expenditure of obligated funds within 48 months of HUD's approval date.

## **PROCEDURAL HISTORY**

- *July 2008* – President Bush signs the Housing and Economic Recovery Act of 2008.
- *August 2008* – Community Development receives informal notification of possible allocation.
- *October 3, 2008* – MDOC receives notification of \$19.6 million allocation.
- *November 28, 2008* – MDOC submits plan to HUD.
- *January 6, 2009* – Community Development Board approves drafted NSP plan.
- *January 8 and 22* – Public Notices are published for the public hearing and public comment period on the NSP plan.
- *January 9, 2009* – Public comment period begins and plan is available on the City website.
- *January 26, 2009* – Public hearing held at City Council.

## BACKGROUND

The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s. These funds are provided by the federal government and are primarily targeted in Billings to address the affordable housing and neighborhood revitalization needs of the community. The FY2008-2009 budget represents the fourth year Action Plan to implement the City's five-year Consolidated Plan. The Consolidated Plan identifies strategies for the use of housing and community development resources in the community. NSP funding requires a substantial amendment to the current FY2008-2009 Annual Action Plan in order to implement NSP activities.

The MDOC submitted a plan for the state of Montana by the December 1, 2008 deadline for HUD's review and consideration. MDOC anticipates a formal acceptance of its plan by mid-February 2009 at which time the NSP plan will be implemented. Eligible activities for NSP funding include:

- Establish financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties;
- Purchase and rehabilitate homes and residential properties abandoned or foreclosed;
- Establish land banks for foreclosed homes;
- Demolish blighted structures; and
- Redevelop demolished or vacant properties.

The MDOC will issue a staged request for proposals process and will begin accepting applications for projects in the following manner:

- Stage One – MDOC will immediately accept applications for projects following HUD's approval of MDOC's Action Plan Amendment to establish financing mechanisms, purchase / rehabilitate abandoned or foreclosed homes or residential properties for individuals / families with household incomes less than 50% Area Median Income (AMI);
- Stage Two – Thirty days post HUD's acceptance of the MDOC's Action Plan Amendment, proposals will be accepted to establish financing mechanisms, purchase / rehabilitate, or land bank abandoned or foreclosed home / residential properties for households with 80 to 120% AMI;
- Stage Three – Sixty days post HUD's acceptance of the MDOC's Action Plan Amendment, proposals will be accepted to demolish blight or redevelop demolished or vacant properties.

The City of Billings proposes activities in all three stages to address significant local needs. The City will also request up to five percent of funding amounts (officially obligated via contract for eligible NSP activities) to address administrative and project start up costs, including:

- Administrative staff / consultant to identify properties;

- Revise project management plans as needed;
- Publication of legal notices and request for proposals;
- Professional services such as design and engineering; and
- Environmental assessments, historic review and other required studies.

The City also proposes to augment NSP funding with an application for CDBG funding through the City's FY2009-2010 budget allocation process. Funding allocated through this process would be available for commitment and distribution after July 1, 2009 following approvals through the City's Community Development Board and City Council.

The City will utilize the Request for Proposals process to publically advertise for services including consultants, professionals and partnership opportunities with local non-profit organizations. Procurement contracts will be contingent upon receipt of NSP funding from MDOC. The City will submit contract amendments to MDOC to obligate funding on a project-by-project basis.

## **ALTERNATIVES ANALYZED**

1) Hold a public hearing, amend the FY2008-2009 Annual Action Plan for CDBG and HOME funds and approve an application to MDOC for NSP funding; 2) Do not hold a public hearing, do not amend the FY2008-2009 Annual Action Plan for CDBG and HOME funds and do not approve an application to MDOC for NSP funding. The Community Development Board reviewed the proposed plan and supports the application for funding.

## **STAKEHOLDERS**

Stakeholders for the CDBG and HOME programs include:

1. Neighborhood Task Forces – The task forces communicate neighborhood needs and solutions to those needs utilizing both CDBG and HOME resources.
2. The Community Development Board, as an advisory body to the City Council, provides detailed oversight to both the CDBG and HOME programs throughout the year.
3. Low and middle income households – Twenty-five percent of all NSP funding must benefit households with incomes less than 50% of the area median income. After meeting this threshold, households up to 120% of the area median income are eligible to purchase properties rehabilitated or constructed.

## **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Projects proposed for consideration are consistent with the goals and objectives of the adopted FY2005-2009 Consolidated Plan for the use of CDBG & HOME resources in Billings. Five primary strategies are proposed in the FY2005-FY2009 Consolidated Plan to meet the diverse needs of Billings' lower-income households. These needs have been primarily identified through the 2005 Billings Housing Needs Assessment completed for the City of Billings by Montana State University-Billings Center for Applied Economic Research. This needs assessment was

undertaken utilizing focus groups, individual interviews, a community survey, and an examination of census and housing market data.

The work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities: (1) Increasing housing cost compared to income and its effect on low income renters and homeowners in achieving safe, decent & affordable housing; (2) An aging population and the associated increase in the percentage of the population with disabilities; (3) A slight decrease in the price of rental housing and short term concern over the number of multi-family units scheduled to be constructed; and (4) The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

The plan also conforms to the Growth Policy by concentrating on eliminating and preventing blight and promoting in-fill development.

### **RECOMMENDATION**

Staff recommends that the City Council hold a public hearing on January 26, 2009 to gather public input on the proposed Neighborhood Stabilization Plan, approve application to the State of Montana's Department of Commerce for funding and to substantially amend the FY2008-2009 Annual Action Plan to include the Neighborhood Stabilization Program.

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

### **ATTACHMENTS**

A. Drafted Neighborhood Stabilization Plan (24)

# City of Billings

Substantial Amendment to the 2008-2009 Consolidated Plan

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*NEIGHBORHOOD STABILIZATION PROGRAM*  
December 2008



*City of Billings*  
Community Development Division  
PO Box 1178  
Billings, Montana 59103

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# Introduction

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The City of Billings is required by the US Department of Housing and Urban Development (HUD) to prepare a Consolidated Plan to address the use of federal funding through the Community Development Block Grant (CDBG) and HOME Investment Partnerships programs (HOME). Focused on CDBG and HOME activities, the Consolidated Plan combines the planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME Programs allows program planning and citizen participation to take place in a comprehensive context covering both programs.

The City's five-year Consolidated Plan for FY2005-2009 can be viewed online:  
<http://www.ci.billings.mt.us/DocumentView.asp?DID=1098>.

The FY2008-2009 Annual Action Plan can also be viewed online:  
<http://www.ci.billings.mt.us/DocumentView.asp?DID=3950>.

This Substantial Amendment to the City of Billings' Annual Action Plan for FY2008-2009 documents how the City plans to utilize funds provided under the Housing and Economic Recovery Act of 2008 (HERA) (Pub.L.110-289, 122 Stat. 2654, enacted July 30, 2008) through the United States Department of Housing and Urban Development's (HUD) Neighborhood Stabilization Program (NSP). The geographic area covered in the Action Plan and amendment is the City of Billings municipal boundaries, with priority emphasis on areas with a high foreclosure risk in low income task force areas.

The NSP provides \$19.6 million in CDBG funds to the Montana Department of Commerce (MDOC) to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. In addition, the funds can be used to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.

The City of Billings intends to utilize granted funding in a manner that complies with regulations established by the U.S. Department of Housing and Urban Development as published in the Federal Register on October 6, 2008. This includes obligating funding via contract for service within 18 months of HUD's approval of the MDOC's Action Plan Amendment<sup>1</sup> and full expenditure of obligated funds within 48 months of HUD's approval date.

# Definitions

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**Abandoned:** A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days, AND the property has been vacant for at least 90 days.

**Foreclosed:** A property “has been foreclosed upon” at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

**Land Bank:** A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP program and this plan, the City of Billings will operate a land bank within the City's municipal boundaries. The City will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. The City may also maintain abandoned or foreclosed property that it does not own, provided the City charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

**Current Market Appraised Value:** The value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property.

**Blighted Structure:** For the purpose of MDOC's NSP Program, the definition of “blighted structure” can include any one of the following categories:

- Montana Department of Revenue Property Physical Condition Database's definition of physical condition of residential housing stock which includes:
  - **Unsound** – Dwelling is definitely structurally unsound and practically unfit for use; or
  - **Very Poor** – Dwelling is definitely structurally unsound and practically unfit for use. Repair and overhaul is needed on painted surfaces, roofing, plumbing and heating. There is excessive deferred maintenance and abuse. Property is approaching abandonment or major reconstruction;
- Structures located in an officially adopted floodplain, including floodway and flood fringe areas;
- Manufactured housing (mobile homes) constructed prior to July 15, 1976, the date the Manufactured Home Construction and Safety Standards Act (24 CFR 3280) became effective;
- Structures included within a designated Urban Renewal District or Tax Increment Financing District as established by Montana Statutes 7-15-4202 (blight in Urban Renewal Districts) and 7-15-4282 (Tax Increment Financing Districts);
- Structures that would meet the definition under MCA 7-15-4206 part (a): Blighted area – An area that is means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, that substantially impairs or arrests the sound

growth of the city or its environs, that retards the provision of housing accommodations, or that constitutes and economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare and morals in its present conditions and use by reason of;

- The substantial physical dilapidation, deterioration, age, obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or non-residential;
- Units identified as "substantially substandard" or "severely substandard" according to the Point Detraction Guideline utilized in the Montana CDBG Program, Application Guidelines for Housing and Neighborhood Renewal Projects, Appendix L, as follows:
  - **Substantially Substandard** – Unit appears to need substantial repair (rehabilitation may not be cost-effective and alternative forms of assistance may be more appropriate);
  - **Severely Substandard** – Unit appears dilapidated. Demolition and housing replacement should be considered;
  - The definition of "substandard buildings" contained in the latest authorized edition of the International Property Maintenance Code published by the International Code Council. This information is available from the Montana Department of Labor and Industry (MDLI), Building Codes Bureau; or
  - Any structure determined to be seriously deteriorated or dilapidated according to a locally adopted Code for the Abatement of Dangerous Buildings or similar ordinance to address the debilitating effects of blight within communities.

# Proposals Process

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The MDOC submitted a plan for the state of Montana by December 1, 2008 for HUD's review and consideration. MDOC anticipates a formal acceptance of their plan by mid-February 2009 at which time the NSP plan will be implemented. Eligible activities for NSP funding include:

- Establish financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties;
- Purchase and rehabilitate homes and residential properties abandoned or foreclosed;
- Establish land banks for foreclosed homes;
- Demolish blighted structures; and
- Redevelop demolished or vacant properties.

The MDOC will issue a staged request for proposals process and will begin accepting applications for projects in the following manner:

- **Stage One** – MDOC will immediately accept applications for projects following HUD's approval of MDOC's Action Plan Amendment to establish financing mechanisms, purchase / rehabilitate abandoned or foreclosed homes or residential properties for individuals / families with household incomes less than 50% Area Median Income (AMI);
- **Stage Two** – Thirty days post HUD's acceptance of the MDOC's Action Plan Amendment, proposals will be accepted to establish financing mechanisms, purchase / rehabilitate, or land bank abandoned or foreclosed home / residential properties for households with 80 to 120% AMI;
- **Stage Three** – Sixty days post HUD's acceptance of the MDOC's Action Plan Amendment, proposals will be accepted to demolish blight or redevelop demolished or vacant properties.

The City of Billings proposes activities in all three stages to address significant local needs. The City will also request up to five percent of funding amounts (officially obligated via contract for eligible NSP activities) to address administrative and project start up costs, including:

- Administrative staff / consultant to identify properties;
- Revise project management plans as needed;
- Publication of legal notices and request for proposals;
- Professional services such as design and engineering; and
- Environmental assessments, historic review and other required studies.

The City also proposes to augment NSP funding with an application for CDBG funding through the City's FY2009-2010 budget allocation process. Funding allocated through this process would be available for commitment and distribution after July 1, 2009 following approvals through the City's Community Development Board and City Council.

The City will utilize the Request for Proposals process to publically advertise for services including consultants, professionals and partnership opportunities with local non-profit organizations. Procurement contracts will be contingent upon receipt of NSP funding from MDOC. The City will submit contract amendments to MDOC to obligate funding on a project-by-project basis.

#### *Citizen Participation*

The Citizen Participation Plan for the City of Billings is designed to assure citizen involvement in the planning and reporting on the City's programs covered under HUD's Consolidated Plan requirements. The purpose of the Citizen Participation Plan is to assure that citizens, nonprofit organizations, and other interested parties are afforded adequate opportunity to review and comment on plans, programs, activities and reports regarding the City's federally funded housing and community development programs.

The primary objectives of the Community Development Division's Consolidated and Citizen Participation Plans are to:

- Encourage citizen participation in the development of the Consolidated Plan, Consolidated Plan Amendments and the Comprehensive Annual Performance and Evaluation Report (CAPER) with emphasis on participation from individuals and households identified as low to moderate income, residents of blighted areas, minorities, those with limited English proficiency, the disabled, and those residing in areas where funding will be utilized.
- Provide citizens with reasonable and timely access to meetings, information and records relating to the City's plan for utilizing funding in addition to allowing reasonable opportunity to comment on the Consolidated Plan, Amendments, the Citizen Participation Plan and the CAPER.
- Finalize consultation with the Billings Housing Authority on the development and implementation of the Consolidated Plan and amendments to the Annual Action Plan, which includes input from residents of public and assisted housing.
- Provide technical assistance to neighborhood task forces which represent the low to moderate income and the highest concentrations of the minority populations in Billings.
- Provide public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program. All hearings and meetings shall be provided in areas where accommodations for the disabled can be provided.

The City of Billings will hold a public hearing on January 26, 2009, during the City Council meeting at 6:30pm, in order to hear public comments and to approve the City's application for NSP funds to MDOC. Public notices announcing the proposed NSP program plan will be published on January 8 and January 22, 2009 and a public comment period will be held from January 9 through January 26, 2009. Presentations regarding the proposed NSP plan are proposed as follows:

- Community Development Board – January 6, 2009;
- Adjacent Neighborhood Committee – January 8, 2009;
- Mayor's Committee on Homelessness – January 8, 2009;
- Billings Area Resource Network – January 14, 2009; and

- Affordable Housing Task Force – January 22, 2009.

Public comments received include...(to be completed post January 26, 2009)

Applicants are required to hold a public hearing no more than 60 days prior to the date of proposal submittal. This timeline is contingent on MDOC's receipt of HUD approval for their proposed NSP plan and open proposal period beginning no later than March 27, 2009. Should MDOC need to respond to HUD with corrections to their plan and HUD's approval of their plan is later than March 27, 2009, the City would hold an additional public hearing to adhere to the 60 day requirement.

**DRAFT**

# Capacity

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The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s and has significant capacity to carry out NSP activities including: trained Lead-Based Paint Risk Assessors; an established Limited English Proficiency Plan; a current Programmatic Agreement to make local determinations for historic preservation with tribal input; environmental review experience and management; and an established and current Request for Proposal process. The City of Billings follows federal standards for accounting and the City's most recent Comprehensive Annual Financial Report can be found online: <http://www.ci.billings.mt.us/index.asp?NID=475>.

The City of Billings – Community Development Division will carry out the activities outlined herein. The office is located on the 4<sup>th</sup> floor of the Parmly Billings Library, 510 North Broadway, Billings, Montana 59101. The project is expected to begin in February 2009 and will end in February 2013, or when the MDOC receives approval from HUD on their Action Plan Amendment.

## *Current Programs*

The City of Billings currently manages the following programs: first time homebuyer; housing rehabilitation; new affordable housing development; rehabilitation / conversion for multi-family units; Tax Increment District redevelopment; property management; and demolition. The Community Development Division's website is located here: <http://www.ci.billings.mt.us/index.asp?NID=114>.

The following community organizations are supported by the Community Development Division:

- **Fair Housing Initiatives Program;**
- **Affordable Housing Task Force** – advisory board made up of housing developers, realtors, lenders and other housing professionals, meet monthly;
- **Neighborhood Task Forces** – seven task forces predominantly representing low-income neighborhoods;
- **Adjacent Neighborhood Committee** – neighborhood task force officers meet every two months to discuss neighborhood issues;
- **Billings Partners for American Indian Homeownership;** and the
- **Mayor's Committee on Homelessness.**

The Comprehensive Annual Performance Evaluation Report for FY2007-2008 can be viewed online: <http://www.ci.billings.mt.us/DocumentView.asp?DID=3948>

The City's latest Analysis of Impediments was completed in December 2007 and can be accessed online: <http://www.ci.billings.mt.us/DocumentView.asp?DID=1100>

The City's latest Housing Needs Assessment was completed in 2005 and can be accessed online: <http://www.ci.billings.mt.us/DocumentView.asp?DID=1411>

# Priorities

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## *Neighborhood Stabilization*

Neighborhood stabilization and renewal is a primary focus of the City's Consolidated Plan which is consistent with MDOC's priorities. The following five strategies have been adopted by the City of Billings in its FY2005-2009 Consolidated Plan to address Billings' housing and community development needs.

### **Strategy #1**

Promote the preservation of the existing supply of affordable housing in the community, by:

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

### **Strategy #2**

Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located, by:

- Preserving the housing stock in older lower income neighborhoods;
- Providing incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods;
- Supporting activities that provide amenities and address infrastructure needs of older lower income neighborhoods; and,
- Supporting efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.

### **Strategy #3**

Promote new affordable housing opportunities, by:

- Encouraging the development of new affordable single, multi-family, and special needs housing in the community through private developers and non-profits; and,
- Promoting homeownership.

### **Strategy #4**

Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs, by:

- Encouraging housing and community development organizations to work together to build strong community structures to better address needs and to respond to opportunities; and,
- Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

### **Strategy #5**

Improve the economic conditions of lower income households in the community, by:

- Supporting efforts of community organizations to address the human service needs of lower income residents of the community in general and our lower income neighborhoods in particular; and
- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.

#### *Homelessness*

The Mayor's Committee began meeting in June 2006 following Mayor Tussing's charge to develop a 10-Year Plan to address the needs of the chronically homeless in Billings. The Mayor's Committee includes representation from a broad stakeholder group including housing / service providers, civic / business leaders, economic / work force agencies, faith based / philanthropy groups, and other interested parties. To date, over 300 cities across the nation have committed to implementing 10-Year Plan to impact chronic homelessness.

The City's intent is to prioritize homelessness as a focus of the NSP program and to implement strategies to support households with incomes less than 50% AMI. This strategy supports the HERA requirement of 25% of all NSP funding must benefit low income households with household incomes of less than 50% AMI with foreclosed / abandoned home redevelopment activities.

#### *Income Limitations and the Work Force Housing Committee*

The NSP program provides an expanded household income limitation and includes a "middle income" category for households with total incomes of less than 120% of the AMI.

**Annual Income Limits**

% AMI	Up to 50% AMI		51% to 80% AMI		81% to 120% AMI	
	Low Income		Moderate Income		Middle Income	
HUD Category	Lower Limit	Higher Limit	Lower Limit	Upper Limit	Lower Limit	Upper Limit
Household Size						
1	\$0	\$21,650	\$21,651	\$34,650	\$34,651	\$52,000
2	\$0	\$24,750	\$24,751	\$39,600	\$39,601	\$59,400
3	\$0	\$27,850	\$27,851	\$44,550	\$44,551	\$66,850
4	\$0	\$30,950	\$30,951	\$49,500	\$49,501	\$74,300
5	\$0	\$33,450	\$33,451	\$53,450	\$53,451	\$80,200
6	\$0	\$35,900	\$35,901	\$57,400	\$57,401	\$86,150
7	\$0	\$38,400	\$38,401	\$61,400	\$61,401	\$92,100
8	\$0	\$40,850	\$40,851	\$65,350	\$65,351	\$98,050

The Billings City Council created the Workforce Housing Ad Hoc Committee in January 2008. This 19-member Committee was tasked to develop strategies to increase the housing supply for households earning 80 to 120 percent of area median income. Since February, the Committee met monthly and

facilitated a Workforce Housing Summit in October 2008. Eighty-five area residents attended the Summit and discussed the issues and potential solutions for increasing workforce housing under the topics of finance, design standards and development process, regulatory barriers, neighborhood buy-in, incentives and costs. The Committee is compiling the results of the Summit and will present recommended strategies to the City Council in February, 2009. Creation of a land bank and requiring home finance education for all income levels were among the many strategies that will be recommended.

#### *One-for-One Replacement & Continued Affordability*

Although the City of Billings is not required to provide one-for-one housing replacement for NSP funding, every effort will be made to ensure depletion to the affordable housing stock is minimized as a result of NSP activities. The MDOC recently published a study entitled "*Housing in Montana, The White Paper*"<sup>11</sup> estimating the number of total housing units that will be lost due to poor physical condition in the next twelve years. As shown below, over 10,000 affordable housing units may be lost by the year 2020 in Yellowstone County and over 19,000 units will need to be built or renovated to accommodate population growth. In light of this information, emphasis is placed on replacement housing as a priority.

Housing Units and Structure-type data for Yellowstone County				
Homeownership rate in 2000 = 69.2%				
Households in 2006 = 56,030				
% change in population, 2006 to 2020 = 14.3%				
% change in households, 2005 to 2020 = 17.0%				
Estimated Housing Units needed by 2020 in Yellowstone County				
Housing Units	Units in Poor Condition Lost by 2020	2006 Units in Good Condition, still Available in 2020	Total Housing Units Needed by 2020	Housing Units that must be built or renovated by 2020
<b>TOTAL</b>	10,703	49,475	68,560	19,084
<b>Single-family</b>	4,717	36,874		?
<b>Multi-family</b>	1,467	9,068		?
<b>Manufactured Home</b>	4,519	3,533		?

The data in the table gives a rough estimate of housing needs and some options for the county in meeting those needs in the future. One option is to focus on rehabilitating the units in poor condition. This will reduce the number of new units needed. The type of new units will be influenced by whether they will be owned or rented. The higher the housing costs relative to incomes, the more expensive both rental and homeownership housing will be and the fewer new homeowners will be created between the years 2006 and 2020.

The City's intent is to ensure long-term affordability to individuals / families for units rehabilitated or constructed with NSP funding. If NSP funding is provided to a project previously assisted with HOME funding on which the affordability period was shortened, the original terms will be revived for the remaining period of HOME affordability. Affordability will be ensured via development agreements, deed restrictions and / or covenants running with the land.

The MDOC has adopted HOME regulations for ensuring an appropriate period of affordability for both homeownership and rental activities and has included a mandatory minimum forgiveness period for each level of assistance. Proceeds from resale can be reinvested within the first four years of the NSP program but must be returned to MDOC after that time period.

<i>Subsidy Amount per Unit / Homebuyer</i>	<i>Minimum Affordability Period</i>	<i>Minimum Restriction</i>
Under \$15,000	5 years	Subsidy recapture 20% forgiveness each year
\$15,000 – \$40,000	10 years	Subsidy recapture 10% forgiveness each year
Over \$40,000	15 years	Subsidy recapture 6.6% forgiveness each year
New Construction or Acquisition	20 years	Subsidy recapture 5% forgiveness each year

The MDOC has established rent and occupancy restrictions for assisted projects. Renters cannot pay more than 35% of their gross income for rent and utilities or the applicable fair market rents in Billings (see charts for monthly income limits and fair market rents below).

% AMI	Up to 50% AMI		51% to 80% AMI		81% to 120% AMI	
	Low Income		Moderate Income		Middle Income	
	HUD Category	Lower Limit	Upper Limit	Lower Limit	Upper Limit	Lower Limit
1	\$0	\$631	\$632	\$1,011	\$1,012	\$1,517
2	\$0	\$722	\$723	\$1,155	\$1,156	\$1,733
3	\$0	\$812	\$813	\$1,299	\$1,300	\$1,950
4	\$0	\$903	\$904	\$1,444	\$1,445	\$2,167
5	\$0	\$976	\$977	\$1,559	\$1,560	\$2,339
6	\$0	\$1,047	\$1,048	\$1,674	\$1,675	\$2,513
7	\$0	\$1,120	\$1,121	\$1,791	\$1,792	\$2,686
8	\$0	\$1,191	\$1,192	\$1,906	\$1,907	\$2,860

#### 2008-2009 Fair Market Rents

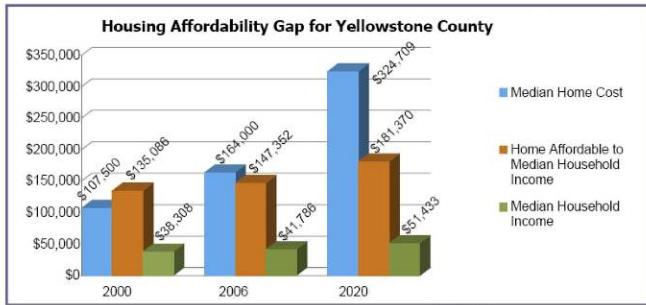
*Effective 10/01/08*

Bedroom Size	0	1	2	3	4
Allowable Rent	\$421	\$499	\$646	\$871	\$1,049

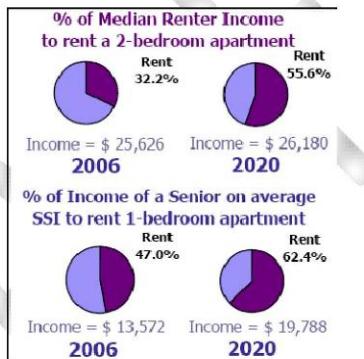
Gross income will be determined using the Section 8 Rent Assistance program's standards. Low Income Housing Tax Credit and HOME assisted project standards will supersede the Section 8 standards for applicable projects. Rental income above what is needed for maintenance, operations and reserves is considered program income and must be returned to MDOC, and subsequently, to HUD.

#### *Homeownership & Rental Affordability*

According to MDOC's Housing in Montana study, the housing affordability gap in Yellowstone County is expected to increase drastically over time.



In Yellowstone County, 51% of households under 80% AMI were cost-burdened in the year 2000 and were spending over 30% of their income on housing costs. Almost 24% of households qualified as having a severe housing cost burden<sup>iii</sup> (paying over 50% of their income for housing costs). MDOC's Housing in Montana study illustrates the current cost burdening for renters in Yellowstone County and affordability will be more challenged by the year 2020.



The City's intent with NSP funding is to stabilize neighborhoods and provide support to those seeking affordable housing. The following table illustrates the maximum mortgage affordable for varying income levels.

**Maximum Mortgage Affordable\***

% AMI	Up to 50% AMI		51% to 80% AMI		81% to 120% AMI	
	Low Income		Moderate Income		Middle Income	
	HUD Category	Household Size	Lower Limit	Upper Limit	Lower Limit	Upper Limit
1		1	\$65,000	\$100,000	\$100,000	\$122,000
2		2	\$80,000	\$112,000	\$112,000	\$150,000
3		3	\$95,000	\$122,000	\$122,000	\$170,000
4		4	\$110,000	\$135,000	\$135,000	\$188,000
5		5	\$122,000	\$150,000	\$150,000	\$210,000
6		6	\$135,000	\$165,000	\$165,000	\$226,000

7	\$145,000	\$177,000	\$177,000	\$240,000	\$240,000	\$268,000
8	\$160,000	\$188,000	\$188,000	\$260,000	\$260,000	\$280,000

*\*Based on the following assumptions: 6%, 30 year fixed rate with standard FHA mortgage insurance, taxes and hazard insurance included in payments, 43% debt to income ratio and affordability based on 30% of the total household income to accommodate utilities.*

*Information provided by Jacquelyn Wagner, First Interstate Bank*

According to MDOC's Housing in Montana study, the median home cost in Yellowstone County in 2006 was \$164,000. Most homeowners using the City's First Time Homebuyer program (up to 80% AMI) closed with mortgages less than \$150,000 in 2008. The City of Billings will facilitate both rental and homeownership projects in order to meet both the needs of area residents in respect to household income and affordability guidelines established by MDOC.

#### Rental and Homeownership Projects

% AMI	Up to 50% AMI		51% to 80% AMI		81% to 120% AMI	
	Low Income		Moderate Income		Middle Income	
HUD Category	Lower Limit	Upper Limit	Lower Limit	Upper Limit	Lower Limit	Upper Limit
Household Size						
1	\$65,000	\$100,000	\$100,000	\$122,000	\$122,000	\$176,000
2	\$80,000	\$112,000	\$112,000	\$150,000	\$150,000	\$200,000
3	\$95,000	\$122,000	\$122,000	\$170,000	\$170,000	\$217,000
4	\$110,000	\$135,000	\$135,000	\$188,000	\$188,000	\$226,000
5	\$122,000	\$150,000	\$150,000	\$210,000	\$210,000	\$230,000
6	\$135,000	\$165,000	\$165,000	\$226,000	\$226,000	\$250,000
7	\$145,000	\$177,000	\$177,000	\$240,000	\$240,000	\$268,000
8	\$160,000	\$188,000	\$188,000	\$260,000	\$260,000	\$280,000

**Using \$160,000 as the median home cost in Billings, a mix of homeownership and rental projects would benefit Billings' residents.**

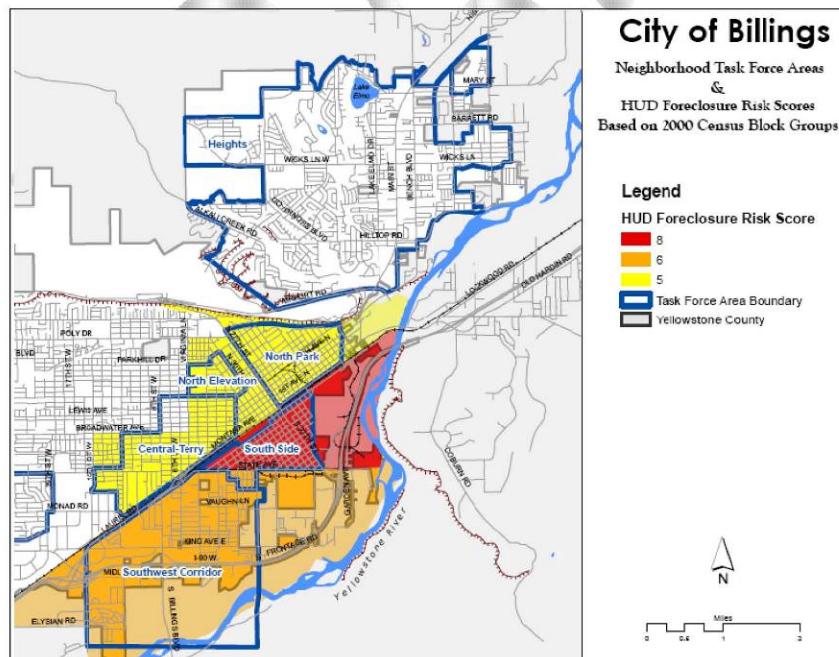
# Areas of Greatest Need

The City of Billings has experienced increasing foreclosure filings and significant blight in several neighborhoods. Neighborhood Task Force leaders have known and reported on increases in boarded-up and vacant units over the past several years. Subprime lending, foreclosures and blight has impacted neighborhoods throughout Billings in significant numbers.

For the purposes of this amendment and determining the scope of need in Billings, information provided regarding estimated number of units was retrieved from the Montana Department of Revenue, CAMA detail in July 2008 and the City of Billings Information Technology Division. Data is utilized in this context to evaluate areas of greatest need based on the primary goal of redeveloping properties vacated and abandoned in foreclosures.

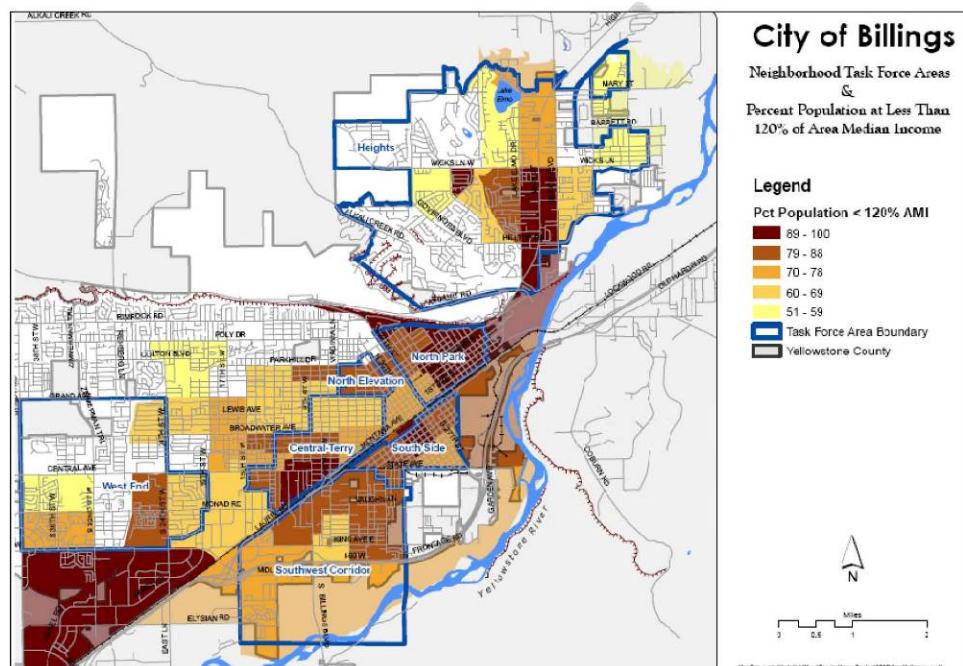
## *Foreclosures*

HUD has provided data to evaluate foreclosure and abandonment risk<sup>iv</sup> across the nation to assist local targeting efforts for NSP funding. Data analysis included estimating the number and percent of foreclosure filings over the past 18 months through June 2008, percentages of high-cost loans, unemployment and vacancy rates, and home values among other data points. The MDOC has prioritized risk scores of five or higher for targeting NSP funding throughout Montana. The City of Billings has a population of approximately 100,000 people, almost 25% of which reside in NSP target areas.



The City of Billings supports the activities of seven local neighborhood task forces. Six of the seven task forces encompass predominantly low income areas and are illustrated as high-needs areas based on HUD's foreclosure risk scores. Task force areas representing a high HUD foreclosure risk score include the South Side and Southwest Corridor neighborhoods.

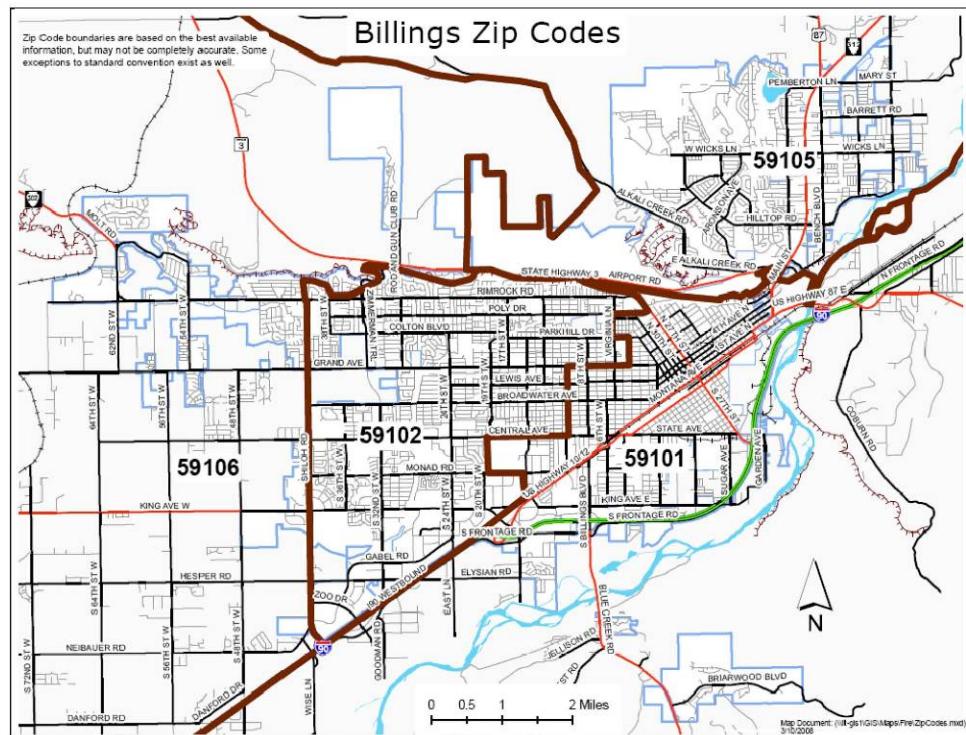
Fifty-seven percent of Billings' residents qualify at or below 120% of the Area Median Income (AMI) restrictions for NSP funding. The following map shows concentrations of the City's population with reported household incomes of less than 120% AMI relative to the task force areas.



The City of Billings has been experiencing a moderate foreclosure filing rate and currently has an estimated inventory of 33 single-family residential homes, eight multi-family units and over 30 vacant parcels of land that are owned by financial institutions. A total of 449 structural properties are currently tax delinquent including over 300 residential units, 50 condominiums / townhouses, and almost 50 commercial units.

According to the Foreclosure Response Project<sup>v</sup>, the City of Billings has the highest Intradate Foreclosure Needs Score of all CDBG entitlement communities with a score of 100, compared to Great Falls (84.5) and Missoula (28.2). **This score identifies Billings as the neediest entitlement jurisdiction in Montana.** When compared to the entire state, the area of Billings with the 59101 zip code is the third highest identified area of foreclosure need out of 233 Montana zip codes. The Billings Heights (zip code 59105) and West End (59102) areas rank fifth and seventh out of the 233 identified zip codes in the state. Collectively, these zip codes identify the majority of the City as high foreclosure need areas. As a

point of comparison, area code 59106 was ranked in 48<sup>th</sup> place in estimated foreclosure need in the state.



### Mobile Homes

Mobile homes are a large source of affordable housing in Yellowstone County (over 80 mobile home courts). Over 3,000 mobile home units in Yellowstone County were built prior to 1980 and established HUD standards for safety compliance. In Billings, there are approximately 26 mobile home courts supporting an estimated 2,500 units. Over 600 mobile homes in Billings are rated with a physical condition of "fair", "poor" or "unsound". Of these, 471 were built prior to HUD's construction standards in 1976. There are 272 mobile homes in Billings with a physical condition rating of "poor" or "unsound".

### Blight

According to data provided by the Montana Department of Commerce, the City of Billings has 116 buildings ranked "unsound" or "very poor"<sup>vi</sup>, buildings. Local data suggests the city has almost 450 additional properties listed as "poor", excluding vacant land. Twenty-eight properties in Billings are currently listed on the Department of Environmental Quality's Methamphetamine Lab Contaminated

Properties List<sup>vii</sup>. In addition, the City of Billings Code Enforcement Division has identified twelve high-complaint properties which may be eligible for demolition and redevelopment.

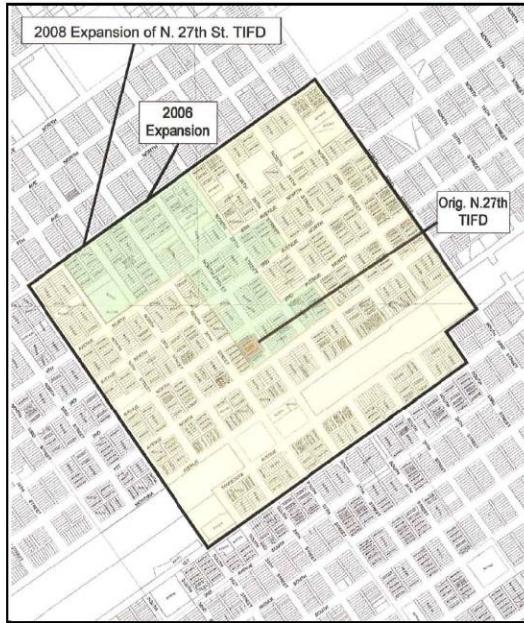


**Vacant and Abandoned Home in the South Side Task Force Area**

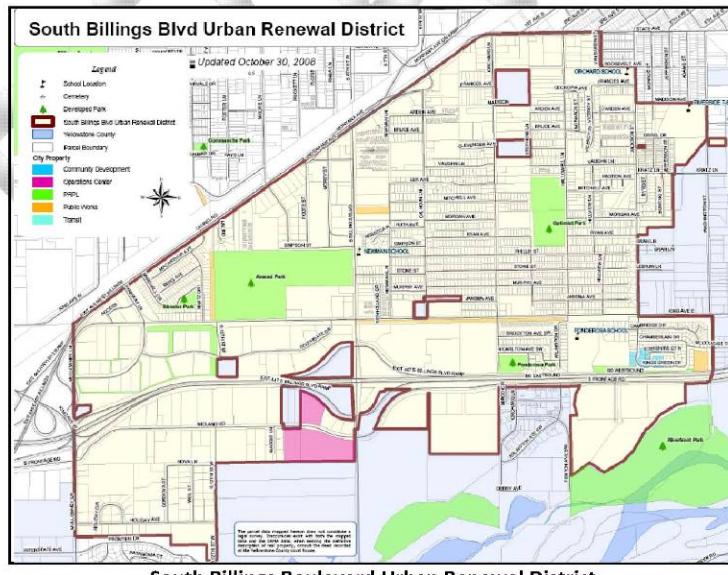
The City of Billings also has three established tax increment districts including the East Billings Tax Increment District, the North 27<sup>th</sup> Street Tax Increment Finance District and the South Billings Boulevard Urban Renewal District.



**East Billings Tax Increment District**



North 27<sup>th</sup> Street Tax Increment Finance District



South Billings Boulevard Urban Renewal District

# Activities

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In order to efficiently and expeditiously utilize NSP funding, the following programs are proposed for funding in the City of Billings utilizing current programming and staff expertise. As the City's Consolidated Plan describes, programs will target the lower-income and task force areas in the City of Billings limits. For the 2007-2008 fiscal year, 98% of the City's activities benefited low-income households. No less than twenty-five (25%) of the total funding allocated nationwide will be targeted toward activities benefitting households at or below 50% of the AMI.

All projects will be located in the City of Billings municipal limits which have been determined to be eligible for NSP project funding due to city blocks having HUD foreclosure risk scores between five and eight. Periods of affordability will be assigned in accordance with the subsidy amount committed and expended for each project. The City will not undertake activities which will trigger the Uniform Relocation Act. The City will be leveraging funding from available application sources including CDBG, HOME and partner-provided funding sources to facilitate NSP activities.

In general, the City will undertake the following activities, to be funded in part with NSP funding:

- Acquisition, rehabilitation (including infrastructure as part of redevelopment) and resale of foreclosed or abandoned homes to income qualified homebuyers as their primary residence;
- Financial assistance to income qualified homebuyers who are purchasing an abandoned or foreclosed home; and
- Acquisition of properties and demolition of existing structures that meet the definition of blight in the community. These properties will be redeveloped in the future for use as permanent affordable housing.

As required, all NSP funding must be committed within an 18 month timeframe and must be carried out within four years. The projects will begin in early 2009 and will be carried out until early 2013. This timeframe commences upon formal execution of the grant agreement between HUD and the State of Montana.

## *Stages One & Two*

The City is proposing to establish financing mechanisms purchase / rehabilitate abandoned or foreclosed homes or residential properties for individuals / families with household incomes:

- Less than 50% Area Median Income (AMI) – Stage One; and
- Up to 120% AMI – Stage Two.

The City will purchase vacant properties which have been abandoned or foreclosed for the purposes of rehabilitation and direct homeownership assistance. Housing will be used as the primary residence for purchasers. The final sales price will be no greater than the initial acquisition and rehabilitation costs, as per federal mandate. The discount for acquisition will be 5% from current appraised market value for single purchases and 15% for bulk purchases. Appraisals must be conducted not more than 60 days prior to the date of an offer being made for the property. Each property will be evaluated for feasibility for

rehabilitation as per standard protocol with both Demolition and Housing Rehabilitation programs. Structures requiring less than \$25,000 in rehabilitation will be eligible for this stage of the NSP program. Structures requiring more than \$25,000 in rehabilitation will be evaluated for Stage Three activities.

Direct homeownership loan assistance will be provided to buy down mortgages to ensure no more than 35% of the total household income is allocated to a mortgage, interest and tax payments on a monthly basis. The loan would follow the routine standard for the First Time Homebuyer program, remaining as a recapture product with zero interest / payments and established periods of affordability as per MDOC guidelines. NSP loans will be fully forgiven after the mandated period of affordability. Eight hours of pre-purchase counseling is mandatory for homeowner participation in City home buyer programs. Assistance will be provided in a graduated manner, offering more down payment assistance to those with lower incomes.

Any rehabilitation of a foreclosed upon home or residential property shall be to the extent necessary to comply with applicable laws, codes and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties. Funds will be used for preservation, improving energy efficiency or conservation, or providing renewable energy source(s). The City strategically incorporates modern green building and energy efficiency improvements to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

Housing rehabilitation is performed through the City of Billings as a standard CDBG activity and is performed utilizing the following adopted building codes:

- International Building Code, 2006 Edition;
- International Residential Code, 2006 Edition;
- International Existing Building Code, 2006 Edition;
- International Mechanical Code, 2006 Edition;
- International Fuel Gas Code, 2006 Edition;
- International Energy Conservation Code, 2003 Edition;
- National Electrical Code, 2005 Edition;
- Uniform Plumbing Code, 2006 Edition; and
- NFPA 99c, Standard on Gas and Vacuum Systems (med gas), 2005 Edition.

All homes assisted through the City's housing rehabilitation programs meet HUD's minimum Housing Quality Standards when completed. Inspections by certified building inspectors and lead-based paint risk assessors are also standard protocol for City rehabilitation programs.

### *Stage Three*

The City is proposing to demolish blight and redevelop demolished or vacant properties in Stage Three for redevelopment. Structures identified in the first two stages requiring more than \$25,000 in rehabilitation will be considered for this stage. Qualifying properties include those units not feasible for rehabilitation due to excessive damage and contamination including:

- Burned and boarded up housing units; and

- Units listed on the Methamphetamine Lab Contamination List.

Following demolition, the City will ensure redevelopment within a ten-year period in conformance with regulations set by HERA. To facilitate redevelopment, the City may establish a land bank to maximize affordability periods and to ensure redevelopment. The land bank must obligate the property for a specific, eligible redevelopment NSP activity within a ten year period. The City may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service. Deed restrictions will be placed on the properties with covenants running with the land for a period of affordability of **50** years. The City will manage the long-term affordability of the land bank by maintaining a resale provision for prospective homeowners for the entire period of affordability. As an entitlement, the City must apply the AMI levels applicable to regular CDBG program geography.

The City may also acquire properties which have been abandoned, foreclosed, or blighted in order to build new modest, affordable rental and single family housing based on current zoning codes. New construction will be based on a drafted green building standard which offers a point-by-point review of housing construction standards to maximize both efficient and respectful use of resources. Long-term affordability, expected maintenance, energy consumption, and compatibility with the surrounding neighborhood are predominant factors in decision-making for new construction.

NSP funds may be used to redevelop acquired property for nonresidential uses, such as mixed residential and commercial use. Vacant commercial properties undergoing tax and / or mortgage foreclosures may be purchased by the City for redevelopment to benefit low-moderate income areas and clients. The Mayor's Committee on Homelessness is working on collaborative ventures involving the concepts of Social Enterprise, which can be defined as any non-profit, for-profit or hybrid corporate form utilizing market-based strategies to advance a social mission. The Downtown Billings Partnership and Chamber of Commerce have been instrumental in facilitating this movement in Billings. Buildings can be purchased and redeveloped for commercial leasing by Social Enterprise employers, and on-site housing units can be available for employees above store-front businesses. The long-term affordability of the ventures would be ensured via deed restriction.

The City proposes to establish community partnerships in order to facilitate working with mobile-home owners to voluntarily demolish unsafe mobile homes (built prior to 1976) contributing to neighborhood blight. This activity is expected to facilitate homeownership in energy-efficient units with permanent foundations. Special care and consideration will be taken in order to avoid relocation activities and alternative housing would need to be established on a voluntary basis to avoid relocation.

#### *Performance Measurements*

The City proposes to measure performance by the number of units of housing restored and created by varying income levels, number of years of affordability created and the amount of funding leveraged for the program. With the relative short time frame for funding commitment via contract (18 months), all efforts will be made to propose and implement projects to be carried out within allowed timelines.

<sup>1</sup> Montana Department of Commerce Website, November 2008, [http://housing.mt.gov/Includes/CP/ApplicationDocs/CP\\_NSP-Amendment.pdf](http://housing.mt.gov/Includes/CP/ApplicationDocs/CP_NSP-Amendment.pdf) .

<sup>2</sup> Housing in Montana, The White Paper, Housing Coordinating Team, September 2008, pg. 80, [http://housing.mt.gov/Includes/HCT/Final\\_White\\_Paper.pdf](http://housing.mt.gov/Includes/HCT/Final_White_Paper.pdf)

<sup>3</sup> DataPlace by KnowledgePlex, 2000 Census Data, November 2008, [www.dataplace.org](http://www.dataplace.org) .

<sup>4</sup> HUD User Publications, retrieved November 2008, [http://www.huduser.org/Datasets/nsp\\_foreclosure\\_data.html](http://www.huduser.org/Datasets/nsp_foreclosure_data.html) .

<sup>5</sup> The Foreclosure Response Project is a collaborative effort involving the Center for Housing Policy, KnowledgePlex, the Urban Institute and the Local Initiative Support Corporation, <http://www.housingpolicy.org/foreclosure-response.html#> , October 2008.

<sup>6</sup> Montana Department of Revenue Property Physical Condition Database provided by the Montana Department of Commerce, December 2008, [http://comdev.mt.gov/CDD\\_CDBG\\_NSP.asp](http://comdev.mt.gov/CDD_CDBG_NSP.asp) .

<sup>7</sup> Montana Department of Environmental Quality, retrieved December 2008, <http://svc.mt.gov/deq/methquery/> .

DRAFT



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Public Hearing for Special Review #871 – 124 North Broadway  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a special review request to locate an All Beverage License without gaming within the existing Rock Creek Coffee Roasters, a tenant in the Babcock Building, at 124 North Broadway. The total square footage of the parcel is 21,000 square feet, known as Block 93, Lots 6-12, Billings Original Town in the Central Business District (CBD) zone. The property owner is The Babcock, LLC and the agent is Randy Heiser. The Zoning Commission held a public hearing on this request on January 6, 2009, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review, if approved, should increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #871 on a 5-0 vote.

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

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

## **INTRODUCTION**

This is a special review request to locate a new All Beverage License without gaming in the existing Rock Creek Roasters café, a tenant in the northeast corner of the Babcock Building, at 124 North Broadway in the Central Business District (CBD) zone. The lot is legally described as a fraction of Lot 6 & Lots 7-12, Block 93, Billings Original Town (BOT) and is 21,000 square feet in area. Surrounding development is commercial in nature with a mix of retail sales, eating establishments and other downtown businesses.

## **PROCEDURAL HISTORY**

- A special review application to allow an All Beverage License without gaming was received on December 1, 2008.
- The City Zoning Commission held a public hearing on January 6, 2009, and is forwarding a recommendation of conditional approval on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on January 26, 2009.

## **BACKGROUND**

The applicant proposes to establish an all beverage liquor service within the existing Rock Creek Coffee Roasters café. This license does not allow gaming and cannot have gaming added at a future date. The applicant states in the application letter this will help support the continued growth and stabilization of downtown businesses including other restaurants and entertainment. The state has issued very few all beverage licenses without gaming and this particular license has a 60-day time limit for the owner to successfully locate the license.

The Unified Zoning Regulations exempt all locations within the Central Business District zone from the 600-foot separation requirement to churches, schools & playgrounds applicable to other zoning districts for new alcoholic beverage licenses.

Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria; 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within the CBD zoning district where on premise consumption of alcoholic beverages may be allowed by special review approval.

The application also conforms to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages may be allowed. The CBD zone is intended to *“primarily accommodate stores, hotels, governmental and cultural centers and service establishments at the central focal point of the city's arterial and transportation system, where the C.B.D. can conveniently serve the population of the entire urban area with a varied and specialized selection of goods and services. In order to protect the public interest and welfare and facilitate an attractive, efficient and prosperous C.B.D., the emphasis is on larger scale building and specialty shops.”*

The proposed use is in a zoning district that allows this use with a special review. The City Council has granted 31 of the previous 33 requests for alcoholic beverage licenses within a 3-block radius of this location. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns. This site is surrounded by a mix of commercial businesses and will use a portion of an existing café to allow diners to enjoy a beverage of choice during café hours. The CBD zoning district is intended for specialty shops convenient to cultural and governmental centers. The Planning Division recommended conditional approval to the Zoning Commission.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

*This application does comply with the requirements of the zoning regulations.*

2. Is consistent with the objectives and purposes of Chapter 27 BMCC and the Growth Policy.

*This application is consistent with the purposes of Chapter 27- Unified Zoning Regulations and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.*

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The proposed location of the all beverage liquor service is appropriate and conditions of approval are recommended.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #871 on a 5-0 vote.

## **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to a fraction of Lot 6 & Lots 7-12, Block 93, Billings Original Town (BOT) generally located at 124 N Broadway.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show additional square footage for all beverage service within the Babcock Building, the addition of an outdoor patio or the addition of another alcoholic beverage license with gaming will require additional special review approval.
3. As shown on the site plan submitted with the application, there shall be no outdoor patio. The addition of an outdoor patio will require an additional special review.
4. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
5. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

A public hearing before the City Zoning Commission was held on January 6, 2009. Staff forwarded a recommendation of conditional approval. Randy Heiser, agent for the property owner, appeared before the Zoning Commission and explained the proposed development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 5-0 to forward this recommendation to the City Council.

## **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

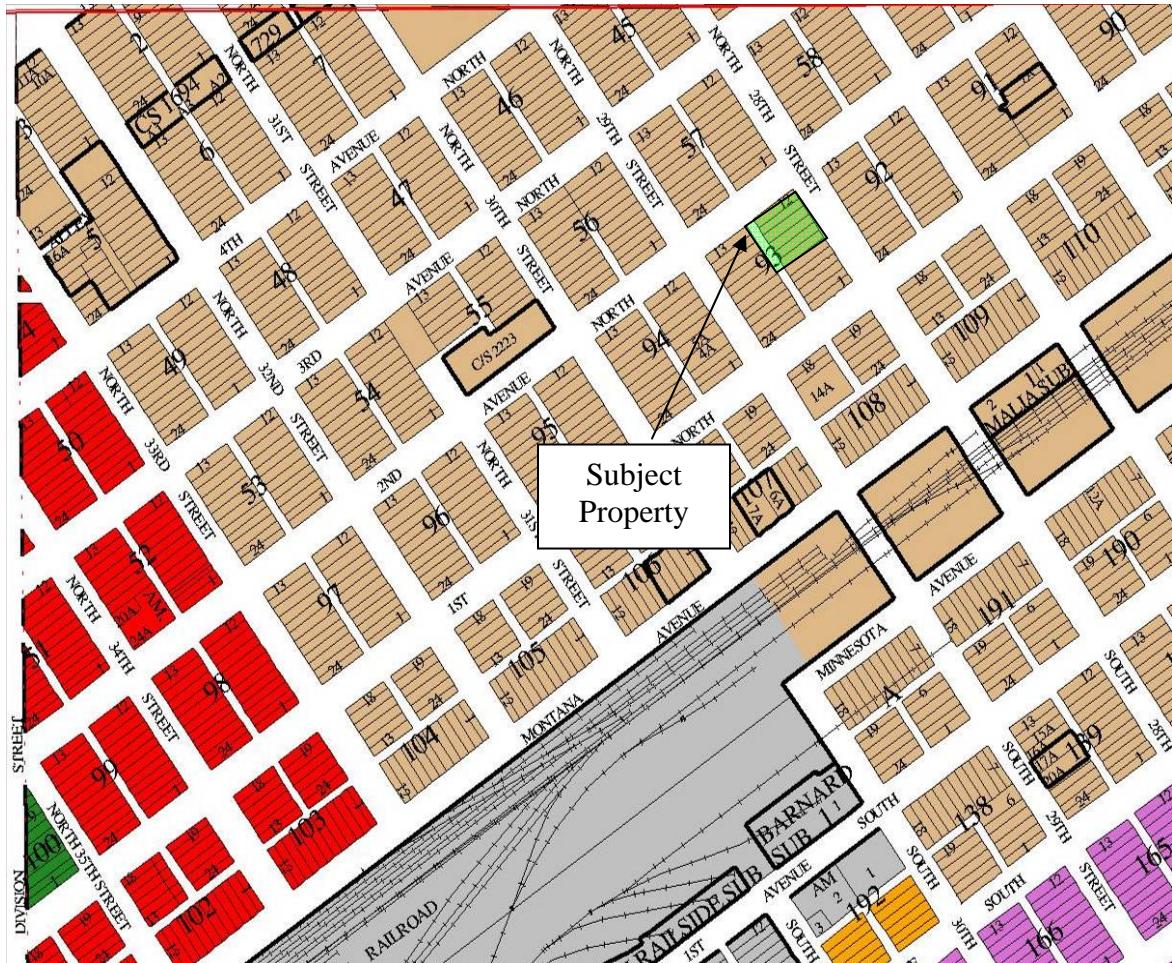
## **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #871 on a 5-0 vote.

## **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

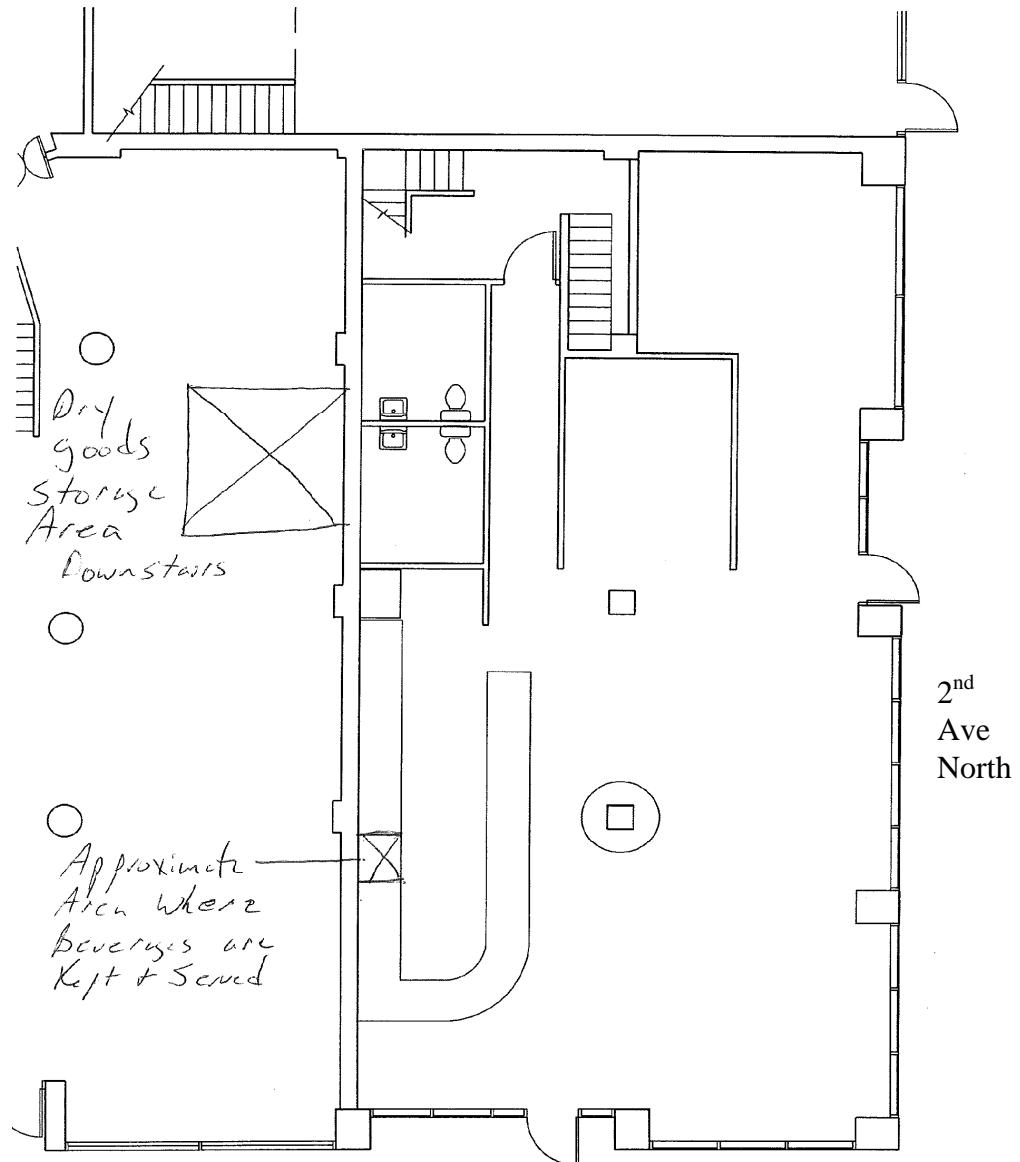
ATTACHMENT A  
Zoning Map – Special Review #871



**ATTACHMENT B**  
Site photos –Special Review #871



# Rock Creek Coffee Roasters



124 N Broadway



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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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TITLE: Public Hearing for Special Review #872 – 2224 Minnesota Avenue  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a special review request to allow a sandblasting operation in an existing building at 2224 Minnesota Avenue. The total square footage of the parcel is 39,000 square feet, known as Block 134, Lots 7-18, Billings Original Town in a Controlled Industrial (CI) zone. The property owner is Midland West Manufacturing and the agent is PowderKote Unlimited. The Zoning Commission held a public hearing on this request on January 6, 2009, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
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- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review should have no effect on the City's tax base since the use already exists on the property

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #872 on a 5-0 vote.

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

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

## **INTRODUCTION**

This is a special review to permit a sandblasting operation within an existing building that also powder coats items for customers in a Controlled Industrial zone at 2224 Minnesota Avenue. PowderKote Unlimited provides sandblasting for preparation of items to be powder coated within the building owned by Midland West Manufacturing. There are several machine shops, open storage yards and the railroad within the immediate area. Previous to the special review application, sandblasting was vented without filtration to the outside of the building. A complaint about the sandblasting was filed with the Code Enforcement Division on October 1, 2008 and the owner of PowderKote was notified to apply for a special review. While the application was pending, PowderKote installed an air handler and filtration system and no further complaints have been received. There are 3 residential dwellings (100 block of S 24<sup>th</sup> Street) within 600 feet of this location as well as several office buildings and retail establishments. All other surrounding properties are used for industrial purposes.

## **PROCEDURAL HISTORY**

- Code compliance complaint received by the Code Enforcement Division on October 1, 2008. Property owner and agent notified of requirement for special review approval.
- A special review application to allow sandblasting in an existing industrial building was received on December 1, 2008.
- The City Zoning Commission held a public hearing on January 6, 2009, and is forwarding a recommendation of conditional approval on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on January 26, 2009.

## **BACKGROUND**

The applicant proposes to continue using a 39 foot by 31 foot area within the existing industrial building to sandblast and prepare customer items for powder coating. Sandblasting can cause fugitive dust, odors, and if done outside a building creates a noise nuisance. The applicant has remedied these problems by installing an indoor ventilation and filtration system. No further complaints regarding the operation have been received since the original complaint in October 2008.

Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria; 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within the CI zoning district where sandblasting may be allowed by special review approval.

The application also conforms to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where sandblasting and manufacturing may be allowed. The CI zone is intended to *“accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial*

*zones, and to provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.”*

The proposed use is in a zoning district that allows this use with a special review. The City Council has granted several requests to allow sandblasting in CI zones since 2003. The Council granted approval for a machine shop 2 blocks from this location. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns. This site is surrounded primarily by industrial uses, automotive repair and machine shops. Minnesota Avenue links to principal arterial streets to the east and west. Not all CI zones could accommodate a sandblasting use however this particular location and neighborhood characteristics is compatible with such use. The Planning Division recommended conditional approval to the Zoning Commission.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations.*
2. Is consistent with the objectives and purposes of Chapter 27 BMCC and the Growth Policy.  
*This application is consistent with the purposes of Chapter 27- Unified Zoning Regulations and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.*
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.  
*The proposed location for an indoor sandblasting operation is appropriate and conditions of approval are recommended.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #872 on a 5-0 vote.

### **CONDITIONS OF APPROVAL**

1. The special review approval for sandblasting is for Lots 7-18 of Block 134 of BOT generally located at 2224 Minnesota Avenue and no other special review use is approved or implied by this application.
2. Development of the site shall be in substantial conformance with the site plan submitted with this application and shown in this staff report. Deviations from the approved site plan that show addition of floor area for sandblasting greater than 10% of the existing area or outdoor sandblasting will require additional special review approval.
3. The applicant shall comply with all requirements of state and federal regulations, codes and statutes regarding the operation of the sandblasting business including but not limited to regulations administered by the Yellowstone County Air Pollution Control Board, the Montana Department of Environmental Quality, the U.S EPA and OSHA.
4. All sandblasting conducted on the property shall be conducted within an enclosed building.
5. The applicant shall maintain the property so as to minimize fugitive dust including but not limited to spraying down exterior ground, paved or unpaved, with water or other dust control measures.
6. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

A public hearing before the City Zoning Commission was held on January 6, 2009. Staff forwarded a recommendation of conditional approval. C.W. McCarthy, owner of PowderKote Unlimited and agent for the property owner, appeared before the Zoning Commission and explained the proposed development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 5-0 to forward this recommendation to the City Council.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

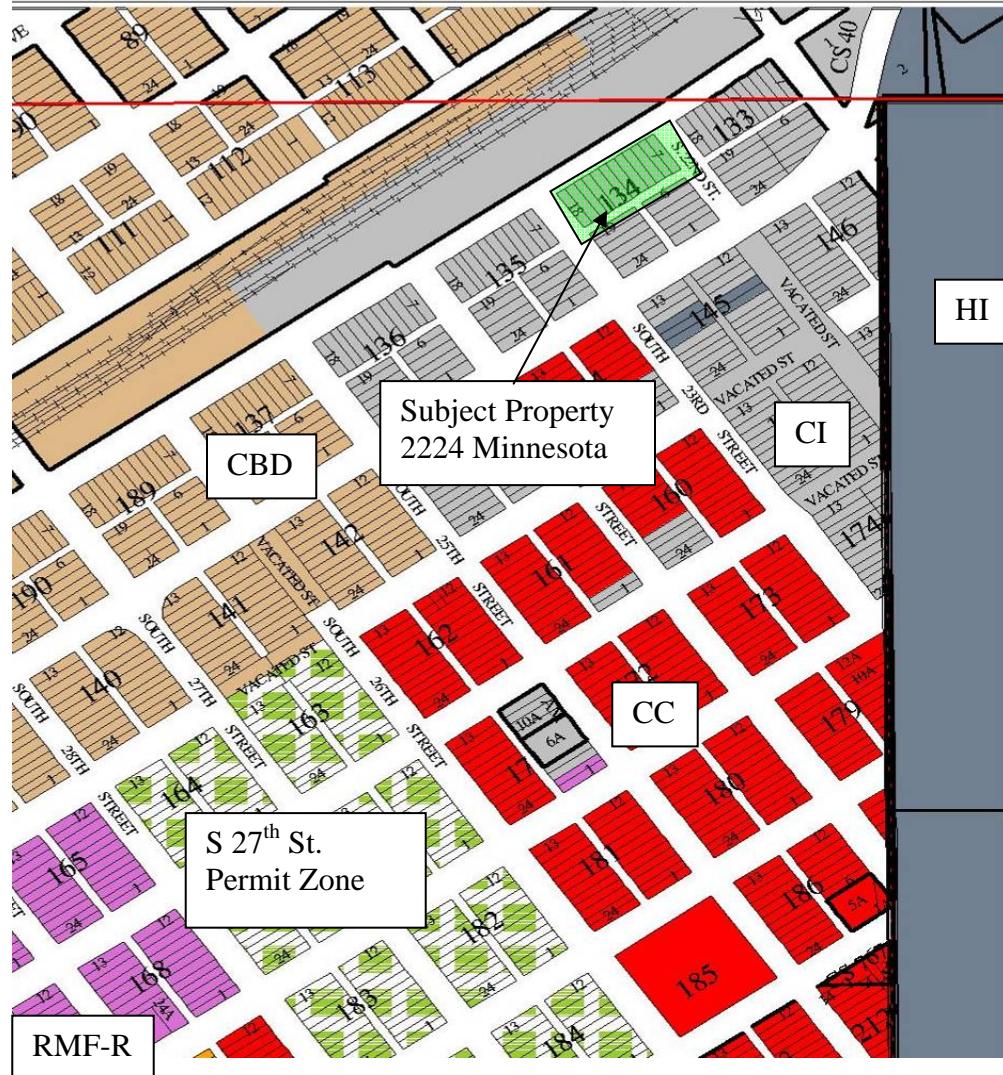
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #872 on a 5-0 vote.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

**ATTACHMENT A**  
Zoning Map – Special Review #872



ATTACHMENT B  
Site photos –Special Review #872

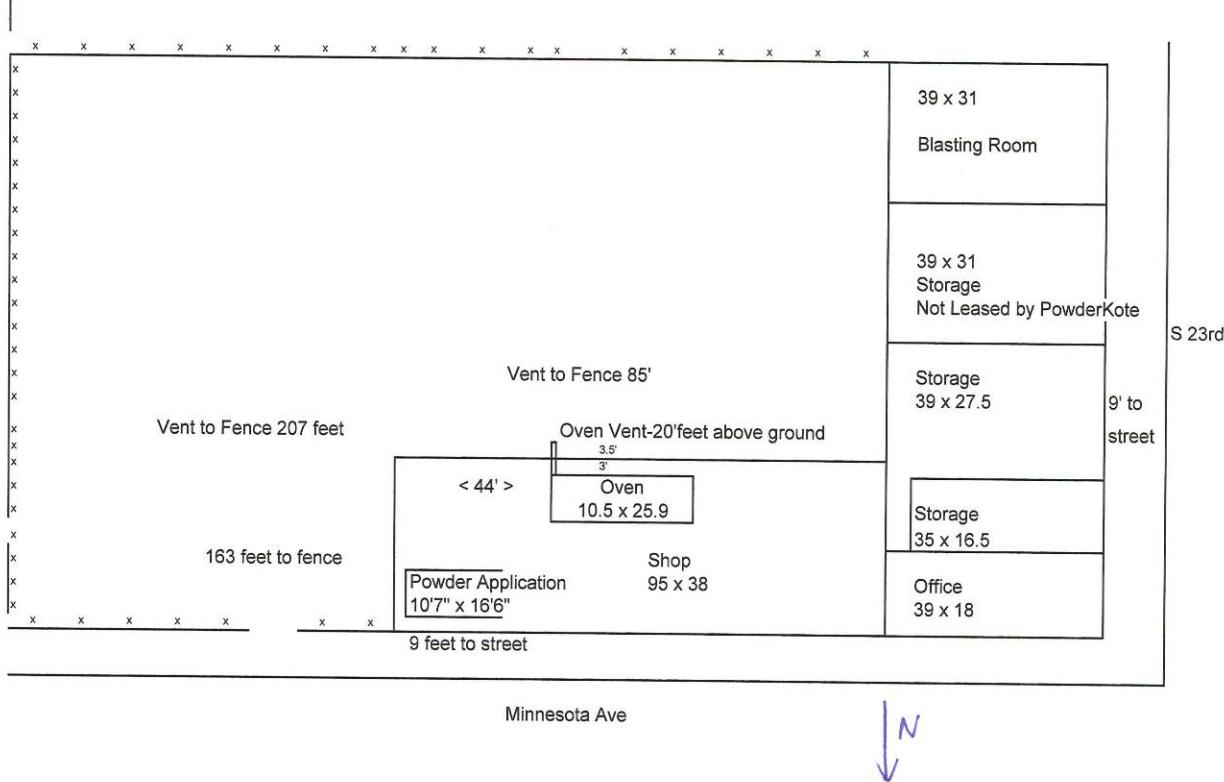


2224 Minnesota Avenue



View east on Minnesota Avenue

**ATTACHMENT C**  
Site Plan –Special Review #872





**CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009**

**TITLE:** Public Hearing for Special Review #873  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

**PROBLEM/ISSUE STATEMENT:** This is a request for a special review to allow a drive-through window for the Albertson's Pharmacy in a Community Commercial (CC) zone adjacent to a Residential 7,000 (R-70) zoning district, on Tract A of Certificate of Survey 2192. The property is addressed as 1212 Grand Avenue and is the site of the Albertson's grocery store and several other small retail shops on the south east corner of the intersection of Grand Avenue and 13<sup>th</sup> Street West. The Zoning Commission held a public hearing on this request on January 6, 2009, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

**ALTERNATIVES ANALYZED:** Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

**FINANCIAL IMPACT:** The special review should increase the City's tax base.

## RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #873 on a 5-0 vote.

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

**Approved By:**  
**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

## **INTRODUCTION**

This is a request for a special review to allow a drive-through window for the Albertson's Pharmacy at 1212 Grand Avenue. There is a vacant space formerly occupied by a Rite-Aid Pharmacy that is proposed to be removed and the new drive through lane installed for the existing pharmacy. The property is across an alley from R-70 zoning and requires a special review approval to allow the use at this location. The property is located at the south east corner of the intersection of Grand Avenue, a principle arterial street, and 13<sup>th</sup> Street West. Thirteenth Street West is a collector street and Lewis and Clark School is directly west of the property.

## **PROCEDURAL HISTORY**

- A special review application to allow a drive through on the west side of the existing Albertson's store was received on December 1, 2008.
- The City Zoning Commission held a public hearing on January 6, 2009, and is forwarding a recommendation of conditional approval on a 5-0 vote.
- The City Council will conduct a public hearing and consider this application on January 26, 2009.

## **BACKGROUND**

The applicant proposes to construct the drive through service on the west end of the Albertson's store. A Special Review must be approved to have the drive-through use on the commercially zoned property adjacent to the residential property to the south. The applicant intends to fully re-develop this section of the property including new landscaping and pavement. The Engineering Division had several concerns with the submitted site plan and proposed conditions have been crafted to address these concerns. First, the site plan shows a third drive approach out to 13<sup>th</sup> Street West to handle exiting from the new drive through window. The property does not have enough linear street frontage to allow a third drive opening. Engineering staff requests that traffic exit from the drive through directly on to the paved alley. Screening of the alley already exists on the adjacent residential properties. Engineering staff also commented the drive through should provide queuing for at least 3 vehicles without interfering with the existing drive lane along the front of the store.

This property is adjacent to a residential neighborhood, a public school as well as high traffic retail to the north and east. Grand Avenue is classified as an arterial street and is designed to carry high volumes of traffic through this area of the City. The 2008 traffic count for Grand Avenue at this location is approximately 23,000 vehicle trips per day and the count on 13<sup>th</sup> Street West is approximately 5,000 vehicle trips per day.

The applicant plans to completely demolish the existing Rite-Aid Pharmacy structure and re-develop this portion of the site. The existing alley is paved and is used for deliveries to Albertson's and other stores in the same complex. The site will contain the required landscaping along 13<sup>th</sup> Street West. The existing parking lot will be unaffected by the proposed project.

Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria; 1) the application complies with

all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within the CC zoning district where a drive through service may be allowed by special review approval.

The application also conforms to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where drive through services may be allowed. The CC zone is intended to *“accommodate community retail, service and office facilities offering a greater variety than would normally be found in a neighborhood or convenience retail development. Facilities within the classification will generally serve the community, and is commensurate with the purchasing power and needs of the present and potential population within the trade area.”*

The proposed use is in a zoning district that allows this use with a special review. The City Council has granted several requests to allow drive through services adjacent to residential zoning in this area since 1983, including McDonald's, Arby's, Dairy Queen, Taco John's, Taco Bell and Don's Car Wash. Most recently, the Council granted conditional approval for a drive through teller for a proposed bank at 15<sup>th</sup> Street West and Grand Avenue. That project has not yet been built. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns. This site is adjacent to high traffic retail and two other drive through pharmacies. This appears to be an appropriate use considering the location of the property, the type of facility proposed, the character of the surrounding properties, and the existing uses in the area with drive-through services. The Planning Division recommended conditional approval to the Zoning Commission.

## **ALTERNATIVES ANALYSIS**

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).  
*This application does comply with the requirements of the zoning regulations.*
2. Is consistent with the objectives and purposes of Chapter 27 BMCC and the Growth Policy.  
*This application is consistent with the purposes of Chapter 27- Unified Zoning Regulations and the 2003 Growth Policy. The application is appropriate in this particular district based on all the circumstances of the location. The application does encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.*
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.  
*The proposed location for the drive through service is appropriate and conditions of approval are recommended.*

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of conditional approval of Special Review #873 on a 5-0 vote.

### **CONDITIONS OF APPROVAL**

1. The special review approval for a drive through window shall be limited to Tract A of C/S 2192 as shown on the site plans submitted with this application.
2. Any new lighting within the parking lot or drive through areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
3. The drive through location shall be constructed as shown on the submitted site plan with the following modifications: 1) the drive through exit shall be to the existing alley south of the building - no new drive approach or exit will be allowed directly on to 13<sup>th</sup> Street West; 2) the storm water retention pond is eliminated; and 3) the queue for the drive through window shall have enough linear feet for 3 waiting vehicles without intruding on the drive lane and approach from 13<sup>th</sup> Street West.
4. The applicant is required to continuously maintain and replace as necessary the sight-obscuring fencing that runs along the south boundary of the alley adjacent to the residential properties. This requirement is limited to the first two residential properties south of the alley and east of 13<sup>th</sup> Street West.
5. There shall be no outdoor public address system or outside announcement system of any kind. The drive through may have an outdoor private address system as standard for all drive through services.
6. Demolition of the existing structure on the property will provide for site security, debris and trash containment, dust control during and after structure demolition, and no demolition work shall occur prior to 8 am or after 8 pm daily. A demolition permit from the Building Division is required.
7. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this

application. The Planning Division points out that the use and development of the property must be in accordance with the submitted site plan.

### **STAKEHOLDERS**

A public hearing before the City Zoning Commission was held on January 6, 2009. Staff forwarded a recommendation of conditional approval. Nicole Dovel-Moore of CTA Architects and Engineers, agent for Albertson's, appeared before the Zoning Commission and explained the proposed development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation of conditional approval. The Zoning Commission moved to recommend conditional approval of the special review request and voted 5-0 to forward this recommendation to the City Council.

### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

Consistency with plans and policies is discussed in the Alternatives Analysis section above.

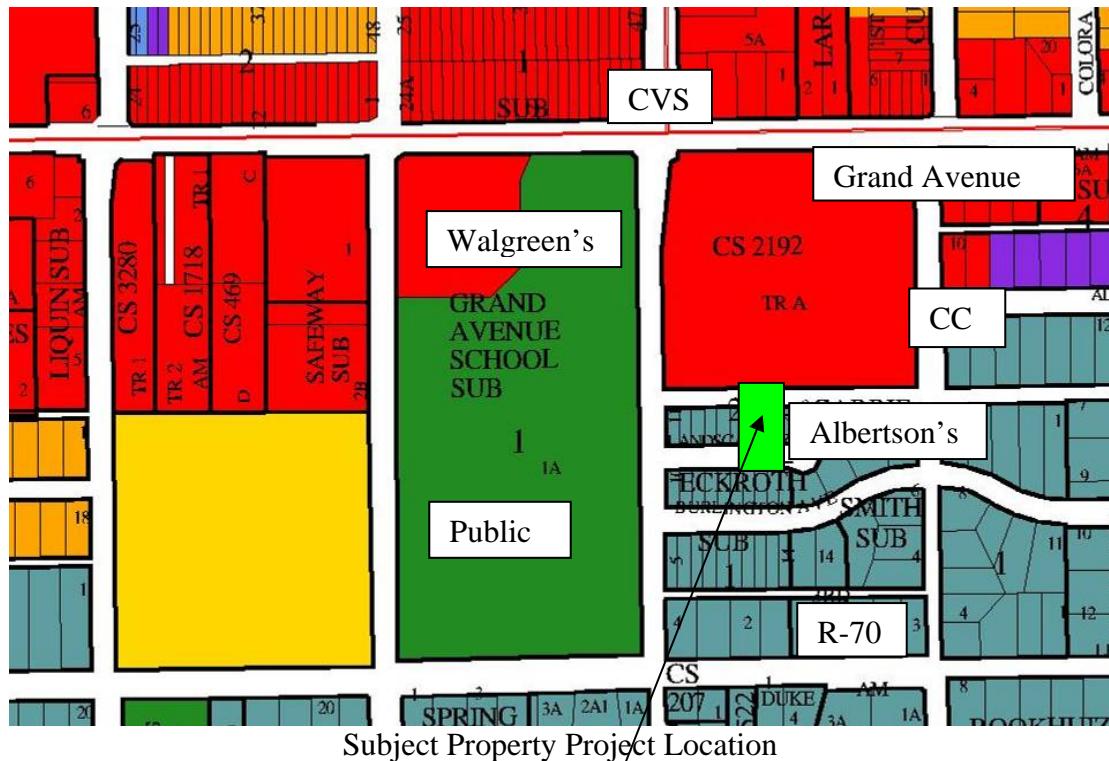
### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #873 on a 5-0 vote.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A  
Zoning Map – Special Review #873



**ATTACHMENT B**  
Site photos –Special Review #873

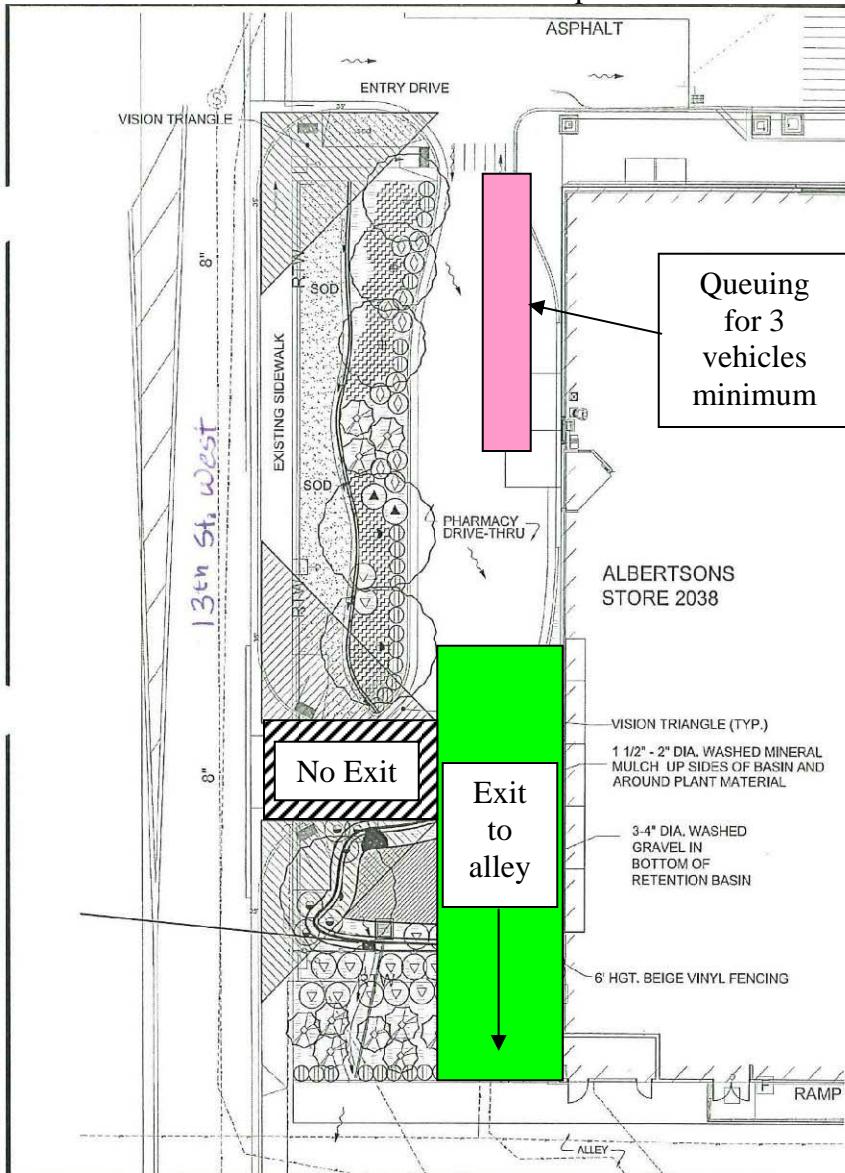


Subject property



Subject Property south along 13<sup>th</sup> Street West

**ATTACHMENT C**  
Site Plan –Special Review #873



PLANT LIST					
TREES		COMMON NAME	QUANTITY	SIZE	SPACING
	FRAXINUS PENNSYLVANICA 'CINNAMON'	CINNAMON ASH	3	2" CAL. (3.5")	AS SHOWN
	VALVATIA SPRING SNOW	SPRING SNOW CRISPASPILE	3	12" CAL. (3.5")	AS SHOWN
	PISTILLARIA CORYNIFLORA	CYPRESS SPANISH WYPRSCHE	11	6' 0"	AS SHOWN
	FORSYTHIA X SUSCENS 'TOWER'	TOWER FORSYTHIA	5	17" CAL. (3.5")	AS SHOWN
SHRUBS		COMMON NAME	QUANTITY	SIZE	SPACING
	WEIGELA THUNBERGII 'BAILEY'	BURGUNDY CAFE DU SOLEIL	12	5' 0"	4' 0"
	CONVOLVULUS SWEET BLOOM	IVORY HULM BUCKWOOD	21	5' 0"	5' 0"
	PASSIFLORA PURPUREA	WAVE MUDDY FINE	2	5' 0"	5' 0"
	POTENTILLA FRUTICOSA 'TAKEOVER'	POTENTILLA	30	5' 0"	2' 0"
	SALIX PURPUREA 'NANA'	DWARF PURPLE OSIER WILLOW	8	5' 0"	5' 0"
GROUND COVER		COMMON NAME	QUANTITY	SIZE	SPACING
	ARCTOTIS STAPFII 'MASSACHUSETTS'	MINNIE MAE	600 SQ. FT.	1' 0"	3' 0"
	THYMUS	LAIN	600 SQ. FT.	600	600 KENTUCKY SP.
	3-4" DIA. WASHED ROCK		1000 SQ. FT.	200 PER-PIKE	
	1 1/2" - 2" WASHED MINERAL MULCH		550 SQ. FT.	45 PER-PIKE	

PERFORMANCE IRRIGATION:

1. CONTRACTOR TO DESIGN AND INSTALL UNDERGROUND AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO INSTALL, MANUAL DRAYS AT LOW FONTS AND AIR RELIEF CONDUITS HEAD OF MONOLITHIC VALVE. TO INSTALL, DRAIN VALVE COUPLER AT END OF MONOLITHIC DRAIN VALVE.
2. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44. TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
3. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
4. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
5. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
6. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
7. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
8. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
9. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
10. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.
11. CONTRACTOR TO PROVIDE AUTOMATIC IRRIGATION SYSTEM TO PROVIDE ADEQUATE WATER FOR ALL PLANT MATERIAL AS SHOWN ON PLANTING PLAN. TO PROVIDE AUTOMATIC IRRIGATION CONTROLLER CONNECTIONS WITH FACILITY STA. 44.

CITY CODE REQUIREMENTS:

BUFFER YARD TREE REQUIREMENT: 27 FEET PER 40 LF. ON STREET FRONTAGE
TOTAL STREET FRONTAGE OF APPROVED SITE AREA: 120 LF.
BUFFER YARD TREES REQUIRED: 7
BUFFER YARD TREES SPECIFIED: 9
BUFFER YARD ORGANIC LANDSCAPE MATERIAL REQUIREMENT: 75% MN, 25% COTTON. PERCENTAGE OF BUFFER YARD TO BE ORGANIC LANDSCAPE: 85% (REMOVING 2% AS BIRCH SODDING)





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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Public Hearing and First Reading of an Ordinance Expanding Ward I:  
Annexation #08-09

**DEPARTMENT:** Planning and Community Services Department

**PRESENTED BY:** David Green, Planner I

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**PROBLEM/ISSUE STATEMENT:** On January 12, 2009 the City Council approved the annexation of a total of 28.222 gross acres and 5.027 net acres. The net acreage, the subject property, is located 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. The remaining acreage is portions of rights-of-way of Interstate 90 (I-90) and the South Billings Boulevard interchange. The request for annexation was submitted by owner and petitioner, Brumar Corporation, represented by Bruce E. Sunwall. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward I will be conducted at this meeting. The second reading of the ordinance will be conducted on February 9, 2009.

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

**RECOMMENDATION**

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds the subject property to City Ward I.

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 09-\_\_\_\_\_

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

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

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

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

PASSED by the City Council on the first reading this 26<sup>th</sup> day of January, 2009.

PASSED by the City Council on the second reading this 9<sup>th</sup> day of February, 2009.

THE CITY OF BILLINGS:

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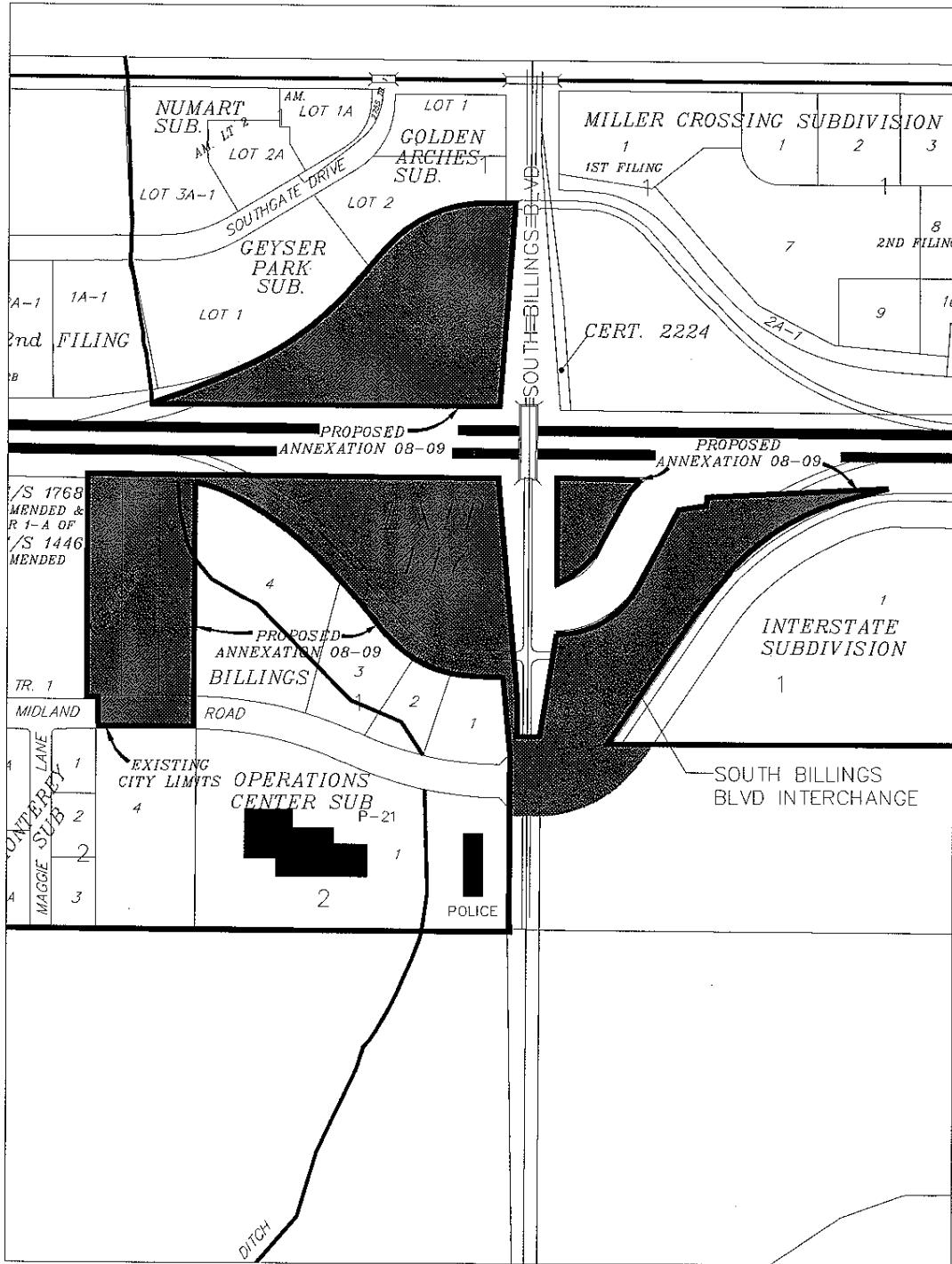
Ron Tussing, MAYOR

ATTEST:

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

(AN 08-09)

# EXHIBIT A





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CITY COUNCIL AGENDA ITEM  
CITY OF BILLINGS, MONTANA  
Monday, January 26, 2009

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**TITLE:** Renewal of City Administrator Contract for 2008-2010  
**DEPARTMENT:** Councilmember Jani McCall/City Attorney  
**PRESENTED BY:** Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** The Mayor and City Council have previously conducted the annual performance evaluation of the City Administrator, and the summary of that evaluation as prepared by Councilmember Jani McCall is attached to this memo as Attachment A. As a result of a positive evaluation, the Mayor and City Council requested Councilmember Jani McCall to lead the negotiation of a new two year contract with City Administrator Tina Volek. Councilmember McCall and the City Attorney have met with the City Administrator and have prepared a proposed new employment contract for the term of October 2008-October 2010, which is attached to this memo as Attachment B. Changes are noted by strikethroughs and underlines. These noted changes will be eliminated, and a clean version will be presented to the Mayor and City Administrator for signatures upon final City Council approval.

**ALTERNATIVES ANALYZED:**

- The Council may approve the proposed new City Administrator employment contract.
- The Council may disapprove the proposed new City Administrator employment contract.

**FINANCIAL IMPACT:**

The proposed base salary for the City Administrator for the first year of the renewed contract will be \$114,337.60 for October 2008-2009, as indicated in Section Three. An additional two percent (2%) contribution from the City to the City Administrator's retirement account managed by the International City Managers Association (ICMA-RC) will be made each of the two years, as provided in Section Seven of the contract. The City Administrator has waived any Cost of Living Allowance (COLA) for the next two years under this proposed contract; therefore, no COLA has been included in the compensation section.

**RECOMMENDATION:** Councilmember Jani McCall and staff recommend that the City Council approve the proposed City Administrator contract for 2008-2010.

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

**ATTACHMENTS**

- A. Performance Evaluation Summary of City Administrator for 2008
- B. Proposed City Administrator Contract for 2008-2010

**Attachment A**  
**CA Administrator**  
**Evaluation Summary for 2008**

The Billings City Council has completed the 2008 evaluation of City Administrator (CA), Tina Volek. The Council and Department Administrators completed written evaluations and Ms Volek completed a self evaluation as well. The overall results were very good. Written comments affirm that Ms Volek is doing an excellent job as CA and is well regarded by the Council and staff. The City Council is very pleased to offer Ms Volek a continuing 2 year contract with the City of Billings.

The Council recommends that Ms Volek receive a 2% increase yearly to her employer contribution for her retirement, going to the ICMA Retirement Corporation equaling an 8.8% contribution from October 1, 2008 through September 30, 2009 and 10.8% from October 1, 2009 through September 30, 2010.

Goals for the CA include:

- 1) Monthly updates during work sessions regarding progress on strategic plan priorities and other accomplishments.
- 2) Implement a personal management tool to improve communication and follow-through, responsiveness and timeliness to requests from Council and staff
- 3) Increase the level of delegation of tasks and responsibilities to staff and assess community activities that could be done by other staff or council members
- 4) Implement a process for more communication with staff. Possible suggestions include:
  - a) Employee suggestion box
  - b) Meet more often with staff without administrators there
  - c) Citizen questionnaires regarding services

Other City Council priorities for CA prioritization include:

- 1) Options for outside legal consultation directly to the CC for unique issues
- 2) Option of adding a “management analyst” staff person or consultants to assist CA
- 3) Balanced budget (without reserves)

In order to ensure completion and follow-through on goals, the CA Evaluation Committee will serve as an ongoing committee and will meet with Ms Volek on a quarterly basis during the next 2 year period to review goals and objectives set forth.

Jani McCall, Ward IV Councilman  
CA Evaluation Committee Chair  
1/12/09

Attachment B  
Employment Agreement

Introduction

This Agreement, made and entered into October 1, 2008, by and between the City of Billings, Montana, a municipal corporation, (hereinafter called "Employer") and Christina F. Volek (hereinafter called "Employee"), an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

The term of this agreement shall be for an initial period of two years, from October 1, 2008 to September 30, 2010. This Agreement shall automatically be renewed on its anniversary date for an additional 2-year year term unless notice is given by the Employer is given at least 12 months before the expiration date that the Agreement shall be terminated. If the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. If the Employee is terminated, as defined in Section 9 of this agreement, the Employee shall be entitled to all compensation including salary, accrued vacation and sick leave, car allowance paid in lump sum plus continuation of all benefits for the remainder of the term of this agreement.

Section 2: Duties and Authority

Employer agrees to employ Christina F. Volek as City Administrator to perform the functions and duties specified in Section 4.03 of the City Charter of the City of Billings, Montana.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee in the first year of this Agreement an annual base salary of \$105,833 \$114,337.60 payable in biweekly installments at the same time that the other management employees of the Employer are paid.

~~B. This agreement shall be amended each subsequent October 1 to reflect a cost of living adjustment (COLA) and an increase in compensation as agreed by the Employer and Employee, dependent upon successful completion of the performance evaluation conducted under the provisions of Section 12 of this Agreement.~~

#### Section 4: Health, Disability and Life Insurance Benefits

- A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and her dependents equal to that which is provided to other employees of the City of Billings, Montana
- B. Employer shall pay the amount of premium due for term life insurance in the amount of the Employee's two-year annual base salary. The Employee shall name the beneficiary of the life insurance policy.
- C. Should Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and transporting the Employee's remains back to the custody of the Employee's family.

#### Section 5: Vacation and Sick Leave

- A. On the effective date of this agreement, Employee shall be credited with her existing sick and vacation leave earned to date. The Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees.
- C. Employee is entitled to accrue all unused leave, up to 500 hours, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, and other benefits to date.
- D.

#### Section 6: Automobile

Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$4,800 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The amount of the vehicle allowance may be increased in the future by mutual consent of the parties. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee on the basis of gasoline receipts for any business use of the vehicle beyond the greater Billings area. For purposes of this Section, use of the car within the greater Billings area is defined as travel to locations within a 50-mile radius of Billings.

#### Section 7: Retirement

- A. Employer agrees to contribute 6.8%— the statutorily required percentage of the Employee's annual salary into the Montana Public Employees' Retirement System (MPERS) or its successor. Employee will contribute 6.9% the statutorily required percentage of her annual salary to MPERS.
- B. In addition to Employer's payment to MPERS as referenced above, Employer agrees to execute

all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to pay ICMA-RC an amount equal to ~~6.8~~ ~~8.8%~~ of Employee's base salary, in equal proportionate amounts each pay period from October 1, 2008, through September 30, 2009, and upon completion of a successful performance evaluation, in an amount of 10.8% from October 1, 2009, through September 30, 2010. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

#### Section 8: General Business Expenses

A. Employer agrees to budget for and to pay for:

1. Professional dues and subscriptions of the Employee for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
3. Reasonable travel and subsistence expenses of Employee for short courses, institutes, and seminars for the Employee's professional development and for the good of the Employer.

B. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations reasonably related to Employee's duties. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

#### Section 9: Termination

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- B. If the Employer, citizens or legislature acts to amend any provisions of the City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such

amendments constitute termination.

C. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the majority of the governing body, then the Employee may declare a termination as of the date of the suggestion.

#### Section 10: Severance Compensation

A. Severance compensation shall be paid to the Employee if employment is terminated as defined in Section 9.

B. If the Employee is terminated, the Employer shall provide a minimum severance compensation payment equal to one year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

C. The Employee shall also be compensated for all accrued vacation leave and  $\frac{1}{4}$  of accrued sick leave. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

D. For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4A;
2. Life insurance as provided in Section 4B;
3. Out-placement services should the employee desire them in an amount to be negotiated at time of separation.
4. Any other benefits as negotiated at the time of separation.

E. If the Employee is terminated for cause, the Employer is not obligated to pay severance under this section.

#### Section 11: Resignation

If the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

#### Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee in September, subject to a review form shown as Attachment A hereto or to another process for the evaluation which shall be

mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to:

1. Prepare a written evaluation;
2. Meet and discuss the evaluation; and
3. Present a written summary of the evaluation results, along with specific suggestions for improvement. The final written evaluation shall be completed and delivered to the Employee within 30 days of the evaluation meeting.
4. Meet Quarterly for goal review.

#### Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

#### Section 14: Residency

Employee agrees to maintain residence within the corporate boundaries of the City of Billings.

#### Section 15: Indemnification

Employer shall defend, save harmless and indemnify Employee as provided in the current version of Montana Code Annotated Section 2-9-305(2005) which is set forth in its entirety below. This obligation shall survive and extend beyond the Employee's separation from Employer and Employee shall be indemnified and held harmless for any post-separation costs or expenses incurred in connection with the investigation or defense of any claim related to her employment.

1. It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
2. In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to *42 U.S.C. 1983*, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.
3. Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting

that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

4. In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection 6.
5. Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).
6. In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:
  - (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
  - (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
  - (c) the employee compromised or settled the claim without the consent of the government entity employer; or

- (d) the employee failed or refused to cooperate reasonably in the defense of the case.
- 7. If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

#### Section 16: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### Section 17: Other Terms and Conditions of Employment

A. Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other exempt employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

#### Section 18: Notices

Notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### Section 19: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part

of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on October 1, 2008.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Approved as to Form:

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Brent Brooks, City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2009.

The City of Billings

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

Attest:

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Cari Martin, City Clerk

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Christina F. Volek, Employee

Attachment A

CITY OF BILLINGS

CITY ADMINISTRATOR  
PERFORMANCE EVALUATION

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This form shall be completed by each member of the Council to evaluate the City Administrator's performance in each of the areas noted below. Performance levels can be noted, based on the following scale:

- 1 = Poor (rarely meets expectations).
- 2 = Below average (usually does not meet expectations).
- 3 = Satisfactory (meets performance expectations).
- 4 = Above average (generally exceeds performance expectations).
- 5 = Excellent (almost always exceeds expectations and performs at very high standard).

Each member of the Board should sign the form and forward it to the Mayor, who will be responsible for compiling the comments.

EVALUATION PERIOD: \_\_\_\_\_ TO: \_\_\_\_\_

1. PERSONAL

- \_\_\_\_\_ Invests sufficient effort toward being diligent and thorough in the discharge of duties.
- \_\_\_\_\_ Composure, appearance, and attitude fitting for an individual in his executive position.

2. PROFESSIONAL SKILLS AND STATUS

- \_\_\_\_\_ Knowledgeable of current developments affecting the management field and affecting city governments.
- \_\_\_\_\_ Respected in management profession.
- \_\_\_\_\_ Has a capacity for and encourages innovation.
- \_\_\_\_\_ Anticipates problems and develops effective approaches for solving them.
- \_\_\_\_\_ Willing to try new ideas proposed by Council Members or staff.

3. RELATIONS WITH MAYOR/CITY COUNCIL

- \_\_\_\_\_ Carries out directives of the Council as a whole rather than those of any one Council member.
- \_\_\_\_\_ Assists the Council in resolving problems at the administrative level to avoid unnecessary Board action.
- \_\_\_\_\_ Assists the Council in establishing policy, while acknowledging the ultimate authority of the Council.
- \_\_\_\_\_ Responds to requests for information or assistance by the Council.
- \_\_\_\_\_ Informs the Council of administrative developments.
- \_\_\_\_\_ Receptive to constructive criticism and advice.

#### 4. POLICY EXECUTION

- \_\_\_\_\_ Implements Council action in accordance with the intent of the Board.
- \_\_\_\_\_ Supports the actions of the Council after a decision has been reached.
- \_\_\_\_\_ Enforces City policies.
- \_\_\_\_\_ Understands City's laws and ordinances.
- \_\_\_\_\_ Reviews enforcement procedures periodically to improve effectiveness.
- \_\_\_\_\_ Offers workable alternatives to the Council for changes in the law when an ordinance or policy proves impractical in actual administration.

#### 5. REPORTING

- \_\_\_\_\_ Provides the Council with reports concerning matters of importance to the City.
- \_\_\_\_\_ Reports are accurate and comprehensive.
- \_\_\_\_\_ Reports are generally produced through own initiative rather than when requested by the Council.
- \_\_\_\_\_ Prepares a sound agenda which prevents trivial administrative matters from being reviewed by the Council.

#### 6. CITIZEN RELATIONS

- \_\_\_\_\_ Responsive to complaints from citizens.
- \_\_\_\_\_ Dedicated to the community and its citizens.
- \_\_\_\_\_ Skillful with the news media, avoiding political positions and partisanship.
- \_\_\_\_\_ Has the capacity to listen to others and to recognize their interests--works well with others.
- \_\_\_\_\_ Willing to meet with members of the community to discuss their real concerns.
- \_\_\_\_\_ Cooperates with neighboring communities.
- \_\_\_\_\_ Cooperates with the County, State, and Federal governments.
- \_\_\_\_\_ Cooperates with other organizations within the City, such as Chamber, School Districts, and BSEDA.

7. STAFFING

- \_\_\_\_\_ Recruits and retains competent personnel for City positions.
- \_\_\_\_\_ Aware of staff weaknesses and works to improve their performance.
- \_\_\_\_\_ Accurately informed and concerned about employee relations.
- \_\_\_\_\_ Professionally administers the merit system.

8. SUPERVISION

- \_\_\_\_\_ Encourages Department Heads to make decisions within their own jurisdictions without City Administrator approval, yet maintains general control of administrative operations.
- \_\_\_\_\_ Instills confidence and initiative in subordinates and emphasizes support rather than restrictive controls for their programs.
- \_\_\_\_\_ Has developed a friendly and informal relationship with the work force as a whole, yet maintains the prestige and dignity of the City Administrator's office.
- \_\_\_\_\_ Evaluates personnel periodically, and points out management weaknesses and strengths.

9. FISCAL MANAGEMENT

- \_\_\_\_\_ Prepares a balanced budget to provide services at a level directed by the Council.
- \_\_\_\_\_ Makes the best possible use of available funds, conscious of the need to operate the City efficiently and effectively.
- \_\_\_\_\_ Prepared budget is in an intelligent but readable format.
- \_\_\_\_\_ Possesses awareness of the importance of financial planning and control.

10. What would you identify as the results achieved during the evaluation period as representative of the strengths of the City Administrator?

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11. What performance areas would you identify as needing improvement? Why? What constructive, positive ideas can you offer the City Administrator to improve these areas?

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12. Other comments?

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Signature: \_\_\_\_\_

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