

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

July 23, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ulledalen

ROLL CALL

MINUTES – July 9, 2007

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4, & #5

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

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

CONSENT AGENDA:

1. A. **Mayor's appointments:**

Mayor Tussing recommends that Council confirm the following appointment:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Board of Ethics	07/23/07	12/31/08

1. Unexpired term of David Morales

(Corresponding Staff Memo A)

B. **Approval** of Mutual Aid Agreement renewal with City of Laurel.

(Corresponding Staff Memo B)

C. Approval of Limited Commercial Aviation Building and Ground Lease renewal with Alpine Aviation.

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

D. Approval of Non-Commercial Aviation Ground Lease renewal with First Interstate BancSystem, Inc.

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

E. Approval of Terminal Building Commercial Space Lease revision with Montana GSE, Inc.

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

F. Approval of Commercial Non-Aviation Ground Lease for a Communication Site with Gold Creek Cellular of Montana Limited Partnership.

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

G. Amendments to Emergency Operations Plan for Billings, Laurel, Broadview, and Yellowstone County.

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

H. Amendment #2, W.O. 03-07 Alkali Creek Trail. Professional Services Contract with HKM Engineering, Inc., \$168,000.00.

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

I. Perpetual Right-of-Way Easement and Right-of-Way Agreement with Yellowstone Country Club, \$40,697.00.

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

J. W.O. 07-01, 2007 Water & Sewer Line Replacement Project, Schedule 2, Right-of-Way Agreements; a Perpetual Right-of Way Easement; and Temporary Right-of-Way Easements with 11 property owners, \$1,450.00.

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

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

(1) Parcel 15: Portion of Lot 1, Rex Subdivision, Janet Croy, \$13,750.00.

[\(Corresponding Staff Memo K1\)](#)

(2) Parcel 16: Portion of Lot 1, Rex Subdivision, 2nd Filing, The Bird House, LLC, \$8,800.00.

[\(Corresponding Staff Memo K2\)](#)

(3) Parcel 17: Portion of Lot 2, Rex Subdivision, 2nd Filing, The Bird House, LLC, \$13,700.00.

[\(Corresponding Staff Memo K3\)](#)

(4) Parcel 30: Portion of Tract 1, Certificate of Survey 1682, Ron Goertzen and Alisha Goertzen, \$8,100.00.

[\(Corresponding Staff Memo K4\)](#)

(5) Parcel 39: Portion of Lot 6, Block 1, Rice Subdivision, Linda M. Posey, \$2,250.00.
[\(Corresponding Staff Memo K5\)](#)

L. Street Closures:

(1) Billings Association of Realtors 2-Mile and 5-Mile Run, 5:00 a.m. to 10:00 a.m., August 25, 2007. Two-mile starting at MSU-B, west on Rimrock Road, south on Virginia Lane through Pioneer Park, north on 3rd Street West, east on Parkhill Drive, south on North 32nd Street, finishing at 6th Avenue North and Grand Avenue. Five-mile starting at Masterson Circle, east on Airport Road, south on North 27th Street, west on Rimrock Road, south on Virginia Lane through Pioneer Park, north on 3rd Street West, east on Parkhill Drive, south on North 32nd Street, finishing at 6th Avenue North and Grand Avenue.

[\(Corresponding Staff Memo L1\)](#)

(2) Billings Clinic Classic Street Party, North Broadway between 3rd and 4th Avenues North, from midnight August 24, 2007, through 5:00 p.m. August 26, 2007; and the alley between 3rd and 4th Avenues North from 9:00 p.m. August 25, 2007, through 5:00 a.m. August 26, 2007.

[\(Corresponding Staff Memo L2\)](#)

(3) Railyard Ale House Street Closure, August 3, 2007, 2:00 p.m. – 10:00 p.m., closing one lane in the 2500 block of Montana Avenue.

[\(Corresponding Staff Memo L3\)](#)

M. Approval of donation of six (6) Class A fully encapsulated hazardous material suits to the MSU-B College of Technology.

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

N. Approval and acceptance of donation from ConocoPhillips to the Billings Fire Department for Self-Contained Breathing Apparatus (SCBA) equipment, \$8,000.00.

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

O. Approval and acceptance of in-kind donation from Faith Chapel for labor and materials to paint the North Park Recreation Center handball/racquetball court walls and restrooms; install irrigation and sod at the 6th Avenue North, Grand Avenue, and Division Street intersection; and restore the middle median strip planter on South 27th Street.

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

P. Resolution of Intent to create a Tourism Business Improvement District, and set a public hearing for 8/27/07.

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

Q. Resolution of Intent to create SID 1379, King Avenue West from S. 31st Street West to Shiloh Road (water, sewer, storm drain, street, sidewalk, drive approach, and curb/gutter improvements), and set a public hearing for 8/13/07.

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

R. Resolution of Intent to create SILMD 301 (Josephine Crossing Subdivision) and SILMD 302 (Grand Avenue, 8th to 12th Streets West), and set a public hearing for 8/13/07.

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

S. Second/Final Reading ordinance modifying allowable driveway widths, curb cut locations from intersections, and curb cut separations on arterial roadways.

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

T. Preliminary Minor Plat of Amended Lots 15A, 15B, 15C, and 15D, Block 3, Vista Heights Subdivision, 2nd Filing, generally located on the northwest corner of Main Street and Wicks Lane, conditional approval of the preliminary minor plat and adoption of the Findings of Fact.

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

U. Preliminary Minor Plat of Trailshead Subdivision, a 4.01 acre lot generally located on the southeast corner of the intersection of Rimrock Road and Avalon Road, including the Yellowstone Racquet Club, conditional approval of the preliminary minor plat and adoption of the Findings of Fact.

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

V. Preliminary Plat of Emma Jean Heights Subdivision, 1st Filing, 38 lots on approximately eight (8) acres generally located on the west side of Bitterroot Drive, south of Wicks Lane, approval of variance; conditional approval of the preliminary plat; and adoption of the Findings of Fact.

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

W. Final Plat of Gunn Estates Subdivision, 2nd Filing.

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

X. Bills and Payroll

(1) June 22, 2007

[\(Corresponding Staff Memo X1\)](#)

(2) June 29, 2007

[\(Corresponding Staff Memo X2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#814: A zone change from Residential 9,600 to Community Commercial; Neighborhood Commercial; Residential Professional; Residential Multi-family Restricted; Residential 6,000; Residential 7,000 Restricted; and Public on a portion of a 288.38 acre parcel of land proposed as Skyview Ridge Subdivision generally located south of Wicks Lane, west of Governors Boulevard, and north of Constitution and Kootenai Avenues. State of Montana, owner. Zoning Commission recommends approval of the zone change and adoption of the

determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation).

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

3. **TEAMSTERS LOCAL 190 LABOR AGREEMENT, JULY 1, 2007, THROUGH JUNE 30, 2010.** Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

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

4. **AWARD OF CONTRACT FOR DEMOLITION OF EXISTING COBB FIELD.** Staff recommends approval of the contract with Magnum Contractors LLC in the amount of \$198,500.00. (Action: approval or disapproval of Staff recommendation).

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

5. **AWARD OF CONTRACT FOR THE NEW BASEBALL AND MULTI-USE STADIUM AT ATHLETIC PARK.** Recommendation to be made at City Council meeting. (Action: approval or disapproval of Staff recommendation).

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

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

Council Initiatives

ADJOURN

A



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 23, 2007

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

PROBLEM/ISSUE STATEMENT: Confirmation of the appointment for the Board and Commission position that is vacant due to a resignation.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Board of Ethics	07/23/07	12/31/08

2. Unexpired term of David Morales

Approved By: City Administrator _____ City Attorney _____

Attachments

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

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday July 23, 2007

TITLE: Mutual Aid Agreement City of Laurel

DEPARTMENT: Fire Department

PRESENTED BY: Marvin L. Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: The long standing Mutual Aid Agreement with the City Of Laurel, in effect since February 2, 1976, has expired. The Mutual Aid Agreement secures additional resources should the City of Billings experience an emergency that overwhelms the resources of the Billings Fire Department. Other than dates there are no material changes to the agreement.

ALTERNATIVES ANALYZED: None

FINANCIAL IMPACT: None

RECOMMENDATION

Staff recommends that Council renew the Mutual aid Agreement with the City of Laurel.

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

ATTACHMENT

A. Mutual Aid Agreement City of Laurel

MUTUAL ASSISTANCE AGREEMENT

THIS AGREEMENT is made by and between the CITY OF LAUREL, a political subdivision of the State of Montana; pursuant to the Interlocal Agreements Act. (Mont. Code Ann. Title, 7, Chapter 11, Part 1); and, the CITY OF BILLINGS, a municipal corporation of the state of Montana, pursuant to the Interlocal Cooperation Act (Mont. Code Ann. Title, 7, Chapter 11, Part 1), and the City of Laurel Fire Department, and the City of Billings Fire Department have approved and authorized the terms of this Agreement.

NOW, THEREFORE,

WHEREAS, each of the parties hereto has a mutual interest in the control and combat of fire within their respective jurisdictional areas; and

WHEREAS, each of the parties owns and maintains equipment and retains personnel who are trained to provide various levels of service in the control and combat of fire; and

WHEREAS, in the event of a major fire, disaster or other emergency, either party may need the assistance of the other party to this Agreement to provide supplemental fire suppression and combat; and

WHEREAS, each of the parties may have the necessary equipment and personnel available to enable it to provide such services to the other party to this Agreement in the event of such a major fire, disaster, or other emergency; and

WHEREAS, the facilities of each party are located in such a manner as to enable each party to render mutual assistance to the other; and

WHEREAS, each of the parties to this Agreement has determined that it is in the best interests of each party to set forth guidelines for providing mutual assistance to each other in the case of a major fire, disaster or other emergency; now, therefore,

IT IS HEREBY AGREED AS FOLLOWS:

1. **PURPOSE.** The stated purpose of the Mutual Assistance Agreement is to provide mutual assistance to the parties for control and combat of fire in the event of a major fire disaster or other emergency.

2. **REQUEST FOR ASSISTANCE.** The Commanding Officer or Incident Commander of the party (also known as the Requesting Party) at the scene of an emergency within the boundaries of that party's geographical jurisdiction is authorized to request assistance from the other party to this Agreement if confronted with an emergency situation at which the Requesting Party has need for equipment or personnel in excess of that available at the Requesting Party's facilities.

3. **RESPONSE TO REQUEST.** Upon receipt of a request as provided for in Paragraph No. 2 of this Agreement the Commanding Officer of the party receiving the request (also known as the Responding Party) shall immediately take the following action.

A. Determine if the Responding Party has equipment and personnel available to respond to the request of the Requesting Party and determine the type of the equipment and number of personnel available.

B. Determine what available equipment and what available personnel should be dispatched in accordance with the plans and procedures established by the parties.

C. In the event the requested equipment and/or personnel are available, then the Commanding Officer shall dispatch such equipment and personnel to the scene of the emergency with proper operating instructions.

D. In the event the requested equipment and/or personnel are not available, then the Commanding Officer shall immediately advise the Requesting Party of such fact.

4. **COMMAND RESPONSIBILITY AT EMERGENCY SCENE.** The Incident Commander of the Requesting Party at the scene of the emergency, to which the response is made, shall be in command of the operations under which the equipment and personnel sent by the Requesting Party shall serve.

5. **INDEMNIFICATION:** To the fullest extent allowed by law, the City of Laurel, (hereinafter referred to as LAUREL) agrees to save, indemnify and hold harmless the City of Billings, (hereinafter referred to as BILLINGS), its elected and appointed officials, its agents, employees and volunteers and others working on behalf of BILLINGS for all claims, losses, expenses and damages, including but not limited to, court costs and reasonable attorney fees, which may be asserted against BILLINGS arising out of the negligence or the negligent or intentional acts of LAUREL, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of LAUREL, while rendering services in connection with this agreement.

To the fullest extent allowed by law, BILLINGS agrees to save, indemnify and hold harmless LAUREL, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of LAUREL for all claims, losses, expenses and damages, including but not limited to, court costs and reasonable attorney fees, which may be asserted against LAUREL arising out of the negligence or the negligent or intentional acts of BILLINGS, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of BILLINGS, while rendering services in connection with this agreement.

6. **POST RESPONSE RESPONSIBILITY.** Upon completion of the rendering of assistance, such assistance and help as is necessary will be given by the parties to locate and return and items of equipment to the fire department owning said equipment. All equipment and personnel used under the terms of this Agreement shall be returned to the Responding Party upon being released by the Requesting Party, or upon demand being made by the Responding Party for return of said equipment and personnel.

7. **COMPENSATION.** Each party agrees that it will not seek from the other party compensation for services rendered under this Agreement. Each party hereto shall at all times be responsible to its own employees for the payment of wages and other compensation and for carrying workmen's compensation upon said employees; and each party shall be responsible for

its own equipment and shall bear the risk of loss therefore, irrespective of whether or not said personnel and equipment are being used within the area of primary responsibility of that party. However, if the fire suppression chemicals are utilized by the Responding Party, the Requesting Party shall compensate the other party for the actual cost of such chemicals.

8. **INSURANCE:** Each party to this agreement shall, at their expense, obtain and keep in full force and effect adequate insurance against general liability, automobile liability and physical damage, with policy limits of not less than \$750,000 per person and \$1,500,000 per occurrence, and worker's compensation to cover loss, damage, or injury to persons or property which might arise out of the performance of their duties under this agreement. Each entity shall produce a Certificate of Insurance providing evidence of same.

9. **PER-INCIDENT PLANNING:** The Commanding Officer of the parties may, from time to time, mutually establish pre-incident plans which shall indicate the types of and locations of potential problem areas where emergency assistance may be needed, the type of equipment that should be dispatched under such circumstances, the number of personnel that should be dispatched under such circumstances and the training to be conducted to ensure efficient operations. Such plans shall take into consideration the proper protection by the Responding Party of its own geographical jurisdiction. The parties hereto agree to take such steps as are feasible to standardize equipment such as couplings, hose, and apparatus, so that said equipment can be fully utilized by either of the parties hereto.

10. **DOCUMENT CONTROL-EXECUTION:** A duplicate original of the Agreement shall be filed at the administrative offices of each party. Copies of the Agreement shall be filed with the CITY OF LAUREL FIRE DEPARTMENT, the CITY OF LAUREL City Clerk/Treasurer, the CITY OF BILLINGS FIRE DEPARTMENT, and the CITY OF BILLINGS Clerk/Treasurer.

11. **TERMINATION:** This Agreement shall remain in full force and effect until jointly modified or terminated by either party as follows.

A. A party desiring to terminate this Agreement shall serve written notice upon the other party of its intention to terminate this Agreement; such notice shall be served not less than sixty calendar days prior to the termination date set forth in said written notice. Said written notice shall automatically terminate this Agreement on the date specified therein unless rescinded prior in writing.

12. **AGREEMENT NOT EXCLUSIVE:** This agreement is not intended to be exclusive as between parties hereto. Either of the parties may, as that party deems necessary or expedient, enter into a separate Mutual Assistance Agreement or Agreements with any other party or parties. Entry into such separate Agreements shall not change any relationship or covenant herein contained unless the parties hereto mutually agree in writing to such change.

CITY OF BILLINGS

By: _____
Officer and Title

ATTEST:

Billings City Clerk/Treasurer

Approved as to form:

Legal Counsel
City of Billings

CITY OF LAUREL

By: _____
Officer and Title

ATTEST:

Laurel City Clerk/Treasurer

Approved as to form:

Sam S. Painter, Legal Counsel
City of Laurel

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: Renewal of Limited Commercial Aviation Building and Ground Lease with Alpine Aviation

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Staff has negotiated with Alpine Aviation for a five (5) year renewal of the Limited Commercial Aviation Building and Ground Lease for the Airport facilities commonly known as large hanger IP-5, located in the Airport Business Park on the north side of the Airport. Alpine Aviation is a contracted U.S. Postal Service airfreight provider that uses this hangar to perform maintenance on its aircraft. This Lease is for 10,403 square feet of hangar building. This large hangar was constructed by the military in the mid 1960s and donated to the City in the mid 1970s. Alpine Aviation has been the tenant in this facility for the past five (5) years. Prior to that, the Airport had difficulty finding a tenant for this facility due to its size and more importantly, the cost of heating this large facility during the Winter months. During the current Lease term, Alpine Aviation has added improvements to the hangar and the Airport has scheduled roof repairs to address some needed maintenance issues, in which Alpine Aviation is willing to also participate.

FINANCIAL IMPACT: The first year of this Lease will generate \$17,268.96 of revenue for the City's Airport. Subsequent years will be adjusted using the Consumer Price Index - Urban to keep pace with annual inflation. This Lease rate calculates out to \$1.66 per square foot per annum, which is somewhat less than other rates charged on the Airport for hangar buildings. However, when the large building size and heating costs are factored into the calculation, we believe that the Lease rental to be received is reasonable.

RECOMMENDATION

Staff recommends that Council approve the five (5) year renewal of the Limited Commercial Aviation Building and Ground Lease to Alpine Aviation for the term beginning November 1, 2007 and ending October 31, 2012.

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

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Renewal of Non-Commercial Aviation Ground Lease with First Interstate BancSystem, Inc.

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: First Interstate BancSystem, Inc., desires to renew the Non-Commercial Aviation Ground Lease it has for the executive hangar at 2451 Overlook Drive. This Lease was originally approved by the City Council on July 7, 1997 to King Management for a ten (10) year term, which expires on August 14, 2007. King Management assigned and transferred a 50% interest in this Lease to First Interstate BancSystem, Inc., on July 7, 1998. Subsequently, on October 10, 2000, King Management assigned and transferred a 100% interest in this Lease to First Interstate BancSystem, Inc. This Lease is for a 13,125 square foot hangar site located on the west end of the Airport.

FINANCIAL IMPACT: The first year of this Lease will generate \$2,985.96 of revenue for the City's Airport. Subsequent years will be adjusted using the Consumer Price Index - Urban for the previous twelve months to keep pace with annual inflation. This Lease rate calculates out to \$0.2275 per square foot per annum, in line with the other tenants in this area.

RECOMMENDATION

Staff recommends that Council approve the ten (10) year, sixteen (16) day renewal of the Non-Commercial Aviation Ground Lease to First Interstate BancSystem, Inc., for the term beginning August 15, 2007 and ending August 31, 2017. The additional sixteen (16) days added to the term will facilitate a "month-end" expiration, consistent with all other Airport leases.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, July 23, 2007**

TITLE: Revision of Terminal Building Commercial Space Lease with Montana GSE, Inc.

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: As Council may recall, staff negotiated with Montana GSE, Inc. for a three (3) year Terminal Building Space Lease for the Airport facilities commonly known as Rooms D103 and D104, located on the lower level of the Terminal Building facing the airfield. Montana GSE, Inc. is a local ground equipment repair service provider that proposes to use this garage space to perform maintenance on aircraft tugs and baggage ground-handling equipment owned by the airlines. This space was previously leased to Delta Airlines as part of its exclusive use space under Delta's Airline Operating Agreement. Under Delta's bankruptcy restructuring, the airline relinquished this space and it has remained vacant since that time. The location of this space is ideal for Montana GSE, Inc.'s operations in that it will provide close proximity to the airlines' equipment that it currently services via contract with several of the airlines. On June 25, 2007, the City Council approved the Lease with the square footage listed as 1,447. The correct square footage for both rooms is 1,673. There are no other changes in the term of the Lease.

FINANCIAL IMPACT: The first year of this Lease will generate \$16,730 of revenue for the City's Airport. Subsequent years will be adjusted using the Consumer Price Index for Urban Consumers (CPI-U) to keep pace with annual inflation. This Lease rate calculates out to \$10.00 per square foot per annum

RECOMMENDATION

Staff recommends that Council approve the revision of the square footage of the three (3) year Commercial Terminal Building Lease to Montana GSE, Inc. for the term beginning July 1, 2007 and ending June 30, 2010 as 1,673 square feet.

Approved By: City Administrator City Attorney

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AGENDA ITEM:**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, July 23, 2007**

TITLE: Commercial Non-Aviation Ground Lease for a Communication Site with Gold Creek Cellular of Montana Limited Partnership

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Gold Creek Cellular of Montana Limited Partnership, DBA Verizon Wireless, would like to renew an existing cell tower Lease on Airport property. This tower is located on the west end of the Airport near the City's red and white water tower. The original Lease was established in September 1997 for a ten (10) year term that is scheduled to end on September 30, 2007. Gold Creek Cellular has previously allowed other cell phone companies to co-locate on the west end tower, due to its strategic location overlooking the valley. Additionally, on May 29, the City Council approved a second Lease for construction of a new cell tower that will be located on the east end of the Airport for the purpose of providing coverage to the Alkali Creek residential area, which currently has some locations with less than adequate Verizon cell phone coverage

FINANCIAL IMPACT: For the first year of the Lease, the City will receive \$6,400. The annual amount is split between the ground rental, which will start at \$3,200 per year, and a charge of \$3,200 for each set of antennas installed. Both charges will be adjusted annually by the Consumer Price Index for all Urban Consumers (CPI-U).

RECOMMENDATION

Staff recommends that Council approve a five (5) year Commercial Non-Aviation Ground Lease for a Communication Site with Gold Creek Cellular of Montana Limited Partnership, DBA Verizon Wireless. The term will commence on October 1, 2007 and terminate on September 30, 2012.

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

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: Amendments to Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County.

DEPARTMENT: Fire

PRESENTED BY: Marv Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: After a joint review of the Emergency Operations Plan for Billings, Laurel, Broadview and Yellowstone County, it was determined that some housekeeping amendments were necessary to ensure that we will receive reimbursements of state and federal dollars for disasters. The Emergency Operations Plan is mandated by both State and Federal governments.

ALTERNATIVES ANALYZED: None

FINANCIAL IMPACT: None

RECOMMENDATION

Staff recommends that Council approve the amendments to the Emergency Operations Plan.

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

ATTACHMENT

A. Emergency Operations Plan Amendments

**AMENDMENT TO THE EMERGENCY OPERATIONS PLAN FOR
BILLINGS, LAUREL, BROADVIEW AND YELLOWSTONE COUNTY**

PROMULGATION DOCUMENT (RESOLUTION #)

WHEREAS, the Emergency Operations Plan (EOP) for Billings, Laurel, Broadview and Yellowstone County was adopted by the City of Billings on February 27, 2006; and

WHEREAS, new language needs to be added to the Finance Annex "P" of the EOP to ensure the City of Billings is eligible to receive financial reimbursement from agencies of the State of Montana, the Federal Emergency Management Agency and the Department of Homeland Security in times of major disaster declarations; and WHEREAS, this new language will be added to Finance Annex, at the end of Section C. Concept of Operations, and will read as follows:

For any all-risk incident that exceeds local capability, and meets the criteria for reimbursement by any local, state or federal agency (s), the current policies and/or mutual aid agreement (s) shall apply.

For any exclusions or waiting periods that apply to the incident, the least restrictive exclusion time frame will apply.

NOW, THEREFORE, I, the Mayor of the City of Billings, by virtue of the power and authority vested in me by the laws of this State, do hereby amend this Yellowstone County Emergency Operations Plan, Finance Annex as enumerated above and attached. This amendment is effective upon execution.

IN WITNESS WHEREOF, I have subscribed my signature this
day of , 2007.

ATTEST:

CITY OF BILLINGS

Clerk

Ron Tussing, Mayor

ANNEX P FINANCE

A. PURPOSE

To provide the necessary funds and fiscal records (payments, claims) to finance a disaster, either declared or not declared.

B. SITUATION AND ASSUMPTIONS

1. SITUATION. When a disaster strikes, Yellowstone County may commit and/or expend funds beyond the approved fiscal year budget. Such commitment or expenditures may cause financial hardship requiring the county (or its incorporated cities) to levy two emergency mills and/or request state and/or federal financial assistance. (Reference 10-3-405, MCA.)

2. ASSUMPTIONS.

- a. Most disasters will create the need for additional funds.
- b. To request and support reimbursements from state and/or federal governments, accurate fiscal records must be developed and maintained.
- c. City and county governments will adhere to State of Montana laws governing the expenditure of public funds.

C. CONCEPT OF OPERATIONS

The finance officer(s) and treasurer(s) of Yellowstone County will establish a record system to ensure disbursements are related to the disaster and such are as accurate as possible. The recordings will include:

1. Who requested the allocation or expenditure.
2. The purpose of the expenditure.
3. Who authorized the commitment.

Records concerning the use of equipment and manpower, whether it is rented, hired, or government owned, shall be as follows:

1. Make and size of equipment.

2. Rental rate per hour.
3. Name of operator and property worked.
4. Salary scale and overtime.
5. Cost of equipment maintenance.
6. Fuel costs.
7. Work performed, location, and purpose.
8. Overhead costs (doesn't apply to government).

Such records of emergency expenditures are required by law and to support any state and/or federal reimbursements.

For any all-risk incident that exceeds local capability, and meets the criteria for reimbursement by any local, state or federal agency (s), the current policies and/or mutual aid agreement (s) shall apply.

For any exclusions or waiting periods that apply to the incident, the least restrictive exclusions and time frames will apply.

D. EMERGENCY LEVY INFORMATION

1. The Board of County Commissioners may, by unanimous vote adopt a maximum two mill emergency levy against the taxable value of property located in the unincorporated area of the county. Reference 10-3-405, MCA.
2. The City/Town Council may, by unanimous vote, adopt a maximum two mill emergency levy against the taxable value of property located in the corporate city/town limits. Note: The City of Billings may levy this tax only after adopting an ordinance amending its Charter, which must be confirmed by a majority of voters at a general or special election. Reference 10-3-405, MCA.
3. An emergency proclamation or disaster declaration is a prerequisite to the adoption of an emergency mill levy.
4. The Commissioners or the Council may set the emergency levy at less than two mills. However, the maximum two mills must be levied, and spent or committed, in order to be eligible for assistance from the Montana Emergency and Disaster Fund. Reference Section 34, Administrative

Rules of Montana.

5. Any funds levied via the two mill emergency levy for the emergency and remaining in the fund after the emergency, shall be used only for expenditures arising from future emergencies. Reference 10-3-405(5), MCA.
6. Guidance for preparing the emergency mill levy resolution is contained in the Montana Local Government Disaster Information Manual.

E. MONTANA EMERGENCY AND DISASTER FUND

1. Access to this fund requires the following actions:
 - a. An emergency proclamation or disaster declaration by the Chairman of the Board of County Commissioners or Mayor.
 - b. Adoption of a maximum emergency mill levy by the Board of County Commissioners or City/Town Council.
 - c. Demonstration that all available emergency levies have been spent or committed.
2. References:
 - a. 10-3-311, MCA.
 - b. The Montana Local Government Disaster Information Manual.
 - c. Section 34, Administrative Rules of Montana
 - d. The Montana State Emergency Operations Plan.

F. FEDERAL ASSISTANCE

1. Federal assistance and/or a Presidential Disaster Declaration is obtained through the State DES Office.
2. References:
 - a. Presidential Declaration. PL 93-288 as amended.
 - b. Section 34 of Administrative Rules of Montana.

G. ORGANIZATION AND ASSIGNMENT OF RESPONSIBILITIES

1. **ORGANIZATION.** The finance officers of city and county are directly responsible to the Mayor, City Administrator, or County Commissioners.
2. **ASSIGNMENT OF RESPONSIBILITIES.** This Annex is responsible for the fiscal record keeping as mentioned in the Concept of Operations. In addition, all payments, expenditures, purchase orders, etc., are to be prepared by the respective finance officers and submitted to the appropriate approving authority.

H. ADMINISTRATION AND LOGISTICS

The finance officer(s) must ensure the necessary forms, supplies, and equipment needed in the EOC are provided or procured as expeditiously as possible after the EOC is in operation. The finance officer(s) and any necessary support staff are required to be in the EOC, at least for a set period of time each day.

I. PLAN DEVELOPMENT AND MAINTENANCE

This Annex will be maintained by the County Finance Officer and YCDES.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: W.O. 03-07 - Alkali Creek Trail, Contract Amendment #2 to Professional Services Contract with HKM Engineering, Inc.

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Council awarded a professional services contract to HKM Engineering, Inc. (HKM) in June 2003 for design study, design, and construction administration services for a bicycle and pedestrian trail through the Alkali Creek corridor between Senators Boulevard and the Metra Trail. Contract Amendment #1 to this contract was completed to incorporate several necessary federal aid contract provisions and was approved by the City Administrator at no cost (\$0.00) in December 2003. The original contract with HKM provided that a specific scope of services and fee would be negotiated for design and construction administration services for a section of the trail to be constructed once the study was complete. The design study portion of the project is now complete, and funding is available to build a bicycle and pedestrian underpass under Main Street. Staff negotiated a scope of services and fee with HKM for design and construction administration of the bicycle and pedestrian underpass under Main Street. The scope of services is more extensive than a typical City project because this project includes federal aid funds and requires construction under Main Street and within a designated floodplain – these features require additional services by the consultant. The use of federal aid funds requires additional environmental services and the location triggers additional permitting and calls for providing construction layout. Staff presents this Contract Amendment #2 to Council for approval in order for design of the underpass to commence.

FINANCIAL IMPACT: Funding for the Professional Services Contract is available from the budget allocation for the Alkali Creek Trail project. There are two main sources of funds for this project as follows: (1) a Transportation and Community and System Preservation Pilot Program (TCSP) grant from the Federal Highway Administration (FHWA) in the amount of \$495,654, and (2) a Community Transportation Enhancement Program (CTEP) grant in the amount of \$338,277 (for a total of \$833,931). The budget information for the project is as follows:

Budget Amount (CIP #PL0203)	\$833,931
Less: Amount Encumbered (and Spent) to Date	\$ 90,495
Less: Contract Amendment #2	<u>\$168,000</u> (This memo)
Budget Amount Remaining	\$575,436

RECOMMENDATION

Staff recommends that Council approve Contract Amendment #2 to the Professional Services Contract with HKM Engineering, Inc. in the amount of \$168,000.00 and authorize the Mayor to execute the document.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Contract Amendment #2 to Professional Services Contract (17 pages)
- B. Area Map of Alkali Creek Underpass at Main Street (1 page)

INTRODUCTION

The entire project consists of a design study, design, construction, and construction administration of a multi-use trail through the Alkali Creek corridor between Senators Boulevard and the Metra Trail. The design report summarized the public input process, examined alternative trail alignments, identified the preferred trail alignment, summarized the design considerations for the trail, and estimated construction costs for the several different segments of the trail. The design study portion of the project is now complete, and funding is available to build a bicycle and pedestrian underpass under Main Street.

PROCEDURAL HISTORY

Completed Items

- Council awarded a professional services contract to HKM – June 2003
- Design study commenced with a public meeting held at Alkali Creek School – August 2003
- Design study placed on hold pending a Pow Wow Park Master Plan – December 2003
- Contract amendment #1 approved at no cost by the City Administrator – December 2003
- Pow Wow Park Master Plan adopted by Council – July 2005
- Design study finalized – May 2007
- Council approved CTEP funding agreement for underpass of Main Street – June 2007
- Multi-use trail completed between Black Pine St and Senators Blvd as part of the Alkali Creek Road Improvements project – June 2007

Future Items

- Council approval of Contract Amendment #2 for design and construction administration services with HKM (**This memo**)
- Design complete and advertise for construction bids – Fall/Winter 2007
- Construction begins – Winter 2007/Spring 2008
- Expected construction completion – Spring 2008

BACKGROUND

The Alkali Creek Trail project as a whole has been identified as a major component of the Heritage Trail Plan. The preferred alignment of the Alkali Creek Trail as outlined in the design study utilizes the existing Alkali Creek Road right-of-way between Senators Boulevard and Swords Park (North) near the soon to be completed Aronson Avenue. The preferred trail alignment continues in the Swords Lane right-of-way to Main Street then along Main Street to the underpass to be designed and built. The proposed underpass under Main Street will provide a safe, well-lit, grade-separated crossing of Main Street for bicycles and pedestrians below the *busiest section of street in the entire state of Montana*. The underpass will ultimately be used to connect the existing trails in Swords Park and along Alkali Creek Road with the Kiwanis Trail up to the north end of the Heights and the Metra Trail leading all the way to Coulson Park.

Staff negotiated a scope of services and fee with HKM for design and construction administration of the bicycle and pedestrian underpass under Main Street. The scope of services for design includes the following, in addition to the typical preliminary and final design services:

(1) wetlands delineation of the project area along Alkali Creek; (2) threatened & endangered species investigation of the project area along Alkali Creek; (3) design survey; (4) subsurface utility engineering to provide accurate location of the several utilities under Main Street; (5) a comprehensive geotechnical investigation due to the tunneling; and (5) floodplain permits because the project will be located within the designated 100-year floodplain. These five items constitute over \$56,000 of the total \$168,000 amendment amount. The construction administration (CA) services includes construction layout at a cost of more than \$13,000, in addition to the typical CA services. Construction layout is a cost often included in the construction contract either as incidental or as a separate bid item. For this project, it was felt that layout should be performed by the Engineer as a means to provide additional oversight and control of the project. These six items taken together account for almost half of the cost of this contract amendment, but they are all either required by federal rules or deemed prudent based on the nature of this project.

STAKEHOLDERS

The public-at-large will benefit from construction of this project. The proposed trail will be the key link for bicycle and pedestrian traffic to cross Main Street. It is expected that

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Construction of the underpass under Main Street is identified in the Heritage Trail Plan as an important link for the community.

RECOMMENDATION

Staff recommends that Council approve Contract Amendment #2 with HKM Engineering, Inc. in the amount of \$168,000.00 and authorize the Mayor to execute the document.

ATTACHMENTS

- A. Contract Amendment #2 to Professional Services Contract (17 pages)
- B. Area Map of Alkali Creek Underpass at Main Street (1 page)

AMENDMENT NO. 2
TO
CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND
ENGINEERING SERVICES
CITY OF BILLINGS WORK ORDER 03-07,
ALKALI CREEK MULTI-USE PATH

THIS AGREEMENT, made and entered into on this _____ day of _____, 2007, by and between the following:

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

and

HKM Engineering, Inc.
PO Box 31318
Billings, Montana 59101-1318
hereinafter designated the Contractor, Consultant and/or Engineer

WITNESSETH:

WHEREAS, the City and Consultant have entered into a contract dated May 27, 2003, and a Contract Amendment No. 1 dated December 23, 2003, for Consultant to provide engineering services to the City for Work Order 03-07, Alkali Creek Multi-Use Path, 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 Consultant represents that he is qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

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

Part I, Section 2.A is amended as follows:

The revised scope of work for design and construction administration services is attached as Appendix A to this amendment.

Part I, Section 2.B is amended as follows:

Billings shall pay the Consultant in accordance with Appendix B and incorporated herein by reference for services actually performed under this Contract.

Part I, Section 3.C is amended as follows:

The contract shall terminate at midnight on December 31, 2008.

Part I, Section 7.B.4 is amended as follows:

The Professional Liability Insurance in the amount of \$1,500,000.

Part I, Section 15.D is added as follows:

The subcontractors expected to be used under this agreement include the following:

Ritter Engineering (Electrical Engineering Subconsultant)

Utility Mapping Services, Inc. (Subsurface Utility Engineering Subconsultant)

Garcia & Associates (Wetlands and Wildlife Surveys Subconsultant)

Appendix A, Section 3 is amended as follows:

Section 3.A of the original contract is completed.

Delete Section 3.B (Engineering Design) and Section 3.C (Construction Administration) of the original contract and replace them with the Appendix A, Section 3.B attached to and made a part of this amendment.

Appendix B, Section 1 is amended as follows:

Section 1.A.1 of the original contract is completed.

Delete Section 1.A.2 (Engineering Design) and Section 1.B.1 (Construction Administration) of the original contract and replace them with the Appendix B, Section 1.A.2 and Section 1.B.1 attached to and made a part of this amendment.

Appendix B, Section 2 is amended as follows:

Delete Section 2.A.

Section 2.B. Requests made or conditions identified by interested groups at public meetings, which are beyond the scope and intent of this study shall be paid as negotiated with Billings.

Appendix B, Section 4 is added as follows:

It is understood that the Engineer will not perform any work that the Engineer deems outside the scope found in Appendix A, as amended, prior to receiving written approval from Billings. Any such work performed, even if requested by Billings, shall not be paid by Billings and any claims for such work shall be denied. In the event scope of work issues arise, the Engineer shall immediately discuss them with the Project Manager for Billings.

Appendix C is amended as follows:

Delete Appendix C, sentences A and B.

Appendix D is amended as follows:

Add to the text in the second paragraph (prior to Section 1) the following verbiage: "The cost of Professional Liability Insurance shall be included in the hourly rates of personnel."

Appendix D, Sections 1-9 are amended as follows:

Delete the existing Sections 1-9 and replace with the attached HKM Professional Services Fee Schedule dated 2/1/07.

Appendix D verbiage is added, after the attached HKM Professional Services Fee Schedule, as follows:

Federal Cost Principles. Payment to the Consultant will be limited to those costs determined by the City to be allocable, reasonable, and allowable in accordance with the provisions of Federal cost principles contained in 48 CFR Part 31.

Materials, subconsultants and other out-of-pocket expenses will be reimbursed at cost. No mark up or "handling fee" is allowed for reimbursement under 48 CFR.

Appendix E is amended as follows:

Delete existing Sections A, B and C and replace with the following:

<u>Milestone</u>	<u>Completion Date</u>
Concept Review Meeting	30 calendar days after amendment approval
60% Plans, Specifications, and Estimate	60 calendar days after amendment approval
95% Plans, Specifications and Estimate	120 calendar days after amendment approval

Appendix F is amended as follows:

The Consultant will provide updated insurance certificates to Billings prior to amendment approval.

Appendix G is amended as follows:

Delete the existing Appendix G and replace with the Appendix G attached to and made a part of this amendment.

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

CONSULTANT

NAME: _____

BY: _____

TITLE: _____

DATE: _____

CITY OF BILLINGS, MONTANA

BY: _____
Ron, Tussing, Mayor

DATE: _____

Appendix A, Section 3.B

B. Engineering Design

The outcome of the “Design Study and Route Selection Phase” of this contract resulted in the selection of a preferred alignment for the corridor that is divided up into six discrete segments, as documented in the final report. In accordance with the proposed sequence of completion for the various trail segments, segment 1b is next to be constructed. This segment includes design and construction of a bicycle/pedestrian tunnel under Main Street at Alkali Creek. The scope of the engineering design and construction administration services are to be limited to that portion of segment 1b that includes the tunnel under Main Street and the connecting path on the west side of Main Street.

1. Data Collection

- a. Historic Properties – Identification of potential cultural / historic sites within the project limits of work will be limited to a letter requesting a search of existing records maintained by the State Historic Preservation Office and that this search will result in no further action required.
- b. Wetlands Protection (COE) / Threatened or Endangered Species / Biological Resources – Our proposal includes a delineation of existing wetlands on both the east and west sides of the Main Street embankment and south of the existing channel. Engineer has assumed that this delineation will allow us to demonstrate zero impact to existing wetlands from this project avoiding the need for mitigation. The existing delineation will be submitted to the local Corps of Engineer’s representative for review and concurrence of this baseline inventory. If impacts exceeding the allowable minimum of 0.1 acres are unavoidable and mitigation in the form of replacement wetlands is required, then this additional work would be addressed with a supplemental agreement.

An inventory of the fish and wildlife resources in these areas is scheduled concurrently with the wetland delineation and the limits of this inventory would be similar to that previously described in the Wetlands Protection Section. A copy of the final report will be submitted to the U.S. Fish & Wildlife Service and the Montana Department of Fish Wildlife & Parks to get their input on potential impacts and mitigation. Engineer does not anticipate any adverse impact as result of this work.
- c. Design Survey and Mapping – Complete topographic mapping of the corridor (English units) necessary for the design and construction of segment 1b improvements. Mapping will include definition of property boundaries for the corridor. The horizontal datum for the project will be NAD 83(1992) and vertical datum will be NAVD 88. Project mapping will be developed using control from the MDT Airport Road Project.

- d. Subsurface Utility Engineering (SUE) – Engineer will complete a Phase 1 investigation of the utilities within the project limits followed by a Phase 2 investigation for specific utilities that will impact design and construction of the proposed work. Phase 2 will involve vacuum excavation of at least two utilities, the water main and the communications duct bank located on Main Street. A total of five test holes have been presumed for scoping purposes.
- e. Geotechnical Investigation –Soil conditions for the Main Street embankment at Alkali Creek are anticipated to consist of poorly consolidated sand and clay soils overlying and shale and sandstone bedrock. The earth fill likely consists of sand and clay fill with scattered sandstone, gravel and cobble size material. The sandstone and shale is anticipated to occur at relatively shallow depths along the Alkali Creek drainage. Groundwater is anticipated at depths consistent with the water surface water elevation of Alkali Creek.

The proposed construction will consist of a Portland cement concrete trail, mass gravity retaining walls and a tunnel through the earth fill below Main Street. The concrete trails will be constructed near existing grades however minor grade adjustments of less than 5 feet are anticipated along the trail alignment. Where necessary, mass gravity retaining walls will be constructed along the multi-use trail and tunnel openings. The tunnel is anticipated to be 14 feet in diameter and constructed at an approximate elevation 25 feet below the top of pavement of Main Street. The tunnel is anticipated to be constructed using a manual digging method and the installation of segmental tunnel liner.

HKM is proposing to perform 3 borings along the tunnel alignment from Main Street and 2 to 3 test pit excavations along the multi-use trail. The borings will be advanced using a hollow-stem auger drill rig from the shoulders and turning lane of Main Street to a depth of 35 feet. The test pits will be advanced using a backhoe along the proposed trail alignments within the project area. The test pits will be advanced to a proposed depth of five feet below finished grade or practical refusal, which ever is encountered first. HKM is not proposing to perform drilling or coring beyond 35 feet. HKM will obtain utility clearances to ensure boring and test pit locations do not conflict with buried utilities.

HKM will provide an engineer or geologist to observe boring and test pit excavations and evaluate existing site conditions. Penetration tests will be performed in the borings to determine the subgrade soil strength characteristics. Soils samples will also be collected at various depths for laboratory testing. Continuous logs of the borings and test pits will be produced by HKM as a record of soil and groundwater conditions.

Samples will be returned to HKM's laboratory where some routine laboratory testing may be performed to assist in evaluating the site soils. HKM is proposing to perform moisture content, classification (sieve and Atterberg analysis), corrosion testing (pH, resistivity, soluble sulfates), direct shear, and consolidation/swell testing if necessary.

The information obtained from the field exploration and laboratory-testing will be used to evaluate the subsurface conditions at the site. Engineering analysis will then be performed in order to determine the suitability of the site soils, and our recommendations for the project. Recommendations will include geotechnical considerations for design and construction of tunnel structures; concrete trails; mass gravity retaining walls and corrective earthwork if necessary. Part of the final report would include a review of previous geotechnical investigations provided by the City, MDT and the County, for past projects that constructed the existing sewer main, storm drainage systems, etc.

- f. Other Projects – Engineer intends to make a general request of the utility companies, Yellowstone County, the Department of Transportation and the City of Billings for record drawings of past projects within or adjacent to the limits of work including any past geotechnical investigations that may be relevant to this project.
- g. Concept Review Meeting – The last task within the Data Collection / Coordination Phase will involve the notification of all stake holders i.e. utility owners, Yellowstone County, the Montana Department of Transportation, CTEP and the City of Billings. The mailer would include a brief description of the project and invite the stake holders to attend a concept review meeting to learn more and provide comments as we move forward with the design. The concept review phase will include a cursory review of the preconstruction versus post-construction water surfaces at the upstream side of the Main Street as a result of the tunnel construction.

2. Develop Construction Documents

Engineer assumes two review submittals with City Staff, a preliminary design submittal at approximately 60 % completion and a final review submittal. Distribution for these reviews will include: the CTEP representative, MDT (Billings District), Yellowstone County Public Works, and utility representatives. The 60 % review submittal will include a utility coordination meeting. Coordination with the Department of Transportation will follow their "Guide to the System Impact Process".

Both submittals will include plans, specifications and an opinion of cost. Project specifications will be the current edition of the Montana Public Works Standard Specifications as adopted and modified by the City of Billings. The city requires one set of full size plans with specifications and cost estimate for their reviews and CTEP will receive two sets of plans, specifications and estimates for their final review.

The lighting for this project is limited to the tunnel interior and the tunnel ends. No path lighting has been considered. The Engineer also assumes installation of a new and separate circuit for these improvements and includes the necessary utility coordination.

3. Permitting –

- a. Once the design is substantially complete, the Engineer intends to complete and submit the "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains and Other Water Bodies" and a City of Billings Floodplain Permit Application. These applications will be submitted to the
 - Floodplain Administrators (city & county)
 - Army Corps of Engineers (404 Permit)
 - Montana Department of Fish, Wildlife & Parks (SPA 124 Permit)

The Engineer is expecting that the Corps of Engineers and the Montana Department of Fish, Wildlife & Parks will respond as having no jurisdictional concerns. Response time for these applications could be as much as 120 days.

- b. The Engineer will complete and submit an Encroachment Permit to the Billings District of the Montana Department of Transportation in accordance with their System Impact Process. This initial application request would include plans and specifications for the 60 % design review and the geotechnical report. Drainage calculations including culvert analysis, hydraulic modeling, etc. are not included as part of this proposal.
- c. The Engineer assumes that the appropriate environmental document for this project will be a "Categorical Exclusion Group (d) Action Letter" which the City will prepare and submit and that most of the areas of statutory-regulatory compliance will be "not applicable" with the exceptions being:

(1) Floodplain Management (city / county) – Since this project is being constructed in the existing 100 year floodplain, permits from both Yellowstone County and the City of Billings will be required. The Engineer assumes that all practicable alternatives for crossing Main Street have been considered in the Design Study and Route Selection phase of this contract and that the proposed tunnel will not result in any adverse impacts which need to be mitigated or that would lead to a reevaluation of alternatives.

(2) Water Quality – The only concern here is related to storm water discharges related to construction activity and we have assumed that the total disturbance will be less than 20 acres, i.e. does not require preparation of a plan by a registered engineer. HKM will show BMP's on the plans that provide perimeter containment for the site but is not responsible for the design, selection and sequencing interior controls necessary to manage the site during construction. The contractor will be responsible for acquiring the necessary permits including the NOI / NOT and compliance with the conditions of the approved permit.

4. Construction Administration

Services described in this section are based on a 120 calendar day construction contract. HKM will provide the following services during the construction process:

- a. Produce and distribute bid sets (up to 30 half size and 10 full size), maintain the plan holders list, and issue addenda and clarifications.
- b. Conduct the prebid meeting and attend the bid opening.
- c. Tabulate bids, review and make an award recommendation to the City.
- d. Process contracts, bonds and insurance along with other information that is required by the successful bidder.
- e. Process change orders and Requests for Information.
- f. Issue notices.
- g. Review contractor submittals.
- h. Conduct the preconstruction meeting.
- i. Review Certified Payrolls for compliance with the applicable wage rates.
- j. Provide part time inspection (approximately $\frac{1}{2}$ time) of the construction process.
- k. Provide construction staking for the project.
- l. Conduct the Substantial Completion and Final Inspections.
- m. Administer project closeout including record drawings, final pay requests, lien waivers, insurance, etc. The City will receive one set of record mylars, excluding cross sections, and a CD with pdf drawings.
- n. Acceptance testing will be the Contractor's responsibility with distribution and frequency to be established by the project specifications and results submitted to the designated project representative for review and action.
- o. Schedule and conduct a one-year walk through inspection.

Appendix B

Section 1.A.2

Engineering Design

Task

I. Data collection (includes SHPO inquiry, wetlands, T & E, SUE, Geotechnical, other projects and concept review meeting)	\$ 60,173
II. 60% Plans, Specs and Estimate Submittal	\$ 30,952
III. Final Plans, Specs and Estimate Submittal	\$ 10,590
IV. Permits	\$ 3,285
Engineering Design Subtotal	\$105,000

The allocation of fees within this phase is for administrative purposes only and not to be considered ceiling amounts for each task. The fees for each task (excluding Sub work) within a phase can be shifted between tasks within the same phase, but the project total will not be changed except by contract amendment.

Section 1.B.1

Construction Administration

Task

I. Bidding	\$ 8,208
II. Construction Administration	\$ 40,920
III. Construction Staking	\$ 13,872
Construction Administration Subtotal	\$ 63,000

Project Total

\$168,000

The allocation of fees within this phase is for administrative purposes only and not to be considered ceiling amounts for each task. The fees for each task (excluding Sub work) within a phase can be shifted between tasks within the same phase, but the project total will not be changed except by contract amendment.

HKM Engineering Inc.

PROFESSIONAL SERVICES FEE SCHEDULE (Effective 2/1/07; See Note 1)

TASK DESCRIPTION	PRICE/UNIT	UNIT
JOB SUPERVISION AND LABOR		
Principal/Sr Manager	\$ 150.00	Hour
Engineer/Professional V	\$ 125.00	Hour
Engineer/Professional IV	\$ 105.00	Hour
Engineer/Professional II	\$ 85.00	Hour
Engineer/ Professional I	\$ 75.00	Hour
Engineer/Professional I	\$ 65.00	Hour
Technician/ CADD III*	\$ 76.00	Hour
Technician/ CADD II*	\$ 65.00	Hour
Technician/ CADD I*	\$ 45.00	Hour
Professional Surveyor, L. S.*	\$ 86.00	Hour
Survey Party Chief*	\$ 65.00	Hour
2 Person Survey Crew*	\$ 130.00	Hour
Administrative Managers		
Sr Administration/Support*	\$ 65.00	Hour
Support/Clerical*	\$ 45.00	Hour

*Subject to overtime at 1.5 times above rates.

TRAVEL , MILEAGE & MISC.	PRICE/UNIT	UNIT
Per diem (per man-day MT/ WY/ID)	\$ 39.00	Day**
Lodging (MT/WY/ID)		Cost
Vehicle Usage: Autos	\$ 0.65	Mile
Pickups & Suburbans	\$ 0.75	Mile
Printing / Supplies / Phone / Fax / Postage	Note 2	
Subcontractors	Cost	
Laboratory Analysis	Cost	
Other/Miscellaneous	Cost	

**Per diem will be billed after six (6) hours in field when more than 50 miles from office as follows:

\$9.75 for every full quarter-day (6 hours) or portion of a quarter-day greater than 3 hours.

For the day of departure, the day begins at time of departure.

For the day of return, the day ends when employee arrives at authorized point of destination (office, home, etc.)

EQUIPMENT, MATERIALS & SUPPLIES	PRICE/UNIT	UNIT
Interface Probe	\$ 30.00	Day
PID/LEL/O2 Meter	\$ 60.00	Day
Peristaltic Pump	\$ 30.00	Day
Disposable Bailei	\$ 10.00	Each
Grunfos Pump	\$ 50.00	Day
Environmental Sample Fee	\$ 15.00	Sample
Disposable Tubing	\$ 1.25	Foot
Portable Electric Generator	\$ 25.00	Day
12 Volt Pump	\$ 25.00	Day
YSI Multiprobe	\$ 35.00	Day
ATV's	\$ 100.00	Day
Boat and Trailer	\$ 150.00	Day
GPS Equipment (Dual Frequency)		
2 Receiver System	\$ 200.00	1/2 Day
	\$ 400.00	Day
	\$ 1,600.00	Week
	\$ 4,800.00	Month
3 Receiver System	\$ 300.00	1/2 day
	\$ 600.00	Day
	\$ 2,400.00	Week
	\$ 7,200.00	Month
Nuclear Densometer	\$ 25.00	Day
	\$ 100.00	Week
	\$ 300.00	Month

Note 1: HKM's Professional Services Fee Schedule is subject to adjustment at the beginning of each fiscal year (October 1st) or at the end of a contract period, whichever is appropriate. Should adjustments be anticipated or required, such adjustments will not affect existing contracts without prior agreement between Customer and HKM.

Note 2: Costs included in overhead rate for reasonable requests. Requests beyond those considered reasonable by the project manager billed at the actual cost of the service.

Appendix G
Federal Aid Requirements

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, **HKM Engineering, Inc.** (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

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

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

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

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

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

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

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

(1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.

(2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**

(3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

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

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

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate

DBE GOAL

The Contractor will make all reasonable efforts to utilize MDT's currently certified DBE firms for applicable subcontracting services that are necessary. The MDT Civil Rights website, <http://www.mdt.state.mt.us/civilrights/>, contains information related to MDT's certified DBE firms. An MDT Compliance Specialist may be contacted at (406) 444-9229 should subcontracting opportunities arise.

Each invoice submitted for payment must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal.

The DBE Goal for this project is **Zero percent (0.0%)**.

CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of ***HKM Engineering, Inc.***, whose address is ***PO Box 31318, Billings, MT 59101-1318*** and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:

- (a) has employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
- (b) has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- (c) has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.

2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:

- (a) is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency or any agency of any state government;
- (b) has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of antitrust statutes;

commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2(b) of this certification.

(d) has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.

3. That to the best of my knowledge and belief:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the **City of Billings**, State of Montana, Department of Transportation, and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Date

Signature

HKM Engineering, Inc.

CERTIFICATE OF THE CITY OF BILLINGS, MONTANA

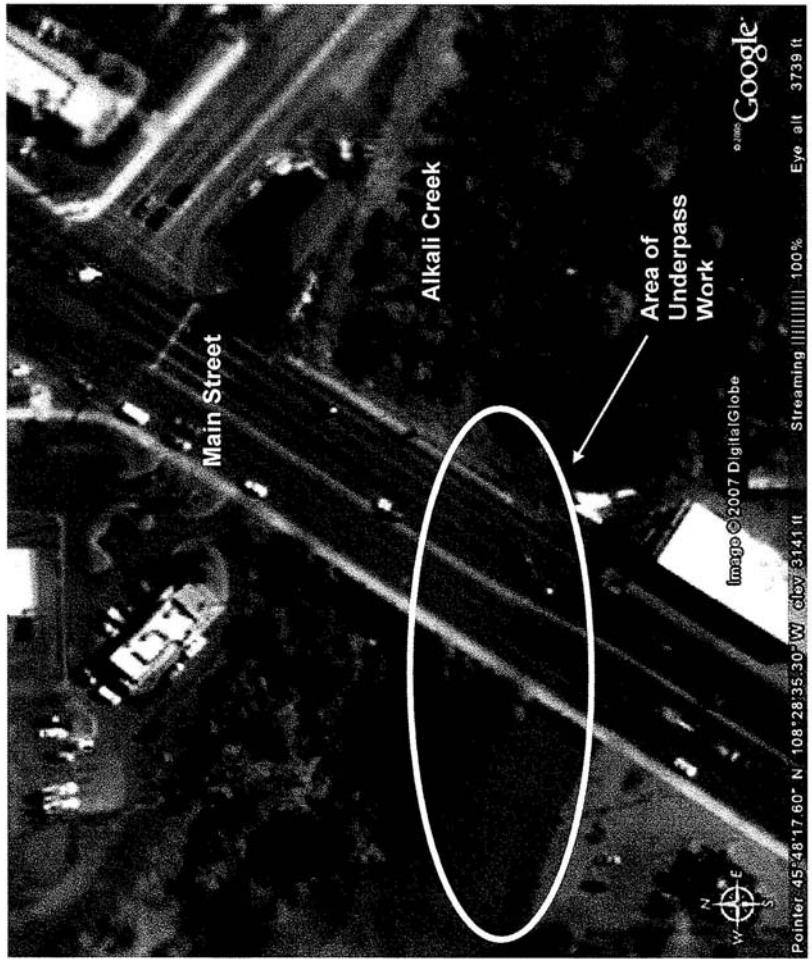
I hereby certify that I am *The Mayor of the City of Billings*, of the State of Montana, and that the above consulting firm, or its representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Date _____ Signature _____
Mayor, City of Billings

Attachment B - Area Map of Alkali Creek Trail Underpass at Main Street



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: Yellowstone Country Club Sewer Easement

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: In 2002 the City of Billings annexed the Yellowstone Country Club and Yellowstone Club Estate Subdivision. The City of Billings assumed responsibility for their roads, storm water, and water system at the time of annexation. At the time of annexation, the Yellowstone Club Estate Homeowner Association did not transmit ownership of the sanitary sewer system RSID to the City of Billings. The Yellowstone Club Estate Homeowners Association has requested the City of Billings take ownership of the Sanitary Sewer RSID. The City of Billings has reached an agreement with the Yellowstone Country Club to acquire a sanitary sewer easement for the extension of the sanitary sewer main and the removal of the existing wastewater treatment plant. The easement is required for the Public Works Department to connect the existing sanitary sewer system to the City's sewer system and remove the existing plant.

ALTERNATIVES ANALYZED: Public Works Department evaluated the following alternatives:

- Negotiation a perpetual right-of-way easement with Yellowstone Country Club to allow connection to the City's sewer system in Rimrock Road and removal of the existing sewer plant.
- Using force mains connect the existing sewer system to the City's system. This would require several force mains and leaving the existing sewer plant in place. The force main construction would be more expensive and require more annual maintenance. The existing wastewater treatment plant would be left in place. The Homeowners Association and Yellowstone County would be reluctant to transfer the Sanitary Sewer RSID to the City of Billings under these conditions.
- Not accept responsibility for the Sanitary Seer RSID. This would require the Yellowstone Club Estate Homeowners to continue operating and maintaining the existing system. The existing treatment plant has operational problems.

FINANCIAL IMPACT: The following is an evaluation of the financial costs of the alternatives:

- Purchase of easement:

- Approve the purchase of the easement for \$40,697.00.
- Appraised value - \$27,450.00
- 5% Premium - \$ 1,372.00
- #3 Fairway restoration \$11,875.00
- Construct a force main and leave the existing plant in place. This would cost more than the \$1,529,000 allocated in the adopted CIP for the project. Additional funding from another project would be required.
- No financial cost to the City not to purchase the easement and not accept responsibility for the Sanitary Sewer RSID.

RECOMMENDATION

Staff recommends that Council authorize staff to complete the purchase of the perpetual utility easement located on a portion of Tract 10 of C/S 835, Section 30, Township 1N, Range 25E As shown on Exhibit A for \$40,697.00

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

ATTACHMENTS:

- A- Right-of-Way Agreement
- B- Perpetual Right-of-Way Easement
- C- Exhibit A
- D- Exhibit B

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

<u>YCC Sanitary Sewer Main Extension</u> DESIGNATION	Work Order: 07-07	<u>Yellowstone</u> <u>COUNTY</u>		
Parcel No. N/A	Parcel Description Portion of Tract 10 of C/S 835	Section 30	Township 1N	Range 25E

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

Yellowstone Country Club
5707 Bobby Jones Boulevard
Billings, MT 59106

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute a perpetual right-of-way easement and other documents required by the City for the property interests agreed to be conveyed by this agreement.

2. COMPENSATION FOR EASEMENT (List acreage and improvements to be acquired.)

0.71 acres, more or less, perpetual right-of-way easement for sanitary sewer 5% Premium	\$24,300.00 \$1,372.00
--	---------------------------

3. OTHER COMPENSATION:

0.83 acres, more or less Temporary Construction Easement #3 Fairway playable area restoration, lump sum	\$ 3,150.00 \$11,875.00
--	----------------------------

4. TOTAL COMPENSATION (includes all damages to the remainder): \$40,697.00

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

A warrant in the amount of \$40,697.00, to be made payable to Yellowstone Country Club and mailed to 5707 Bobby Jones Boulevard, Billings, MT 59106.

6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to extend a sanitary sewer main to replace the existing wastewater treatment facility (improvements) located within the easement. Some of these improvements may be constructed with special improvement property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.

7. The Grantors hereby grant the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Perpetual Right-of-Way Easement, and made for the period of the improvements construction project plus the one-year warranty period.

8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property rights being acquired and notice that possession need not be given until payment has been received by the Grantors.

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

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

For the Yellowstone Country Club:

Signature: _____ (Date) _____ Tax ID No.

Signature: _____ (Date) _____ Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

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

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

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this _____ day of _____, 20____, the undersigned,

Yellowstone Country Club
5707 Bobby Jones Boulevard
Billings, MT 59106

of the address of _____, 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 easement and right-of-way over, across, under and through the following described tract of real property in Yellowstone County, Montana:

See attached Exhibit A and Exhibit B

This Perpetual easement to Grantee is for the purpose of constructing, maintaining, operating, servicing, repairing and replacing a sanitary sewer 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, maintaining, operating, servicing, repairing and replacing the said sanitary sewer and appurtenances.

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, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee. 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 at any time, day or night, regardless of outside weather conditions.
3. Grantors agree to obtain the permission of the Public Works Department of the 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.

4. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer by the City of Billings shall be limited to trench backfill, compaction, and placement of backfill material to existing grade by the City of Billings including restoration of any roadways including the asphalt roadway which crosses Hole No. 3. Grantors and Grantee shall work together in good faith in respect to any restoration issues that may arise in respect to the initial construction of the sanitary sewer line as well as any work performed at any later date. The City of Billings will financially compensate the Yellowstone Country Club for all reasonable costs to restore the area to its original condition.
5. Grantee agrees to notify Grantors of any construction, maintenance, operation, servicing, repairing and replacing of the said sanitary sewer line by the Grantee except in the case of an emergency when notification is not reasonable. Under all circumstances, Grantee agrees to coordinate its activities with Grantors in order to travel upon the golf course in order to perform Grantees' duties and to minimize and eliminate if at all possible, any damage or destruction to the golf course property.
6. Grantee agrees to notify Grantors of any proposed routine maintenance and service schedules so that a mutually agreed upon time can be set for coordination of the activities of both Grantors and Grantee.
7. **HOLD HARMLESS AGREEMENT:**
 - Grantors shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked, split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from easement right-of-way by authorized representatives of the City of Billings in the exercise of any of their rights under this easement.
 - Grantors shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by the failure of Grantors or their agents to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.

- The City of Billings shall reimburse the Grantors for any and all damage claims paid by the Grantors for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by the failure of Billings or their agents to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement, except damages occasioned by necessary and reasonable maintenance activities of the City of Billings in the right of way.
- Grantors agree to indemnify, defend, save and hold the City of Billings harmless from any claims, lawsuits, judgments or liability, including reasonable attorney's fees and costs, to the extent caused by the Grantor's negligent acts or omissions arising from its performance this agreement or the negligent acts or omissions of Grantors' agents or employees.
- The City of Billings agrees to indemnify, defend, save and hold Grantors harmless from any claims, lawsuits, judgments or liability, including reasonable attorney's fees and costs, to the extent caused by the City's negligent acts or omissions arising from performance of this agreement or the negligent acts or omissions of Billings' agents or employees.
- Neither the Grantors nor Billings shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

7. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and their successors in interest and all persons claiming thereunder.

For the Yellowstone Country Club:

STATE OF MONTANA)

) ss.

County of Yellowstone)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____ to me known to be the _____ of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Signature of Notary

(SEAL)

Printed name of Notary

NOTARIAL SEAL STATE OF MONTANA
RESIDING AT BILLINGS, MONTANA
MY COMMISSION EXPIRES _____

STATE OF MONTANA)
) ss.
County of Yellowstone)

On this _____ day of _____, 20____, before me, the undersigned, a
Notary Public for the State of Montana, personally appeared _____ to me
known to be the person whose name is subscribed to the within instrument and acknowledged to me
that she/he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
and year in this certificate first above written.

Signature of Notary

(SEAL)

Printed name of Notary

NOTARIAL SEAL * STATE OF MONTANA
RESIDING AT BILLINGS, MONTANA
MY COMMISSION EXPIRES _____

K. ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk

STATE OF MONTANA)
:ss
COUNTY OF _____)

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

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

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

EXHIBIT A

PERPETUAL UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT
FOR: THE CITY OF BILLINGS, MONTANA
BY: ENGINEERING, INC. MAY, 2006

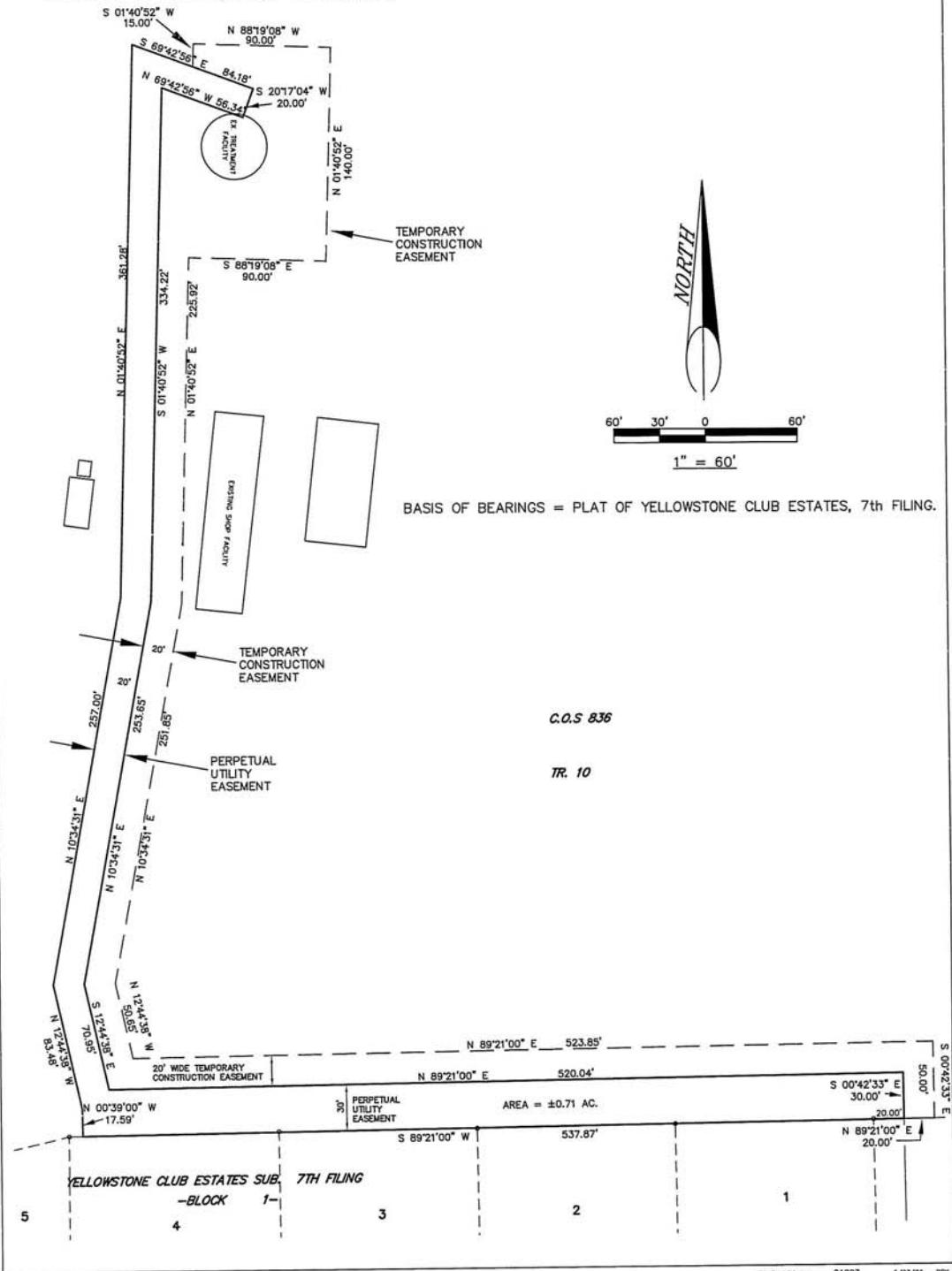


Exhibit B

A tract of land in Section 30, Township 1 North, Range 25 East, P.M.M., Yellowstone County, Montana, described as a portion of Tract 10 of Certificate of Survey No. 836, on file in the office of the Clerk and Recorder of said County, under Document #639577, excepting therefrom Amended Tract 10 of Certificate of Survey No. 836, and more particularly described as follows:

Basis of bearings: Plat of Yellowstone Club Estates, 7th Filing, on file in the office of the Clerk and Recorder of said County, under Document #910700.

Beginning at the northeast corner of Lot 1, Block 1, Yellowstone Estates Subdivision, 7th Filing, thence S89°21'00"W for a distance of 517.87 feet; thence N00°39'00"W for a distance of 17.59 feet; thence N12°44'38"W for a distance of 83.48 feet; thence N10°34'31"E for a distance of 257.00 feet; thence N01°40'52"E for a distance of 361.28 feet; thence S69°42'56"E for a distance of 84.18 feet; thence S20°17'04"W for a distance of 20.00 feet; thence N69°42'56"W for a distance of 56.34 feet; thence S01°40'52"W for a distance of 335.00 feet; thence S10°34'31"W for a distance of 254.43 feet; thence S12°44'38"E for a distance of 70.95 feet; thence N89°21'00"E for a distance of 520.04 feet; thence S00°42'33"E for a distance of 30.00 feet; thence S89°21'00"W for a distance of 20.00 feet to the point of beginning, and all according to Exhibit A attached hereto.

Containing an area of 0.71 acres, more or less.

Subject to all existing easements either of record or as are apparent on the ground.

Together with a temporary construction easement as shown on Exhibit A, containing an area of 0.83 acres, more or less.

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

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: W.O. 07-01-2007 Water & Sewer Line Replacement Projects, Schedule 2
Approval of Right-of-Way Agreements and Easements

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: On June 11, City Council awarded Schedule 2 of the 2007 Water and Sewer Line Replacement Projects to Chief Construction. One of the replacements in Schedule 2 calls for an existing sewer main to be relocated from private property (at the back of 9 lots along the south side of Bruce Avenue) into a Perpetual Right-of-Way Easement desired by the City from the owners of Tract 1, Retzlaf Acreage Tracts Subdivision. Replacing this sewer main also calls for the transfer of all existing individual sewer services from the old main (also located on private property) to the new main located in the same desired Easement. Constructing the new sewer main and transferring the services requires executing Right-of-Way Agreements, a Perpetual Right-of-Way Easement, and Temporary Right-of-Way Easements.

Of the eleven (11) properties needing to cooperate in order to construct the new sewer main, ten (10) of them require standard Temporary Right-of-Way Easements for the transfer of services to the new main; these property owners did not desire any special conditions as part of reaching an Agreement. The Barretts have communicated to the City that they will only grant the Perpetual Right-of-Way Easement that the City desires if they receive a sewer service connection to the new sewer main to serve their new single family home currently under construction on the property. If they do not receive the sewer service connection, the Barretts have said that they will construct an on-site septic system to serve their home and not grant the City an Easement.

In order to obtain City sewer service, the Barretts are required to pay the City's current local sewer main construction fee and system development fees. For the Barretts' 6.4 acre parcel, this fee far exceeds the appraised value of the land needed by the City for the easement; therefore, the City has agreed to amend the plat of the Barretts' tract so that the replatted portion containing the house is of such land area as to equalize Mr. Barrett's fees and appraised land values. In accordance with their Right-of-Way Agreement, the City does not anticipate an exchange of funds with the Barretts.

Summary of Appraised Easement Values and Fees

Owner	Address	Legal Description	Appraised Values	Fees Owed to City	Net Payment By City
Barrett	314 Calhoun Ln.	Tr. 1 Retzlaf Ac. Tr.	\$7,197.60	\$7,347.60	-\$150.00
Barrett	307 S Billings Blvd.	Tr. 2A C/S #1456	\$150.00	0.00	\$150.00
Bell	4610 Bruce Ave.	L1,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
Perkins/Norby	4612 Bruce Ave.	L2,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
Phelps	4614 Bruce Ave.	L3,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
Mortenson	4616 Bruce Ave.	L4,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
Gowan	4618 Bruce Ave.	L5,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
G. Apps	4620 Bruce Ave.	L6,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
Young	4622 Bruce Ave.	L7,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
T. Apps	4624 Bruce Ave.	L8,B3 Calhoun Ln. Sub	\$150.00	0.00	\$150.00
Wilson	4626 Bruce Ave.	L9,B3 Calhoun Ln. Sub	\$250.00	0.00	\$250.00
TOTALS			\$8,797.60	\$7,347.60	\$1,450.00

ALTERNATIVES ANALYZED: If the City is unable to obtain a Perpetual Right-of-Way Easement from the Barretts, an alternate sewer main location and design must be developed. Relocating the sewer to the Barretts' property is the most cost effective and least disruptive solution. If this sewer replacement must be redesigned and relocated in another way in the future, it will be constructed at greater disruption to the customers it serves at greater expense to the City.

FINANCIAL IMPACT: The \$1,450.00 in funding needed for payment to nine property owners is available from wastewater funds (513-8591-625-9340).

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreements, the Temporary Right-of-Way Easements, and the Perpetual Right-of-Way Easement for a total of \$1,450.00, and authorize the Mayor to execute these documents.

Approved By: City Administrator _____ City Attorney _____

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

K1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Right-of-Way Easement for Parcel #15, a Portion of Lot 1 of Rex Subdivision With Janet Croy

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #15 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this easement made a conclusion of value for the easement, any appurtenant features, and the construction permit at a value of \$13,750.00. A perpetual easement for right-of-way purposes has the same value as a fee simple acquisition. An easement was negotiated for this parcel because the property owner did not want the new property boundary to encroach too close to the existing structure on the property. A copy of the right-of-way agreement; easement; appraisal; tax documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this easement is \$13,750.00. The cost of this easement is equal to the sum of the appraised value of the easement, any appurtenant features, and the construction permit. Funding is available for this easement from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #15, a Portion of Lot 1 of Rex Subdivision with Janet Croy in the amount of \$13,750.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #15, a Portion of Lot 1 of Rex Subdivision with Janet Croy in the amount of \$13,750.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane	Work Order: 04-33	Yellowstone COUNTY	
DESIGNATION		Project No. 05153	
Parcel No.	Parcel Description	Section	Township
15	Lot 1 of Rex Subdivision	22	1N
Range			
26E			

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

JANET L. CROY
P.O. BOX 21120
BILLINGS, MT 59104-1120
671-2551

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

1,857 square feet by easement Improvements (Trees, fencing, service walk, sod)	\$7,892.00 \$5,156.00 <u>\$2,737.00</u>
3. OTHER COMPENSATION:	
611 square feet Temporary Construction Permit Relocate sign	\$ 260.00 \$ 350.00 <u>\$13,750.00</u>
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): <u>\$19,650.00</u>	
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS: <u>\$13,750.00</u> A warrant in the amount of \$19,650.00, to be made payable to JANET L. CROY and mailed to P.O. BOX 21120, BILLINGS, MT 59104-1120	
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.	
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Right-of-Way Easement, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.	
8. This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor	
9. At no expense to the Grantor and at the time of street construction, permission is hereby granted the City to enter upon the Grantor's land, where necessary, at the location and for the purpose described as: Reconfigure and repair sprinkler system, if any, affected by project.	

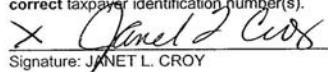
Grantor understands and agrees that upon completion of the construction of this item located upon the Grantor's land, they shall be considered the sole property of the Grantor, and the maintenance and repair of said property shall be the responsibility of the Grantor.

(Continued from Previous Page)

10. It is understood and agreed by and between the parties hereto that included in the amount payable under "Other Compensation" herein is payment in full to compensate the Grantor for the expense of performing the following work: Relocate the on-premise sign outside the right-of-way on or before August 1, 2007
11. Permission is hereby granted the City to enter upon the Grantor's land, where necessary and for the purpose of constructing a curb cut approach at the northerly end of the property. It is understood and agreed by the parties hereto that the specific location of this approaches is subject to adjustment at the time of construction to achieve the best physical location for said approach. The City agrees to contact the Grantor for specifics regarding this approach.

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

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

 Janet L. Croy
Signature: JANET L. CROY

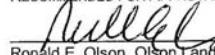
6/6/07
(Date)

lings
our

Signature: _____ (Date) _____ Tax ID No. _____

Signature: _____ (Date) _____ Tax ID No. _____

RECOMMENDED FOR APPROVAL:

 6-6-07
Ronald E. Olson, Olson Land Services

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

6-6-07
Mayor, City of Billings
(Date)

ATTEST:

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

LER-015.200 CROY

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

RIGHT-OF-WAY EASEMENT

THIS INDENTURE, made and entered into this 6th day of June,
2007, by and between the following:

JANET L. CROY
P.O. BOX 21120
BILLINGS, MT 59104-1120

hereinafter referred to as **GRANTOR** and

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

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

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

Parcel No. 15 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Lot 1 of Rex Subdivision, on file under Document No. 527461, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 1,857 sq. ft.

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 611 sq. ft..

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

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

Project No. : W.O. 04-33

Parcel No. 15

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

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

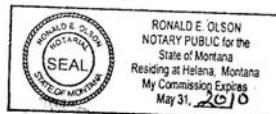
IN WITNESS WHEREOF

Janet L. Croz

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on June 6, 2007
(date)

by Janet L. Croz
(names)



Neela

Notary Signature Line

Ronald E. Olson
Notary Printed Name

Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk

STATE OF MONTANA)

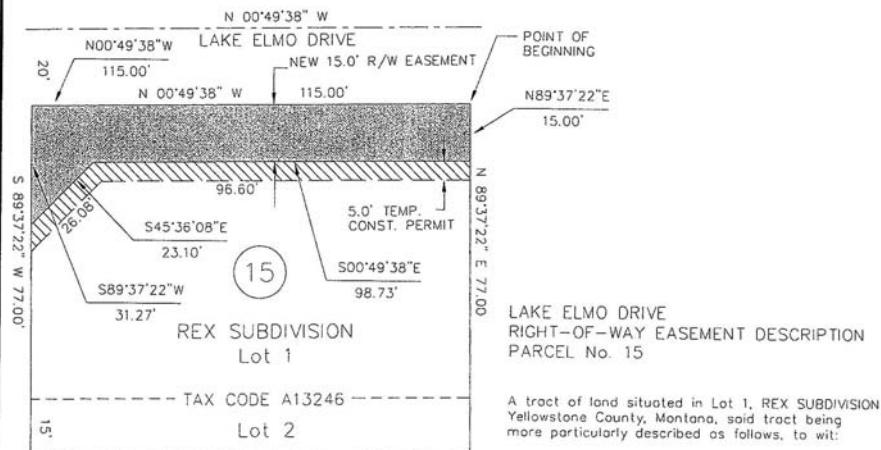
COUNTY OF _____)

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

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

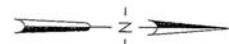
Notary Public for the State of _____
Residing at _____
My Commission Expires _____

EXHIBIT A
RIGHT-OF-WAY EASEMENT
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 1,
REX SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



A tract of land situated in Lot 1, REX SUBDIVISION Yellowstone County, Montana, said tract being more particularly described as follows, to wit:

Beginning at a point, said point being the northwest corner of Lot 1 of REX SUBDIVISION, thence N 89°37'22" E a distance of 15.00 feet, thence S 049'38" E a distance of 98.73 feet, thence S 45°36'08" E a distance of 23.10 feet, thence S 89°37'22" W a distance of 31.27 feet, thence N 049'38" W a distance of 115.00 feet to the point of beginning, said tract containing 1,857 square feet.



30 0 30 60
 scale feet

LEGEND

	RIGHT-OF-WAY EASEMENT
	CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
 RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 15

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

UPDATED: 6/11/07 NO PARCEL 15.DWG

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

K2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #16, a Portion of Lot 1 of Rex Subdivision 2nd Filing With The Bird House, LLC

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #16 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$8,800.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$8,800.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #16, a Portion of Lot 1 of Rex Subdivision, 2nd Filing with The Bird House, LLC in the amount of \$8,800.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

Approved By: City Administrator City Attorney

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

- January 9, 2006 – Award of Contract for Professional Services for Right-of-Way Acquisition to Right-of-Way Acquisition Group, LLC
- January 23, 2006 – Award of Contract for Professional Services for Land Surveying services related to right-of-way acquisition to Engineering, Inc.
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- March 10, 2006 – Public meeting with adjoining property owners
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- November 2006 – Appraisals completed on parcels to be acquired
- December 2006 – Right-of-way negotiations began with property owners

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #16, a Portion of Lot 1 of Rex Subdivision, 2nd Filing with The Bird House, LLC in the amount of \$8,800.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u> DESIGNATION	Work Order: 04-33 Project No. 05153	<u>Yellowstone</u> COUNTY		
Parcel No. 16	Parcel Description Lot 1 of Rex Subdivision 2nd Filing	Section 22	Township 1N	Range 26E

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

THE BIRD HOUSE, LLC.
P.O. BOX 50575
BILLINGS, MT 59105-0575
(800) 736-5233

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

1,395 square feet by deed	\$5,580.00
Improvements (tree, fence, asphalt, sod)	\$3,019.00
3. OTHER COMPENSATION:

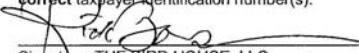
465 square feet Temporary Construction Permit	\$ 186.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$8,800.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$8,800.00, to be made payable to THE BIRD HOUSE, LLC. and mailed to P.O. BOX 50575, BILLINGS, MT 59105-0575
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:
Reconfigure and repair sprinkler system, if any, affected by project.

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

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SUBSCRIBED.

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

 6/13/07
Signature: THE BIRD HOUSE, LLC. (Date)

ngs
ur

Signature: _____ (Date) _____ Tax ID No.

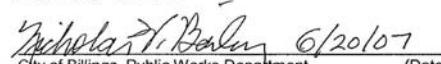
Signature: _____ (Date) _____ Tax ID No.

RECOMMENDED FOR APPROVAL:  6/13/07

Ronald E. Olson
Olson-Land Services (Date) Mayor, City of Billings (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

ATTEST:

 6/20/07
Michael T. Bailey
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-16.200 BIRD HOUSE

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

Project No. W.O. 04-33 Parcel No. 16 County of YELLOWSTONE
Designation LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

WARRANTY DEED
THIS INDENTURE, made this 13th day of June, 2007.

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

THE BIRD HOUSE, LLC
P.O. BOX 50575
BILLINGS, MT 59105-0575

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

Parcel No. 14 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project.
Said parcel is also described as a tract of land within Lot 1 of Rex Subdivision 2nd Filing, on file
under Document No. 695701, Yellowstone County, Montana, as shown by the shaded area on
Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of
1,395 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year
construction warranty period as shown by the hatched area on said Exhibit A, containing an
area of 465 sq. ft..

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

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

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

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

Project No. : W.O. 04-33

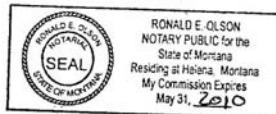
Parcel No. 16

Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE



State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on June 13, 2007
(date)
by Rick Jones, member of The Bird House, LLC
(names) 



Notary Signature Line
Ronald E. Olson
Notary Printed Name

Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)

:ss

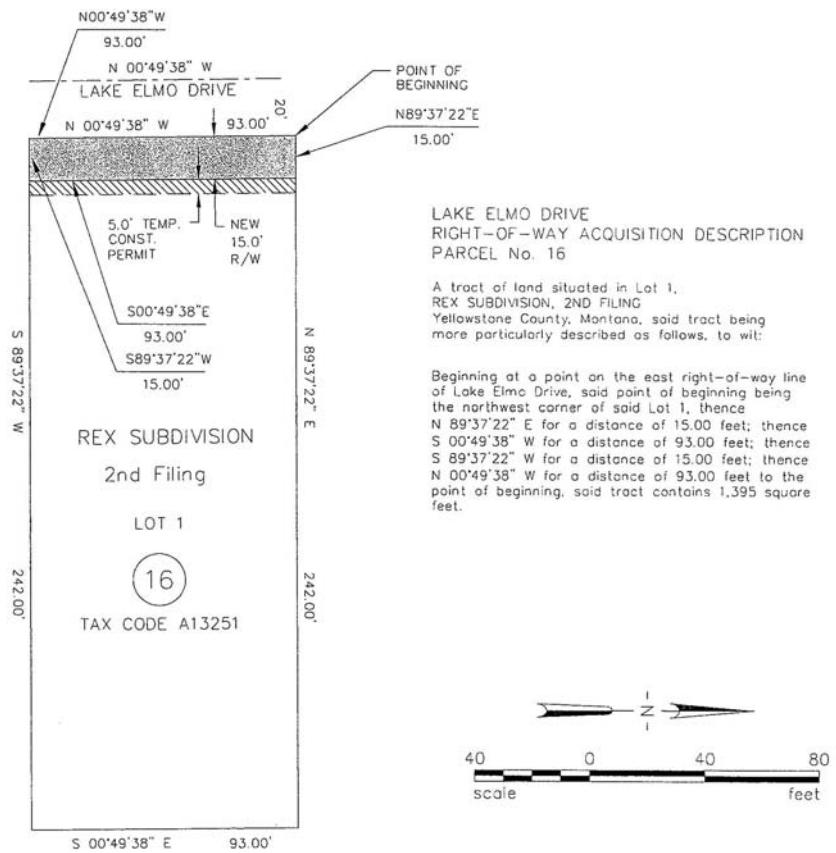
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 1,
REX SUBDIVISION, 2ND FILING
YELLOWSTONE COUNTY, MONTANA



AREA TO BE ACQUIRED: 1395 S.F.
AREA OF TEMPORARY CONSTRUCTION
PERMIT: 465 S.F.

LEGEND

	RIGHT-OF-WAY ACQUISITION
	CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA RIGHT-OF-WAY EXHIBIT	
---	--

CITY W.O. 04-33 PARCEL 16 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA RIGHT-OF-WAY PLAN.	
--	--

UPDATED 6/20/07 AB PARCEL 16.00G

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

K3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #17, a Portion of Lot 2 of Rex Subdivision 2nd Filing With The Bird House, LLC

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #17 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$13,700.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$13,700.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #17, a Portion of Lot 2 of Rex Subdivision, 2nd Filing with The Bird House, LLC in the amount of \$13,700.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- June 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #17, a Portion of Lot 2 of Rex Subdivision, 2nd Filing with The Bird House, LLC in the amount of \$13,700.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane DESIGNATION	Work Order: 04-33 Project No. 05153	Yellowstone COUNTY
Parcel No. 17	Parcel Description Lot 2 of Rex Subdivision 2nd Filing	Section 22
		Township 1N
		Range 26E

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

THE BIRD HOUSE, LLC.
 P.O. BOX 50575
 BILLINGS, MT 59105-0575
 (800) 736-5233

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

2,580 square feet by deed Improvements (Gravel beds, curbing, sod, landscape sign base, re-stripe parking)	\$8,385.00 \$3816.00
---	-------------------------

3. OTHER COMPENSATION:

1,720 square feet Temporary Construction Permit Relocate sign out side right-of-way	\$ 559.00 \$ 900.00
--	------------------------

4. TOTAL COMPENSATION (includes all damages to the remainder): \$13,700.00.

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

A warrant in the amount of \$13,700.00, to be made payable to THE BIRD HOUSE, LLC. and mailed to P.O. BOX 50575, BILLINGS, MT 59105-0575

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

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

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES S

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

Signature: THE BIRD HOUSE, LLC.

6-13-07
(Date)

Signature:

(Date)

Tax ID No.

Signature:

(Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

Nellie C. Olson
Olson Land Services
Rouse & Olson6-13-07
(Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings
(Date)

ATTEST:

Nicholas W. Baker
City of Billings, Public Works Department6/20/07
(Date)City Clerk
(Date)

LER-17.200 BIRD HOUSE

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

Project No. W.O. 04-33 Parcel No. 17 County of YELLOWSTONE
Designation LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

WARRANTY DEED
THIS INDENTURE, made this 13th day of June, 2007.

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

THE BIRD HOUSE, LLC
P.O. BOX 50575
BILLINGS, MT 59105-0575

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

Parcel No. 17 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project.
Said parcel is also described as a tract of land within Lot 2 of Rex Subdivision 2nd Filing, on file
under Document No. 695701, Yellowstone County, Montana, as shown by the shaded area on
Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of
2,580 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year
construction warranty period as shown by the hatched area on said Exhibit A, containing an
area of 1,720 sq. ft..

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

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

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

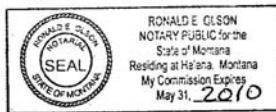
TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions,
remainders, tenements, hereditaments and appurtenances thereto, unto the CITY OF BILLINGS, and
to its successors and assigns forever. IN WITNESSTH WHEREOF, the undersigned have executed
these premises the day and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



State of Montana)
 County of Yellowstone)

This instrument was acknowledged before me on June 13, 2007

by Rick Jones member of The Bird House, LLC
 (names)



Notary Signature Line

Ronald E. Olson
 Notary Printed Name

Notary Public for State of _____
 Residing at: _____
 My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____
 City Clerk

STATE OF MONTANA)

:ss

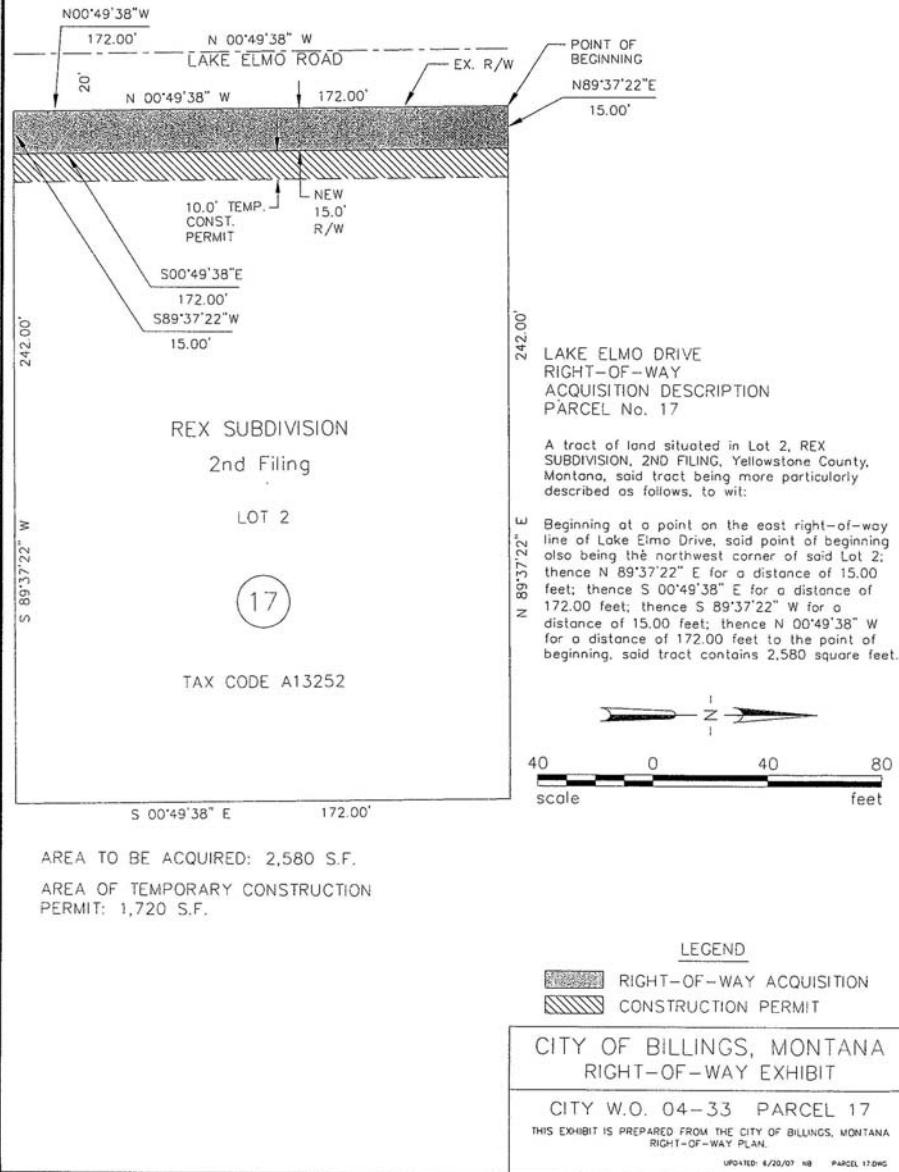
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 2,
REX SUBDIVISION, 2ND FILING
YELLOWSTONE COUNTY, MONTANA



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

K4

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 23, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Approval of Right-of-Way Agreement, Warranty Deed and Right-of-Way Easement for Parcel #30, a Portion of Tract 1 of Certificate of Survey No. 1682 With Ron Goertzen and Alisha Goertzen

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #30 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the perpetual right-of-way easement, the right-of-way land acquisition, any appurtenant features, and the construction permit at a value of \$8,100.00. A perpetual easement for right-of-way purposes has the same value as a fee simple right-of-way acquisition. A combination of acquisition and easement were negotiated for this parcel because the property owner did not want the new property boundary to be within approximately ten (10) feet from their existing home, as would have been the case in a solely land acquisition deal. A copy of the right-of-way agreement; warranty deed; right-of-way easement; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$8,100.00. The cost of this acquisition and easement is equal to the sum of the appraised value of the perpetual right-of-way easement, the right-of-way land acquisition, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement, Warranty Deed, and Right-of-Way Easement for right-of-way and easement acquisition for Parcel #30, a Portion of Tract 1 of Certificate of Survey No. 1682 with Ron Goertzen and Alisha Goertzen in the amount of \$8,100.00, and authorize the Mayor to execute these documents.

ATTACHMENT

A. Right-of-Way Agreement, Right-of-Way Easement, and Warranty Deed (8 pages)

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

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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- 2009-2010 – Design and construction of street improvements (in draft CIP)

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

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

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

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement, Warranty Deed, and Right-of-Way Easement for right-of-way and easement acquisition for Parcel #30, a Portion of Tract 1 of Certificate of Survey No. 1682 with Ron Goertzen and Alisha Goertzen in the amount of \$8,100.00, and authorize the Mayor to execute these documents.

ATTACHMENT

- A. Right-of-Way Agreement, Right-of-Way Easement, and Warranty Deed (8 pages)

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

RIGHT-OF-WAY EASEMENT

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

**RON GOERTZEN AND ALISHA GOERTZEN
1136 LAKE ELMO DRIVE
BILLINGS, MT 59105**

hereinafter referred to as **GRANTOR** and

CITY OF BILLINGS, a Montana Municipal Corporation
City Hall – 210 North 27th Street
PO Box 1178
Billings, Montana 59103-1178,

hereinafter referred to as **GRANTEE**

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

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

A portion of Parcel No. 30 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 1 of Certificate of Survey No. 1682, situated in the SW $\frac{1}{4}$ of Section 22, Township 1 North, Range 26 East, P.M.M., on file under Document No. 1059045, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 1,125 square feet.

Together with a temporary construction permit, for the period of construction plus a one-year construction warranty period, as shown by the hatched area on said Exhibit A, containing an area of 375 square feet.

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

IN WITNESS WHEREOF, the undersigned have executed these premises the day and year above first written.

Project No. : W.O. 04-33

Parcel No. 30

Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

Ron Goertzen

Alisha Goertzen

State of Montana)
County of Yellowstone)
:ss.
)

This instrument was acknowledged before me on June 25, 2007
(date)

by Ron Goertzen + Alisha Goertzen
(names)



Rebecca L. Klein
Notary Signature Line

Rebecca L. Klein
Notary Printed Name

Notary Public for State of Montana
Residing at: Billings
My Commission Expires: March 28, 2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

THIS PERPETUAL EASEMENT is hereby accepted pursuant to Billings City Council approval on June 25, 2007. The Mayor and City Council of the City of Billings acknowledges receipt of this perpetual easement and hereby accepts the property interest conveyed through this instrument.

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk

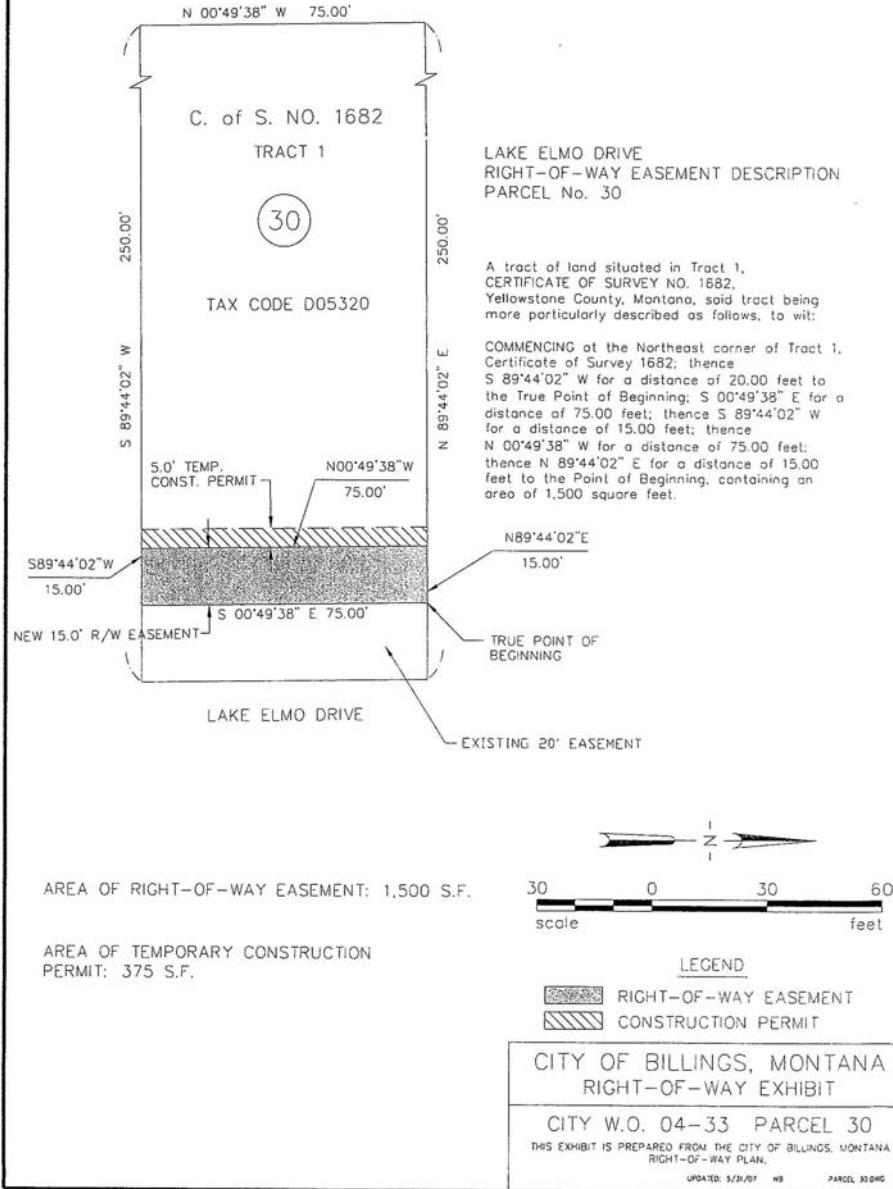
STATE OF MONTANA)
County of Yellowstone)
:ss.
)

On this _____ day of _____, 2007, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ as City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, I have hereunto set my hand and my seal the day and year herein above written.

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

Print Name

EXHIBIT A
RIGHT-OF-WAY EASEMENT
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN TRACT 1,
CERTIFICATE OF SURVEY NO. 1682,
YELLOWSTONE COUNTY, MONTANA



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

Project No. W.O. 04-33 Parcel No. 30 County of YELLOWSTONE
Designation LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 2007.

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

RON GOERTZEN AND ALISHA GOERTZEN
1136 LAKE ELMO DRIVE
BILLINGS, MT. 59105

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

A portion of Parcel No. 30 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 1 of Certificate of Survey No. 1682, situated in the SW% of Section 22, Township 1 North, Range 26 East, P.M.M., on file under Document No. 1059045, Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 1,500 square feet.

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

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

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

TO HAVE AND TO HOLD the above described and conveyed premises, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the **CITY OF BILLINGS**, and to its successors and assigns forever.

IN WITNESSTH WHEREOF, the undersigned have executed these premises the day and year first above written.

Project No. : W.O. 04-33

Parcel No. 30

Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

Ron Gandy John Baxton

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on June 25, 2007
(date)

by Bar Goertzen + Alisha Coertzen
(names)




Rebecca L. Kline
Notary Signature Line

Rebecca L. Klein
Notary Printed Name

Notary Public for State of Montana
Residing at: Billing s
My Commission Expires: March 28, 2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

STATE OF MONTANA)
:)
County of Yellowstone)

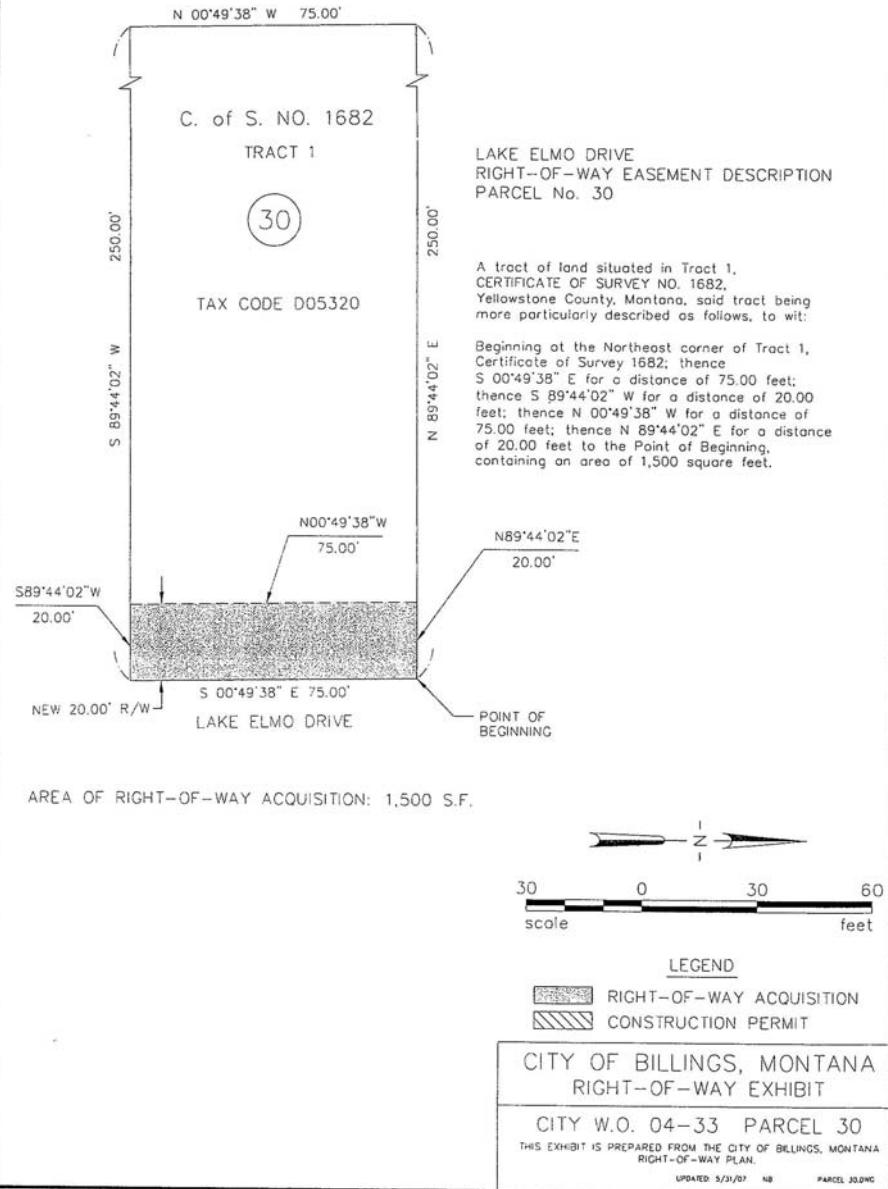
On this _____ day of _____, 200_____, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ as City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS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

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

Print Name

EXHIBIT A

RIGHT-OF-WAY ACQUISITION SITUATED IN TRACT 1, CERTIFICATE OF SURVEY NO. 1682, YELLOWSTONE COUNTY, MONTANA



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

<u>Lake Elmo Road Hilltop Road to Wicks Lane</u>	Work Order: 04-33 Project No. 05153	<u>Yellowstone COUNTY</u>
DESIGNATION		
Parcel No. 30	Parcel Description Tract 1 of Certificate of Survey Number 1682	Section 22 Township 1N Range 26E

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

RON GOERTZEN AND ALISHA GOERTZEN
1136 LAKE ELMO DRIVE
BILLINGS, MT. 59105
248-7436

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

1,125 square feet by easement	\$3,769.00
1,500 square feet by deed	\$251.00
Improvements (Trees, asphalt, sod)	\$3,928.00

3. OTHER COMPENSATION:

375 square feet Temporary Construction Permit	\$ 126.00
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4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$8,100.00.

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

A warrant in the amount of \$8,100.00, to be made payable to RON GOERTZEN AND ALISHA GOERTZEN and mailed to 1136 LAKE ELMO DRIVE, BILLINGS, MT. 59105

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

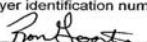
Reconfigure and repair sprinkler system, if any, affected by project.

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

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN

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

 6-25-07
Signature: RON GOERTZEN (Date)

 6-25-07
Signature: ALISHA GOERTZEN (Date)

RECOMMENDED FOR APPROVAL:

N/A
Ronald E. Olson, Olson Land Services

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

City of Billings, Public Works Department (Date) City Clerk (Date)
LER-030.Goertzen-053107

Page 2 of 2

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

K5

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Warranty Deed for Parcel #39, a Portion of Lot 6, Block 1 of Rice Subdivision With Linda M. Posey

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: Lake Elmo Drive improvements from Hilltop Road to Wicks Lane are Phases III & IV (combined) of a five-phase plan to complete street improvements of Lake Elmo Drive between Main Street and Pemberton Lane. The existing right-of-way between Hilltop and Wicks is too narrow to allow the needed street improvements, and it will be necessary to acquire right-of-way from approximately 78 parcels along this one-mile length of street. This memo represents Parcel #39 of the parcels to be acquired (there are some numbered parcels within the project limits from whom right-of-way does not need to be acquired). The appraisal for this acquisition made a conclusion of value for the land, any appurtenant features, and the construction permit at a value of \$2,250.00. A copy of the right-of-way agreement; deed; appraisal; tax and land transfer documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$2,250.00. The cost of this acquisition is equal to the sum of the appraised value of the land, any appurtenant features, and the construction permit. Funding is available for this acquisition from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #39, a Portion of Lot 6, Block 1 of Rice Subdivision with Linda M. Posey in the amount of \$2,250.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

Approved By: City Administrator City Attorney

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

- September 2007 – Estimated completion of right-of-way acquisition
- 2009-2010 – Design and construction of street improvements (in draft CIP)

BACKGROUND

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

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

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

stretch of Lake Elmo; and by 2025, 9,950 vehicles per day are expected to use this stretch.

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Warranty Deed for right-of-way acquisition for Parcel #39, a Portion of Lot 6, Block 1 of Rice Subdivision with Linda M. Posey in the amount of \$2,250.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane DESIGNATION	Work Order: 04-33 Project No. 05153	Yellowstone COUNTY		
Parcel No. 39	Parcel Description Lot 6, Block 1 of Rice Subdivision	Section 22	Township 1N	Range 26E

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

LINDA M. POSEY
1250 LAKE ELMO DRIVE
BILLINGS, MT 59105
259-3219

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

450 square feet by deed	\$1,575.00
Improvements (Sod, sidewalk)	\$ 497.00
3. OTHER COMPENSATION:

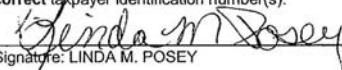
450 square feet Temporary Construction Permit	\$ 158.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$2,250.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$2,250.00, to be made payable to LINDA M. POSEY and mailed to 1250 LAKE ELMO DRIVE, BILLINGS, MT 59105
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Warranty Deed, and made for the period of the street improvements construction project plus the one-year warranty period. City agrees to restore the line and grade and re-seed disturbed areas, if any, within the construction permit area. The permit area will be left in a workmanlike condition.
8. This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor
9. At no expense to the Grantor and at the time of street construction, permission is hereby granted the City to enter upon the Grantor's land, where necessary, at the location and for the purpose described as:
Reconfigure and repair sprinkler system, if any, affected by project.

Grantor understands and agrees that upon completion of the construction of this item located upon the Grantor's land, they shall be considered the sole property of the Grantor, and the maintenance and repair of said property shall be the responsibility of the Grantor.

(Continued from Previous Page)

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

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


Signature: LINDA M. POSEY

6/13/07
(Date)

Signature: _____ (Date) _____ Tax ID No. _____

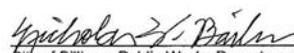
Signature: _____ (Date) _____ Tax ID No. _____

RECOMMENDED FOR APPROVAL:


Ronald E. Olson, Olson Land Services

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:
6/13/07
(Date) Mayor, City of Billings (Date)

ATTEST:


Michael J. Darby 6/20/07
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-039.200 Posey

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

Project No. W.O. 04-33 Parcel No. 39 County of YELLOWSTONE
Designation LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 13th day of June, 2007.

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

LINDA M. POSEY
1250 LAKE ELMO DRIVE
BILLINGS, MT 59105

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

Parcel No. 39 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project.
Said parcel is also described as a tract of land within Lot 6, Block 1 of Rice Subdivision, on file
under Document No. 539205, Yellowstone County, Montana, as shown by the shaded area on
Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of
450 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year
construction warranty period as shown by the hatched area on said Exhibit A, containing an
area of 450 sq. ft..

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

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

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

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

Project No. : W.O. 04-33
Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

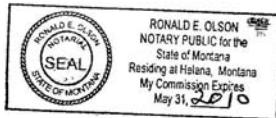
Parcel No. 39

Linda M. Posey

State of Montana)
County of Yellowstone)

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

by Linda M. Posey
(names)



Ronald E. Olson
Notary Signature Line

Ronald E. Olson
Notary Printed Name

Notary Public for State of _____
Residing at: _____
My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings

Date

ATTEST: _____

City Clerk

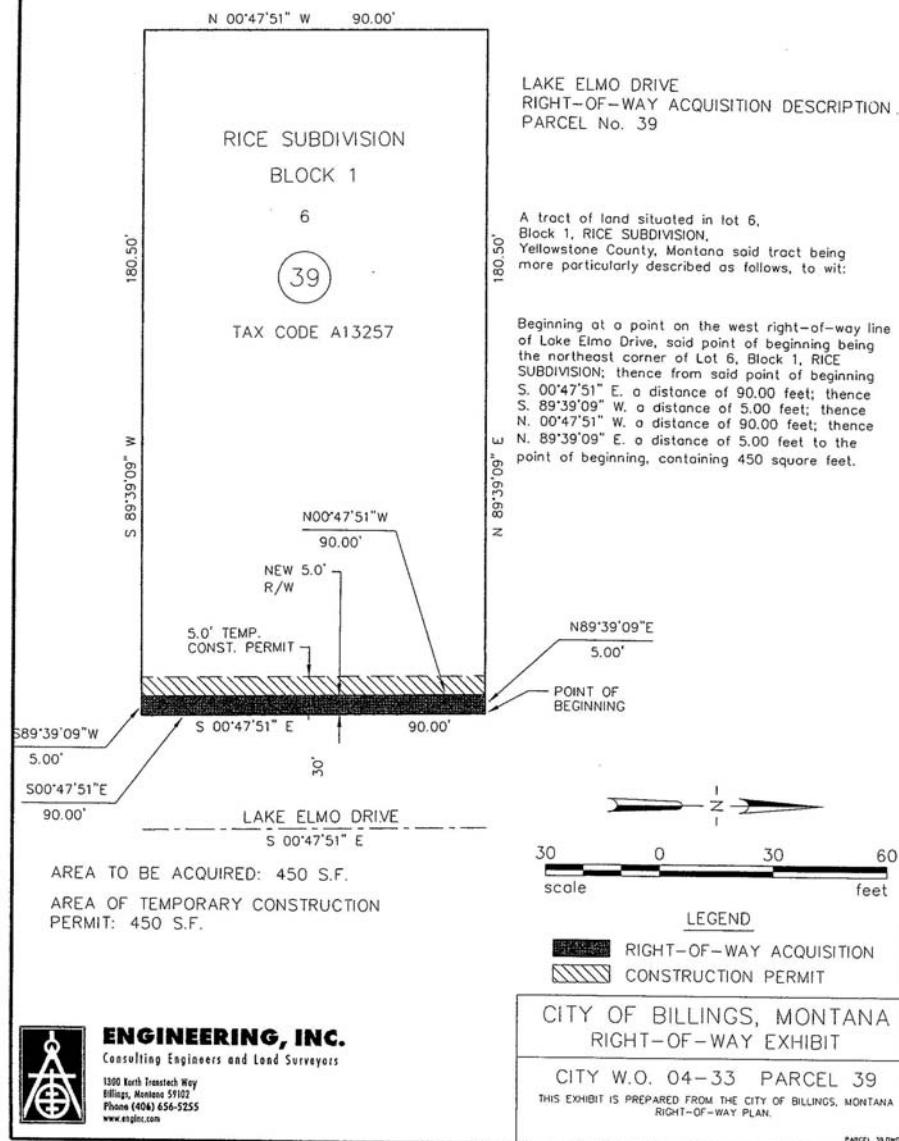
STATE OF MONTANA)
:ss
County of Yellowstone)

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

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

Print Name

EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 6,
BLOCK 1,
RICE SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



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

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

Monday, July 23, 2007

TITLE: Billings Association of Realtors 2 and 5 Mile Run

DEPARTMENT: Parks, Recreation and Public Lands

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

PROBLEM/ISSUE STATEMENT: The Billings Association of Realtors request partial street closures on Saturday, August 25, 2007, from 5:00 am to 10:00 am for their 2 mile and 5 mile run. The 5-mile begins atop the Rims near Masterson Circle while the 2-mile starts near MSU-Billings. The racing path - down the Rims via Airport Road, through the Pioneer Park area and ending at the Transwestern Parking Lot - will be marked with orange cones, but will not obstruct traffic. A barricade will be in place to prohibit traffic from entering Rimrock Road off of Airport Road until all runners have passed that point.

Recommended conditions of approval include Billings Association of Realtors:

- Have no alcohol consumption in the right of way
- Clean area to be used and provide and empty waste cans
- Notifying all emergency facilities, bus lines and media at least two weeks in advance of the event
- Provide a certificate of insurance with required liability amounts naming the City of Billings as additional insured
- Have traffic directors properly attired in orange vests or bright colored shirts
- Provide and install adequate traffic barricades and signs directing motorists around closure

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the city other than administrative time to process the application. Police, traffic control and litter removal for are to be paid for by the Billings Association of Realtors.

RECOMMENDATION

Staff recommends that Council approve the temporary street closures for the Billings Association of Realtors 2 and 5 Mile Run on Saturday, August 25, 2007.

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

ATTACHMENTS

- A. Letter outlining event
- B. Right of Way Special Activity Permit Application
- C. Course/Barricade map
- D. Certificates of insurance

Attachment A

April 20, 2007



Lisa Woods
Downtown Billings Association
2815 2nd Avenue N.
Billings, MT 59101

Dear Ms. Woods,

Please find enclosed a Right-of-Way Special Activity permit for the *Quality of Life* Run sponsored by the Billings Association of Realtors®.

As you know, this is an annual event aimed at raising money for non-profits in our community. This year, the proceeds will benefit the Senior Helping Hands Program of Big Sky Senior Services.

The *Quality of Life* Run is slated for Saturday, August 25, 2007, beginning at 8 a.m., with all activities concluded by 10 a.m. The race includes two starting points, one for the 5-mile run and another for a 2-mile walk/run. The 5-mile begins atop the Rims near Masterson Circle while the 2-mile starts near MSU-Billings.

The racing path – down the Rims via Airport Road, through the Pioneer Park area and ending at the Transwestern Parking Lot – will be marked with orange cones, but will not obstruct traffic. A barricade will be in place to prohibit traffic from entering Rimrock Road off of Airport Road until all runners have passed that point.

Thank you for your consideration of this permit. If you have any questions, please contact me at 248-7145 or by email at amber@billings.org.

Sincerely,

A handwritten signature in black ink that reads "Amber Sundsted".

Amber Sundsted
Government Affairs Director



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

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure

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

PERSON MAKING APPLICATION Amber Sandsted

ORGANIZATION MAKING APPLICATION Billings Association of Realtors

PHONE 406.248.7145

ADDRESS 1043 Lewis Ave., Ste. 12 Billings MT 59102
City State ZIP

APPROXIMATE TIME EVENT WILL:

Assemble 5 a.m. Start 8 a.m. Disband 10 a.m.

DATE OF EVENT Saturday, August 25, 2007

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

The Quality of life Run benefits non-profit organizations that improve quality of life in our community. This year's proceeds will benefit the Senior Helping Program of Big Sky Senior Services.

EVENT ROUTE DESIRED: (Please attach map.)

The run will have two starting locations - one atop the rims and one at the base of the rims. The run then winds through the Pioneer Park area and ends in the Central Business District at the Transwestern parking lot.

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

Volunteers from the Association provide cleanup at the start points, run route and finish line. Cones and barricades also are promptly removed from the race route.

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ 1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as an additional insured.

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

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



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

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

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

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

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

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

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

APPLICANT SIGNATURE A. Sandsted DATE 4.20.07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FEES: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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

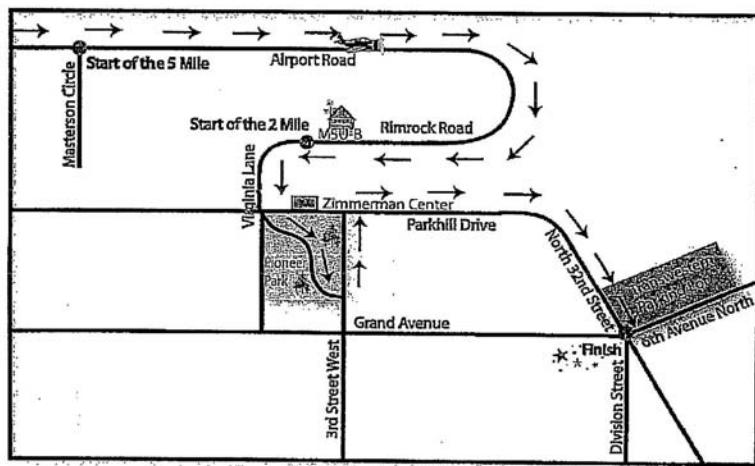
Jun 04 07 02:41p

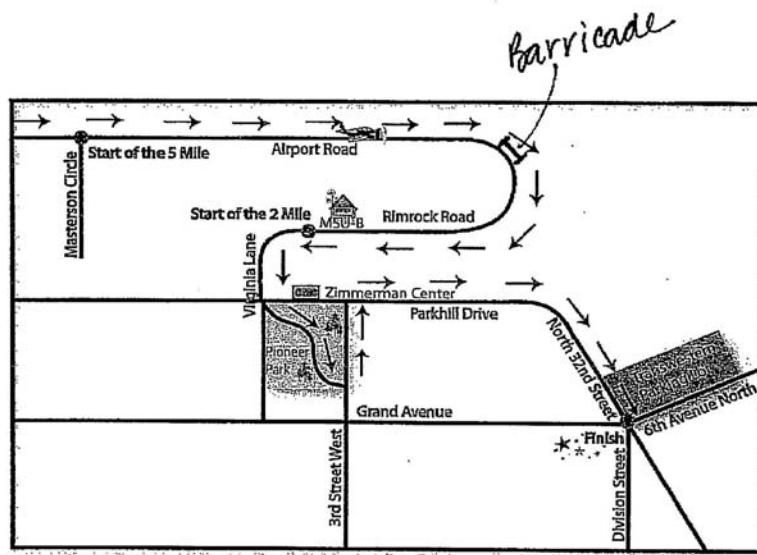
CITY OF BILLINGS - PRPL D 406-247-8641

p.5

Race Route

Attachment C





Attachment D

ACORD CERTIFICATE OF LIABILITY INSURANCE						DATE (MM/DD/YYYY) 12/12/2006			
PRODUCER (260) 482-5455 FAX: (260) 483-6297 GL Insurance - Diller-Smith Office 2526 Scottswolde P.O. Box 8517 Fort Wayne IN 46898			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.						
INSURED ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 8965 GUILFORD ROAD, SUITE 150 COLUMBIA MD 21046			INSURERS AFFORDING COVERAGE			NAIC #			
			INSURER A: GREAT AMERICAN INSURANCE						
			INSURER B: NATIONWIDE LIFE INSURANCE						
			INSURER C:						
			INSURER D:						
			INSURER E:						
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.									
INSR	ADDL	LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY			MAC0000568960002	12/31/2006 12:01 AM	12/31/2007 12:01 AM	EACH OCCURRENCE	\$ 1,000,000	
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (EA OCCURRENCE)	\$ 300,000	
	<input type="checkbox"/>	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person)	\$ 5,000	
	<input checked="" type="checkbox"/>	LEGAL LIAB. TO PART.					PERSONAL & ADV INJURY	\$ 1,000,000	
	\$1,000,000						GENERAL AGGREGATE	\$ NONE	
GENL AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC			PRODUCTS - COMP/OP AGG	\$ 1,000,000					
A	AUTOMOBILE LIABILITY			MAC0000568960002	12/31/2006 12:01 AM	12/31/2007 12:01 AM	COMBINED SINGLE LIMIT (EA accident)	\$ 1,000,000	
	<input type="checkbox"/>	ANY AUTO					BODILY INJURY (Per person)	\$	
	ALL OWNED AUTOS							BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS							PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/>	Hired Autos							
X NON-OWNED AUTOS									
GARAGE LIABILITY						AUTO ONLY - EA ACCIDENT	\$		
ANY AUTO						OTHER THAN EA ACC	\$		
						AUTO ONLY: AGG	\$		
EXCESS/UMBRELLA LIABILITY						EACH OCCURRENCE	\$		
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE						AGGREGATE	\$		
<input type="checkbox"/> DEDUCTIBLE							\$		
<input type="checkbox"/> RETENTION \$							\$		
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						IWC STATUTORY LIMITS	OTHER		
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED?						E.L. EACH ACCIDENT	\$		
If yes, describe under SPECIAL PROVISIONS below						E.L. DISEASE - EA EMPLOYEE	\$		
B OTHER EXCESS ACCIDENT & MEDICAL			SPX0000002408400	12/31/2006 12:01 AM	12/31/2007 12:01 AM	E.L. DISEASE - POLICY LIMIT	\$		
						EXCESS MEDICAL: \$250 DEDUCTIBLE: AD & SPECIFIC LOSS	\$10,000 PER CLAIM \$2,500		
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS MEMBER CLUB CERTIFICATE									

CERTIFICATE HOLDER		CANCELLATION
QUALITY OF LIFE MONTANA REALTOR RUN ATTN: AMBER SUNDSTED 1643 LEWIS, SUITE 12 BILLINGS, MT 59102		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE John Lefever/JRM

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/19/2007

<p>PRODUCER (260) 482-5455 FAX: (260) 483-6297 GL Insurance - Diller-Smith Office 2526 Scottswolde P.O. Box 8517 Fort Wayne IN 46898 INSURED ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 8965 GUILFORD ROAD, SUITE 150 COLUMBIA MD 21046 COVERAGE</p>				<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</p>			
				INSURERS AFFORDING COVERAGE		NAIC #	
				INSURER A: GREAT AMERICAN ASSURANCE	26344		
				INSURER B: NATIONWIDE LIFE INSURANCE	70750		
				INSURER C:			
				INSURER D:			
				INSURER E:			
<p>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>							
INSR ADD'L LTR/INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> LEGAL LAB. TO PART. \$1,000,000 GENL AGGREGATE LIMIT APPLIES PER: POICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC	MAC0000568960002	12/31/2006 12:01 AM	12/31/2007 12:01 AM	EACH OCCURRENCE	\$ 1,000,000	
	DAMAGE TO RENTED PREMISES (EA occurrence)				\$ 300,000		
	MED EXP (Any one person)				\$ 5,000		
	PERSONAL & ADV INJURY				\$ 1,000,000		
	GENERAL AGGREGATE				\$ NONE		
PRODUCTS - COMP/OP ASG	\$ 1,000,000						
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	MAC0000568960002	12/31/2006 12:01 AM	12/31/2007 12:01 AM	COMBINED SINGLE LIMIT (EA accident)	\$ 1,000,000	
	BODILY INJURY (Per person)				\$		
	BODILY INJURY (Per accident)				\$		
	PROPERTY DAMAGE (Per accident)				\$		
	AUTO ONLY - EA ACCIDENT				\$		
A	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:	EA ACC AGG	
	EACH OCCURRENCE				\$		
	AGGREGATE				\$		
	\$				\$		
	\$				\$		
B	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				WC STAB TORY LIMITS	OTH- ER	
	E.L. EACH ACCIDENT				\$		
	E.L. DISEASE - EA EMPLOYEE				\$		
	E.L. DISEASE - POLICY LIMIT				\$		
	EXCESS MEDICAL:				\$10,000		
\$250 DEDUCTIBLE:	PER CLAIM						
AD & SPECIFIC LOSS	\$2,500						
<p>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED.</p>							
<p>DATE & EVENT: 08/25/07 QUALITY OF LIFE RUN ROAD RACE INSURED CLUB: QUALITY OF LIFE MONTANA REALTOR RUN; ATTN: AMBER SUNSTED; 1643 LEWIS AVE.; SUITE 12; BILLINGS, MT 59102</p>							
CERTIFICATE HOLDER				CANCELLATION			
(406) 247-8641				<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p>			
				<p>AUTHORIZED REPRESENTATIVE: John Lefever/IROHR</p>			

ACORD 25 (2001/08)

© ACORD CORPORATION 1988

CERTIFICATE OF INSURANCE		03/12/2007
PRODUCER American Specialty Insurance & Risk Services, Inc. 142 North Main Street Roanoke, Indiana 46783	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICY BELOW.	
INSURED USA Track & Field, Inc. 1 RCA Dome, Suite 140 Indianapolis, IN 46225-0120	INSURERS AFFORDING COVERAGE INS. A: Philadelphia Indemnity Insurance Company INS. B: INS. C:	
BILLINGS ASSOCIATION OF REALTORS 1643 LEWIS AVE., SUITE 12 BILLINGS, MT 59102	CERT NUMBER: 1000500860 EVENT CODE: 07-31-005	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITION OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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

- The Certificateholder is only an Additional Insured with respect to liability caused by the negligent acts or omissions of the Named Insured, but only with respect to the QUALITY OF LIFE RUN on August 25, 2007.
- Coverage applies to USA Track & Field sanctioned events and registered practices, including any directly related activities, such as event set-up and tear-down, participant check-in and award ceremonies.

CERTIFICATE HOLDER	CANCELLATION
CITY OF BILLINGS, DEPARTMENT OF PARKS & RECREATION 390 N. 23RD STREET BILLINGS, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Billings Clinic's Classic Street Party Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

Billings Clinic requests the temporary closure of N. Broadway between 3rd Ave. N. and 4th Ave. N. from Friday, August 24, from 12:00 midnight until Sunday, August 26, at 5:00 pm; as well as the alley between that runs between 3rd Ave. N. and 4th Ave. N. from Friday, August 25, 2007 at 9:00 pm through Sunday, August 26, 2007 at 5:00 am for the annual Classic Street Party.

Recommended conditions of approval include Billings Clinic:

- Obtain proper permit for alcohol consumption in the right of way
- Obtain proper open container and noise permits from Police Department
- Contact all businesses and make them aware of the event 60 days in advance
- Provide security for event
- Clean area to be used and provide and empty waste cans after the event
- Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event
- Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a 20' emergency vehicle access lane on either side of the street which is free of kiosks or anything other than pedestrians
- Pedestrian access to adjacent businesses be maintained

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT:

There are no costs to the City of Billings other than administrative time to process application. Police, traffic control and litter removal are to be paid for by the Billings Clinic.

RECOMMENDATION

Staff recommends that Council approve the temporary closures named above for the annual Billings Clinic Classic Street Party.

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

ATTACHMENTS

- A. Letter from Billings Clinic outlining events
- B. Right of Way Permit Application
- C. Course map
- D. Certificate of insurance

June 5, 2007

Downtown Billings Association, Inc.
2815 2nd Avenue North
Billings, MT 59101

Subject: Street Closure, Billings Clinic Foundation Classic

Billings Clinic is underway with our planning for the 2007 Classic Street Party. As you may know, over the last several years, Billings Clinic has utilized North Broadway between 3rd and 4th Avenues North, together with the US Bank parking lot, to host this event. And, it would be our desire to do so again this year. This year's event is scheduled for Saturday, August 25th.

As with the last four (4) years, we would like to be able to close the street late Thursday night (i.e. midnight) and leave it closed through Sunday afternoon. To be clear, the request is then for all day Friday, all day Saturday, and through 5:00 p.m. Sunday (8/24, 8/25, and 8/26) This allows adequate time to fully set up tents, stages, chairs, etc., and then to remove them after the party.

Also, as we did the last three (3) years, we would also request the ability to close the N. 27th/N. 28th Alley between 3rd and 4th Avenues North (i.e. the alley east of/behind the US Bank Building). We would request that we be allowed to close this alley beginning at 9:00 p.m. Friday, August 24th through 5:00 a.m. Sunday, August 26th. This closure provides for alley access through the business day on Friday. But, for Saturday, this closure provides for access and use by our beverage and ice trucks, additional solid waste dumpsters, site access by our outdoor bands, etc.

And, as we have done over the last three (3) years, we would also request the ability to close the N. 28th/N. 29th Alley between 3rd and 4th Avenues North (i.e. the alley west of/behind the Alberta Bair Theater). We would request that we be allowed to close this alley beginning at 6:00 a.m. Saturday, August 25th through 2:00 a.m. Sunday, August 26th. This closure provides for alley access though the business day on Friday. For Saturday, this closure provides for use of the alley by a refrigerated food service truck as well as tour buses associated with the Saturday night performance in the Alberta Bair Theater.

In past years, I know that the Fire Department has reviewed the layout of the party and the features (i.e. tents, tables, stages, etc.) that are placed in the street and the bank parking lot. After that review, they felt that the adjoining buildings could be accessed by emergency response personnel in the case of a fire or other emergency event.

Attached you will find a Right-of-Way Activity Permit Application, a copy of our certificate of insurance, and a map of the party area.

Billings Clinic has made initial contact with each of the fronting property owners (US Bank, Travel Café, Alberta Bair Theatre, and 1st United Methodist Church) and discussed our plans with them. All are supportive of the plans, including the all-day closure on Friday. As with past years, we will make arrangements with them to accommodate any special needs that they have during this closure.

We have traditionally made provisions for patrons of the Farmer's Market to be able to access the market through our party set-up, and would continue to do so this year.

As with past years, we would also contact the City Engineer's office directly to coordinate the street closure and to process a traffic control plan. Billings Construction Supply will once again be our traffic control contractor.

And, as with past years, we would be intending to serve beer and wine as part of the event. We do provide security personnel to insure that only ticketed guests are allowed inside the party venue and to limit removal of alcoholic beverages. We will contact the State of Montana for the necessary temporary beverage license and the Billings Police Department to process the necessary Open Container Form.

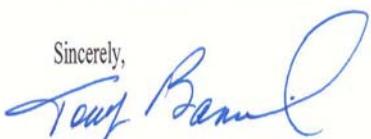
In regards to clean-up. Billings Clinic uses a cadre of volunteers from within the organization and the community at large to stage this event. A specific team will be assigned to the post-party clean-up. Initial clean-up is done immediately following the party. This includes garbage/litter patrol, removal of some tents, and removal of most of the decorative elements. At least one tent remains in place for use by First United Methodist Church to conduct an outdoor Sunday morning worship service. Following their services, we complete the removal of tents, decorative items, tables, chairs, etc. This is followed by another round of detailed garbage/litter patrol. Our food waste is removed in a volunteer provided trash trailer. We also coordinate with the Solid Waste Division to manage dumpsters before and after the event.

For your information, the beneficiary of this year's Classic funds will be the Billings Clinic Critical Care Endowment. At the heart of our Critical Care Services is the Hospital's Intensive Care Unit. This unit provides care for the most seriously ill and injured patients; and, these patients have the highest complication rates. The primary goal is to be able to create a permanent fund to insure that we can continue to sustain the ability of our Critical Care Division to provide the best in care to the sickest of our patients. As with past Classic events, we expect to raise hundreds of thousands of dollars that are returned directly to this clinical program for the benefit of patients in Billings, Yellowstone County and the surrounding region.

I believe that this should provide you with the basic information that you need to begin processing our block party/street closure request. However, should you need further information, please contact me at 657-4143 or tbanovich@billingsclinic.org.

Please advise of the date of the City Council meeting on this item so that a Billings Clinic representative can plan to attend.

Sincerely,



Tony Banovich
Billings Clinic



**City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT APPLICATION**



Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure

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

PERSON MAKING APPLICATION TONY BANOVICH
ORGANIZATION MAKING APPLICATION Billings Clinic
PHONE 406-657-4143
ADDRESS 2800 10th AVENUE N. Billings MT 59107
City _____ STATE _____ ZIP _____

APPROXIMATE TIME EVENT WILL:
Assemble See Below Start _____ Disband _____

DATE OF EVENT August 25, 2007

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

2007 Billings Clinic Classic STREET Party
• Street Closure REQUEST - 12:00 a.m./midnight, 8/24/07 -> 5:00 p.m., 8/26/07
• Alley Closure REQUEST - 9:00 p.m., 8/25/07 -> 5:00 a.m., 8/26/07

EVENT ROUTE DESIRED: (Please attach map.)

• Closure of N. Broadway between 3rd & 4th Avenues N.
• 1/2 - N. 29th & N. 28th Alley between 3rd & 4th Avenues N.
• N. 28th & 29th Alley between 3rd & 4th Avenues N.
• See attached map and cover letter.

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

As w/ past years, street and R/W clean up will be conducted by Billings Clinic volunteers.

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ 1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as an additional insured.

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

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



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

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

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

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

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

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

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

APPLICANT SIGNATURE  DATE 4/5/07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

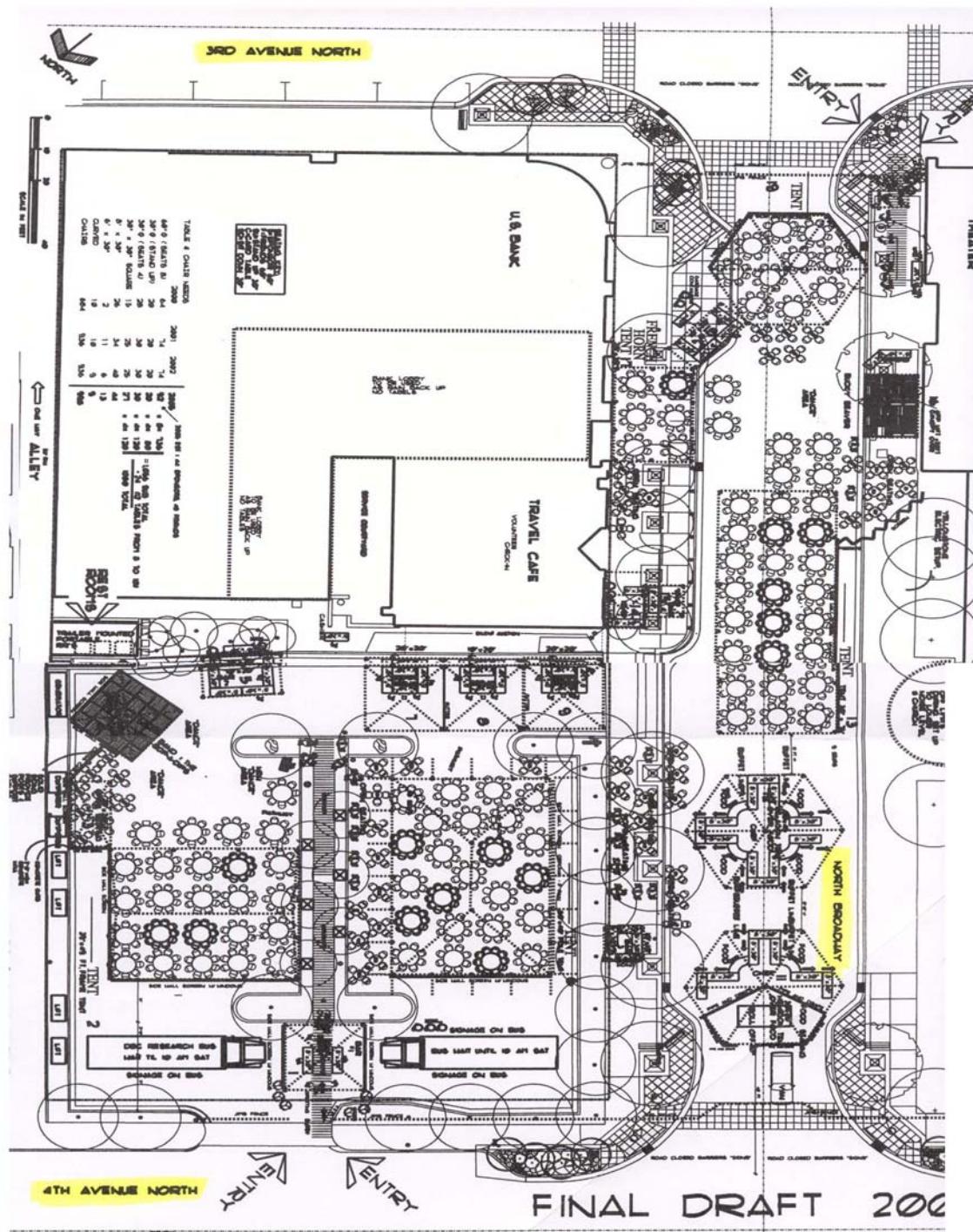
FOR CITY USE ONLY

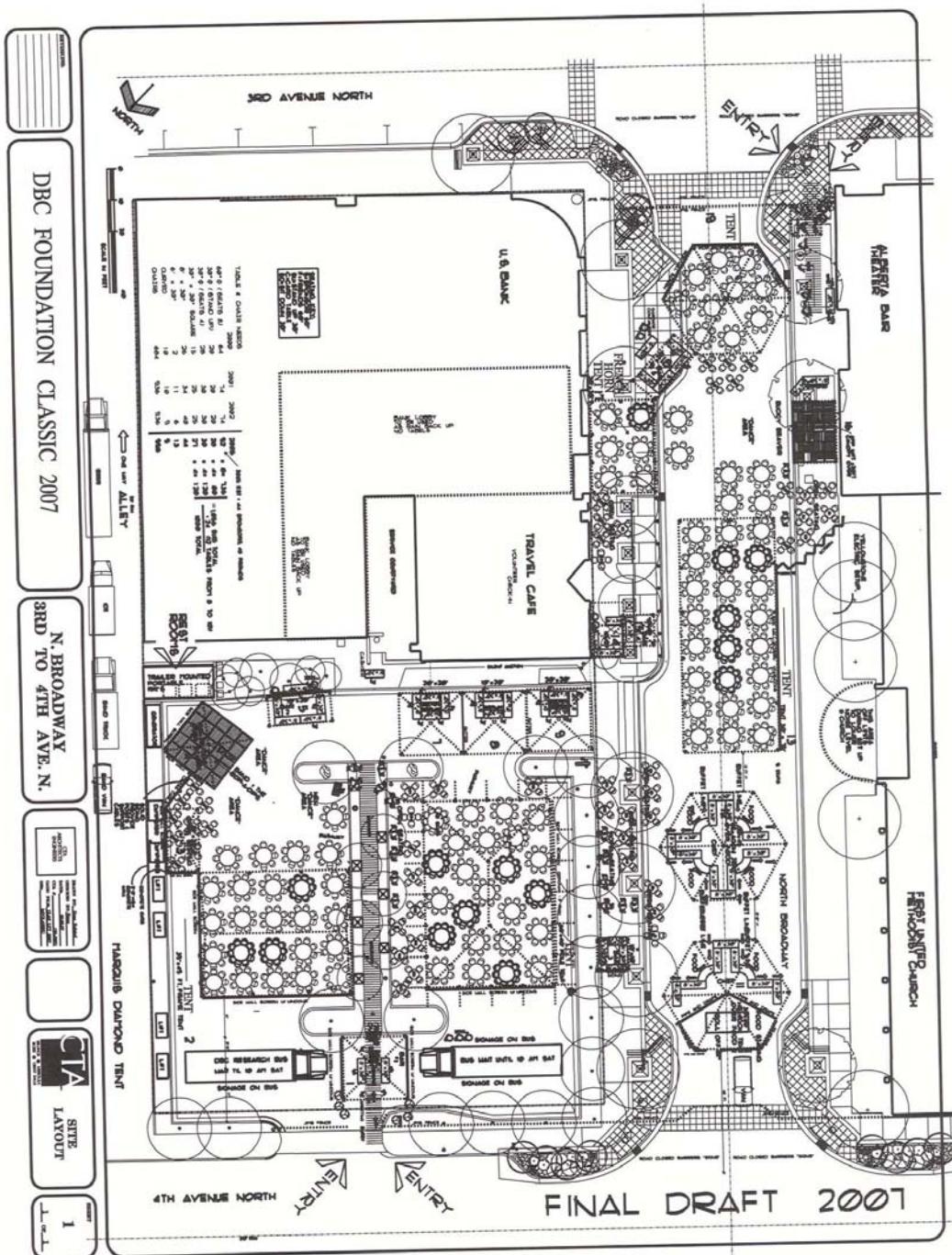
FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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





ACORD™ CERTIFICATE OF LIABILITY INSURANCE					DATE (MM/DD/YYYY) 06/11/2007		
PRODUCER Aon Risk Services, Inc. of Illinois 200 East Randolph Chicago IL 60601 USA		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.					
PHONE (866) 283-7122 FAX (847) 953-5390		INSURERS AFFORDING COVERAGE			NAIC #		
INSURED Billings Clinic 2800 10th Avenue North Billings MT 59101 USA		INSURER A: Columbia Casualty Company INSURER B: INSURER C: INSURER D: INSURER E:			31127		
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	ADDP'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YY)	POLICY EXPIRATION DATE(MM/DD/YY)	LIMITS	
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE	
						DAMAGE TO RENTED PREMISES (EA occurrence)	
						MED EXP (Any one person)	
						PERSONAL & ADV INJURY	
						GENERAL AGGREGATE	
						PRODUCTS - COMP/OP AGG	
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident)	
						BODILY INJURY (Per person)	
						BODILY INJURY (Per accident)	
						PROPERTY DAMAGE (Per accident)	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	
						OTHER THAN AUTO ONLY : EA ACC AGG	
A		EXCESS /UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$25,000	HMU10644020234 1st Layer	01/01/07	01/01/08	EACH OCCURRENCE	\$1,000,000
						AGGREGATE	\$1,000,000
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUS- TORY LIMITS	OTHE- R
						E.L. EACH ACCIDENT	
						E.L. DISEASE-EA EMPLOYEE	
						E.L. DISEASE-POLICY LIMIT	
		OTHER					
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS Certificate of Insurance is issued to evidence coverage with respects to Billings Clinic. Classic Event on 8/24/07 and 8/25/07							
CERTIFICATE HOLDER City of Billings Department of Parks, Recreation & Public Lands 390 N. 23rd Street Billings MT 59103 USA			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.				
			AUTHORIZED REPRESENTATIVE <i>Aon Risk Services, Inc. of Illinois</i>				
ACORD 25 (2001/08) ACORD CORPORATION 1988							

Holder Identifier :

Certificate No : 570022925627

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: The Railyard Ale House & Casino Benefit Concert for St. Jude's Hospital
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Railyard Ale House & Casino requests the closure of one lane on Montana Avenue, Friday, August 3rd, 2007 from 2:00 pm – 10:00 pm for the St. Jude's benefit concert. (Please see attachments A and B)

Recommended conditions of approval include Railyard Ale House & Casino:

1. contacting all businesses and making them aware of the event
2. cleaning the area to be used following the event and providing and emptying waste cans
3. notifying all emergency facilities, bus lines and media at least two weeks in advance of the event
4. providing certificate of insurance naming City of Billings as additional insured
5. obtaining the proper permit if alcohol will be consumed in the public right of way
6. providing a 20' access lane for emergency vehicles

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the street closure named above for the Railyard Ale House & Casino concert on August 3rd, 2007.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Course Map
- C. Certificate of Insurance



**City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT**

Attachment A

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure

Submit this application with a cover letter to: Director of Parks, Recreation and Public Lands, 390 North 23rd Street, Billings, Mt 59101. Application should be made at least 60 days in advance of the date of proposed event.

PERSON MAKING APPLICATION Corey Olszczak

ORGANIZATION MAKING APPLICATION The Railyard Ale House & Casino

PHONE (406) 867-2337

ADDRESS 2526 Montana Ave. CITY Billings STATE MT ZIP 59101

EMAIL ADDRESS corey@railyardehouse.com

APPROXIMATE TIME EVENT WILL:

Assemble 2:00 P.M. Start 6:00 P.M. Disband 10:00 P.M.

DATE OF EVENT FRIDAY August 3rd, 2007

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

The Railyard Ale House & Casino is hosting a fund raiser concert for St. Judes Hospital. We have one of the patients, their family, and a few of the board of directors from St. Judes flying in for this concert, we are also hosting an 80-mile walk for St. Judes that will end at the Railyard in time for our concert. We also have 3-members from CMT, country station, flying in to record our 80-mile walk with country music singer Keith Anderson also walking & singing @ the Railyard. Two-lanes are requested for closure for this once-in-a-lifetime experience & fund-raiser. We also have 300-350 kids also walking the last couple miles to support St. Judes.

EVENT ROUTE DESIRED: (Please attach map.) Thank You

Map attached

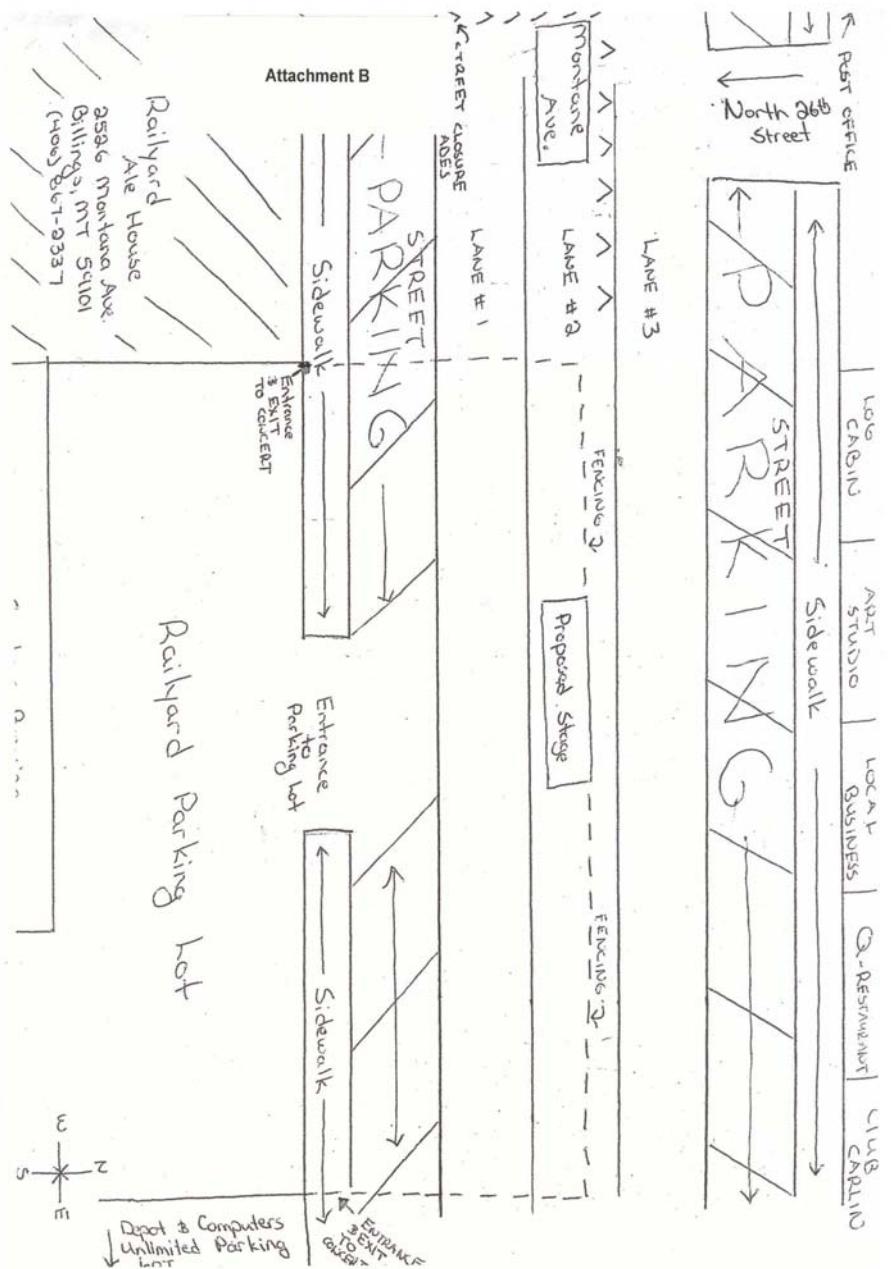
CLEAN UP IMPLEMENTATION: (Company contracted or services you will provide)

The Railyard Ale House & Casino will provide the clean-up

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Please refer to the sample insurance copy attached to this packet)

PLEASE COMPLETE BOTH PAGES

↓
New insurance certificate
w/ proper limits will be
supplied this week!
Thank you



Client#: 200

CITYOFBI

DATE (MM/DD/YYYY)
07/11/07

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

PRODUCER Hoiness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Penn-American Insurance Co.	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSR'D	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS				
A		GENERAL LIABILITY	BINDER706786	04/01/07	04/01/08	EACH OCCURRENCE \$2,000,000				
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (EA occurrence) \$100,000				
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$5,000				
		<input checked="" type="checkbox"/> PD Ded:250				PERSONAL & ADV INJURY \$2,000,000				
		GENL AGGREGATE LIMIT APPLIES PER:								
		<input type="checkbox"/> POLICY				GENERAL AGGREGATE \$2,000,000				
		<input type="checkbox"/> PRO- JECT				PRODUCTS - COMP/OP AGG \$2,000,000				
		<input type="checkbox"/> LOC								
		AUTOMOBILE LIABILITY								
		<input type="checkbox"/> ANY AUTO								
<input type="checkbox"/> ALL OWNED AUTOS										
<input type="checkbox"/> SCHEDULED AUTOS										
<input type="checkbox"/> HIRED AUTOS										
<input type="checkbox"/> NON-OWNED AUTOS										
						COMBINED SINGLE LIMIT (EA accident) \$				
						BODILY INJURY (Per person) \$				
						BODILY INJURY (Per accident) \$				
						PROPERTY DAMAGE (Per accident) \$				
GARAGE LIABILITY						AUTO ONLY - EA ACCIDENT \$				
<input type="checkbox"/> ANY AUTO						OTHER THAN EA ACC \$				
<input type="checkbox"/> AUTO ONLY:						AUTO ONLY AGG \$				
EXCESS/UMBRELLA LIABILITY						EACH OCCURRENCE \$				
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE						AGGREGATE \$				
						\$				
<input type="checkbox"/> DEDUCTIBLE						\$				
<input type="checkbox"/> RETENTION \$						\$				
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUS / OTH- ER				
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?						E.L. EACH ACCIDENT \$				
If yes, describe under SPECIAL PROVISIONS below						E.L. DISEASE - EA EMPLOYEE \$				
						E.L. DISEASE - POLICY LIMIT \$				
OTHER										
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS										
Holder is listed as Additional Insured on policy for Keith Anderson										
Concert on 8/3/07 at the Railyard Ale House & Casino for benefit concert										
for St. Judes. Computers Unlimited, Inc. 2407 Montana Avenue, Billings, MT										
59101 is listed as Additional Insured - Landlord										

CERTIFICATE HOLDER	CANCELLATION
The Railyard Ale House & Casino, Corey Olszczak 2526 Montana Avenue Billings, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE 

ACORD 25 (2001/08) 1 of 2 #291967

LP1 © ACORD CORPORATION 1988

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M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 23, 2007

TITLE: Donation of Class A Fully Encapsulated Hazardous Material Suits To MSUB College of Technology.

DEPARTMENT: Fire

PRESENTED BY: Marv Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: Every year we have a certain number of fully encapsulated Class A Hazardous Material suits that fail a required pressure test. Over the years we have accumulated many of these suits. When these suits fail the pressure test they are then used for training purposes only. The Billings Fire Department now has many more training suits than are necessary and the extra suits create a storage issue for us. The COT has a Hazardous Material Course and can use these suits for training.

ALTERNATIVES ANALYZED: None

FINANCIAL IMPACT: The suits have no monetary value.

RECOMMENDATION

Staff recommends that Council approve the donation of 6 Class A Fully Encapsulated Hazardous Material Training Suits to the COT.

Approved By: City Administrator City Attorney

ATTACHMENT

A. Release of All Claims

RELEASE OF ALL CLAIMS

IN CONSIDERATION of the City of Billings, Montana, a municipal corporation, donating to Montana State University Billings College of Technology, six Class A Fully Encapsulated Hazardous Material Suits, receipt of which is hereby acknowledged. Montana State University Billings College of Technology does hereby release the City of Billings and all of its agents, employees, representatives, insurance companies, and all other persons, corporations, firms, associations or partnership of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including serious injury or death, and property damage and the consequences thereof resulting or to result from the use of these Class A Fully Encapsulated Hazardous Material Suits. Montana State University Billings College of Technology fully understands that these Class A Fully Encapsulated Hazardous Material Suits are to be used for training purposes only.

Montana State University Billings College of Technology, on behalf of itself, its agents, employees, representatives and insurance companies understands: that these donated Class A Fully Encapsulated Hazardous Material Suits has been in service, is not in new condition, and any manufacturer warranties have expired; that there are no guarantees, warranties or promises, written or implied by the City of Billings, Montana; that it is unknown if the Class A Fully Encapsulated Hazardous Material Suits will function properly; and, that Montana State University Billings is solely responsible for contacting the manufacturer and determining whether these Class A Fully Encapsulated Hazardous Material Suits is fit for use prior to using same.

To the extent allowed by Montana law, Title 2 Ch.9, Montana State University Billings College of Technology agrees to indemnify, hold harmless, and defend the City of Billings, Montana, from any and all actions, costs, charges, claims, demands, judgments, losses, liabilities, payments, recoveries and suits of any kind by reason of the use, misuse or failure of these Class A Fully Encapsulated Hazardous Material Suits.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 11th day of July, 2006 2007

MONTANA STATE UNIVERSITY
BILLINGS COLLEGE OF TECHNOLOGY

Jerie Lewis

BY: -

MSU Billings

STATE OF MONTANA)

: ss.

County of Yellowstone)

On this 14th day of July, 2007 before me a Notary Public for the State of Montana, personally appeared Terrie Tuverson, known to me to be the Administrative Vice Chancellor of the **Montana State University Billings College of Technology**, and acknowledged to me that (s)he executed the foregoing instrument.

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

 (Signature)

Christy Arnold (Printed)

(NOTARIAL SEAL)
Name)

Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: Nov. 10th, 2008

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N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2006

TITLE: Donation from ConocoPhillips
DEPARTMENT: Fire
PRESENTED BY: Marv Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: ConocoPhillips has donated \$8000.00 to the Billings Fire Department. The proceeds have been designated, by ConocoPhillips, to be used to buy Self Contained Breathing Apparatus (SCBA) equipment.

FINANCIAL IMPACT: This donation of \$8000.00 will be deposited into a Billings Fire Department revenue account. Purchase of this much needed equipment would not be possible without this donation.

RECOMMENDATION

Staff recommends that Council approve accepting this donation of \$8000.00 , from ConocoPhillips, to be used to purchase SCBA equipment.

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

Attachment

A. ConocoPhillips Award Letter



Clint G. Young
Manager, Finance and Public Relations
ConocoPhillips
Billings Refinery

P.O. Box 30198
Billings, MT 59107
406-255-2511

June 25, 2007

Billings Fire Department
2305 8th Avenue N.
Billings, MT 59101

Attention: Marv Jochems

Dear Mr. Jochems:

ConocoPhillips is pleased to enclose a check in the amount of \$8,000.00 representing our 2007 contribution to the Billings Fire Department.

This contribution, which is unrestricted, is to be used within the United States for the purposes of the Billings Fire Department. Although this contribution is unrestricted, it is our hope that the funds will be used towards the purchase of SCBA breathing equipment for the Department.

In accepting this contribution, the following requirements need to be met:

1. Provide an acknowledgement receipt of this contribution in compliance with IRS regulations. A self-addressed, postage-paid reply card is enclosed for your convenience.
2. Provide a brief report to this office. You may either use the enclosed contributions report form, or provide the requested information in your own format.

We are pleased to provide the Department with this contribution and wish you continued success.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Young".

Clint Young

Enclosures

Cc: Billings Refinery Contributions File

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: In-Kind Volunteers and Materials Donations from Faith Chapel.
DEPARTMENT: Park, Recreation, and Public Lands
PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT:

The Faith Chapel of Billings has proposed to do 3 congregational community service projects this summer.

1. The first project is to paint the outdoor racquetball/handball court walls at the North Park Recreation Center and completely paint the public toilets in the center of North Park. The walls in the outdoor courts on the recreation building are frequent targets of graffiti vandals and bear the marks of numerous paint-overs all over them. The public restrooms also frequently are graffitied and are in need of fresh paint. Faith Chapel is donating all the paint and materials and supplies needed. The estimated value to the City of Billings of the painting project is \$2,500. When Faith Chapel met with staff on Friday, June 8th, to inform them that they were committed to the 3 projects, they had already scheduled the painting project for June 20th, 2007, and all of the painting was completed by June 30th, 2007.

2. The second project involves restoring the landscape on the highly visible small triangle located at 6th Avenue North, Grand Avenue, and Division Street. The center of the triangle was filled with overgrown junipers and they had become a safety issue due to the obstruction of visibility for traffic around the intersection. In April the junipers were all removed and the irrigation system on the triangle was demolished in the process. The triangle needs the irrigation system to be restored and it will be sodded with grass to restore it. The Faith Chapel volunteers have agreed to rake and level the triangle, install the irrigation pipe and heads from the 4 control valves, and to fine rake and lay sod to complete the restoration. The project work has been scheduled for July 25th-26th, 2007. The value of this project will be about \$3,800.

3. The third project planned by Faith Chapel will be the restoration of the middle landscape median strip planter on South 27th Street. During the 18 years since the median planters were constructed, the rock mulch layer in the 3 median planters silted in and the ground cover and shrubs have slowly died out. The other 2 planter medians were renovated 3 – 4 years ago to remove the old plants, landscape fabric and rock mulch and reconstruct the irrigation to convert them to grass, which is much easier to maintain. The PRPL Dept staff have been unable to schedule the completion of the middle median planter because of the need for a large number of workers to do the labor intensive mulch and fabric removal. Faith Chapel agreed to take this

project on and has scheduled it for August 10th and 11th, 2007. The estimated value of the project is \$5,800.

Faith Chapel and the project volunteers has agreed to comply with the city requirements with regard to volunteers, including the signing of liability waivers in case any are injured or involved in accidents or property loss claims. The Billings Parks, Recreation, and Cemetery Board reviewed the proposed projects at their regular meeting on June 13, 2007, and recommends the City Council accept the volunteer work and donated materials and supplies for the projects as outlined.

ALTERNATIVES ANALYZED:

- Accept the volunteer assistance and materials donations from Faith Chapel, as listed. Staff recommendation.
- Decline the donation of materials and volunteer time from Faith Chapel

FINANCIAL IMPACT:

The projects that are planned will result in an estimated donation of over \$12,100 in time and materials in these high use and high visibility locations.

RECOMMENDATION

Staff recommends that Council accept the donation of volunteer help and materials as listed from the Faith Chapel Congregation.

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

ATTACHMENTS:

- A. Letter of Commitment - Volunteer Projects
- B. Maps B1, B2, B3 of each of the project locations.

Attachment "A"

faithchapel

www.faithchapel.cc

June 28, 2007

To Whom It May Concern:

This letter is to confirm Faith Chapel Church's commitment to the following projects in and around Billings this summer. Volunteers from within our congregation will perform all the necessary tasks for these projects.

We will paint the outdoor handball courts and restrooms at North Park.

We will help in the restoration of the median strip on So. 27th Street.

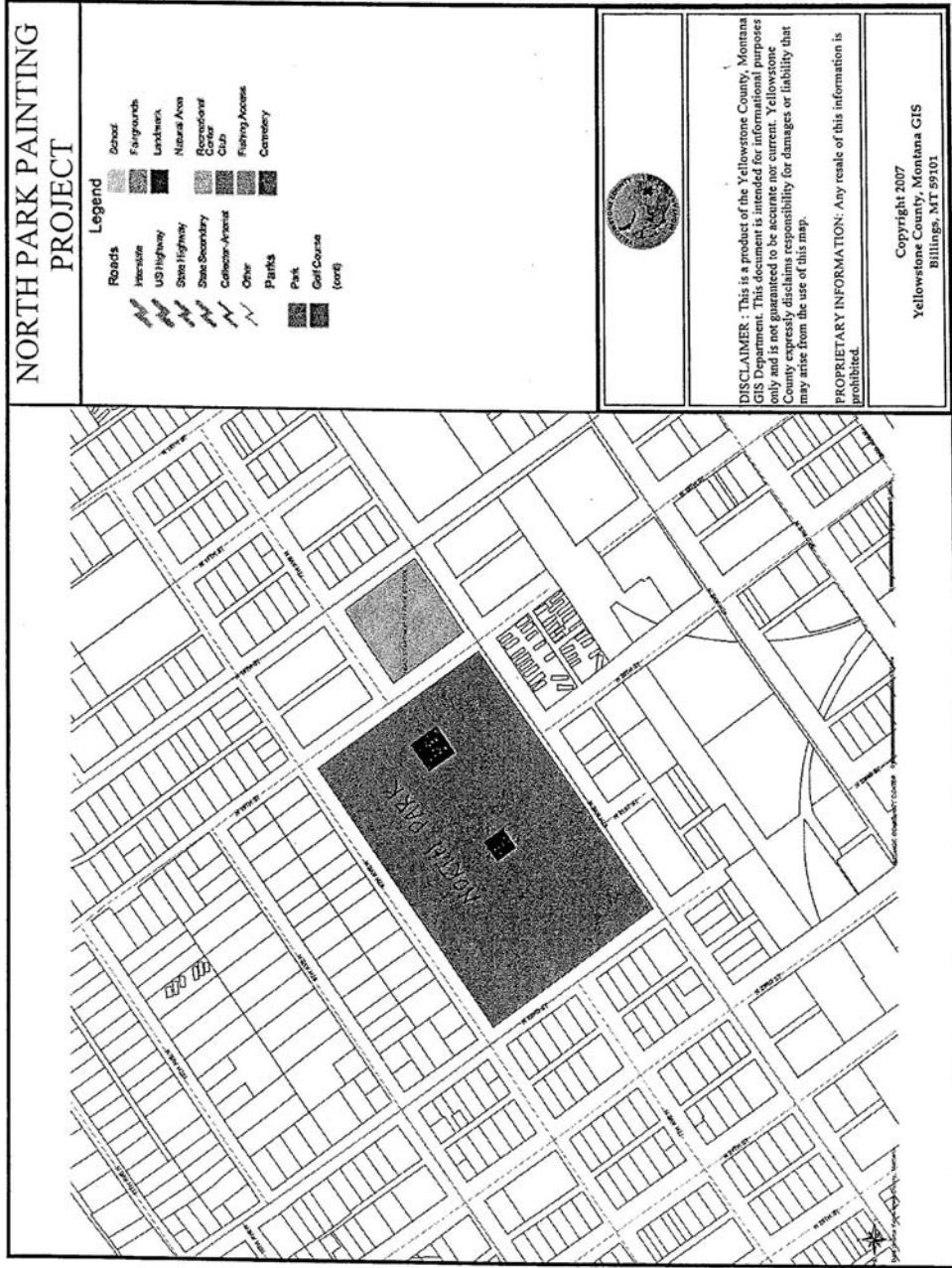
We will install the sprinkler system and lay sod on the Division St. and Grand Ave. intersection island.

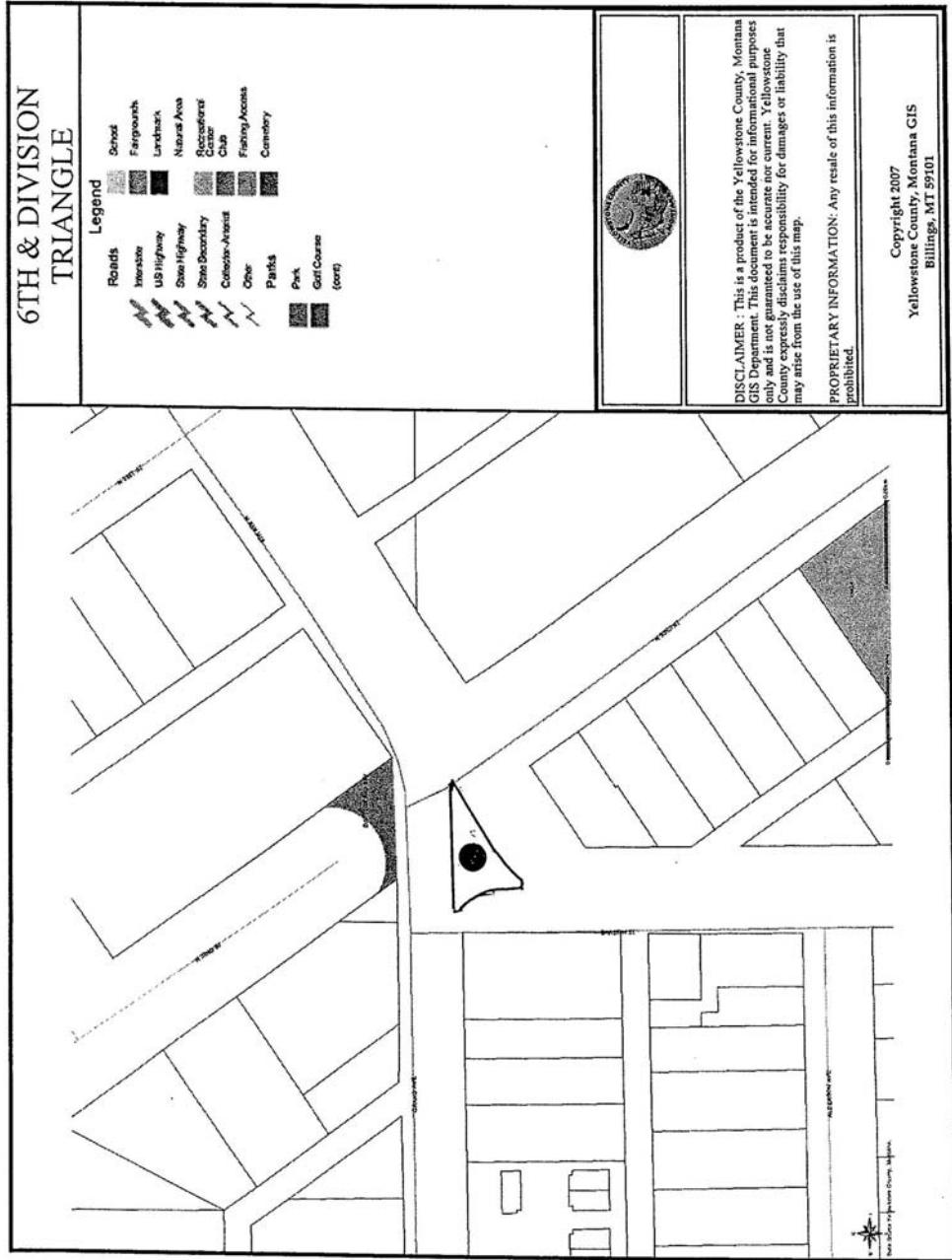
It is our hope that these projects will assist our wonderful City to look better and a way for our Church to support its neighbors.

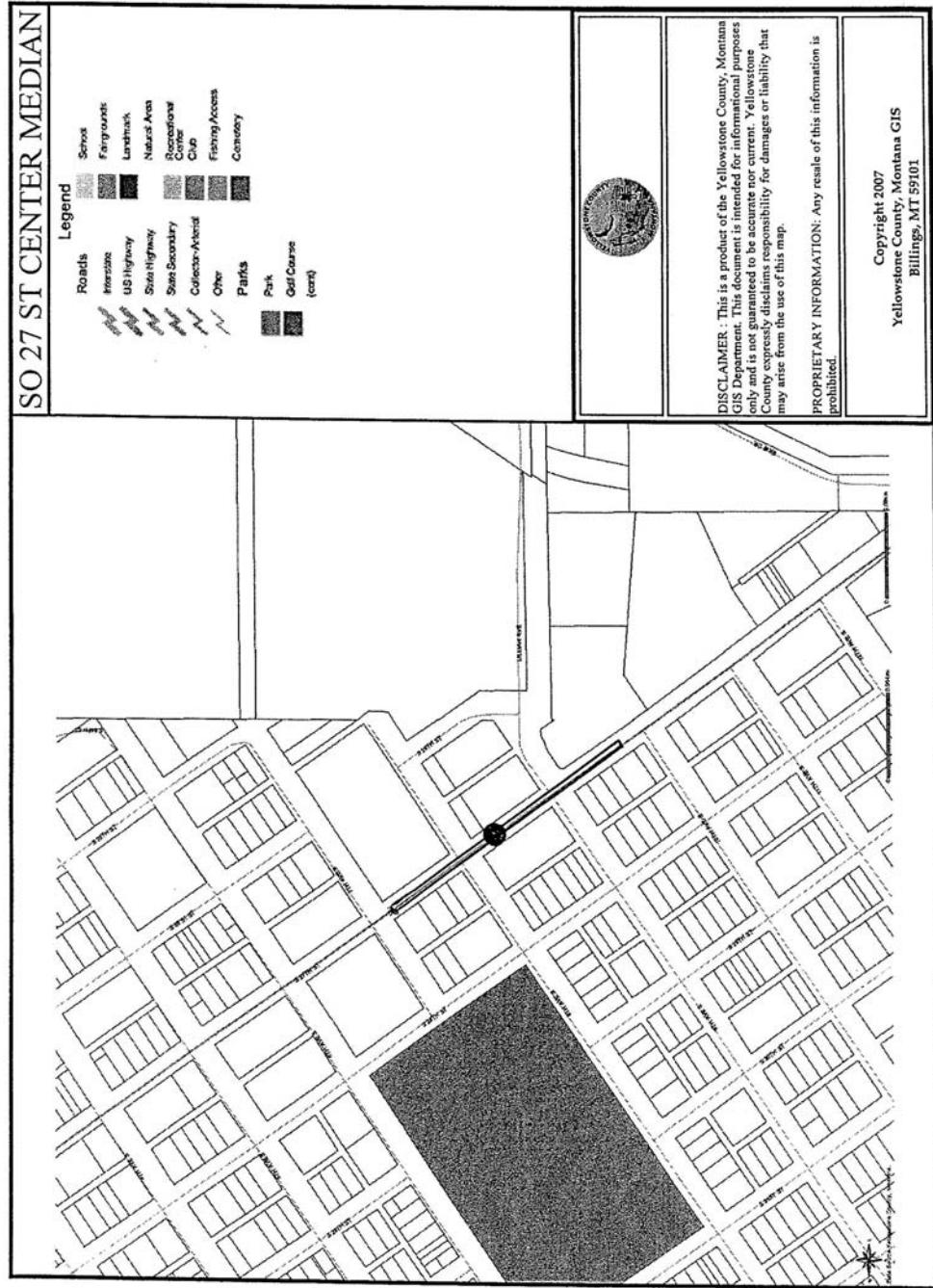
Sincerely

Ronald Todd
Community Service Pastor

517 shiloh road • billings • mt • 59106 • 406.656.8780







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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Resolution of Intent to Create a Tourism Business Improvement District
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Assistant City Administrator

PROBLEM/ISSUE STATEMENT: The Council is being asked to pass a Resolution of Intent to create the Billings Tourism Business Improvement District (TBID). A Resolution of Intent is required by the state law that authorizes BIDs. If it is approved, the resolution will be sent to all properties within the proposed district and will inform those property owners that the Council will conduct a Public Hearing on whether to create the district at its meeting on August 27, 2007.

FINANCIAL IMPACT: There will be a small financial impact on the City. The City Finance Division must provide the assessment documentation for the district each year. The documentation includes property ownership and assessment amounts that are transmitted to the County Treasurer for tax statement issuance and tax collection. Finance will receive payments from the County Treasurer, primarily in December and June, and will transfer the payment to the TBID. Finance does not intend to charge an administrative fee for these services since it does not charge for the same services that are performed for the downtown BID.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to create a Tourism Business Improvement District and set a public hearing for August 27, 2007.

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

ATTACHMENT

A: Resolution of Intent

INTRODUCTION

The Council is being asked to pass a Resolution of Intent to create the Billings Tourism Business Improvement District (TBID). A Resolution of Intent is required by the state law that authorizes BIDs. If it is approved, the resolution will be sent to all properties within the proposed district and will inform those property owners that the Council will conduct a Public Hearing on whether to create the district at its meeting on August 27, 2007.

PROCEDURAL HISTORY

House Bill 235, which amends the current BID law, was adopted by the 2007 Legislature and the Governor signed the bill on April 26th. The amendments allow local governments to create Tourism BIDs (TBID). The law goes into effect on October 1, 2007, therefore all Council actions that are taken at this time must have a delayed, specific effective date. The procedures that are required by the law and the proposed schedule are as follows:

• July 5	Petitions submitted to City Clerk
• July 23	Resolution of Intent to create BID
• July 27	First notice of intent to create, protest period starts, and advertise the public hearing.
• July 27	Advertise for board of trustees applications
• August 2	Second notice
• August 10	Deadline for written protests
• August 27	Public hearing and Resolution creating BID – delay effective date to Oct. 1, 2007
• August 27	Resolution appointing Board of Trustees
• Sept 24	Work Plan and Budget
• Oct. 1	BID effective date

BACKGROUND

The Billings Area Chamber of Commerce approached the City Council in the fall, 2006 and asked that the City support its effort to have the 2007 Legislature authorize TBIDs. The proposal's purpose was to expand the present BID statute to allow local governments to create this new type of BID. The BID law had to be amended so that TBID properties could be non-contiguous and could be assessed a flat fee rather than by square feet or value. The City Council agreed to support the proposal when it adopted its 2007 Legislative Priorities.

The TBID law allows property owners to petition for district creation. If at least 60% of the property owners sign the petition, the Council may create the TBID. TBIDs allow property owners to assess themselves and produce revenue that will be used to promote tourism, conventions and other events that help to support hotels, restaurants and other tourist services. The State of Montana presently collects a 7% accommodation tax that produces nearly \$26 million statewide and returns only \$200,000 to Billings to help support tourism promotion in the area. The proposed TBID, which would collect \$.75/occupied room night, would produce nearly \$700,000/year that the Convention and Visitors Bureau would use for marketing, attracting and supporting conventions and other tourism promotions.

After the bill was approved, the Chamber of Commerce approached City staff and started the dialogue on how and when to create the Billings TBID. The first step is for the Chamber to

collect petitions to create the district from at least 60% of the property owners. Those petitions were submitted to the City Clerk on July 5. The next step is for the Council to adopt a Resolution of Intent to create the district. Adopting the resolution triggers a public hearing notification to all owners within the district. After the public hearing, the Council may create the district, appoint a board of trustees, approve a work plan and budget and order the assessments. The new law has an October 1 effective date, so the resolutions that creates the district and appoints the board of trustees must have a delayed effective date to match the state law's effective date. The assessments are reviewed annually and the district has a 10 year sunset. The first assessment is expected to be made in April, 2008 and will be a partial year assessment due to this being mid-year for tax collections. After the initial collection, the assessments will be collected semi-annually like all other taxes and assessments.

STAKEHOLDERS

The Chamber of Commerce, Convention and Visitors Bureau and a few of the hotel/motel manager are the law's primary supporters. The law requires at least 60% of the affected property owners petition to create the district, so these petitioners could be considered supporters. The petition contains signatures of __% of the properties, so there could be as many as __% of the properties who oppose the district. The smaller and older hotels/motels are not as likely as larger hotels to receive benefits from tourism promotion and may oppose the same fee being applied to all properties.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to create a Tourism Business Improvement District and set a public hearing for August 27, 2007.

ATTACHMENT

A: Resolution of Intent

RESOLUTION 07-_____

A RESOLUTION DECLARING IT TO BE THE INTENTION
OF THE CITY COUNCIL TO CREATE A BUSINESS
IMPROVEMENT DISTRICT FOR THE PURPOSE OF
PROMOTING TOURISM, CONVENTION, TRADE SHOWS AND TRAVEL TO THE CITY
OF BILLINGS, MONTANA

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

Section 1. Proposed Tourism Business Improvement District (T.B.I.D.); Intention To Create Tourism Business Improvement District. The T.B.I.D. proposes that the purposes for which the assessments collected shall be used are the statutory purposes set forth in Business Improvement District Law, Montana Code Annotated 2007, 7-12-1101 through 7-12-1144 as amended, for the funding of all uses and projects for tourism promotion within Billings as specified in the Billings Tourism Business Improvement District budget.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Tourism Business Improvement District No. 0002 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are the limits and boundaries of the City of Billings and are depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on "Exhibit C" hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibit "A" are hereby declared to be the Tourism Business Improvement District and the territory which will benefit and be benefited by and will be assessed for the costs of the Tourism Business Improvement District as described in Section 1.

Section 5. General Character of the Services to be Performed. The services to be performed shall be the funding of all uses and projects for tourism promotion within Billings as specified in the Billings Tourism Business Improvement District budget. It includes the marketing of convention and trade shows that benefit local tourism and lodging businesses in Billings; the marketing of Billings to the travel industry in order to benefit local tourism and the lodging businesses located within the Billings Tourism Business Improvement District; and the marketing of Billings to recruit major sporting events in order to promote local tourism and to benefit the lodging businesses within the Billings Tourism Business Improvement District.

Section 6. Assessment Methods; Property To Be Assessed. All hotels, as defined as any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn,

motel, or other similar structure or portion thereof, which meet this criteria and are within the District are to be assessed for the costs of operating the Tourism Business Improvement District.

Section 7. Assessable Area. All Hotels, as defined in Section 6, that are within the District will be assessed for their proportionate share of the costs of maintaining the activities of the Tourism Business Improvement District as prescribed in Section 7-12-1133 subsection (c), M.C.A. The assessments to fund the work plan for the first fiscal year are to be a total amounts collected from all hotels with 6 or more rooms within the boundaries of the district who shall be subject to an assessment of seventy five cents (\$0.75) per occupied room night as prescribed in Section 7-12-1133, subsection (c), M.C.A.

Section 8. Payment of Assessments. The assessments for the costs of maintaining the services provided by the Tourism Business Improvement District shall be payable, as prescribed in Section 7-12-1133 subsection (c), M.C.A.

Section 9. Duration of District. The duration of the T.B. I. D. shall be for a period of 10 years as prescribed in Section 7-12-1141, M.C.A. Upon receipt of a petition signed by the owners of more than 50% of the area of the property included in the district, the governing body shall dis-establish the district at the end of any fiscal year.

Section 10. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the proposed District subject to assessment and taxation for the cost and expense of maintaining the Tourism Business Improvement District may make and file with the City Clerk until 5:00 p.m., D.S.M.T., on the expiration date of said 15-day period from July 27, 2007 through August 10, 2007, written protest against the proposed Tourism Business Improvement District, and this Council will at a regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on Monday, August 27, 2007 at 6:30 p.m., in the Council Chambers, located on the Second Floor of the City Hall at 220 North 27th Street, in Billings, Montana.

Section 11. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the Billings Times, a newspaper of general circulation in the County on Thursday, July 26, 2007 and Thursday, August 2, 2007, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his or her name upon the last completed assessment roll for State, County, and school district taxes, at his last-known address, on or before the same day such notice is first published.

APPROVED by the City Council of the City of Billings, Montana, this 23rd day of July, 2007.

THE CITY OF BILLINGS:

BY: _____
Mayor

ATTEST:

BY: _____
City Clerk

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 23, 2007

TITLE: SID 1379 King Avenue West from S. 31st Street West to Shiloh Road
Resolution of Intent to Create District and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The developers of the southeast corner of King Avenue West and Shiloh Road and the City of Billings have a desire to widen King Avenue West from South 31st Street West to Shiloh Road from a two-lane section to a five-lane section. These improvements generally consist of water, sewer, storm drain, street, sidewalk, drive approach and curb/gutter improvements to King Avenue West.

ALTERNATIVES ANALYZED:

1. Approve the Resolution of Intent to Create SID 1379 and set a public hearing for the August 13, 2007, City Council Meeting; or
2. Do not approve the Resolution of Intent to Create SID 1379.

FINANCIAL IMPACT: The total estimated costs of the improvements are \$6,456,592.11. The bonded cost assessed to property owners is \$442,000.00. A breakdown of assessed costs is shown below:

City of Billings Cash Contribution	\$ 5,727,125.28
SID Assessments	\$ 442,000.00
Steve Corning Cash Contribution	\$ 117,198.36
<u>Intersection Cash Contribution (Steve Corning)</u>	\$ 170,268.47
Total	\$6,456,592.11

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1379 and set a public hearing date for August 13, 2007.

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

ATTACHMENT

A. Boundary of Proposed Special Improvement District (1 page)

INTRODUCTION

The developers of the southeast corner of King Avenue West and Shiloh Road and the City of Billings have a desire to widen King Avenue West from South 31st Street West to Shiloh Road from a two-lane section to a five-lane section. These improvements generally consist of street, sidewalk, drive approach and curb/gutter improvements to King Avenue West. Also included in this project are utility improvements consisting of the installation of new water mains, sewer mains and storm drain mains.

PROCEDURAL HISTORY

- July 23, 2007 – Resolution of Intent to Create SID 1379.
- August 13, 2007 – Public Hearing and Resolution Creating SID 1379.
- August 13, 2007 – Resolution Authorizing for Construction Bids and Construction Contract Award.

BACKGROUND

Steve Corning, the developer of the lot on the southeast corner of King Avenue West and Shiloh Road, has paid for design of the surface and storm drain improvements in order to facilitate faster construction of King Avenue West from South 31st Street West to Shiloh Road. Originally, the City of Billings had plans to construct the water and sewer mains in that segment of King Avenue in 2008 and install the surface and storm drain improvements in 2013. As a result of Mr. Corning's desire to construct King Avenue sooner, the City of Billings decided to finance their portion of the construction costs from funds borrowed from the Solid Waste Division, which are to be paid back in 2013, with interest, when money is available in the CIP.

The public hearing will be held at the August 13, 2007, Council Meeting. If approved, it is anticipated that construction of SID 1379 will begin in early Fall 2007 and be completed by early Fall 2008.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1379 and set a public hearing date for August 13, 2007.

ATTACHMENT

- A. Boundary of Proposed Special Improvement District (1 page)

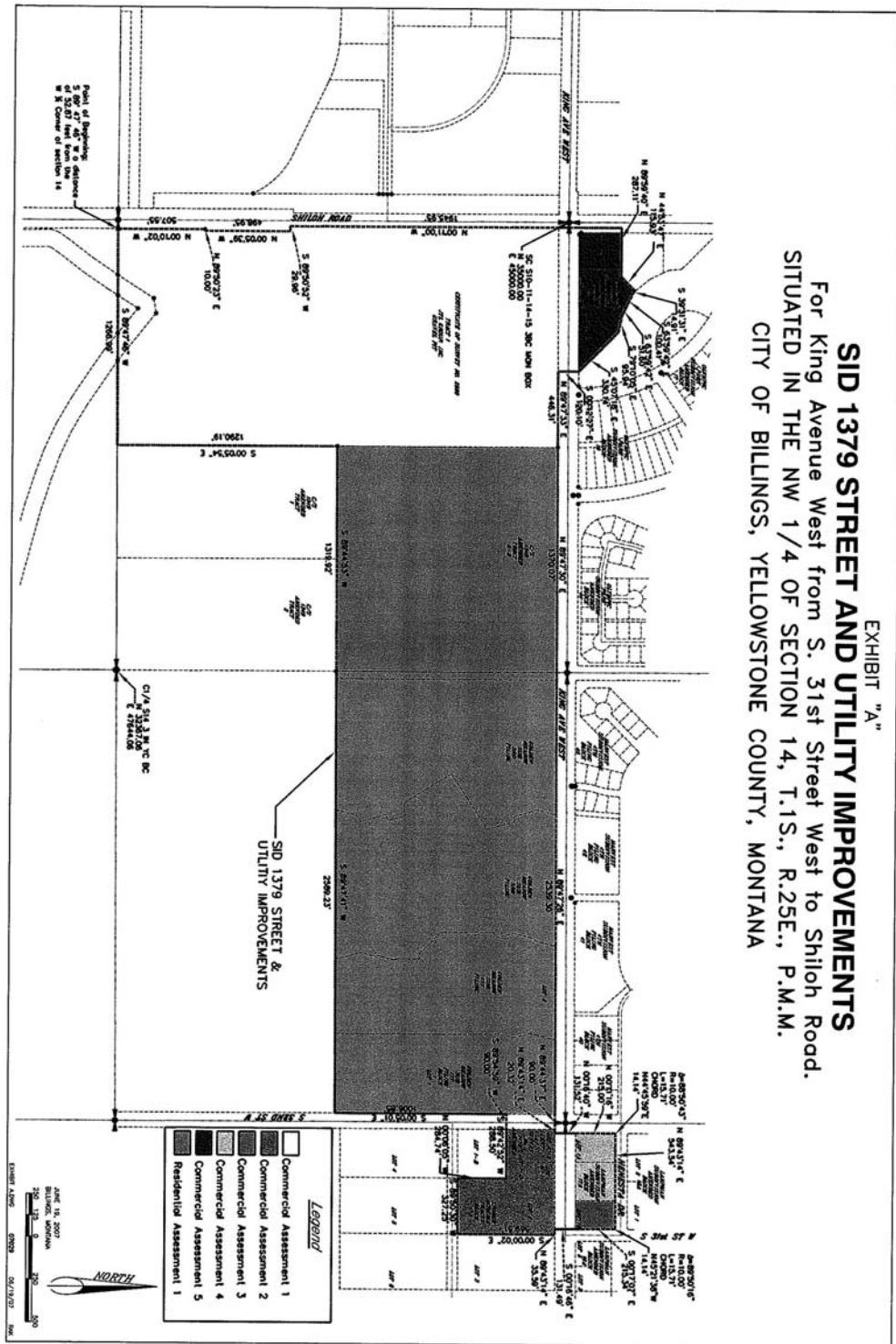
EXHIBIT "A"

SID 1379 STREET AND UTILITY IMPROVEMENTS

For King Avenue West from S. 31st Street West to Shiloh Road.

SITUATED IN THE NW 1/4 OF SECTION 14, T.1S., R.25E., P.M.M.

CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA



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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JULY 23, 2007

TITLE: SILMD 301 – Josephine Crossing Subdivision
SILMD 302 – Grand Ave., 8th to 12th Streets West

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: In order to pay the costs of energy & maintenance for street lighting the City has traditionally created Special Improvement Lighting Maintenance Districts (SILMD's) to assess the lighting costs to abutting 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 each district at the August 13, 2007, City Council meeting.

ALTERNATIVES ANALYZED:

1. Create the SILMD's to provide a source of funding for operation & maintenance of the street lights
2. Do not create the SILMD's and do not install street lighting
3. Develop some other source of funding to pay for street light energy & maintenance

FINANCIAL IMPACT: All maintenance and energy costs for these proposed light districts would be paid for by assessments against properties within the district. City properties within light districts are assessed their proportionate share of the costs for that particular district. The only City-owned property within either of the proposed districts is park within Josephine Crossing Subdivision. The estimated annual assessment for the park property is \$83.

RECOMMENDATION

Staff recommends that Council pass Resolutions of Intent to create SILMD's 301 and 302, and set a public hearing date for August 13, 2007.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. District Boundary Map SILMD 301
- B. District Boundary Map SILMD 302

INTRODUCTION

The City has traditionally paid the cost of street lighting by assessment against the abutting properties. Creation of Special Improvement Lighting Maintenance Districts (SILMD's) is the mechanism used to assess lighting costs to the adjacent property owners. Each light district is a separate entity and funds from one district cannot be used to pay costs incurred by another district. Passage of a Resolution 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 each district at the August 13, 2007 City Council meeting.

PROCEDURAL HISTORY

- July 23 (this meeting), approve Resolutions of Intent to create one or all of the districts
- July 26, legal notices mailed to all affected property owners
- July 26 & August 2nd, legal notices published in *Billings Times*
- August 13 Council meeting, Public hearings and creation for each district
- November 2007, initial assessments appear on tax statements

BACKGROUND

SILMD 301 Josephine Crossing Subdivision: The developer of Josephine Crossing has requested that street lighting be installed as part of the initial public improvements for the subdivision. Josephine Crossing Subdivision is located south of Interstate 90, east of Mullowney Lane near the Holy Cross cemetery. All streets included in the proposed light district are local residential streets. The lighting equipment will be installed and owned by Northwestern Energy. Estimated annual assessments in this district will range from \$72 to \$397.

SILMD 302 Grand Avenue, 8th to 12th Streets West: Lighting along Grand Avenue between 8th and 12th Streets West will be installed with the street reconstruction project currently underway. The street project will pay the cost of installing the lighting equipment (poles, lamps, wiring, etc). The SILMD will pay energy & maintenance costs only. Estimated annual assessments for private properties in this district will range from \$58 to \$324.

The first year assessment for both of these districts will be higher than the annual estimates 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 & maintenance for calendar year 2008, plus any energy & operating costs incurred during 2007.

ALTERNATIVES ANALYSIS

1. Create the SILMD's 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 Grand Avenue, we would not complete the installation of the lighting. The costs incurred to date for underground conduit and pole bases would be lost. In the case of Josephine Crossing the lighting would simply not be installed and an amenity requested by the developers for their subdivision would not be provided.

3. Development of some other source of funding to pay for street light energy & maintenance. The Council has entertained discussions of creating a City-wide arterial lighting district several times, most recently in 2002. At that time, Council directed staff not to pursue the option of a single City-wide district. Other than payment for the City park properties in these districts, no general fund monies have been budgeted in the current budget for operation of this lighting. To do so at this time would probably require elimination of other general fund services that have already been planned for. It could also be argued that payment of the lighting costs in these proposed districts from sources other than assessments against the adjacent properties would not be equitable to property owners in existing lighting districts.

RECOMMENDATION

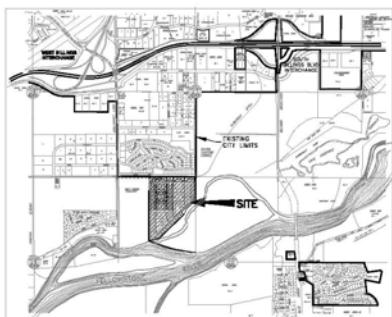
Staff recommends that Council pass Resolutions of Intent to create SILMD's 301 and 302, and set a public hearing date for August 13, 2007.

ATTACHMENTS

- A. District Boundary Map SILMD 301
- B. District Boundary Map SILMD 302

EXHIBIT "C"

STREET IMPROVEMENTS LIGHT MAINTENANCE DISTRICT 301
WITHIN
JOSEPHINE CROSSING SUBDIVISION
SITUATED IN THE NW1/4 OF SECTION 20, T.1S., R.26E., P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA



VICINITY MAP
NOT TO SCALE

NORTH

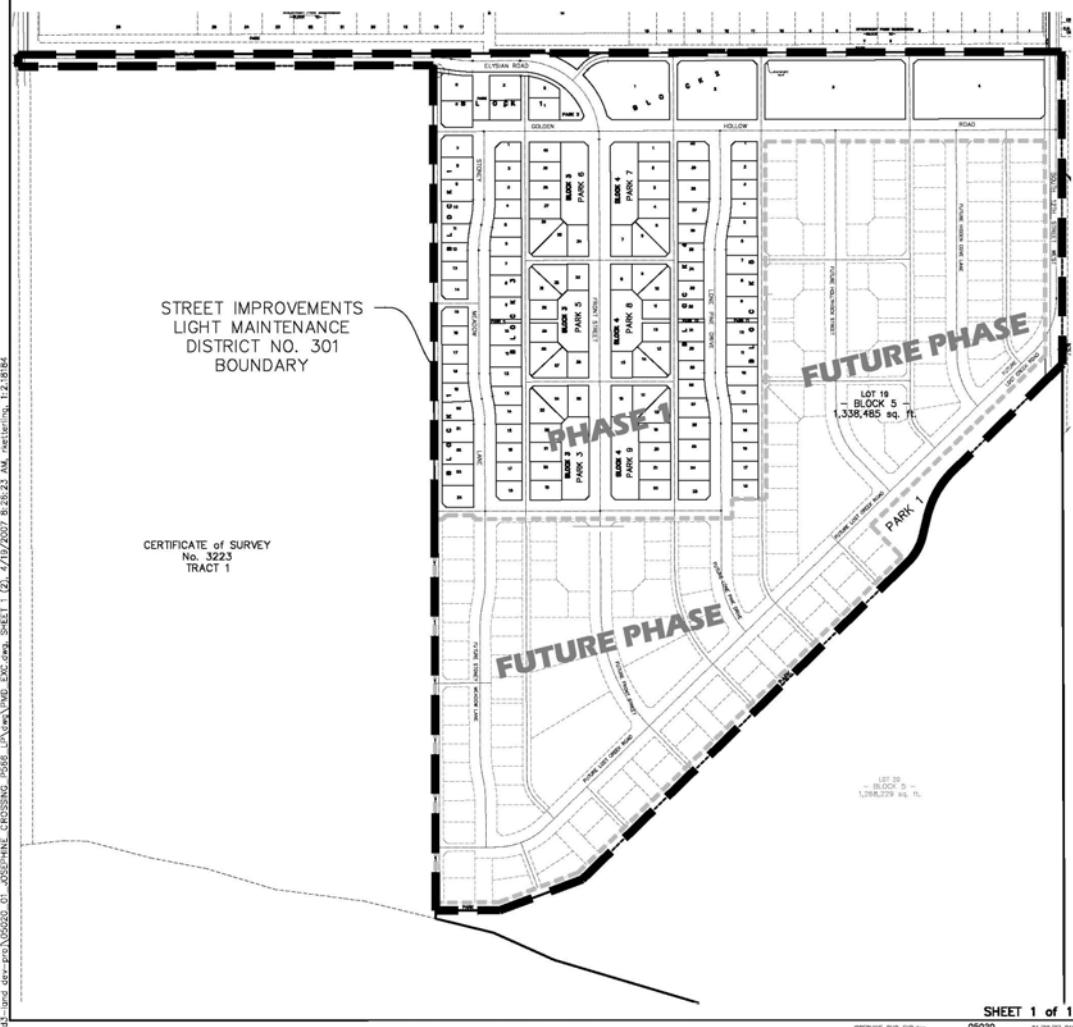


Exhibit "A"

SILMD 302 DISTRICT BOUNDARY



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

S

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 23, 2007

TITLE: Second and Final Reading for the Proposed Amendments to City Code Section 6-1200 Concerning Allowable Driveway Widths, Curb Cut Location From an Intersection, and Curb Cut Separation on Arterial Roads

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The Home Builders Association of Billings has previously contacted the Public Works Department asking for a review of the allowable driveway widths in single-family residential zoned districts and multifamily and professional zoned districts. Following this request the Public Works Department reviewed the existing requirements for these driveway widths. Staff also contacted 13 other cities in Montana, Washington, Colorado, Oregon, Minnesota, North Dakota, California and Alaska to research their current standards. Following this, staff had two meetings with the Home Builders Association. The proposed modifications to this section of city code reflect the consensus of Public Works staff, Planning Department staff and the Home Builders Association. In addition, Public Works staff desires to modify the existing city code language on curb cut locations from an intersection and curb cut separation on Arterial Roads which are also in this same section of city code. These proposed modifications are found in Section 6-1208 (h) (i) and (j) as indicated by underlines and strikeout. The first reading and approval was held at the July 9, 2007 city council meeting.

FINANCIAL IMPACT: There is no financial impact to the City if the proposed amendments are adopted by the Mayor and City Council.

RECOMMENDATION

Staff recommends that Council approve and adopt the proposed amendments upon second and final reading modifying allowable driveway widths, curb cut locations from an intersection, and curb cut separation on Arterial Roads.

Approved By: City Administrator City Attorney

ATTACHMENT

A. Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 6-1208; PROVIDING CHANGES TO CERTAIN CURB CUT LENGTHS AND REGULATIONS.

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

Section 1. That Section 6-1208 of the Billings, Montana City Code be amended so that such section shall read as follows:

“Sec. 6-1208. Curb cut regulations.

- (a) *Purpose.* The purpose of this section is to standardize, regulate and control the location, size, type, construction, maintenance and quantity of curb cuts, driveway aprons, and sidewalk driveway crossings in the city from the standpoint of proper design, safe and efficient entry to and exit from city streets to private property, safety of vehicular traffic in the streets, and safety of pedestrian traffic on the sidewalk area.
- (b) *Definitions.* For the purpose of this section, the following definitions shall apply:

Alley shall mean a narrow public thoroughfare, providing access to the rears of the abutting properties.

Curb cut shall mean the total street curbing that is removed to place a driveway and slopes.

Curb return shall mean the curved portion of a street curb at drive approaches.

Driveway shall mean that area on private property where vehicles are operated, parked or allowed to stand.

Driveway apron shall mean the area, construction or improvement between the curb cut or proposed curb line and the back edge of walk or proposed walk line, to provide ingress and egress for vehicles from the alley, street or roadway to a definite area of the private property.

Driveway width shall mean that portion of the street curbing that is removed excluding curb returns or transitions to provide ingress to and egress from abutting property.

Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways which join each other at, or approximately at, right angles, or the area within which vehicles traveling upon different roadways joining at any other angle may come in conflict.

Right-of-way shall mean public property dedicated for streets, alleys or other public uses.

Roadway shall mean that portion of a street improved, designed and customarily used for vehicular travel, exclusive of the berm or shoulder.

Sidewalk shall mean that portion of a street between curb lines or the outer lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

Street shall mean the entire width between the boundary lines of the right-of-way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Traffic shall mean pedestrians, vehicles, and other conveyances, either singly or together, while using any street, alley or roadway for purposes of travel.

Transitions shall mean the three-foot ramp sections along the street curb on each side of a driveway apron.

(c) *Permit required.* It shall be unlawful for any person either as owner, agent, servant, contractor or employee to cut, break, remove or alter any curbing, driveway apron or sidewalk, or cause to have cut, broken or removed any curbing, driveway apron or sidewalk, or to install or cause to have installed any driveway, or any vehicular access, on any public right-of-way in the city without a permit. Permits shall be issued only to properly licensed and bonded contractors by the city after payment of fees as prescribed by council resolution. At the time the permit application is made, the city shall be advised of any parking meters, traffic or street signs, signal poles, street light poles, fire plugs, trees or obstructions that will be affected by the placement or removal of the driveway or sidewalk.

(d) *Accessibility study.* If any proposed site development will generate five hundred (500) or more vehicle trips per day, a traffic accessibility study shall be required before any developmental permit is issued. A vehicular trip is defined as a one-way journey of a motorized vehicle. If the study indicates a need for the installation of traffic-control devices to regulate traffic flow generated by the facility, such traffic-control devices shall be installed at the expense of the owner of the facility. The study shall include but not be limited to:

(1) Estimated number of vehicular trips per day;

(2) Location of approaches;

(3) Circulation and channelization patterns;

(4) Location and type of traffic-control devices;

(5) Pedestrian systems;

(6) Bicycle systems;

- (7) Projected turning movements; and
- (8) Impact on surrounding existing street intersections.

(e) *Consent of property owner required.* Before a permit is granted for the removal of the curb and/or the construction of a driveway on any street, the applicant for the driveway permit must produce evidence satisfactory to the city to show that the construction of such driveway is agreeable to and in accordance with the desire of the owners of the property to which such driveway will be an entrance.

(f) *Fees.* Permit, inspection and service fees shall be charged by the city as prescribed by council resolution.

(g) *City to furnish inspector.* The city shall furnish an inspector to inspect every piece of curb, driveway and driveway apron to be constructed, whose duties shall be to check the forms for alignment, grade and materials and to see that the work is done in accordance with the specifications of the city at the time of the issuance of the permit. The city shall be notified at least twenty-four (24) hours in advance of the time when the work is proposed to be started.

(h) *Allowable curb cut ~~lengths~~ widths:*

- (1) In single-family residential zoned districts, the maximum driveway width shall be ~~twenty four (24)~~ thirty (30) feet and shall be located in accordance with city specifications or drawings. For lots or parcels with more than 25 feet of frontage, the total combined width of all driveways shall not exceed 50% of the frontage of that parcel or lot. The minimum distance between curb cuts serving the same lot or parcel shall be twenty-five (25) feet.
- (2) In any multifamily ~~and professional~~ zoned districts, the maximum driveway width shall not exceed ~~twenty four (24)~~ thirty six (36) feet and shall be located in accordance with city specifications or drawings. The minimum distance between curb cuts shall be twenty-five (25) feet except in the case where two driveways serve side-by-side duplex units a minimum six (6) foot separation distance is required between the two driveways.
- (3) In ~~any all~~ commercial, professional and industrial zoned districts, the maximum driveway width shall be thirty (30) feet except driveway widths for service stations and trucking businesses may be up to forty (40) feet when approved by the city, and shall be located in accordance with city specifications and drawings. The minimum distance between curb cuts shall be twenty-five (25) feet.
- (4) In any allowable location, no driveway width shall be less than twelve (12) feet wide.

(5) Frontages of sixty (60) feet or less shall be limited to one (1) driveway. Not more than two (2) driveways shall be provided to any single property tract or business establishment, except where the property frontage exceeds six-hundred (600) feet, there may be one (1) additional driveway for each additional three hundred (300) feet of frontage. In cases where parcels have more than one street frontage, each frontage shall be treated separately when determining the allowed number of driveways.

(i) *General regulations.* Every curb cut and driveway apron constructed or altered in the street right-of-way shall conform to the following regulations:

- (1) No driveway apron shall be constructed closer than five (5) feet from the side property line or as may be regulated by city specifications in effect at the time of such work.
- (2) No driveway apron shall be closer than five (5) feet to, nor shall it be so located as to interfere with, intersecting sidewalks, utility facilities, light standards, fire hydrants, catch basins, street signs, signals or other public improvements or installations.
- (3) Any necessary adjustments to such utility facilities, light standards, fire hydrants, catch basins, street signs, signals, underground conduits for street lighting or fire alarm systems, or other public improvements or installations shall be accomplished without cost to the city.
- (4) No curb cut shall be made between the points of curvature of any curb radius at intersections, nor closer than ten (10) feet from the points of curvature except along arterial streets or streets intersecting an arterial at a signalized intersection any curb cut shall be one hundred (100) feet from the corner. The location of curb cuts for lots or parcels along arterial streets having less than 100 feet of frontage shall be approved by the City Engineer or their designee.
- (5) No curb cut or driveway apron shall be located so as to create a hazard to pedestrians or motorists, or to invite or compel illegal or unsafe traffic movements.
- (6) Every curb cut and/or driveway apron must provide complete access to a parking space, building or loading dock on private property requiring the entrance of vehicles.
- (7) In any commercial, professional or industrial zone, driveways shall be designed such that vehicles entering or egressing shall not be required to back from or into a street right-of-way.
- (8) All curb cuts and driveway aprons are to be constructed of portland cement concrete of a quality and type as specified by the city, and in accordance with city specifications in effect at the time of such work. Curb cuts shall be permitted only

with construction of adjoining portland cement concrete aprons having a minimum depth of five (5) feet.

- (9) All work shall be done under the supervision of the city, and in accordance with city specifications in effect at the time of such work.
- (10) The licensed and bonded contractor or his or her agent doing the construction or alteration work shall maintain the premises in a safe manner and shall provide adequate barricades and lights at his or her own expense to protect the safety of the public using the adjacent streets or sidewalks, and shall hold the city free from any damages incurred by his or her operations.
- (11) The angle between any driveway apron and the street and/or curb line shall be ninety (90) degrees to the street tangent or on a radial line to the street curve.
- (12) The two (2) side borders of each driveway apron between the curb line and property line shall be parallel.
- (13) The city street right-of-way shall not be used for private commercial purposes. A permit for the construction of a curb cut driveway shall not be issued unless vehicles which will use the driveway can be parked entirely within the private property lines.
- (14) Any curb cut or driveway apron which has become abandoned or unused through a change of the conditions for which it was originally intended shall be closed and the owner shall replace any such curb cut and/or driveway apron with a standard curb and sidewalk (if necessary) to be constructed according to the city specifications in effect at the time of such work. If the owner does not make such replacement within sixty (60) days after notice, the city may do so at the expense of the owner.
- (15) Driveways serving facilities that will generate five hundred (500) or more vehicle trips per day may, at the discretion of the city, be classified and constructed as a street intersection. A complete design of the intersection shall be submitted to the city before a permit is issued. Approval of this type entrance may be contingent upon the applicant installing traffic-control devices at his or her sole expense. This type of entrance shall be included in calculating number, spacing, or any other requirement pertaining to driveways as specified herein.

(j) *Restrictions.* In addition to the general regulations prescribed herein, curb cuts and driveway aprons to be constructed or altered in districts must conform to the following:

- (1) Where a property abuts more than one city street, the maximum curb cut permitted on each street shall be considered separately and shall be governed by the frontage of the property on that street.

- (2) Two (2) or more curb cuts serving the same property must be separated by islands with full height curb not less than twenty-five (25) feet long except on arterial roads where there shall be a minimum of one hundred (100) feet of separation.
- (3) Where a property width is sixty (60) feet or less, joint curb cut with an adjoining property of sixty (60) feet or less may be constructed at a maximum width of twenty-eight (28) feet. Both property owners must be in agreement to a joint curb cut and must submit a written agreement to the city.

(k) *Deviation.* Permission to deviate from the requirements and regulations of this section shall be granted by the city council only where unusual conditions or strict adherence to this section would cause undue and extreme hardship.”

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

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

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

PASSED by the City Council on first reading this _____ day of _____, 2007.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2007.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

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T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Preliminary Minor Plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On June 15, 2007, the subdivider applied for preliminary minor plat approval of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing, which contains 2 lots on approximately 3.22 acres for commercial development. The subject property is located on the northwest corner of Main Street and Wicks Lane in the Heights and is zoned Highway Commercial (HC). The owner and subdivider is Hawkins Companies, LLC and the representing agent is Interstate Engineering, Inc.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this minor plat; the 35 working day review period for the proposed plat ends on August 3, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

Planning staff recommends conditional approval of the preliminary minor plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

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

INTRODUCTION

On June 15, 2007, the subdivider applied for preliminary minor plat approval of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing, which contains 2 lots on approximately 3.22 acres for commercial development. The subject property is located on the northwest corner of Main St. and Wicks Ln. in the Heights and is zoned HC. This amended plat is being requested to aggregate 4 existing lots into two lots, and to remove a one-foot no-access strip from the original plat for the existing drive approach on Main St.

PROCEDURAL HISTORY

- A pre-application meeting was conducted between the subdivider's representative and city staff on March 29, 2007.
- The preliminary plat application for this subdivision was submitted to the Planning Department on June 15, 2007.
- The City Council will consider the preliminary plat on July 23, 2007.

BACKGROUND

General location: Northwest corner of Main St. and Wicks Ln.

Legal Description: Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing

Subdivider/Owner: Hawkins Companies, LLC

Engineer and Surveyor: Interstate Engineering, Inc.

Existing Zoning: HC

Existing land use: New Walgreens drugstore; vacant

Proposed land use: commercial

Gross area: 3.22 acres

Net area: 3.22 acres

Number of lots: 2

Lot size: Max: 2.69 acres
Min.: .53 acres

Parkland requirements: A parkland dedication is not required, as this is a commercial subdivision.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. An access easement for the benefit of Lot 15-D-1 shall also be determined. These easements shall be depicted on the face of the final plat. (*Recommended by the Engineering Division, MDU, NWE*)
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

Planning staff recommends conditional approval of the preliminary minor plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

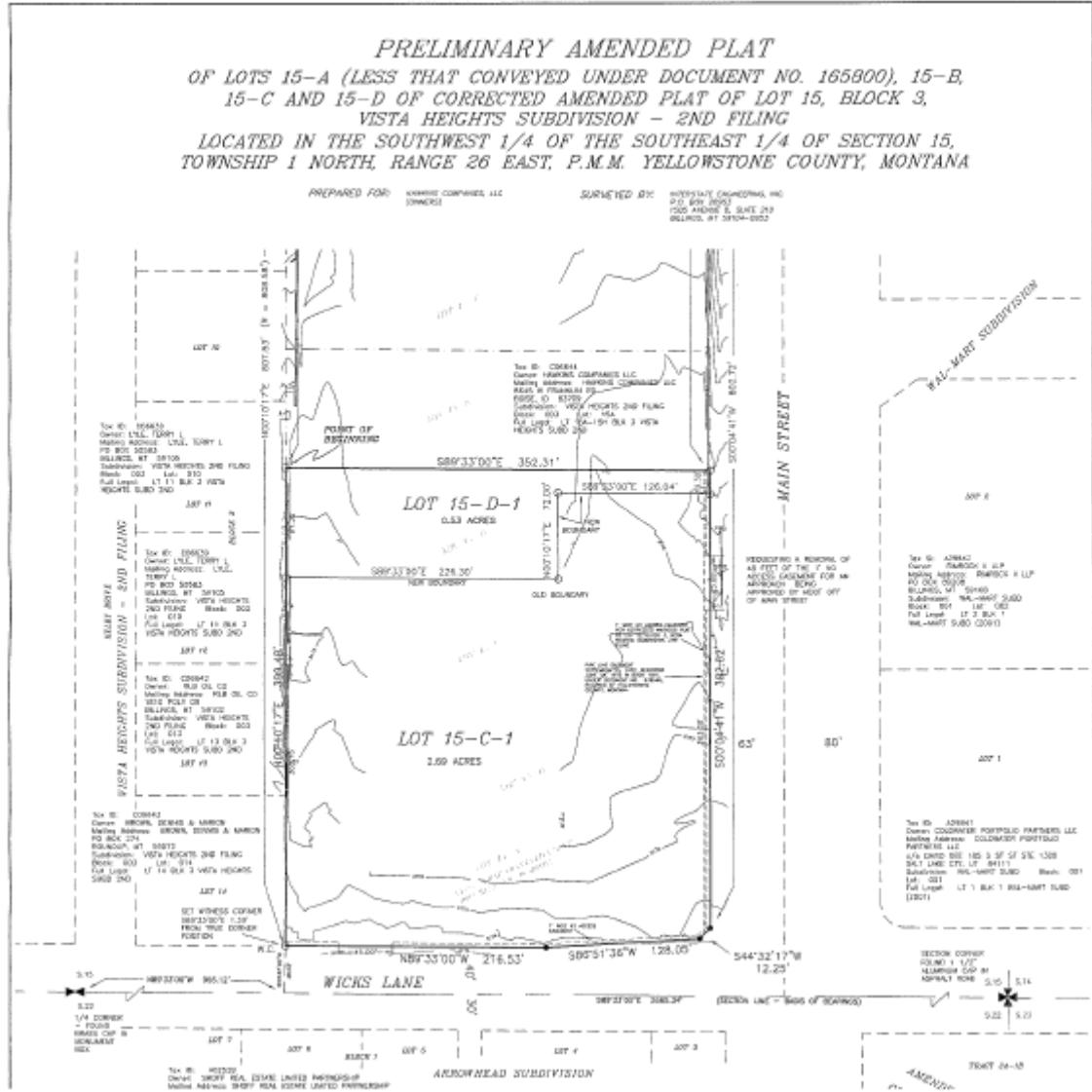
ATTACHMENTS

- A. Preliminary Plat

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

ATTACHMENT A

Preliminary Plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision,
2nd Filing



ATTACHMENT B

Site Photographs



Figure 1: From Wicks Ln. looking north



Figure 2: Looking north at existing approach off of Main Street that will service both lots.

ATTACHMENT C

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? (76-3-608 (3)(a), MCA) (23-302(H)(2), BMCC)

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

2. Effect on local services

- a. **Utilities** – Water to the subject property will be extended from the main line within Wicks Lane. The subject property is located within the County Water District of Billings Heights and will be subject to their review and approval during the time of construction. Sanitary sewer will be extended from the main line also within Wicks. Electrical service is provided by Northwestern Energy, and gas is provided by Montana Dakota Utilities. Condition #1 requires that the subdivider work with City Engineering and the private utility companies to determine suitable locations for utility easements and that these easements are shown on the face of the final plat.
- b. **Stormwater** – Onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department upon lot development.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – The subdivision is located on the northwest corner of Wicks Ln. and Main St., both principal arterial streets. There is one existing drive approach off of Wicks Ln. that provides access to Lot 15-C-1. There is also one existing approach off of Main St. that has been reviewed and approved by the Montana Department of Transportation. The Main St. approach will provide access to both lots. In order to provide legal and physical access to Lot 15-D-1, an easement shall be shown across Lot 15-C-1 from the Main St. approach on the face of the final plat (Condition #1). The remaining street frontage, apart from the approved approaches, has a one-foot no-access strip placed on it, to limit additional accesses.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6).

- f. **Schools** - The subdivision is located within School District #2. However, the subdivision is a commercial subdivision that will not result in any additional school children.
- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a commercial minor plat.
- h. **Mail Delivery** - Mail delivery to the two businesses will be addressed upon lot development.

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official.

4. Effect on wildlife and wildlife habitat

There should be little to no negative effect on wildlife and wildlife habitat from this subdivision. The subject property is in the urban area of the Heights and has been developed for many years.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)

An Environmental Assessment is not required, as this is a minor plat.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)
- c. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)
- d. Coordinated economic development efforts that target business recruitment, retention and expansion. (Economic Development Goal, Page 6)
- e. Visually appealing communities. (Aesthetic Goal, Page 7)

f. A safe and efficient transportation system characterized by convenient connections and steady traffic flow. Transportation Goal, Page 10)

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

A Heritage Trail corridor is not identified within this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-301, BMCC)

If the recommended Condition #1 is adhered to, the proposed subdivision will satisfy the requirements of the Montana Subdivision and Platting Act and conform to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)

The property is served by Heights water and city sewer, storm drain and solid waste services.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-402, BMCC)

The subject property is located within the HC zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)

Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)

Access to the lots will be from approved approaches off of Wicks Ln. and Main St. Condition #1 requires that access to Lot 15-D-1 be shown on the face of the final plat via an access easement across Lot 15-C-1.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and will be required by Condition #1 to provide legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, July 23, 2007

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

July 24, 2007

Hawkins Companies, LLC
Jessica Aguilar
8645 W. Franklin Rd.
Boise, ID 83709

Dear Applicant:

On July 23, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lots 15A, 15B, 15C and 15D, Block 3, Vista Heights Subdivision, 2nd Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. An access easement for the benefit of Lot 15-D-1 shall also be determined. These easements shall be depicted on the face of the final plat.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Division at 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

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U

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Preliminary Minor Plat of Trailshead Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On June 15, 2007, the subdivider applied for preliminary plat approval of Trailshead Subdivision, which contains one lot on 4.01 acres. The subdivider is proposing to aggregate Lots 1-9, Block 1, Swartz McGeorge Subdivision and Certificate of Survey 46 in order to develop the property as a Planned Unit Development (PUD). Pursuant to Section 23-1103(C)(2), BMCC, any vacation of a plat that affects six or more lots shall be reviewed as an amended plat (minor subdivision). The subject property is located on the southeast corner of the intersection of Rimrock Road and Avalon Road, and contains the Yellowstone Racquet Club. The owner is Bill Dolan and the representative is Engineering, Inc. The subject property is zoned Residential 9600 (R-96), however there is a zone change request in process for PUD zoning in order to construct a condominium development containing single-family residences and 4-plexes.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this minor plat; the 35 working day review period for the proposed plat ends on August 3, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

4. Approve;
5. Conditionally Approve; or
6. Deny the Preliminary Plat

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary minor plat of Trailshead Subdivision and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

- E. Preliminary Plat
- F. Site Photographs
- G. Findings of Fact
- H. Mayor's Approval Letter

INTRODUCTION

On June 15, 2007, the subdivider applied for preliminary plat approval of Trailshead Subdivision, which contains one lot on 4.01 acres. The subdivider is proposing to aggregate Lots 1-9, Block 1, Swartz McGeorge Subdivision and Certificate of Survey 46 in order to develop the property as a Planned Unit Development (PUD). The subject property is located on the southeast corner of the intersection of Rimrock Road and Avalon Road, and contains the Yellowstone Racquet Club. The subject property is bordered on the north across Rimrock Road by single-family residences on the south by condominium units; and on the east and west by single-family residences and condominiums.

PROCEDURAL HISTORY

- On April 26, 2007, a pre-application meeting was conducted for proposed subsequent minor plat.
- On June 1, 2007, the preliminary rezone application was submitted to the Planning Department.
- On June 15, 2007, an application for a preliminary minor subdivision was submitted to the Planning Department.
- On July 11, 2007, the Planning Department will conduct a neighborhood meeting regarding the proposed zone change to PUD.
- On July 23, 2007, the minor preliminary plat will be on the consent agenda for the City Council meeting.
- On August 7, 2007, the City Zoning Commission will conduct a public hearing for the proposed zone change.
- On August 27, 2007, the City Council will conduct a public hearing and 1st reading to approve or deny the zone change.
- On September 10, 2007, if approved on the 1st reading, the City Council will conduct the 2nd reading of the proposed zone change.

BACKGROUND

General location:

Southeast corner of the intersection of Rimrock Road and Avalon Road

Legal Description:

Lots 1-9, Block 1, Swartz McGeorge Subdivision and Certificate of Survey 46

Subdivider/Owner:

Bill Dolan

Engineer and Surveyor:

Engineering, Inc.

Existing Zoning:

R-96

Existing land use:

The Yellowstone Racquet Club

Proposed land use:

Condominiums

Gross area:

4.01 acres

Net area:	3.95
Proposed number of lots:	1
Parkland requirements:	0.43 acres

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

4. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
5. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. To ensure the dedication of parkland, the method for parkland dedication shall be chosen and specified within the SIA. If parkland is to be dedicated onsite, it shall be depicted with the plat and shall be reviewed and approved by the Parks and Recreation Department. *(Recommended by City-County Planning)*
7. To minimize effects on local services, the fire hydrants located within the subdivision shall be relocated to the southeast corner of the intersection of Pioneer Trail (to be renamed) and Avalon Road and on the southeast corner of the intersection of Settlers Trail and Avalon Road. *(Recommended by the Fire Department)*
8. To minimize effects on local services, Pioneer Trail shall be renamed, as one already exists within the county. The new name shall be reviewed by the County GIS Department prior to approval of the final plat. *(Recommended by the County GIS Department)*

9. To minimize effects on local services, Section VI.A and B shall be revised to read public mains instead of private mains. *(Recommended by the Public Utilities Department)*
10. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
11. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

Staff recommends conditional approval of the preliminary minor plat of Trailshead Subdivision and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

- E. Preliminary Plat
- F. Site Photographs
- G. Findings of Fact
- H. Mayor's Approval Letter

ATTACHMENT A
Preliminary Plat of Trailshead Subdivision

PRELIMINARY PLAT OF
TRAILSHEAD SUBDIVISION

BEING THE REMAINDER OF C.O.S. 45 &
LOTS 3-8, AND PORTIONS OF LOTS 1,2 & 9 SWARTZ-MCGEORGE SUB. BLOCK 1
SITUATED IN THE NW 1/4 OF SECTION 34 T. 1 N. R. 25 E., P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: ROGER BEETER REAL ESTATE
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 40'

JUNE, 2007
BILLINGS, MONTANA

NORTH

BASIS OF BEARING: NORTH LINE OF NW 1/4 SECTION 34
TAKEN AS N 89°22'51" E

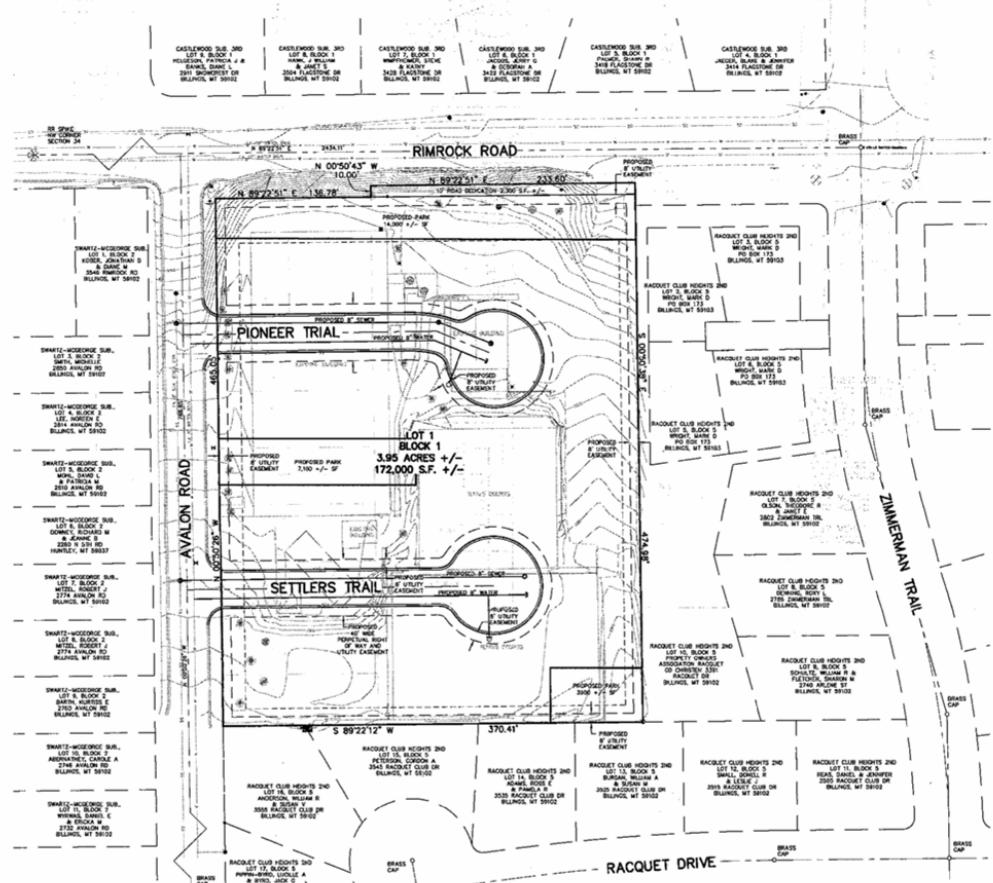
- = FOUND SURVEY MONUMENT, AS NOTED

SITE



PLAT DATA

GROSS AREA	= 4.01 ACRES
NET AREA	= 3.95 ACRES
NUMBER OF LOTS	= 11
MINIMUM LOT SIZE	= 3.95 ACRES
MAXIMUM LOT SIZE	= 3.95 ACRES
LINEAL FEET OF STREETS	= N/A
COMMON PROPERTY	= 0.05 ACRES
PARKLAND DEDICATION	= 0.574 ACRES
EXISTING ZONING	= R-9600
SURROUNDING ZONING:	
NORTH	= R-6000
SOUTH	= PLANNED UNIT DEVELOPMENT
EAST	= PLANNED UNIT DEVELOPMENT
WEST	= R-6000
EXISTING LAND USE	= RACQUET & TENNIS CLUB
PROPOSED LAND USE	= PLANNED UNIT DEVELOPMENT



ATTACHMENT B

Site Photographs



Figure 1: View south at the dead-end cul-de-sac of Avalon Road.



Figure 2: View north along Avalon Road toward Rimrock Road.

ATTACHMENT C

Findings of Fact

Staff is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Trailshead Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? (76-3-608 (3)(a), MCA) (23-302(H)(2), BMCC)

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

2. Effect on local services

- e. **Utilities** – Water and sewer to the subject property will be extended existing 8-inch mains within Avalon Road. The water and sewer services will be private from the intersection of Avalon with Pioneer Trail (to be renamed) and Settlers Trail. The Public Utilities Department is requiring a minor revision to the SIA in order to clarify that the mains within Avalon Road are public not private, as required by Condition #6.
- f. **Stormwater** – As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- g. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- h. **Streets** – Access to the proposed subdivision will be via two private dead end cul-de-sacs off of Avalon Road adjacent to the west of the subdivision. The streets will be constructed to city standards; however no sidewalks are required on private internal streets. The subdivider will construct 5-foot wide boulevard sidewalks along Avalon Road adjacent to the subdivision, as specified within the SIA. There will be no additional accesses or private driveways off of Avalon Road or Rimrock Road. The County GIS Department did state in their review that Pioneer Trail is a duplicate street name within the county and a new name needs to be chosen for this street, as required by Condition #5.

According to the 2005 Transportation Plan Update, Rimrock Road is classified as a principal arterial at this location. This subdivision will trigger improvements on the southern portion of Rimrock Road fronting the proposed subdivision, which includes curb, gutter, and boulevard sidewalk. Since the improvements to Rimrock Road have not been determined by the city at this time, the Engineering Department is requesting a cash contribution for these improvements.

- h. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5). The Fire Department did review the subdivision and is requiring that the fire hydrants originally depicted within the cul-de-sacs be relocated to the entrances of the streets. There should be a fire hydrant located on the southeast corner of the intersection of Pioneer Trail (to be renamed) and Avalon Road and a hydrant on the southeast corner of the intersection of Settlers Trail and Avalon Road, as specified in Condition #4.
- i. **Schools** - The subdivision is located within School District #2. Arrowhead Elementary, Will James Middle School and West High School will serve the children in this subdivision. A response was received from West High School indicating that the school is currently over capacity; however the subdivision is on a bus route. West High School will continue to accommodate new students. Responses from the other schools were not received at the time this report was written.
- j. **Parks and Recreation** – Pursuant to Section 23-1002.B.1, BMCC, subdivisions that provide for multi-family and condominium developments shall provide 11% of the net area of land to be subdivided into parcels ½ acre or smaller as a parkland dedication. Furthermore, a parkland dedication was not required when Swartz McGeorge Subdivision was originally platted, therefore, the subdivider is being assessed parkland for the entire property proposed for subdivision. In this subdivision 3.95 acres are proposed for condominium development, therefore a parkland dedication of 0.43 acres (18,730 square feet) is required. The SIA specifies that the parkland will either be provided through a land dedication or a cash-in-lieu. Condition #3 requires that the method for parkland dedication be chosen and specified within the SIA. If parkland is to be dedicated onsite, it shall be depicted with the plat and shall be reviewed and approved by the Parks and Recreation Department.
- i. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #2. The location of the mail boxes shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property. However, a statement has been added to the SIA, that lot owners should be aware that interactions with wildlife could occur and that any damage to property is the lot owner's responsibility.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)

An Environmental Assessment is not required, as this is a minor plat within the city.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- g. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 5)

The proposed subdivision is consistent with the surrounding condominiums and single-family residences.

- h. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element Goal, Page 6)

The subject property is compatible with the surrounding single-family residences and condominiums.

- i. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

The property is located within an existing subdivision in an urbanized portion of the city and is considered infill development.

2. Urban Area 2005 Transportation Plan Update

According to the 2005 Transportation Plan Update, Rimrock Road is classified as a principal arterial at this location. This subdivision will trigger improvements on the southern portion of Rimrock Road fronting the proposed subdivision, which includes curb, gutter, and boulevard sidewalk. Since the improvements to Rimrock Road have not been determined by the city at this time, the Engineering Department is requesting a cash contribution for these improvements.

3. Heritage Trail Plan

A Heritage Trail corridor is not identified within this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-301, BMCC)

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)

The property will be served by private water and sewer services to be installed within Pioneer Trail (to be renamed) and Settlers Trail.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-402, BMCC)

The subject property shall comply with the standards set forth in Section 27-308, BMCC for the R-96 zoning district. If the PUD is approved, development within the subdivision shall comply with the recorded Planned Development Agreement and the limitations set forth in the Zoning Regulations.

G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)

Access to the lots will be from private streets off of Avalon Road, a public right-of-way bordering the west side of the property.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Trailshead Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, July 23, 2007

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

July 23, 2007

Roger Beeter Real Estate
c/o Bill Dolan
P.O. Box 81369
Billings, MT 59108

Dear Applicant:

On July 23, 2007, the Billings City Council conditionally approved the preliminary plat of Trailshead Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. (*Recommended by the Engineering Division*)
2. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. (*Recommended by the United States Postal Service*)
3. To ensure the dedication of parkland, the method for parkland dedication shall be chosen and specified within the SIA. If parkland is to be dedicated onsite, it shall be depicted with the plat and shall be reviewed and approved by the Parks and Recreation Department. (*Recommended by City-County Planning*)
4. To minimize effects on local services, the fire hydrants located within the subdivision shall be relocated to the southeast corner of the intersection of Pioneer Trail (to be renamed) and Avalon Road and on the southeast corner of the intersection of Settlers Trail and Avalon Road. (*Recommended by the Fire Department*)
5. To minimize effects on local services, Pioneer Trail shall be renamed, as one already exists within the county. The new name shall be reviewed by the County GIS Department prior to approval of the final plat. (*Recommended by the County GIS Department*)
6. To minimize effects on local services, Section VI.A and B shall be revised to read public mains instead of private mains. (*Recommended by the Public Utilities Department*)
7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Aura Lindstrand with the Planning Division at 247-8663 or by email at lindstranda@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Will Ralph, Engineering, Inc.

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V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Preliminary Plat of Emma Jean Heights Subdivision, 1st Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On April 2, 2007, the owner/subdivider applied for preliminary major plat approval for Emma Jean Heights Subdivision, 1st Filing which contains 38 lots on approximately 8 acres of land. The subject property is located on the west side of Bitterroot Drive, south of Wicks Lane. This is the first filing of a 57-acre master planned area with multiple filings. The City Council will review the preliminary plat and approve, conditionally approve, or deny the proposed subdivision at the July 23, 2007 meeting. The owner is Felton Associates, LLC, and the representing agent is HKM Engineering, Inc.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated.

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

RECOMMENDATION

The Planning Board recommends approval of the requested variance from BMCC 23-406(b)(6), conditional approval of the preliminary plat of Emma Jean Heights Subdivision, 1st Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

- I. Preliminary Plat & Master Plan
- J. Site Photographs
- K. Findings of Fact

L. Mayor's Approval Letter

INTRODUCTION

On April 2, 2007, the owner/subdivider applied for preliminary major plat approval for Emma Jean Heights Subdivision, 1st Filing which contains 38 lots on approximately 8 acres of land. The subject property is located on the west side of Bitterroot Drive, south of Wicks Lane. This is the first filing of a 57-acre master planned area with multiple filings. One variance from the subdivision regulations has been requested for the right-of-way dedication width for Bitterroot Drive.

PROCEDURAL HISTORY

- On November 2, 2006, a pre-application meeting was conducted for a proposed major plat.
- On April 2, 2007, the preliminary major plat application was submitted to the planning department.
- On April 19, 2007, the departmental review meeting for the preliminary plat was conducted.
- On April 23 and May 14, 2007, the subdivider submitted letters of extension ultimately extending the review period to July 25, 2007.
- On June 12, 2007, the Planning Board conducted a plat review on the proposed major subdivision.
- On June 26, 2007, the Planning Board conducted a public hearing on the proposed major subdivision but could not make a final recommendation due to lack of a quorum.
- On July 11, 2007, the Planning Board made a recommendation to the City Council.
- On July 23, 2007, the preliminary plat will be approved, conditionally approved, or denied by the City Council.

BACKGROUND

The subject property is bordered on the north by the BBWA irrigation ditch, on the east by Bitterroot Drive, on the south by suburban density residential lots in the County and on the west by Hawthorne Lane.

General location:	South of Wicks Lane, on the west side of Bitterroot Drive.
Legal Description:	N ½ of the NE ¼ of Section 23, Township 1N, Range 26E (less C/S 515 and 1335) and C/S 999
Subdivider/Owner:	Felton Associates, LLC
Engineer and Surveyor:	HKM Engineering, Inc.
Existing Zoning:	Residential-7000
Existing land use:	Vacant Pasture Land
Proposed land use:	Single-Family Residences

Gross area:	57 acres (entire master plan area)
Net area:	7.58 acres (First Filing area)
Proposed number of lots:	38
Lot size:	Max: 14,452 square feet Min.: 7,364 square feet
Parkland requirements:	.83 acres required for this filing, .28 acres proposed in a linear park with remaining proposed as cash in lieu of land. ***Planning Board recommends overall park requirement be met through land dedication***

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

12. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat.
13. To minimize effects on public health and safety, the following amendments shall be made to the Subdivision Improvements Agreement (SIA):
 - Section II. Add F. stating that all construction traffic shall be limited to using Anchor Ave. from Bitterroot Drive, and shall not use neighboring residential streets.
 - Section III.A.2. Strike last sentence and replace with “A detailed cost estimate shall be submitted and approved for the future improvements on Bitterroot Drive. The estimate shall include construction fees, design fees, construction administration fees and City fees. Fees shall be paid with First Filing improvements.”
 - Section IV. Add the following language: “Emergency Access Road The emergency access road along Columbine and Anchor Avenue shall be designed to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. If required by the Fire Department, gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a

conspicuous manner. The sign shall read “EMERGENCY ACCESS ONLY” using black letters not less than 2 inches wide and 6 inches high on a white retroreflective background.

Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer’s Office. The storm drainage design shall account for a 10 year storm event with no encroachment of the travel way.

The emergency access road shall be fully constructed with the 1st filing improvements.”

14. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle as requested by the US Postal Service. The location of the boxes shall be reviewed and approved by the post office.
15. To minimize effects on public health and safety and local services, Anchor Ave. shall be moved south to the furthest extent possible while meeting all required intersection offsets in order to separate it from the bridge to the north.
16. To minimize effects on public health and safety and local services, recommended measures identified in the Traffic Accessibility Study (TAS) shall be implemented prior to final plat approval.
17. To minimize effects on public health and safety, the final storm water management design shall be reviewed and approved by City Engineering. Specific amendments include: the storm drain connections shown on the preliminary plat in Emma Avenue shall be extended to the intersection of Jean Avenue and Carson Way, and at Lots 14 & 15, Block 2, the storm drain shall be extended to the 10-foot right-of-way for future storm drain extension.
18. To minimize effects on public health and safety, a written agreement allowing this subdivision to discharge water into the existing detention pond on Erin Street shall be provided.
19. To minimize effects on local services, the remaining required parkland dedication shall be met through a dedication of land. The park shall be shown on an updated master plan and shall be reviewed and approved as to location by the Parks, Recreation and Public Lands Department prior to final plat approval.
20. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

21. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

A variance to permit a 50-foot half width right-of-way for Bitterroot Drive where Section 23-406(b)(6), BMCC, requires a 65-foot half width right-of-way for principal arterial streets. Engineering staff is supportive of this variance, as the 50-foot half width will maintain consistency with other recently developed properties along Bitterroot Drive.

STAKEHOLDERS

A public hearing was held by the Planning Board on June 24, 2007. Twelve members of the public expressed concern with various elements of the proposed subdivision. Common concerns were:

- The possibility of standing water in the storm water detention ponds creating an opportunity for mosquitoes to breed.
- Concern that the limited site distance on Bitterroot Drive due to the raised canal crossing, and the speed at which people travel present traffic safety concerns.
- Concern that because the present zoning (R-7) would allow duplexes on lots that are 9,600 square feet or larger, some of the larger lots would not be used for single family dwellings.
- Concern over the location of the bike path along the canal and the possibility that people and children using the trail could fall into the ditch.
- Issue of compatibility of the new development with the surrounding, larger lot neighborhoods (those lots immediately south and east that are in the County).
- Concern that the construction traffic should be limited to using Bitterroot Dr. to the north, and that hours of operation should be limited and dust be controlled on the site.
- Concern that the 3 area parks would not be adequate to serve the new residents.
- Question whether there had been a wildlife study, because the subject property has a lot of migratory ducks who use it for nesting.
- Question whether this subdivider will be required to contribute to the future traffic lights or street improvements at Bench and Hilltop and other impacted intersections.

The representing agent “rebuted” these concerns with the following explanations:

- The detention ponds will be designed to discharge a certain limited amount of storm water. They are still working on acquiring an easement to ensure the historic runoff amount to the west through a pipe that crosses under Bitterroot near Erin St. In the event there is standing water, this will need to be sprayed for mosquitoes.
- The proposed access is located about 450 feet south of the ditch crossing. HKM Engineering completed a supplemental study to the Traffic Accessibility Study (TAS) that analyzed the site distance at the proposed access location. It concludes that there is sufficient intersection sight distance at the proposed Anchor Ave. intersection under current Bitterroot Drive conditions. In response to questions about aligning the new access with Erin St., this design would put the road adjacent to the north boundaries of those lots in the Shamrock Acreage Subdivision, and they didn’t feel that would be

desirable to those existing home owners. Aligning Anchor with Blarney would put that much closer to the ditch.

- The property has been zoned R-70 since it was originally assigned a zoning classification in the County many years ago. Upon annexation into the City, the zoning did not change. It is the developer's intention to create single-family lots, however, there are two of the buildable lots in this filing that are greater than 9600 square feet in size.
- The developer is deeding 40 feet to the BBWA for them to maintain the existing ditch within. The 20-foot wide linear park is south of the ditch dedication. A fence between the two has not been contemplated. The developer is not skirting his parkland dedication requirement. State and City laws allow land dedication, cash in lieu of land dedication, or some combination. PRPL is supportive of the proposed land and cash contribution.
- No wildlife study has been completed. Planning staff received a comment from Montana Fish Wildlife & Parks dated April 12, 2007 indicating that future property owners should be warned that this subdivision is in close proximity to prime deer and wild turkey habitat. There is a note to this effect in the SIA under Conditions that Run with the Land.
- The agent indicated that the developer will be responsible for paying a proportionate share toward future traffic light improvements.

At its July 10, 2007 meeting, the Planning Board reconvened to further discuss these concerns and make a recommendation to the City Council regarding the proposed subdivision. In regard to the parkland issue, the Planning Board felt it was important for this subdivision to have additional green space available, and is recommending that a subdivision park be provided for the remaining parkland requirement (approximately 2.86 acres). This is contrary to the PRPL recommendation of taking the cash equivalent of that land and using it to enhance one of the existing area parks. PRPL is concerned with maintaining parks smaller than five acres in size.

In regard to the proposed access onto Bitterroot Drive (for Anchor Ave.) the Planning Board felt that it was important to situate the new access as far from the BBWA bridge crossing as possible. They are recommending that it be moved as far south as possible while maintaining the required offsets from both Erin St. and the internal street within the proposed subdivision. This recommendation will result in Anchor Ave. moving 20-30 feet south.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

The Planning Board recommends approval of the requested variance from BMCC 23-406(b)(6) and conditional approval of the preliminary plat of Emma Jean Heights Subdivision, 1st Filing, and adoption of the Findings of Fact as presented in the staff report to the City Council.

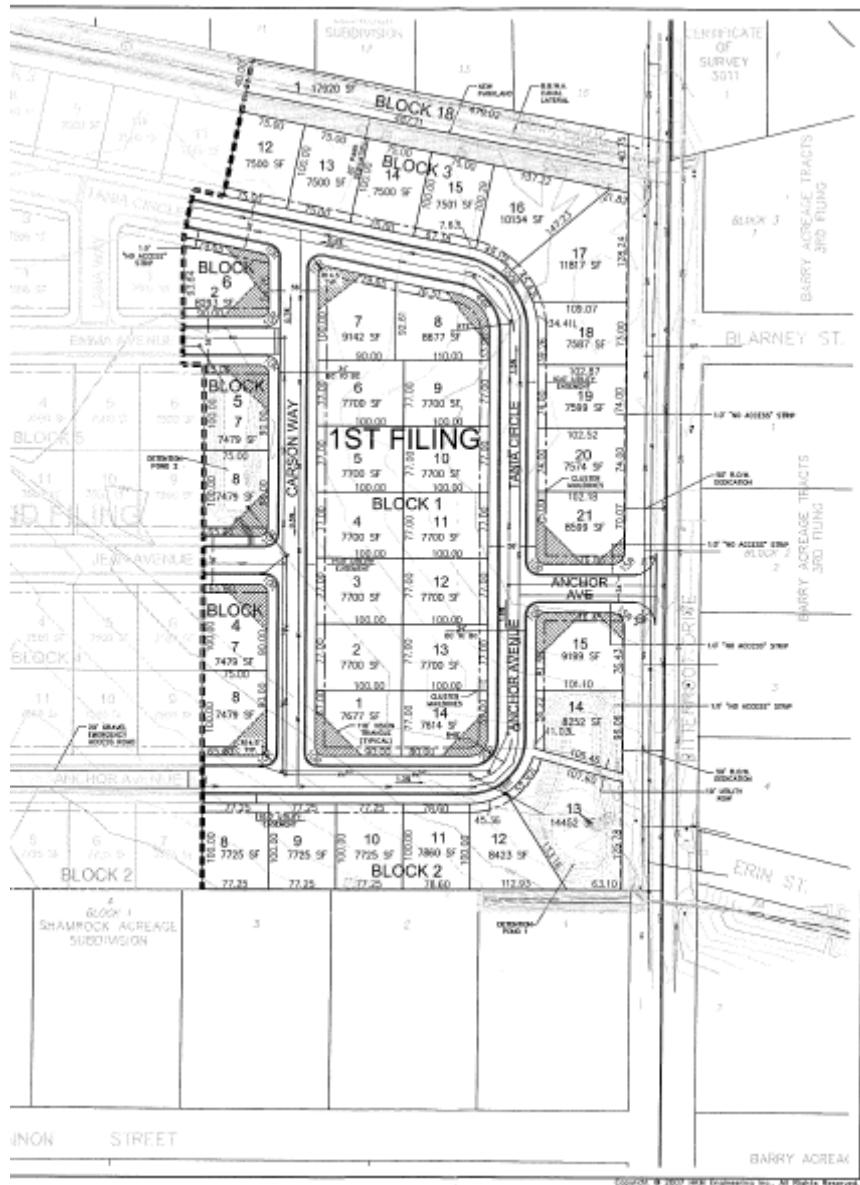
ATTACHMENTS

- A. Preliminary Plat & Master Plan
- B. Site photographs
- C. Findings of Fact

D. Mayor's approval letter

ATTACHMENT A

Preliminary Plat of Emma Jean Heights, 1st Filing



ATTACHMENT B
Aerial and Site Photographs



View of subject property on left, looking north up Bitterroot Drive from Erin St.

ATTACHMENT C

Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for Emma Jean Heights Subdivision, 1st Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

A. What are the effects on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety? (76-3-608 (3)(a), MCA) (23-302(H)(2), BMCC)

1. Effect on agriculture and agricultural water user facilities

The subject property has historically been used for irrigated pasture land. The proposed subdivision will eventually remove the 57 acre parcel from pasture use. However, it is located within an urbanized area, and is a good example of in-fill development within the City.

A BBWA canal lateral weaves its way through the master planned area and along the northern boundary of the first filing. No water rights are being transferred to the new lots. The subdivider has proposed to dedicate a 40-foot strip of land along the southern ditch bank to the BBWA for their maintenance needs. The subdivider has also proposed a linear parkland dedication with a trail corridor on the south side of the ditch. No alterations to the ditch are proposed within the first filing with the exception of trail construction. The parkland trail is proposed to be expanded within future filings as shown on the master plan. Any impacts to the ditch within future filings will be analyzed and mitigated at the time of future filing review.

2. Effect on local services

- a. **Utilities** – The Heights Water District provides water to lots within this area. Water to the subject property will be extended from the existing mains in Bitterroot Drive, Hawthorne Lane and Shannon Street. A combination of 12-inch and 8-inch mains will be constructed within the subdivision.

Sanitary sewer service is provided by the City of Billings. Services will be extended from the existing sanitary sewer mains in Bitterroot Drive and Hawthorne Lane. 8-inch sewer lines will be installed within the interior subdivision streets.

- b. **Stormwater** – Storm drainage for the proposed subdivision will be provided by a combination of surface drainage and curbs and gutters drained to a couple of detention areas to be constructed within the subdivision. Detention basins are proposed on Lots 7 & 8, Block 5, and Lots 13-15, Block 2. Restrictions on the sales of these lots for residential use will remain in place until such time as the storm water is redirected to a City system.

All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department (Conditions # 6 & 7).

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

Streets - Access to this 1st Filing will be via internal streets from Bitterroot Drive. Bitterroot Drive is a principal arterial street, which, according to Section 23-604.B., requires a 65-foot half-width street dedication. The subdivider has proposed to dedicate 50 feet of right-of-way and therefore has requested a variance. Staff is supportive of granting this variance request as 50 feet matches amounts given by the other properties along Bitterroot Drive and a 100-foot right-of-way should be sufficient for future reconstruction needs. The subdivider will provide a cash contribution for their share of curb, gutter, pavement, and boulevard sidewalks with a minimum boulevard width of 10-feet along Bitterroot Drive.

The approach for Anchor Avenue off of Bitterroot Drive has been reviewed and approved by City Engineering. A raised ditch crossing on the northern boundary of this subdivision poses site visibility issues for egress and ingress. A Traffic Accessibility Study (TAS) was submitted to the Engineering Department indicating that the intersection sight distance is adequate for the proposed location of Anchor Ave. After hearing public testimony on the matter, the Planning Board has requested to have the Anchor Ave. access moved as far south from the bridge crossing as possible, while still maintain the required intersection offsets from Erin St. and the streets internal to the subdivision. This recommendation is reflected in Condition #4.

All internal streets will be constructed to city standards with 56-feet of right-of-way and 34-feet back to back of curb pavement width and 5-foot wide boulevard style sidewalks on both sides of the street; these sidewalks will be constructed at the time of lot development.

In order to provide for 2 points of access to the subdivision during this 1st Filing, a 20-foot wide emergency access road will be constructed from where Anchor Ave. connects to Columbine Drive and meets up with the existing Shannon Street to the south. This shall be specified in the SIA, as required by Condition #2.

- d. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews (Station #6). The only concern that the Fire Marshal had was to include language in the SIA regarding the construction of the emergency access road as recommended by Condition #2. The subdivision is located within the ambulance service area of American Medical Response (AMR); they indicated that they could provide services to the subdivision as proposed.
- e. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Bitterroot Elementary and Castle Rock Middle School, and Skyview High School.

f. **Parks and Recreation** – As part of this First Filing, the subdivider is required to provide .83 acres of dedicated parkland. For the overall master planned area, approximately 4.368 acres of parkland is required. The subdivider is proposing a land dedication in the form of a linear park on the south side of the BBWA ditch lateral developed with a pedestrian/bike trail to meet the City's trail standards. The total proposed parkland dedication for this filing of the subdivision is approximately .28 acres and a total of 1.5 acres for the entire master planned area. The subdivider has proposed to give cash in lieu of land to meet the remaining dedication requirement. However, in reviewing the master plan and potential parkland needs for the subdivision, the Planning Board recommends that the remaining requirement (approximately 2.868 acres for the entire master planned area) be met through land dedication (Condition #8).

As noted in the SIA, a park maintenance district will be created at the time the final plat is filed in order to provide future maintenance of the trail.

g. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #3. The location of the mail boxes shall be reviewed and approved by the post office.

3. Effect on the natural environment

A geotechnical report was submitted with this application and indicated that soils are clay and gravel soils found on the site, which are generally suitable for foundation support provided that foundations are constructed on native soils. As specified by the Building Official's review of the submitted geotechnical report, contractors must comply with all requirements of the geotechnical report and or any Engineer's recommendation.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health, safety and welfare

B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, the Heights Neighborhood Plan, and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6).
- New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The BBWA canal is depicted as a trail corridor within the Heritage Trail Plan. As such, the subdivider is proposing a 20-foot wide parkland dedication for a trail along the southern boundary of the ditch. Within the 20-foot wide linear park, 10-foot wide pedestrian accesses will be constructed to City Trails and Bikeways Design Standards, as specified within the SIA. The subdivider will be responsible for the construction of the trail. Future filings will continue the parkland and trail to connect to Hawthorne Lane.

4. Heights Neighborhood Plan

The proposed subdivision satisfies the following policies of the Heights Neighborhood Plan:

- Provide safety for residents and development as it occurs; lower emergency response times by providing easy access to emergency vehicles.
- Provide safe routes for pedestrians to travel between schools, parks and neighborhoods and other community facilities.
- Increase extent and quality of non-motorized transportation facilities.
- Provide safe, good quality and affordable housing in the Heights; develop housing patterns that are compatible with existing neighborhoods.

- Encourage infill development and housing developments that meet residents' desire to have similar housing within their neighborhood.
- Create pedestrian/bike trails to link parks and recreational facilities together.
- Prohibit dead-end water and sewer service lines.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-301, BMCC)

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)

The subdivision will utilize Heights Water District water, and City sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-402, BMCC)

The subject property shall conform to the requirements set forth by Article 27-300 of the Unified Zoning Regulations for the R-70 zoning districts.

G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)

Legal and physical access to the proposed subdivision will be via internal subdivision streets from Bitterroot Drive and eventually Hawthorne Lane.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Emma Jean Heights Subdivision, 1st Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy, the Heights Neighborhood Plan and does not conflict with the Transportation or Heritage Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, July 23, 2007.

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

July 24, 2007

Felco Industries
PO Box 16750
Missoula, MT 59808

Dear Sirs:

On July 23, 2007, the Billings City Council conditionally approved the preliminary plat of Emma Jean Heights Subdivision, 1st Filing. The conditions of approval are as follows:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat.
2. To minimize effects on public health and safety, the following amendments shall be made to the Subdivision Improvements Agreement (SIA):
 - Section II. Add F. stating that all construction traffic shall be limited to using Anchor Ave. from Bitterroot Drive, and shall not use neighboring residential streets.
 - Section III.A.2. Strike last sentence and replace with “A detailed cost estimate shall be submitted and approved for the future improvements on Bitterroot Drive. The estimate shall include construction fees, design fees, construction administration fees and City fees. Fees shall be paid with First Filing improvements.”
 - Section IV. Add the following language: “Emergency Access Road The emergency access road along Columbine and Anchor Avenue shall be designed to a minimum unobstructed surface width of not less than 20 feet and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all weather driving capabilities. If required by the Fire Department, gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read “EMERGENCY ACCESS ONLY” using black letters not less than 2 inches wide and 6 inches high on a white retroreflective background.

Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer’s Office. The storm drainage design shall account for a 10 year storm event with no encroachment of the travel way.

The emergency access road shall be fully constructed with the 1st filing improvements.”

3. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mail carrier vehicle as requested by the US Postal Service. The location of the boxes shall be reviewed and approved by the post office.

4. To minimize effects on public health and safety and local services, Anchor Ave. shall be moved south to the further extend possible while meeting all required intersection offsets in order to separate it from the bridge to the north.
5. To minimize effects on public health and safety and local services, recommended measures identified in the Traffic Accessibility Study (TAS) shall be implemented prior to final plat approval.
6. To minimize effects on public health and safety, the final storm water management design shall be reviewed and approved by City Engineering. Specific amendments include: the storm drain connections shown on the preliminary plat in Emma Avenue shall be extended to the intersection of Jean Avenue and Carson Way, and at Lots 14 & 15, Block 2, the storm drain shall be extended to the 10-foot right-of-way for future storm drain extension.
7. To minimize effects on public health and safety, a written agreement allowing this subdivision to discharge water into the existing detention pond on Erin Street shall be provided.
8. To minimize effects on local services, the remaining required parkland dedication shall be met through a dedication of land. The park shall be shown on an updated master plan and shall be reviewed and approved as to location by the Parks, Recreation and Public Lands Department prior to final plat approval.
9. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Juliet Spalding with the Planning Department at 247-8684 or by email at spaldingj@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Rick Selensky, HKM Engineering, Inc.

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

W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Final Plat of Gunn Estates Subdivision, 2nd Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of Gunn Estates Subdivision, 2nd Filing is being presented to the City Council for approval. On August 14, 2006, the City Council conditionally approved the 3-lot preliminary minor plat on 23,300 square feet of land for residential uses. The subject property is zoned Residential-7000 and is located on the north side of Lux Avenue, between Calhoun Lane and Orchard Lane. The owner is Mankin Construction, Inc. and the agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

FINANCIAL IMPACT: Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Gunn Estates Subdivision, 2nd Filing.

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

ATTACHMENT

A: Final Plat

ATTACHMENT A

Final Plat

(Back to Consent Agenda)

X1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,264,612.09 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 22, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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

X2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$842,177.29 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 29, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Zone Change #814 Public Hearing and 1st Reading of Ordinance
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a zone change request from Residential 9,600 (R-96) to Community Commercial (CC=5.52 acres), Neighborhood Commercial (NC=3.44 acres), Residential Professional (RP=2.29 acres), Residential Multi-family-Restricted (RMF-R=11.92 acres), Residential-6,000 (R-60=6.56 acres), Residential 7,000-Restricted (R-70-R=105 lots), and Public (P=park areas and trails) on a portion of a 288.38 acre parcel of land in the North 1/2 of Section 20 of Township 1 North, Range 26 East and C/S 1904. The property is owned by the State of Montana as school trust land and is located south of Wicks Lane, west of Governor's Boulevard and north of Constitution and Kootenai Avenues. The property is the proposed Skyview Ridge Subdivision. The Zoning Commission conducted a public hearing on July 3, 2007, and voted 3-1 to recommend approval to the City Council.

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 will increase the City's tax base when the property is developed.

RECOMMENDATION

The Zoning Commission recommends by a 3-1 vote that the City Council approve Zone Change #814 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

A: Site Photographs

B: Surrounding Zoning

C: Ordinance

INTRODUCTION

This is a zone change request from R-96 to multiple zoning districts for the proposed subdivision of state school trust land south of Wicks and north of Constitution and Kootenai Avenues. The property encompasses 288+ acres and the city has annexed the property. The state has also submitted a request for subdivision along with this zoning request. The proposed subdivision is named Skyview Ridge Subdivision. The subdivision does not plat all of the proposed lots but will include the eastern third of the total acreage with blocks, streets and park areas. Future subdivisions will plat the remaining undivided lots. Future owners may also submit subdivisions for individual building lots.

PROCEDURAL HISTORY

- A zone change request was received on June 5, 2007, for the subject property.
- The Zoning Commission conducted a public hearing on July 3, 2007, and recommended approval to the City Council by a 3-1 vote.
- The City Council will conduct a public hearing and first reading on July 23, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on August 13, 2007.

BACKGROUND

The state previously submitted a zone change request for this acreage in July, 2006. The previous submittal included Residential 7,000 (R-70) zoning for two family dwelling units on an estimated 140 lots. The R-70 zoning has been eliminated from this new proposal. The previous application included 199 lots for R-96 zoning and the current submittal includes 442 lots for the R-96 zoning district. These changes are based on several neighborhood meetings over the past year.

The state is proposing commercial zoning and multi-family zoning for the north east area of the acreage. CC zoning is proposed at the intersection of Wicks Lane and four lots for a total of 5.52 acres. This zoning mirrors the CC zoning on the north side of Wicks Lane. West of these four lots is proposed for 3.44 acres of NC zoning. South of the NC zone is a proposed RP zone of 2.29 acres. West of the NC and RP zones is proposed for five lots of RMF-R for a total of 11.92 acres. There are five lots of proposed R-60 zoning south of the proposed CC zone. This zoning mirrors the R-60 zoning district on the south east corner of the intersection of Wicks Lane and Governor's Boulevard. The R-60 zone encompasses 6.56 acres and will have access through an interior residential street. The remainder of the proposed subdivision is R-96 and R-70-R and only allows single family dwelling units. The R-70-R zoning is south of the proposed commercial zones and is not adjacent to any existing single family zoning districts. The proposed 49 acres of Public zoning includes the electric substation on C/S 1904 and the proposed park areas for the subdivision. The parks include linear parks, areas of geographical interest and areas for additional developed parks.

The state has conducted at least six neighborhood meetings on the proposed project and has sought to address neighborhood concerns. A primary concern in this neighborhood was the potential increase in traffic to surrounding streets from development densities greater than those allowed by R-96 zoning. The proposed subdivision will increase traffic in the area as do all new subdivisions. The current zoning application includes a potential for up to 547 single family

dwellings in the R-96 and R-70-R zoning districts. This is a reduction of 162 dwelling units from the previous zoning proposal. This will likely reduce the anticipated traffic by approximately 2,000 vehicle trips per day.

A Traffic Accessibility study has been conducted as part of the preliminary subdivision. The study has identified the likely routes to, through and from the proposed subdivision. The study has estimated that 5% of the new daily traffic would use the High Sierra Boulevard intersection at Alkali Creek Road. The remainder of the traffic out or into the subdivision would use Wicks Lane, Governor's Boulevard, or Constitution and Kootenai Avenues. The estimated total new daily traffic after full development is 12,500 vehicle trips per day. The estimated build out of the subdivision is 10 years.

The Planning Department reviewed the proposed zone changes and recommended approval based on the attached twelve (12) criteria for zone changes. The applicant has prepared a zoning plan that provides compatibility with surrounding property, conforms to the preferred land use plan in the Billings Heights Neighborhood Plan and will provide more area for neighborhood services in a residential area. Wicks Lane and Governor's Boulevard are principal arterial streets and have the capacity to accommodate the new traffic. High Sierra Boulevard and Constitution Avenue are collector streets that should accommodate the residential traffic. The new development will have to comply with all applicable zoning requirements. Future subdivisions will have to comply with regulations in place at that time. The new zoning gives reasonable consideration to the character of the district. The Zoning Commission conducted a public hearing on July 3, 2007, and recommended approval of the zone change on a 3-1 vote.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will allow medium density residential uses as well as neighborhood services at the intersection of two principal arterial streets. The growth policy and the Billings Heights Neighborhood Plan support this density and these uses in these locations. The 2003 Growth Policy supports contiguous development in and around existing population centers. This is an appropriate development of property adjacent to existing city services and will provide a variety of housing choices. The Billings Heights Neighborhood Plan supports medium residential density in this area. The commercial uses and multi-family zones are concentrated at the intersection of the arterial streets where traffic impacts can be controlled and located where neighborhood services can be provided.
2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning is not designed to lessen congestion in the streets but does locate zoning districts that generate the highest number of vehicle trips on arterial streets that are designed to handle the increase in traffic. Traffic impacts have been identified in a Traffic Accessibility Study and recommendations will be implemented through the Subdivision Improvement Agreement.
3. *Will the new zoning secure safety from fire, panic and other dangers?*

The property has public street frontage on Wicks Lane, Constitution and Kootenai Avenues. The subdivision when developed will provide new streets to City standards. No public health or safety issues have been raised with this application.

4. *Will the new zoning promote health and general welfare?*

The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.

5. *Will the new zoning provide adequate light and air?*

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Residential zoning districts allow for up to 30% lot coverage with the exception of the Residential-6,000 zone that allows up to 40% lot coverage. The Commercial and Residential Multi-family-Restricted zones allow up to 50% to 55% lot coverage. This should prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The Residential zones allow single family and multi-family dwellings. The average density of the entire parcel will result in approximately four dwelling units per acre or a population of 1,139 families. This is a density reduction from the 2006 zoning proposal of two dwelling units an acre or about 590 less families. The average household in Billings is 2.34 persons resulting in a population increase of approximately 2,722 over a 10-year build out period. The existing population of Billings Heights is about 20,000.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning should have an effect on the adjacent streets and traffic patterns. A traffic study has been completed and will be implemented through the subdivision agreement.

Water and Sewerage: The City will provide water and sewer service to the property and has adequate facilities to serve this property. Water pressure issues will be resolved through the subdivision improvement process.

Schools and Parks: There will be an effect on parks and schools from this rezoning. The Parks will be developed at the time of the subdivision and subject to a park maintenance district fee. The school district will be impacted by this development. They have met several times with the DNRC to discuss access issues and development phasing. The increase in school age population will require additional classroom space and staff. This may be off set by the overall increase to the School Trust income from the long-term leases of the commercial and multi-family lots as well as the sale of the single family lots.

Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*
The primary zoning in this area is Residential-9,600 to the north, south and east. There is a mixture of residential zones in the immediate area including R-6,000, R-5,000 and R-7,000. Each area that is adjacent to a particular zone has been mirrored in the proposed zoning and should be compatible with the surrounding districts.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning is not expected to appreciably alter the value of buildings in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on July 3, 2007, and forwarded a positive recommendation to the City Council by a 3-1 vote. Mr. Jeff Bollman of the DNRC and Mr. Dennis Randall of Engineering, Inc. attended the public hearing and explained the proposed zone change to the Zoning Commission. Mr. Bollman explained the changes from the zoning proposed in 2006. In addition, Mr. Bollman stated that the roadway plan had changed based on local traffic concern. The School District has agreed to allow an access drive to the east of the subdivision to connect with Governor's Boulevard near Castle Rock Middle School. Christine Kelly of 1041 Constitution Avenue testified that she was concerned about the existing traffic and how this development would have an impact on the surrounding neighbors. She attended some of the neighborhood meetings over the past year and appreciated the work the committee did to change the development plan. She stated she was concerned about construction coordination and maintaining pedestrian safety. No other property owners attended the public hearing or registered concerns about the zone change with the Zoning Commission or Planning Department.

RECOMMENDATION

The Zoning Commission recommends by a 3-1 vote that the City Council approve Zone Change #814 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

ATTACHMENT A
Site photographs – Zone Change #814



View south and west from Wicks Lane



View north and east from Constitution Avenue

ATTACHMENT B
Surrounding Zoning – Zone Change #814
Zoning Map

Skyview High
School

SUBJECT PROPERTY

Eagle Cliff
Elementary

ATTACHMENT C

Zone Change #814

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR A PORTION OF A 288.38 ACRE PARCEL OF LAND IN THE NORTH ½ OF SECTION 20 OF TOWNSHIP 1 NORTH, RANGE 26 EAST AND C/S 1904.

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 a portion of a 288.38 acre parcel of land in the North ½ of Section 20 of Township 1 North, Range 26 East and C/S 1904 and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning on a portion of a 288.38 acre parcel of land in the North ½ of Section 20 of Township 1 North, Range 26 East and C/S 1904 is hereby changed from Residential 9,600 to Community Commercial (5.52 acres), Neighborhood Commercial (3.44 acres), Residential Professional (2.29 acres), Residential Multi-family-Restricted (11.92 acres), Residential 6,000 (6.56 acres), Residential 7,000-Restricted (105 lots), and Public (park areas and trails) and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to Community Commercial, Neighborhood Commercial, Residential Professional, Residential Multi-family-Restricted, Residential 6,000, Residential 7,000-Restricted and Public 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 July 23, 2007.

PASSED, ADOPTED AND APPROVED on second reading August 13, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
City Clerk

ZC#814 – State Lands in the North ½ of Section 20 of Township 1 North, Range 26 East
and C/S 1904

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Teamsters Local 190 Labor Agreement (2007 - 2010)

DEPARTMENT: Administration

PRESENTED BY: Karla Stanton, Human Resources Manager

PROBLEM/ISSUE STATEMENT: Nearly half of the City's employees are members of the Teamsters Local 190. The employment contract between the local and the City expired on June 30, 2007. Management staff and union representatives began negotiating a new contract in May. The Council is being asked to approve a new three (3) year contract.

ALTERNATIVES ANALYZED: The Council can approve the contract, approve it with changes or reject the contract. Amending it or rejecting it will return the contract to management and union representatives to continue negotiations, or either party may request mediation.

FINANCIAL IMPACT: The estimated cost for the three (3) year contract is approximately \$1,804,335 in wages and benefits. Nearly 89% or \$1,603,935 of the cost of the contract is attributed to the annual cost of living adjustments (COLA).

RECOMMENDATION

Staff recommends that Council approve the three (3) year contract with the Teamsters Local 190.

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

ATTACHMENT

A: Contract (available for viewing in the City Clerk's Office)

INTRODUCTION

Nearly half of the City's employees are members of the Teamsters Local 190. The employment contract between the local and the City expired on June 30, 2007. Management staff and union representatives began negotiating a new contract in May. The Council is being asked to approve a new three (3) year contract. Joe Dwyer, Ed Bakken, Chad Bargstadt, Dan Bryan, Bud Hawkins, Bob Holbrook, Dirk Korn, Nancy Lindstrom, Randy Maul, Doug Studiner, and Deb Unruh represented the Union negotiating team. Anne Kindness, Sandy Raymond, Bonnie Sutherland, Al Towlerston, Ron Wenger, Mike Whittaker and Karla Stanton represented the Management negotiating team.

BACKGROUND

The City and the Teamsters have historically negotiated three (3) year contracts. The most recent contract expired on June 30, 2007. On Thursday, June 21, the Teamsters Union and City Management tentatively agreed on a new collective bargaining agreement (CBA). The CBA has a three-year term, so it covers the period of July 1, 2007 through June 30, 2010. The Teamsters approved the contract on July 13, 2007.

Some of the significant contract language changes are as follows:

- Eliminate the occurrence program for sick leave. The occurrence program was an effort to identify and remedy sick leave abuse, but sick leave usage has increased since this program started in 2004 and it requires significant administrative effort and oversight. Sick leave abuse will be handled under "just cause" principles applicable to other disciplinary matters and a separate paragraph in the CBA that addresses sick leave abuse. Supervisors will be trained to identify sick leave abuse and how to correct employees' behavior.
- Reduced from 10 to seven consecutive days of sick leave that requires a doctor's return to work release.
- Added that attendance and references may be considered in hiring decisions, in addition to the currently stated disciplinary record, skills and experience, when filling Teamster positions.
- Secured additional hours/days for temporary/seasonal employees. The contract currently exempts these employees from union membership if they work less than 132 days per year. Some departments need seasonal workers for longer periods. The limit was increased to 1,056 hours or 182 days.
- Obtained a Memorandum of Understanding (MOU) that allows rest breaks for 911 Center employees when workload permits them.
- Sanitation workers will not be required to pick up yard rubbish that is not of proper size, weight and bundled as required by City ordinance, except in cases of emergency. By October 1, a process will be developed for all employees to report safety issues to a City-designated Safety Officer. This will not be part of the contract but will be a Memorandum of Understanding.
- The number of steps in the grievance process will be reduced. The City Administrator will review only serious offenses (suspensions or terminations). Grievances for lesser

disciplinary actions will be handled through Human Resources, saving time for all parties.

- Seniority will transfer with the employee if the employee is forced into or absorbed by another division.

The monetary issues were settled last. The CBA sets cost of living adjustments (COLA) at the same rate as the CPI-U as of December of the prior calendar year, with a floor of 3 % and a cap of 4%. This is the same provision that MPEA (police) and the City Council approved last year and the same as approved with the IAFF (Fire) this year. The union asked for a 6% per year wage increase, significant increases in health insurance contributions, longevity (3-4 times current rate) and standby pay and lesser increases in shift differential and life insurance. The cumulative, three-year cost of these compensation proposals was approximately \$6.2 million. The tentative COLA agreement will cost approximately \$1.6 million, including payroll taxes.

After tentatively agreeing on the COLA, the management team speculated what additional amount of money would be needed to settle the remaining compensation issues. With past contracts, the figure has been several hundred thousand dollars. Instead of the usual proposal and counterproposal process that incrementally moves the parties closer to an agreement, the two teams agreed to try to settle the contract with a lump sum payment to the Teamster members. The tentative agreement is for a single, lump sum payment of \$600 to each Teamster upon contract ratification. The total cost is about \$200,000, including payroll taxes. The advantages of making the lump sum payment are 1) it is spread equally among all Teamsters rather than benefiting only those that are eligible for longevity, shift differential or other selective pay items, 2) it does not add to base wages so the cost does not compound over the years, and 3) it has the same purchasing power for the lowest paid employees and the highest paid ones, whereas longevity and standby pay reward senior and higher paid employees.

ALTERNATIVES ANALYSIS

The Council can approve, reject or amend the contract proposal. Approving it puts the contract provisions in place effective on July 1, 2007 through June 30, 2010. Rejecting or amending the contract forces the union and management to reopen negotiations or either party can request state mediation. In mediation the two sides identify the outstanding issues and the mediator works between the two sides, trying to devise a resolution. Additional steps that may be taken are to request fact-finding or binding arbitration. The Teamsters is the only City bargaining group that may strike over unresolved labor issues.

RECOMMENDATION

Staff recommends that Council approve the three (3) year contract with the Teamsters Local 190.

ATTACHMENT

A: Contract (available for viewing in the City Clerk's Office)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Award of Contract for Demolition of Existing Cobb Field
DEPARTMENT: Parks, Recreation, and Public Lands Department
PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: On November 7, 2006 the citizens of Billings voted to give the City authority to sell bonds up to \$12.5 Million to design and build a new Billings Baseball and Multi-Use Stadium to replace the existing Cobb Field. HNTB Montana has been retained as the Architects of Record to design, develop contract documents and oversee the construction of the new stadium.

The demolition of the existing Cobb Field will commence after the final game of the season for the Mustangs and will be completed approximately October 26, 2007. Bids were opened at 2:00 p.m., on July 10, 2007 at City Hall. Bids were received from 2 firms. The bids ranged from the highest of \$215,284.00 to the lowest of \$198,500.00. The Engineers estimate was \$250,000.00 which was 20.6% higher than the lowest bid.

FINANCIAL IMPACT: Funding for the project is through the sale of General Obligation Bonds approved by Voters in the November 7, 2006 General Election.

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: Up to \$12.5 Million General Obligation Bond.

The lowest and best bid received was from Magnum Contractors LLC of Boise Idaho, for a total amount of \$198,500.00. The low bid received is within the budget for the project. The bid tabulation summary is attached.

ALTERNATIVES ANALIZED:

- Award contract to the recommended finalist, or
- Award contract to another finalist, or

- Reject all bid proposals

RECOMMENDATION:

Staff recommends that Council approve the contract for the Demolition of Existing Cobb Field with **Magnum Contractors LLC** for the amount of **\$198,500.00**

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

Attachment

A. Bid Tab



BID TABULATION

DEMOLITION OF EXISTING COBB FIELD
CITY OF BILLINGS

July 10, 2007
2:00 p.m. MDT

CONTRACTOR	BID BOND Rec'd	ACKN. LIQ. DAMG	ADDENDA RECEIVED #1	BASE BID	ALT. BID #1 Remove Field Lights	ALT. BID #2 Field Light Fixture Salvage Value	ALT. BID #3 Remove Play Field Sod and Red Infield Dirt	ALT. BID #4 Play Field Sod and Red Dirt Salvage Value	NOTES
FLACK N FLACK									
JIM'S EXCAVATION									
JTL GROUP INC.									
MAGNUM DEMO	X	X	X	\$ 198,500.00	\$ 6,000.00	\$ 1,200.00	\$ 32,000.00	\$ -	
MATRIACH CONSTRUCTION INC.	X	X	X	\$ 215,284.00	\$ 41,000.00	\$ -	\$ -	\$ -	
CTA Estimate				\$250,000.00					

n:/sec/bidtabs/bidtab2007/COBB_DEMO.XLS

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 23, 2007

TITLE: Award of Contract for the New Baseball and Multi-Use Stadium at Athletic Park

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: On November 7, 2006 the citizens of Billings voted to give the City authority to sell bonds up to \$12.5 Million to design and build a new Billings Baseball and Multi-Use Stadium to replace the existing Cobb Field. HNTB Montana has been retained as the Architects of Record to design, develop contract documents and oversee the construction of the new stadium.

The construction of the new stadium is scheduled to begin approximately July 25, 2007 and will be ongoing throughout the remainder of the baseball season. The scheduled substantial completion date is June 30, 2008. Bids were opened for the project at 2:00 p.m., on July 10, 2007 at City Hall. Bids were received from 3 firms. The bidding documents called for a base bid with 12 alternates. The base bids ranged from the highest of \$13,375,000.00 to the lowest of \$11,467,000.00. The Engineers estimate was \$10,565,000.00 which was 7.9% high/lower than the lowest base bid.

FINANCIAL IMPACT: Funding for the project is through the sale of General Obligation Bonds approved by Voters in the November 7, 2006 General Election.

Location of Work: At Athletic Park comprising the entire block bounded by North 27th Street, North 25th Street, 9th Avenue North and 10th Avenue North.

Funding Sources: Up to \$12.5 Million General Obligation Bond.

The lowest and best bid received was from Langlas & Associates, Inc. of Billings, for a total amount of \$11,467,000.00. The low bid received exceeds the budget for the project. The bid tabulation summary is attached.

ALTERNATIVES ANALIZED:

- Award contract to the recommended finalist, or
- Negotiate with the apparent low bidder to bring cost in line with project budget prior to awarding the bid, or
- Reject all bid proposals

RECOMMENDATION:

Staff will make recommendation at the July 23, 2007 Council Meeting.

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

Attachment

A. Bid

**BID TABULATION****BILLINGS BASEBALL & MULTI-USE STADIUM
CITY OF BILLINGS**

July 10, 2007

2:00 p.m. MDT

CONTRACTOR	BID BOND Rec'd	ADMN. LIO. DAMG	Addenda Received	BASE BID	ALT. BID #1	ALT. BID #2	ALT. BID #3	ALT. BID #4	ALT. BID #5	ALT. BID #6	ALT. BID #7	ALT. BID #8	ALT. BID #9	ALT. BID #10	ALT. BID #11	ALT. BID #12	NOTES		
	#1	#2	#3	#4															
FISHER CONSTRUCTION INC.	X	X	X	X	X	X	\$13,375,000.00	\$500,000.00	\$68,000.00	\$14,000.00	\$102,000.00	\$49,000.00	\$140,000.00	\$43,000.00	\$28,000.00	\$88,000.00	\$148,000.00	\$33,000.00	\$28,000.00
GENERAL CONTRACTORS CONSTRUCTION	X	X	X	X	X	X	\$12,270,979.00	\$451,700.00	\$48,824.00	\$163,570.00	\$1,305.00	\$13,715.00	\$127,054.00	\$32,219.00	\$20,996.00	\$92,596.00	\$7,059.00	\$36,501.00	\$11,100.00
HARDY CONSTRUCTION																			
JTL GROUP INC.																			
LANGLAS & ASSOCIATES	X	X	X	X	X	X	\$11,467,000.00	\$496,500.00	\$57,000.00	\$14,300.00	\$137,000.00	\$23,000.00	\$131,000.00	\$44,500.00	\$23,000.00	\$93,000.00	\$80,000.00	\$33,000.00	\$28,000.00
MARTEL CONSTRUCTION																			
CTA Estimate							\$10,565,000.00												

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