

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

MARCH 12, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Mayor Tussing

ROLL CALL

MINUTES – February 26, 2007

COURTESIES – Community Services re: Walla Walla College

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY.

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

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

CONSENT AGENDA:

1. A. Bid Awards:

(1) **W.O. 07-03, Contract #1: 2007 Street Maintenance.** (Opened 2/13/07). (Delayed from 2/26/07). Recommend JTL Group, Inc., \$556,550.90. ([Corresponding Staff Memo A1](#))

(2) **Concessionaires for four (4) Car Rental Concessions in the Airport Terminal Building.** (Opened 3/06/07). Recommend delaying to 3/26/07. ([Corresponding Staff Memo A2](#))

(3) **One New Current Year 16-Foot wide Area Riding Mower.** (Opened 2/27/07). Recommend Midland Implement Co., \$59,542.00.

([Corresponding Staff Memo A3](#))

(4) Cab & Chassis – Brush Truck. (Opened 2/27/07). Recommend Archie Cochrane Motors, \$43,367.00.
[\(Corresponding Staff Memo A4\)](#)

B. W.O. 04-12: Alkali Creek Road Reconstruction, Contract Amendment #4 for Professional Services Contract, Kademas, Lee & Jackson, \$113,720.00.
[\(Corresponding Staff Memo B\)](#)

C. W.O. 04-33: Lake Elmo Drive (Hilltop Rd to Wicks Ln) Right-of-Way Acquisition:

(1) Parcel 37: Portion of Lot 8 Block 1, Rice Sub., Frank W. Baxter, \$3,200.00.

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

(2) Parcel 48: Portion of Lot 20, Block 1, Broadmoor Sub., Gladys M. Haapala, \$7,000.00.

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

D. Grant Application submittal to the Paul G. Allen Foundation, \$500,000.00.

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

E. W.O. 05-14: Walter Pump Station Expansion and Improvements, Right of Way Easement from Montana Dept. of Transportation (MDT).

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

F. Approval of Quit Claim Deed of Lot 2, Block 2, Arlene Sub., to Kevin & Carolee Ploehn, \$30,000.00.

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

G. Donation Acceptances on behalf of Mayor's Committee on Homelessness:

(1) Walla Walla College, re: work study student, \$1,440.00.
[\(Corresponding Staff Memo G1\)](#)

(2) Rimrock Foundation, re: Pioneer Human Services spring conference, \$1,500.00.
[\(Corresponding Staff Memo G2\)](#)

H. Donation Acceptance from St. John's Lutheran Ministries to Crime Prevention Center for Child I.D. kits, \$5,000.00.

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

I. Affordable Housing Fund Project Revision, Community Development, Inc., (CDI) request for change of units from 49 to 45.
[\(Corresponding Staff Memo I\)](#)

J. Disposal of "Trough" Sculpture to Wells Fargo Bank, \$1.00.
[\(Corresponding Staff Memo J\)](#)

K. Street Closures:

(1) Yellowstone Rimrunners: Shamrock Run, March 18, 2007, 3rd St. West and Ave. B, north on 3rd St. West, west onto Parkhill to Nordbye, east onto Parkhill, right on 3rd St. West and ending at Pioneer Park.

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

(2) Yellowstone Rimrunners: Montana Women's Run, May 12, 2007, 2nd Ave from 20th St. to Division St.; Division between 2nd and 3rd Aves., 3rd Ave. between Division and N. 20th St; and N. 20th St. between 3rd and 2nd Aves.

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

(3) Billings Caledonian Pipes and Drums, St. Patrick's Day Parade, March 17, 2007, regular Downtown Parade Route.

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

L. Application and Agreement with Billings Kiwanis Club for Billings License Plate.

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

M. Acknowledge receipt of petition to annex #07-04: a 10,454-square foot property described as C/S 598 in Lot 30, Clark Subdivision, located at 307 Garden Ave., Lana Jean Bittner, petitioner, and setting a public hearing for 3/26/07.

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

N W.O. 04-13, Schedule I: Filter Building Expansion and Improvements, Resolution to extend limits of administrative change order authority, \$775,000.00.

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

O. Second/final reading ordinance for Zone Change #797: A zone change from Residential-6,000 (R-60) to Community Commercial (CC) on a 14,383 square foot parcel of land, described as: Lots 26 and 27, Block 5, Central Heights Subdivision, 4th Filing, located at 2156 Central Avenue. Michael D. Stock, owner. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria.

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

P. Second/Final reading ordinance for Zone Change #798: A zone change from Agricultural Open (AO) to Neighborhood Commercial (NC) and Community Commercial (CC) on an 11.6-acre parcel of land, described as Amended Lot 65A-4, Sunny Cove Fruit Farms Subdivision. Mary Kramer, owner; Charlie Gamble, agent. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

Q. Preliminary Plat of MK Subdivision, generally located on the north side of Grand Avenue and west of 54th St. West, recommend conditional approval of the plat, approval of the variances, and adoption of the findings of fact.

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

R. Final Plat of Western Sugar Cooperative Subdivision.

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

S. Bills and Payroll.

(1) February 9, 2007

[\(Corresponding Staff Memo S1\)](#)

(2) February 16, 2007

[\(Corresponding Staff Memo S2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION creating Park Maintenance District (PMD) #4036: Josephine Crossing Sub. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property of Annex #07-02: approximately 13.01 acres, described as Lot 65 A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, located on the northwest corner of the intersection of Grand Avenue and 54th St. W south of Cottonwood Grove Sub., Mary Kramer, owner and petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION disposing of City-owned property described as a tract of land being situated in the NW4 of Section 32, Township 1 North, Range 26 East and more commonly known as *Normal Avenue*, and (1) deeding the property to Montana State University – Billings at no cost and (2) approving the easement agreement for public utilities running through previously vacated streets and *Normal Avenue*. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

5. PUBLIC HEARING AND VARIANCE #CC07-01: a variance from Site Development Ordinance, Section 6-1203(h)(3) concerning driveway width on property for new Fire Station #7, described as Lot 2, Block 1, Bishop Fox

Subdivision, and located at 1501 54th St. West. Staff recommends approval.
(**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

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

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

CALENDAR **(Council AND Boards & Commissions)**

MARCH:

3/12/2007	Energy & Conservation Commission Parking Advisory Board REGULAR Council Meeting	3:00 p.m. 4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
3/13/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 th Floor Library
3/14/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
3/19/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
3/20/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
3/22/2007	Yellowstone County Board of Health Community Development Board	7:00 a.m. 9:00 a.m.	Community Health Center 123 So. 27 th Street 4 th Floor Library

3/23/2007	Community Development Board	9:00 a.m.	4 th Floor Library
3/26/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
3/27/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 th Floor Library
3/28/2007	Development Process Advisory Review Board (DPARB) Traffic Control Board Housing Authority	1:00 p.m. NOON NOON	CH Conference Room 4 th Floor Library 2415 1 st Avenue North

APRIL:

4/02/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
4/03/2007	Community Development Board Zoning Commission Aviation & Transit Commission	9:00 a.m. 4:30 p.m. 5:30 p.m.	4 th Floor Library Council Chambers Airport Terminal
4/04/2007	Board of Adjustment	6:00 p.m.	Council Chambers
4/05/2007	EMS Commission Policy Coordinating Committee Human Relations Commission	7:30 a.m. 8:00 a.m. 12:15 p.m.	Main Fire Station 4 th Floor Library CH Conference Room
4/09/2007	Energy & Conservation Commission Parking Advisory Board REGULAR Council Meeting	3:00 p.m. 4:00 p.m. 6:30 p.m.	Billings Operations Ctr. 4848 Midland Rd. CH Conference Room Council Chambers
4/10/2007	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 th Floor Library
4/11/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
4/12/2007	Library Board Committee on Homelessness	11:30 a.m. 1:30 p.m.	Library 3 rd Floor Library
4/16/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
4/17/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
4/19/2007	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
4/23/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
4/24/2007	Planning Board	6:00 p.m.	4 th Floor Library

4/25/2007	Development Process Advisory Review Board (DPARB) Traffic Control Board Housing Authority	1:00 p.m. NOON NOON	CH Conference Room 4 th Floor Library 2415 1 st Avenue North
4/26/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Work Order 07-03, 2007 Street Maintenance Contract No. 1

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for the 2007 Street Maintenance Contract No. 1 on February 13, 2007. The consideration of award of Work Order 07-03, 2007 Street Maintenance Contract No. 1 was delayed until the March 12, 2007, City Council Meeting to allow the '08 CIP to be approved. This project will chip seal various streets throughout the city. Approximately 20 miles of residential and commercial streets will be chip sealed.

ALTERNATIVES ANALYZED:

1. Award Work Order 07-03, Contract No. 1, to JTL Group, Inc. in the amount of \$556,550.90;
or
2. Not award Work Order 07-03, Contract No. 1.

FINANCIAL IMPACT: Funding for the 2007 Street Maintenance Program, Contract No. 1, will be provided from Gas Tax and Street Maintenance Funds. This project will use the remaining funds in Paver from FY '07 and utilize funds from FY '08. The contract with JTL Group, Inc. includes language that will decrease the amount of work to fit the existing FY '07 budget if funds are not approved with the FY '08 budget. We received three bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 566,000.00
JTL Group, Inc.	\$ 556,550.90
Pavement Maintenance Solutions, Inc.	\$ 666,099.66
Riverside Sand & Gravel, Inc.	\$ 726,549.49

CIP Project #ENG98

'07 CIP Budgeted Amount	\$960,000.00	'08 CIP Budgeted Amount	\$560,000.00
Previous Encumbrances	\$623,000.00	Previous Encumbrances	\$000,000.00
Budget Fund Balance (after this award)	\$0,000.00	Budget Fund Balance (after this award)	\$340,449.10

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Chip Seal Maintenance Project with JTL Group, Inc. in the amount of \$556,550.90.

Approved By: City Administrator **City Attorney**

INTRODUCTION

Bids were received for the Street Maintenance Chip Seal Project on February 13, 2007. JTL Group, Inc. is the apparent low bidder.

PROCEDURAL HISTORY

If City Council chooses to award the chip seal contract, the project will move forward and be completed by September 1, 2007.

BACKGROUND

This project is part of the ongoing Street Preventative Maintenance Program supported by the City Council since 1985. Annually, staff identifies streets proposed for preventative maintenance. Staff proposes to bid this work in three contracts. The first contract is for chip sealing, the second contract will be for crack sealing, and the third contract will be for overlay resurfacing. This project will chip seal various streets throughout the city. The areas to be chip sealed are the North Park area, the area around Lewis and Clark Middle School, and the area west of 17th Street West between Rimrock Road and Colton Boulevard. Approximately 20 miles of residential and commercial streets will be chip sealed.

ALTERNATIVES ANALYSIS

Bids were received on February 13, 2007, with JTL Group, Inc. being the low bidder in the amount of \$556,550.90. JTL Group, Inc. was approximately 1.8% below the Engineer's Estimate.

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Chip Seal Maintenance Project with JTL Group, Inc. in the amount of \$556,550.90.

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

A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Postpone Approval of New Automobile Rental Concession Leases with the Four Car Rental Companies Providing the Highest Guaranteed Revenue Bids

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The existing Automobile Rental Concession Leases to operate at the Billings Logan International Airport are set to expire March 31, 2007. Interested parties submitted bids consisting of the amount of Minimum Annual Guaranteed (MAG) revenue that the individual car rental companies would be willing to pay the City for the opportunity to operate their business out of the Airport's Terminal Building for the next four years. The City received bids on March 6, 2007 for the opportunity to operate in the four available concession positions. Staff needs additional time to review the bid documents and ready the four concession leases with the four successful bidders, and desires to postpone the bid award until the March 26, 2007 Council meeting. A copy of the Automobile Concession Lease is on file in the City Clerk's Office and available for review.

FINANCIAL IMPACT: With the acceptance and approval of the top four Automobile Rental Concession bids, the City will be guaranteed a minimum revenue stream over the next four-year lease period. The actual amount of that revenue stream will be provided for the March 26, 2007 Council meeting

RECOMMENDATION

Staff recommends that Council postpone the award of the four Automobile Rental Concession Leases with the top four successful concession bidders until the March 26, 2007 Council meeting.

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

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

A3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Award of Bid for Replacement Park Mower
DEPARTMENT: Park, Recreation, and Public Lands
PRESENTED BY: Mike Whitaker, PRPL Director

PROBLEM/ISSUE STATEMENT: Bids were opened at 2:00 p.m. on Tuesday, February 27, 2007, for the purchase of a 3 mowing deck diesel fueled 16 foot riding mower unit to replace a similar mower, Unit 1678, as approved in the FY 07 Equipment Replacement Program. Specifications and bid documents were distributed to Billings-area dealers and the advertisement for Bids was published as required. There were two (2) bids received and both were in order and met specifications and bid requirements.

FINANCIAL: The replacement of Unit 1678 is in the adopted FY 07 budget as part of the approved Equipment Replacement Plan for the City Of Billings. The amount budgeted for the replacement of the unit is \$66,500. The low bid received that met specifications is the bid of \$59,542.00 with trade-in allowance from Midland Implement Co. of Billings, Montana.

RECOMMENDATION

Staff recommends that City Council award the bid to Midland Implement Co., Billings, Montana for the amount of \$59,542 including the trade-in allowance.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Award of bid for Cab & Chassis – Brush Truck
DEPARTMENT: Fire
PRESENTED BY: Marv Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: This unit is scheduled for replacement in the City's Equipment Replacement Program as approved by City Council during the FY 06/07 budget process.

The advertisement for sealed bids was posted on February 15 and 22, 2007, with the bid opening on February 27, 2007.

Bid packets were mailed to Chevrolet, Ford, Dodge and International.

FINANCIAL IMPACT: The City received two responses to the call for sealed bids.

<u>Vendor</u>	<u>Net Bid</u>
Motor Power Equipment, Billings, MT	No Bid
Archie Cochrane Motors, Billings MT	\$43,367.00

RECOMMENDATION:

Staff recommends that City Council award the bid to Archie Cochrane Motors for their bid of \$ 43,367.00.

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

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

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 2007

TITLE: W.O. 04-12 - Alkali Creek Road Reconstruction Professional Services Contract, Contract Amendment #4

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Phase 3 of the Alkali Creek Road Reconstruction project will reconstruct the portion of street between the BBWA siphon and the terminus of the Airport Road improvements on Alkali Creek Road. This Phase 3 will be bid and constructed in conjunction with the MDT Airport Road project, scheduled to be ready for construction bids later this year. Phase 3 street improvements are anticipated to include a reconstructed street surface, minor curve realignments, storm drain improvements, new guard rails, and a multi-use path. The purpose of Contract Amendment #4 is to develop the project plans and specifications using MDT's standards for inclusion in the MDT bid package for Airport Road. Design plans and specifications produced for MDT projects are significantly different than the plans typically produced for City of Billings projects. For this project, MDT will be utilizing metric units for all items, including bid item quantities. Also, MDT utilizes a standard rigid set of bid item naming and numbering conventions, different standard detailed drawings, and different contract provisions. Because this Phase 3 project will entail a whole separate set of design plans and contract documents beyond the scope and intent of the original services contract, Staff negotiated this proposed Contract Amendment #4 to compensate the consultant for these additional efforts. Contract Amendment #4 exceeds 10 percent of the original contract amount of \$210,860, so Council must approve this amendment in order for the consultant to begin work on the project.

FINANCIAL IMPACT: A summary of the professional services contract is as follows:

Original contract amount	\$210,860	Approved by Council 4/26/04
Contract Amendment #1	\$ 25,394	Approved by Council 1/10/05
Contract Amendment #2	\$ 2,071	Approved by Council 3/28/05
<u>Contract Amendment #3</u>	<u>\$ 10,000</u>	Approved by Council 7/11/05
Subtotal	\$248,325	
<u>Contract Amendment #4</u>	<u>\$113,720</u>	(this memo)
Total Amended Contract	\$362,045	

Funding for this contract amendment is available from project funds.

RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to execute Contract Amendment #4 to the professional services contract with Kadrmas, Lee & Jackson, Inc. in the amount of \$113,720.

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

INTRODUCTION

Alkali Creek Road from Airport Road to Senators Boulevard is projected to carry up to 10,000 vehicles per day by 2010. Phases 1 and 2 of the Alkali Creek Road project developed and reconstructed Alkali Creek Road from Senators Boulevard to the BBWA inverted siphon crossing. Phase 3 of Alkali Creek Road Reconstruction will reconstruct the portion of street between the BBWA siphon and the terminus of the Airport Road improvements on Alkali Creek Road in conjunction with the MDT Airport Road project. The MDT Airport Road project is expected to be “ready” for bidding in November 2007.

PROCEDURAL HISTORY

Completed Items

- February 16, 2004 – Proposals for professional services received by Engineering Division, in response to a Request for Proposals
- April 12, 2004 – Contract for Professional Services awarded to KLJ
- November 15, 2004 – Three phase plan for construction presented to Council
- January 10, 2005 – Contract Amendment #1 approved by Council
- March 28, 2005 – Contract Amendment #2 approved by Council
- July 11, 2005 – Contract Amendment #3 approved by Council
- October 28, 2005 – Phase 1 construction substantially complete
- September 15, 2006 – Phase 2 construction substantially complete

Future Items

- March 12, 2007 – Contract Amendment #4 approved (this memo)
- March 2007 – Phase 3 design begins
- October 2007 – Phase 3 design completed and ready to advertise for bids
- 2008 – Bidding and construction of Phase 3 with MDT Airport Road project
- 2009 –Phase 3 construction estimated completion

BACKGROUND

This Phase 3 will be constructed in conjunction with the MDT Airport Road project, scheduled to be ready for construction bids later this year. Phase 3 street improvements are anticipated to include a reconstructed street surface, minor curve realignment, storm improvements, new guard rails, and a multi-use path. Because the work items expected for this phase will be similar to the Airport Road project (e.g. rock excavation), it was determined that bidding this Phase 3 in conjunction with the MDT Airport Road project could result in cost savings for the City.

The purpose of Contract Amendment #4 is to develop Phase 3 project design plans and specifications using MDT’s standards for inclusion in the MDT bid package for Airport Road. Design plans and specifications produced for MDT projects are significantly different than the plans typically produced for City of Billings projects. For this project, MDT will be utilizing metric units for all items, including bid item quantities. Also, MDT utilizes a standard rigid set of bid item naming and numbering conventions, different standard detailed drawings, and

different contract provisions. Because this Phase 3 project will entail a whole separate set of design plans and contract documents beyond the scope and intent of the original services contract, Staff negotiated this proposed Contract Amendment #4 to compensate the consultant for these additional efforts.

The previous contract amendments were related to Phases 1 and 2 design work. Contract Amendment #1, approved on January 10, 2005, for \$25,394, was for additional alternative road sections analysis, additional stormwater analysis, and additional water main design. Contract Amendment #2, approved on March 28, 2005, for \$2,071, was for additional surveying due to development and for additional sanitary sewer services design. Contract Amendment #3, approved on July 11, 2005, for \$10,000, was for additional design services as necessary during Phases 1 and 2 construction.

RECOMMENDATION

Staff recommends that Council approve and authorize the Mayor to execute Contract Amendment #4 to the professional services contract with Kadrmas, Lee & Jackson, Inc. in the amount of \$113,720.

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

C1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 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 #37, a Portion of Lot 8, Block 1 of Rice Subdivision with Frank W. Baxter

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 #37 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 \$3,200.00. 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 \$3,200.00. 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 #37, a Portion of Lot 8, Block 1 of Rice Subdivision with Frank W. Baxter in the amount of \$3,200.00, 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 #37, a Portion of Lot 8, Block 1 of Rice Subdivision with Frank W. Baxter in the amount of \$3,200.00, 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>	Work Order: 04-33	<u>Yellowstone</u>		
DESIGNATION	Project No. 05153	COUNTY		
Parcel No.	Parcel Description	Section		
37	Lot 8, Block 1 of Rice Subdivision	22	Township	Range
			1N	26E

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

FRANK W. BAXTER
1230 LAKE ELMO DRIVE
BILLINGS, MT 59105
245-1543: 661-9000 cell

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.)

522 square feet by deed	\$1,749.00
Improvements (Concrete, trees, sod)	\$1,245.00
3. OTHER COMPENSATION:

504 square feet Temporary Construction Permit	\$ 169.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$3,200.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$3,200.00, to be made payable to FRANK W. BAXTER and mailed to 1230 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.
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

(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 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).

Frank W. Baxter 12/13/06 516-56-3251
Signature: FRANK W. BAXTER (Date) Tax ID No.

Signature: _____ (Date) _____ Tax ID No.

Signature: _____ (Date) _____ Tax ID No.

RECOMMENDED FOR APPROVAL: APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Ronald E. Olson 12-13-06 Mayor, City of Billings
Ronald E. Olson, Olson Land Services (Date) (Date)

ATTEST:

Frank W. Baxter 1/8/07 City Clerk
City of Billings, Public Works Department (Date) (Date)

LER-037.200 Baxter

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

Project No. W.O. 04-33 Parcel No. 37 County of YELLOWSTONE
Designation LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 13th day of December, 2006

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**:

FRANK W. BAXTER
1230 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. 37 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 8, Block 1 of Rice Subdivision, in the
City of Billings, 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 522 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 504 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. 37

Designation : LAKE ELMO ROAD ~ HILLTOP ROAD TO WICKS LANE

X Frank W. Baxter

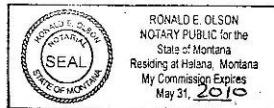
State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on December 13, 2006
(date)

by FRANK W. BAXTER
(names)

RELL OL

Notary Signature Line



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)

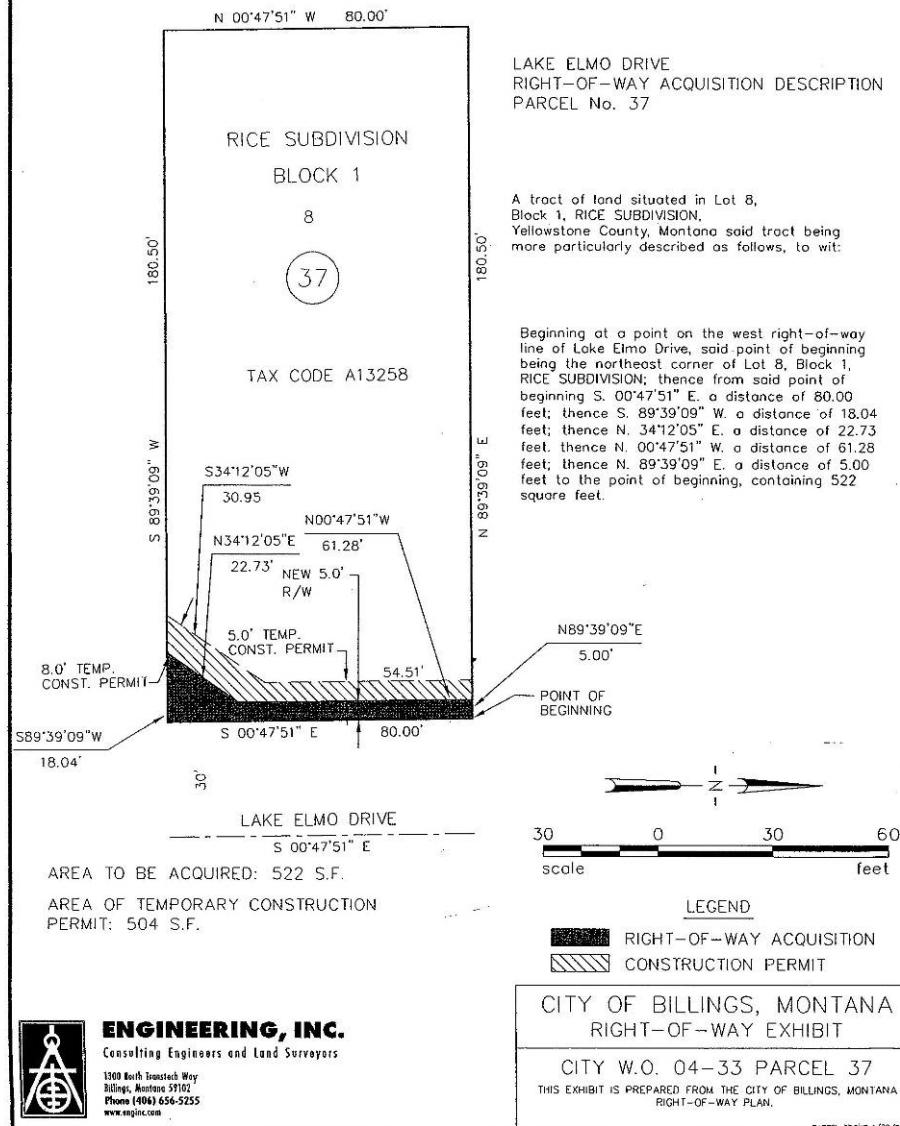
On this _____ day of _____, 200____, before me, a Notary Public in and for the
State of Montana, personally appeared _____ as Mayor and

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 8,
BLOCK 1,
RICE SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



(Back to Consent Agenda)

C2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 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 #48, a Portion of Lot 20, Block 1 of Broadmoor Subdivision with Gladys M. Haapala

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 #48 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 \$7,000.00. 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 \$7,000.00. 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 #48, a Portion of Lot 20, Block 1 of Broadmoor Subdivision with Gladys M. Haapala in the amount of \$7,000.00, and authorize the Mayor to execute these documents.

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

ATTACHMENT

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

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 #48, a Portion of Lot 20, Block 1 of Broadmoor Subdivision with Gladys M. Haapala in the amount of \$7,000.00, 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	Work Order: 04-33	Yellowstone		
DESIGNATION	Project No. 05153	COUNTY		
Parcel No.	Parcel Description	Section	Township	Range
48	Lot 20, Block 1 of Broadmoor Subdivision	22	1N	26E

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

GLADYS M. HAAPALA
1307 LAKE ELMO DRIVE
BILLINGS, MT. 59105
672-5064

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.)

900 square feet by deed	\$3,870.00
Improvements (Fence, concrete, shrubs, tree, sod)	\$2,851.00
3. OTHER COMPENSATION:

600 square feet Temporary Construction Permit	\$ 258.00
---	-----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$7,000.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:
A warrant in the amount of \$7,000.00, to be made payable to GLADYS M. HAAPALA and mailed to 1307 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.
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

(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 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).

X Gladys M. Haapala 1-17-07 517 20 8488
Signature: GLADYS M. HAAPALA (Date) Tax ID No.

Signature: _____ (Date) _____ Tax ID No.

Signature: _____ (Date) _____ Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 1-17-07 APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:
Ronald E. Olson, Olson Land Services (Date) Mayor, City of Billings (Date)

ATTEST:

Mark W. Bailey 2/20/07 City Clerk (Date)
City of Billings, Public Works Department (Date) (Date)
LER-048.200 Haapala

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

Project No. W.O. 04-33 Parcel No. 48 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 17th day of January, 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:

GLADYS M. HAAPALA
1307 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. 48 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 20, Block 1 of Broadmoor Subdivision,
in the City of Billings, on file under Document No. 411808, 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 900 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 600 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. 48

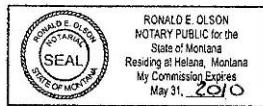
Designation : LAKE ELMO ROAD – HILLTOP ROAD TO WICKS LANE

Gladys M. Happala

State of Montana)
County of Yellowstone)

This instrument was acknowledged before me on January 17, 2007
(date)

by Gladys M. Happala
(names)



Reed O.
Notary Signature Line

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

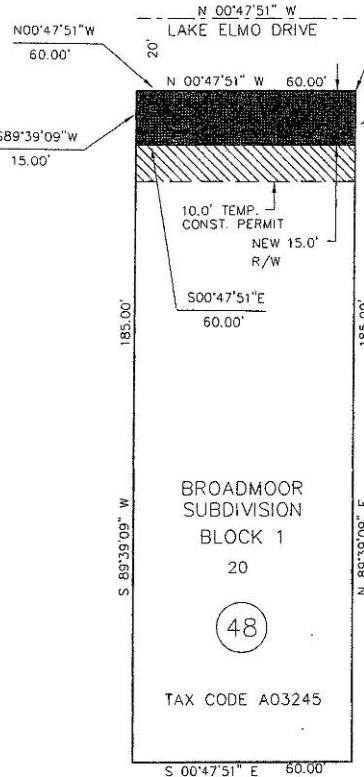
STATE OF MONTANA)
:ss
County of Yellowstone)

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

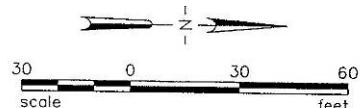
EXHIBIT A
RIGHT-OF-WAY ACQUISITION
AND TEMPORARY CONSTRUCTION PERMIT
SITUATED IN LOT 20,
BLOCK 1,
BROADMOOR SUBDIVISION,
YELLOWSTONE COUNTY, MONTANA



LAKE ELMO DRIVE
 RIGHT-OF-WAY ACQUISITION DESCRIPTION
 PARCEL No. 48

A tract of land situated in lot 20, Block 1, BROADMOOR SUBDIVISION, Yellowstone County, Montana said tract being more particularly described as follows, to wit:

Beginning at a point on the east right-of-way line of Lake Elmo Drive, said point of beginning being the northwest corner of Lot 20, Block 1, BROADMOOR SUBDIVISION; thence from said point of beginning N. 89°39'09" E. a distance of 15.00 feet; thence S. 00°47'51" E. a distance of 60.00 feet; thence S. 89°39'09" W. a distance of 15.00 feet; thence N. 00°47'51" W. a distance of 60.00 feet to the point of beginning, containing 900 square feet.



AREA TO BE ACQUIRED: 900 S.F.
 AREA OF TEMPORARY CONSTRUCTION
 PERMIT: 600 S.F.



ENGINEERING, INC.
 Consulting Engineers and Land Surveyors

1000 Kirti Tech Way
 Billings, Montana 59102
 Phone (406) 656-5255
www.englinc.com

LEGEND

■ RIGHT-OF-WAY ACQUISITION
 ■ CONSTRUCTION PERMIT

CITY OF BILLINGS, MONTANA
RIGHT-OF-WAY EXHIBIT

CITY W.O. 04-33 PARCEL 48
 THIS EXHIBIT IS PREPARED FROM THE CITY OF BILLINGS, MONTANA
 RIGHT-OF-WAY PLAN.

PARCEL 48.DWG

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

D



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday March 12, 2007

TITLE: Grant Application Submittal for the Paul G. Allen Foundation
DEPARTMENT: Planning & Community Development Division
PRESENTED BY: Candi Beaudry, Planning & Community Services Director
Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division has been invited to submit an application to the Paul G. Allen Foundation for \$500,000 on behalf of the Mayor's Committee on Homelessness. The grant would assist the Community Development Division in building administrative capacity for the Mayor's Committee on Homelessness, the Billings Area Resource Network, and the Business Consortium for Social Change. The grant would also provide for planning and development costs for a future housing project for the homeless in Billings.

The Mayor's Committee on Homelessness was approved through resolution by the City Council on April 24, 2006. Twenty members have been appointed by the Mayor and the Billings Area Resource Network has been established with over 150 listed participants to date.

ALTERNATIVES ANALYZED: If unable to pursue this grant, the Mayor's Committee on Homelessness would have limited capacity to implement strategies identified

FINANCIAL IMPACT: There is no match requirement for the grant from the City Council. City Council approval would allow the City of Billings to assist in grant preparation and administration of funded activities.

RECOMMENDATION

Staff recommends that the City Council authorize the submission of the Paul G. Allen Foundation grant and authorize City staff to negotiate and finalize and implement the grant if awarded.

Approved By: City Administrator _____

City Attorney _____

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

E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: W.O. 05-14—Walter Pump Station Expansion and Improvements,
Discharge of Right-of-Way Easement from MDT

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: W.O. 05-14 involves adding on to and improving the existing Walter Pump Station. The land on which the building addition is to be constructed is owned by the City, but the Montana Department of Transportation (MDT) holds an easement on this portion of land. MDT has agreed to discharge the easement on this portion of land, subject to the City signing a Release agreeing to indemnify and hold harmless MDT from and against any and all claims, demands or actions arising out of or resulting from MDT discharging the easement. The official Release form and associated correspondence from MDT is on file with the City Clerk.

FINANCIAL IMPACT: There is no financial impact to signing the Release for MDT to discharge the easement back to the City.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign, on behalf of the City, a Release to the Montana Department of Transportation for the discharge of an easement on that portion of land that the expansion of Walter Pump Station will be built upon.

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

ATTACHMENTS

A. Easement Release Documents (5 pages)

INTRODUCTION

W.O. 05-14 involves adding on to and improving the existing Walter Pump Station. The land on which the building addition is to be constructed is owned by the City, but the Montana Department of Transportation (MDT) holds an easement on this portion of land. MDT has agreed to discharge the easement on this portion of land, subject to the City signing a Release agreeing to indemnify and hold harmless MDT from and against any and all claims, demands or actions arising out of or resulting from MDT discharging the easement.

BACKGROUND

The Walter Pump Station is situated just south of Airport Road, near Boothill Cemetery. The expansion of Walter Pump Station was initially planned to be built to the southeast of the existing building. However, the presence of numerous underground utilities and petroleum lines made this area infeasible for further construction. The alternative was to build the addition to the northwest of the existing building.

The area of land in question was believed to be owned by the City, but HKM Engineering (MDT's consultant for their Airport Road project) notified us that the land was actually part of State right-of-way (ROW). Upon further investigation, it was determined the City of Billings granted an easement to MDT on February 11, 1955, for highway ROW adjoining Airport Road, but the City still owned the land. The easement strictly defines the land as highway ROW, so no structures can be placed in that area. MDT does not need this portion of land for their Airport Road project or for any future highway use, so they have agreed to discharge the easement on the particular portion of land immediately north of the existing Walter Pump Station. The City will then have no restrictions on constructing the addition in this area. However, MDT will discharge the easement subject to the City signing a Release agreeing to indemnify and hold harmless MDT from and against any and all claims, demands or actions arising out of or resulting from MDT discharging the easement. There are a couple of other conditions that must be met to proceed with discharging the easement, but MDT is addressing those issues.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign, on behalf of the City, a Release to the Montana Department of Transportation for the discharge of an easement on that portion of land that the expansion of Walter Pump Station will be built upon.

ATTACHMENTS

- A. Easement Release Documents (5 pages)

ATTACHMENT 'A'



Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Jim Lynch, Director

Brian Schweitzer, Governor

February 12, 2007

Will Robbins
Billings Public Works Department
510 North Broadway, 4th Floor
Billings MT 59101

FEB 13 2007

Subject: S 172(1)
Black Otter Trail
Z940-001-000
Parcel 7
Letter Agreement

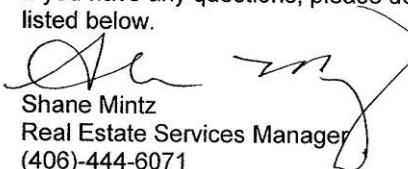
Reference Project: MT (9)

The City of Billings (City) has requested the Montana Department of Transportation (MDT) discharge all that portion of the Highway Right-of-Way Easement acquired under the above-referenced highway project S 1742(1), situated 15 meters southerly of the new centerline of the proposed highway project MT (9) between approximate Engineering Station 62+00 and 62+50 right.

MDT is agreeable to this discharge of easement (Discharge) subject to the following conditions:

- That MDT will be able to comply with the Montana Environmental Policy Act (MEPA) and the National Environmental Policy Act (NEPA) prior to finalizing this discharge. Said request for discharge is currently being reviewed by MDT's Environmental Services Bureau with anticipated approval of documentation supporting compliance by March 1, 2007.
- That the City will sign a Release agreeing to indemnify and hold harmless MDT from and against any and all claims, demands or actions arising out of, or resulting from MDT's discharging the above referenced easement area, including, but not limited to, damages, costs, and attorney fees. This release shall run with the land and be binding upon all heirs, successors, and assigns.
- That MDT will be able to finalize the Discharge when the Right-of-Way plans for MT (9) are finalized and filed in the Yellowstone County Courthouse, which is estimated to be completed by March 15, 2007.

If you have any questions, please don't hesitate to contact me at the number listed below.


Shane Mintz
Real Estate Services Manager
(406)-444-6071

Cc: Bruce H. Barrett, District Administrator-Billings
Jean A. Riley, P.E., Chief, Environmental Services Bureau
An Equal Opportunity Employer

**State of Montana
Department of Transportation**

Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Project ID: S 172(1) Parcel No.: 7 County: Yellowstone
Designation: Black Otter Trail
Project No.: Z940-001-000
Reference Project: MT (9)

RELEASE

We, the undersigned, the City of Billings, have requested the Montana Department of Transportation (MDT) to discharge a portion of the Easement for highway purposes that was conveyed to MDT by the City of Billings, dated February 11, 1955, recorded in Book 517, Page 354, Yellowstone County, Montana. The portion that we have requested that MDT discharge is described as follows:

A strip of land situated in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, Township 1 North, Range 26 East, P.M., M., Yellowstone County, Montana, as shown by the hatched area on the plat, consisting of 1 sheet attached hereto and made a part hereof.

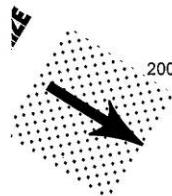
Now, on this _____ day of _____, 2007, we hereby agree to indemnify and hold harmless the Montana Department of Transportation (or any agent, representative, employee or successor in interest of MDT) from and against any and all claims, demands, or actions arising out of, or resulting from MDT's discharging of the above referenced easement area, including, but not limited to, damages, costs, and attorney fees. This release shall run with the land be binding upon all heirs, successors, and assigns.

The City of Billings:

Mayor Ron Tussing

State of _____ }
County of _____ }

This instrument was acknowledged before me on this _____ day of _____
2007, by Ron Tussing, Mayor of the City of Billings, MT.



(Seal)

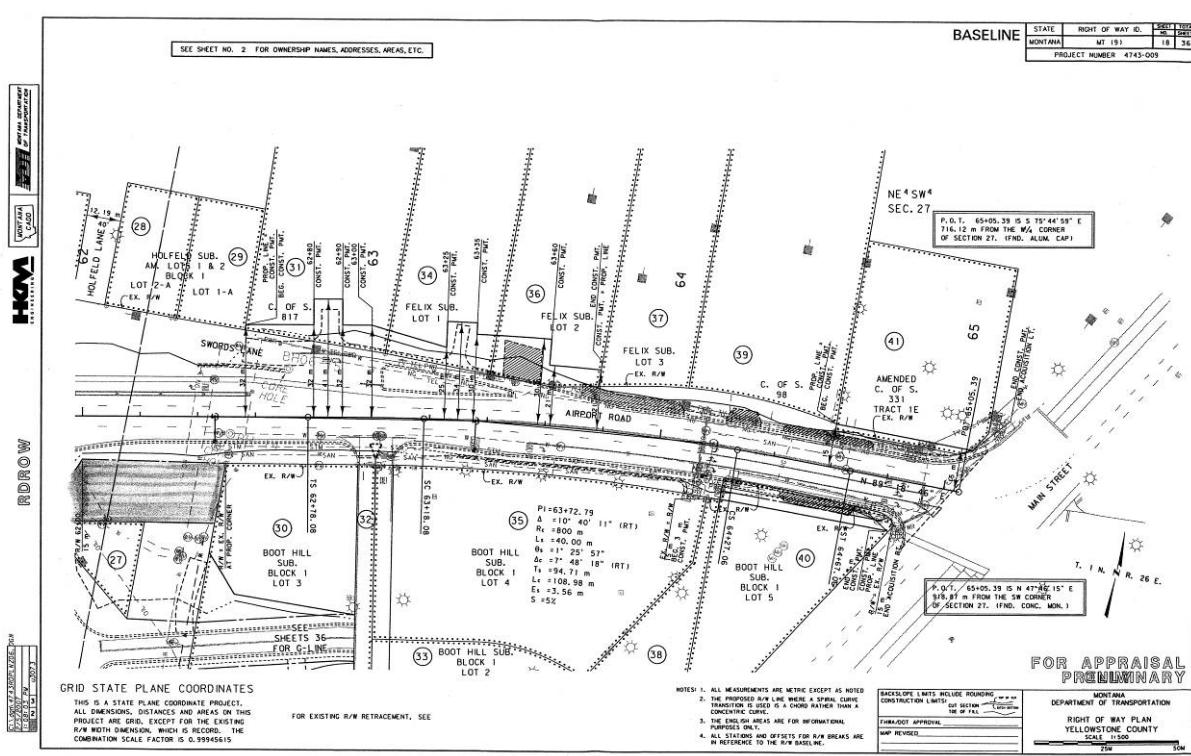
Notary Signature Line

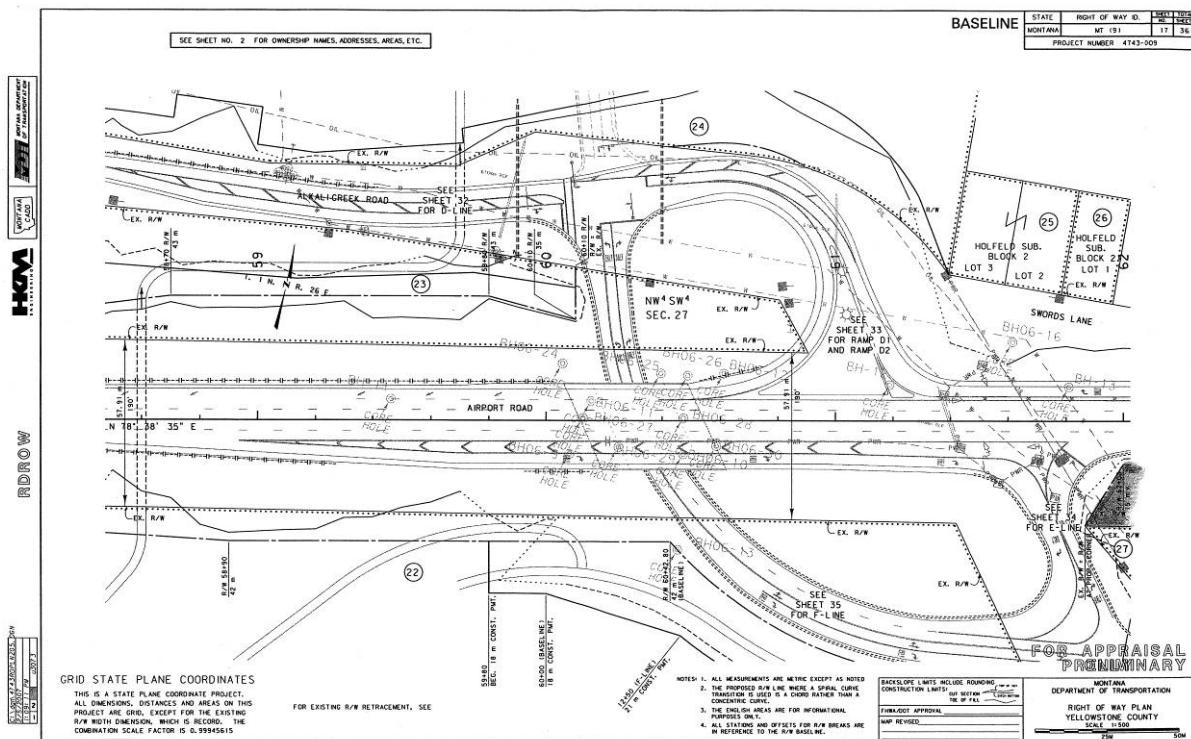
Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____





(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Quitclaim Deed of Lot 2, Block 2, Arlene Subdivision
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings owns Lot 2, Block 2, Arlene Subdivision as shown on the attached map. City Council approved a resolution authorizing the sale of Lot 2, Block 2, Arlene Subdivision at the January 8, 2007, City Council Meeting in which a public hearing was held. Kevin and Carolee Ploehn, owners of the adjacent lots, have offered to purchase Lot 2, Block 2, Arlene Subdivision for \$30,000. The city had a market analysis completed for this lot and the realtor stated that it is worth \$30,000.

ALTERNATIVES ANALYZED:

1. Approve Quitclaim Deed of Lot 2, Block 2, Arlene Subdivision.
2. Do not approve the Quitclaim Deed of Lot 2, Block 2, Arlene Subdivision.

FINANCIAL IMPACT: Kevin and Carolee Ploehn have offered to purchase Lot 2, Block 2, Arlene Subdivision for \$30,000, which is the amount in the market analysis done for the City of Billings.

RECOMMENDATION

Staff recommends that Council approve the Quitclaim Deed of Lot 2, Block 2, Arlene Subdivision to Kevin and Carolee Ploehn.

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

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

G1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 2007

TITLE: Donation Acceptance for the Mayor's Committee on Homelessness – Walla Walla College Work Study

DEPARTMENT: Planning & Community Services Division

PRESENTED BY: Candi Beaudry, Planning & Community Services Director, and Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division is requesting approval to accept an in-kind donation from Walla Walla College for \$1,440 on behalf of the Mayor's Committee on Homelessness. The college has offered to pay this matching amount for a work study student to assist the Mayor's Committee on Homelessness in the development of the ten year plan to impact chronic homelessness.

The Mayor's Committee on Homelessness was approved through resolution by the City Council on April 24, 2006. Twenty members have been appointed by the Mayor and a Provider Network Subcommittee has been established with over 60 listed participants to date.

ALTERNATIVES ANALYZED: Alternatives analyzed include either accepting the donation or not accepting the donation. If unable to accept the donation, the Mayor's Committee on Homelessness would not be able to receive in-kind assistance which would facilitate their efforts toward creating a ten-year plan to impact chronic homelessness.

FINANCIAL IMPACT: The City is not required to match the donation and there is no anticipated financial impact to the organization.

RECOMMENDATION

Staff recommends that the City Council accept the donation on behalf of the Mayor's Committee on Homelessness.

Approved By: City Administrator _____ City Attorney _____

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

G2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 2007

TITLE: Donation Acceptance for the Mayor's Committee on Homelessness - Pioneer Human Services Spring Conference

DEPARTMENT: Planning & Community Services Division

PRESENTED BY: Candi Beaudry, Planning & Community Services Director, and Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division is requesting approval to accept a donation from the Rimrock Foundation for \$1,500 on behalf of the Mayor's Committee on Homelessness. The grant would assist the Mayor's Committee on Homelessness in bringing Pioneer Human Services to Billings for a spring conference.

The Mayor's Committee on Homelessness was approved through resolution by the City Council on April 24, 2006. Twenty members have been appointed by the Mayor and a Provider Network Subcommittee has been established with over 60 listed participants to date. Pioneer Human Services has created an innovative approach toward impacting homelessness in Seattle by creating a "Social Enterprise" model which utilizes a business philosophy and fee-for-service workforce model.

ALTERNATIVES ANALYZED: Alternatives analyzed include either accepting the donation or not accepting the donation. If unable to accept the donation, the Mayor's Committee on Homelessness would not be able to receive funding which would facilitate their efforts toward creating a ten-year plan to impact chronic homelessness.

FINANCIAL IMPACT: The City is not required to match the donation and the financial impact to the organization is limited to administration of payments for the conference.

RECOMMENDATION

Staff recommends that the City Council accept the donation on behalf of the Mayor's Committee on Homelessness.

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

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

H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Acceptance and Recognition of \$5,000 Donation from St. John's Lutheran Ministries for Child I.D. Kits

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On February 9, 2007, St. John's Lutheran Ministries held a benefit dinner and musical show to raise money for the purchase of Child I.D. Kits for the Crime Prevention Center (CPC). These Child I.D. Kits are handed out at the CPC, bike rodeos, health fairs, safety fairs, neighborhood watch programs, daycare centers, etc. A \$5,000 check was received on February 21, 2007, and was deposited into the crime prevention donations account. We are asking City Council to approve acceptance of this donation for the purchase of Child I.D. Kits.

FINANCIAL IMPACT: This donation will be used solely for the purchase of Child I.D. Kits.

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$5,000 donation to the Crime Prevention Center for the purchase of Child I.D. Kits.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday March 12, 2007

TITLE: Staff Recommendation for Affordable Housing Fund project revision
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Brenda Beckett, Community Development Manager
Vicki Lapp, CD Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Community Development, Inc.(CDI) for funding from the Affordable Housing Fund. Their proposal was to assist them in building a 49 unit, multi-family rental complex located at 553 Lincoln Lane. The initial application proposed all 49 units be targeted for families at or below 55% of Area Median Income(AMI). Due to the increase in construction costs, they have requested a change in the number of units from 49 in the original proposal to 45.

ALTERNATIVES ANALYZED: Alternatives would be (1) To approve the change in the number of units; thereby assisting in providing 45 units of quality, affordable housing. (2) Not approve the change in the number of units.

FINANCIAL IMPACT: There has been no request for additional funding for this project. The \$350,000 of HOME/CDBG funds committed to the project is a 3% interest, 40 year, fully amortized loan. They have requested payback be deferred until the 5th year after project completion.

RECOMMENDATION

Community Development Board and Staff recommend City Council approve the request from CDI for the change of units from 49 to 45. Additionally, the CD Board has recommended City Council set a time limit of 30 days to return the executed Development Agreement.

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

Attachments

- A. DRAFT Revised Development Agreement
- B. Letter from Kelly Gill, CDI

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004, in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing. They were affordability, condition and rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers/parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. With the variety of bedroom sizes, including the larger ones this project is proposing, it would help to meet those needs.

The 2005 Housing Needs Assessment indicates that twice the renters than the homeowners are cost burdened, 66% of the renter households are considered low income, and 32% of the total renter households are cost burdened, and living in overcrowded and/or substandard housing.

There are 5,637 renter households under 50% AMI. This report indicates 67.5%, of the renter households with incomes at or below 50% AMI (which is the income group this project is targeting) are cost burdened. This translates into approximately 3,805 households that could benefit from this project.

Thirty-three percent of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type, only behind affordable single family homes for purchase. The Census Tract the project is located in is 60 – 69% low to moderate income.

PROCEDURAL HISTORY

November, 2004	CDI presents application to Community Development.
December, 2004	Potential conflict of interest identified with CDI partnership with CHIP.
May 3, 2005	Project presented to CD Board; applicant present to answer questions.
June 7, 2005	Staff recommendation to CD Board.
June 27, 2005	CD Board and Staff Recommendation to City Council.
August, 2005	Development Agreement to CDI.
December, 2005	Development Agreement returned to City and recorded.
2006	CDI returned the 2005 Low Income Housing Tax Credits awarded them.
January, 2007	CDI requested approval for a reduction in the number of units in the project from City of Billings.
February 6, 2007	Revised project presented to CD Board for approval.
February 2007	CDI applied for Low Income Housing Tax Credits again.
March 12, 2007	Staff recommendation for reduction in units to City Council.

BACKGROUND

This project consists of 8 two-story, six-plex buildings with a mix of bedroom sizes from two to four. There will be a Community Building which includes a manager's unit, manager's office,

common laundry, computer room, exercise room, kitchen, lounge/meeting room, tot lot, sports court and adequate parking.

The original project planned for 49 units. During the time the project would have been sent out to bid, Hurricane Katrina hit and construction costs rose rapidly. The developer found they could not build the project with the funding they had and they returned the Low Income Housing Tax Credits that had been awarded with the thought of re-applying the next year for more tax credits. CDI re-bid and value engineered the project to decrease unnecessary costs, but still found they would have to request more than the maximum amount of tax credits that they are allowed to apply by the state program regulations. The only alternative was to request a reduction in the number of units. This will not change the HOME per unit subsidy, nor the number of HOME assisted units. Since a Development Agreement has been approved and signed by the City for 49 units, they have requested approval to reduce the units to 45. The new application for LIHTC shows the reduction in units.

Organizational Strengths

This will be the largest project in Montana developed, owned and operated by CDI. CDI has 3 other LIHTC projects located in Corvallis (36 units); Dillon (24 units) and Anaconda(10 units). The balance of projects they own and operate are in Idaho, Utah, Wyoming and Alaska, Nevada, Arizona and Washington state. CDI is a private nonprofit organization specializing in real estate and community development and was founded in 1994. The CEO and Co-Chair have a collective 22 years of affordable housing development and management experience. Programs they have extensive knowledge and experience with include Low Income Housing Tax Credits, HOME, HUD Section 202 and Section 811 programs as well as numerous Rural Development programs.

Relocation

When the intent to purchase for the property was signed, there was a tenant living in the house located on the property. According to CDI, this tenant had already given his intent to vacate when the purchase option was signed. When the next tenant moved in, CDI requested the property manager to inform the prospective tenants of their intention to purchase the property, that they would be required to move, and that they were not eligible for relocation benefits. This follows the Uniform Relocation Assistance Act requirements. CDI has confirmed they are prepared to take on the relocation costs, if necessary. Before a Development Agreement is signed, documentation will be required regarding the status of the tenants, and the notifications that have been sent along with the dates they were notified to ensure the Relocation Requirements have been appropriately met. The Development Agreement will also spell out who is responsible for Relocation Assistance.

Financial Plan

New sources of funds to complete the project financing are as follows:

City of Billings HOME/CDBG	\$ 350,000
Low Income Housing Tax Credits	\$ 5,461,079
Permanent Loan	\$ 1,750,000

Deferred Developer's Fee	\$ 32,596
TOTAL	\$ 7,593,675

CDI is proposing to acquire a permanent loan in the amount of \$1,750,000. The term of the loan is 40 years with 7.2% interest; however the loan is amortized over 18 years. This would mean an annual payment of \$133,562 dollars, which is reflected in the pro forma. The pro forma includes the payment to the City of \$17,707 annually, starting in year 6. It is also typical of these types of projects to defer part of the Developer's Fee; which CDI is proposing.

HOME Requirements Review

Total square feet of the project is 51,332. The building housing the manager's apartment and office, as well as all the common areas, is approximately 3,300 square feet, so cost per square foot of the actual living space is \$109. This is consistent with other recent projects that have been funded. CDI is proposing 5 units be HOME assisted. HOME cost per square foot of the 5 units proposed to be HOME assisted is \$70. HOME per unit subsidy is \$70,000. Maximum subsidy for a 3 bedroom unit is \$81,563 and a 2 bedroom unit is \$63,049; so, 5 of the 3 and 4 bedroom units would **have** to be HOME assisted. CDI is requesting 7% of total project costs from City, which would equal 4 units. They are targeting 5 units to be HOME assisted, which translates to 10% of the total. The subsidy is appropriate.

The HOME 25% match requirement is being met through a reduction in architectural and engineering fees and construction loan fee waivers for \$164,500. Also a portion of the property tax exemption will be used when that is approved.

Low Income Housing Tax Credits(LIHTC) Restrictions & Requirements

The revised project applied for LIHTC during the February 2007 funding cycle. The results of the application are not known at this time.

LIHTC require that owners target no less than 40% of the units to be rented to 60% AMI or less. All of the units will be at 55% AMI or less. They also require projects must remain rent and income restricted for a minimum period of 15 years. CDI is proposing this project be restricted for 31 years. The LIHTC rent and income restrictions are enforced through Restrictive Covenants that are recorded against the title of the property at closing.

Ten percent of the State's allocation must be set aside for projects involving qualified nonprofit organizations. CDI is a nonprofit, however, they are partnering with a local non-profit as well, the Eastern Montana Association of Affordable Housing (EMAAH). EMAAH and CDI have a Memorandum of Agreement in which EMAAH will receive \$50,000 of the \$767,404 Developer's fee, have 1% of .49% ownership interest in the project and will also have first right of refusal at the end of the tax compliance period, 31 years.

In reviewing the application for cost limitations, CDI has followed the LIHTC allowed percentages with regard to construction contingency, developer's fees, builder's overhead and general requirements.

ALTERNATIVES ANALYSIS

Alternatives would be (1) To approve the change in the number of units; thereby assisting in providing 45 units of quality, affordable housing. (2) Not approve the change in the number of units. Not approving the change in units would put a stop to the development.

STAKEHOLDERS

- Stakeholders include the Heights Area Task Force who have indicated unanimous support for this project.
- Low Income families and individuals in the community. This project is targeted to families and individuals under 55% AMI.
- Disabled individuals and families in the community. The proposed project will have 6 to 8 units targeted for disabled, 1 of those will be accessible for individuals with sensory impairments and 2 of them will be set aside for HIV/AIDS positive tenants.
- Surrounding property owners. By funding this project, a new, high-quality family housing complex with numerous amenities to complement the neighborhood will be constructed. This will have a positive impact on the surrounding property owners through increasing the value of their homes and the neighborhood as a whole.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This project meets the following three strategies in the City's Consolidated Plan.

- Promote New Affordable Housing Opportunities
- Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs
- Improve the economic conditions of lower income households in the community

Additionally,

- The property is located within the City limits and is zoned Neighborhood Commercial; multi-family housing is an approved use. Parking & landscaping are required and are being included in the site plan. CDI has purchased the land so therefore has site control.
- This project is consistent with the Heights neighborhood Plan. The Plan encourages infill housing, which this project addresses.

SUMMARY

An overall review of the funding for the project reveals it to be consistent with other similar projects that the City has funded. The HOME/CDBG subsidy amount being requested is consistent with the number of HOME/CDBG assisted units, and is not over the subsidy limitation. Match requirements are being appropriately met, as well as Section 504 accessibility requirements. There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment. The owner/developer has extensive experience, both in developing and managing Low Income Housing Tax Credit projects and is knowledgeable of the HOME program requirements as well. Due to the length of time between the approval of the project for funding and the return by the developer of the signed Development Agreement, the CD Board is also recommending City Council set a time limit of 30 days for CDI to return the executed documents to the City.

RECOMMENDATION

Community Development Board and Staff recommend City Council approve the request from CDI for the change of units from 49 to 45. Additionally, the CD Board has recommended City Council set a time limit of 30 days to return the executed Development Agreement.

City of Billings
HOME Investment Partnerships Program
DEVELOPMENT AGREEMENT

This AGREEMENT, dated the ____ day of _____ 2007, between the **CITY OF BILLINGS**, a Montana municipal corporation, whose address is P. O. Box 1178, Billings, MT 59103, and **Community Development, Inc.** (CDI) a 501(c)3 non-profit corporation (Developer) whose address is 4110 Eaton Avenue, Ste A; PO Box 1214, Caldwell, ID 83606.

WHEREAS, the Developer desires to work with the City and construct 8, six-plex buildings with 45 multi-family rental units of affordable housing, of which **5** of the three & four bedroom units will be HOME assisted, on developer-owned property in the City of Billings, Yellowstone County, Montana commonly known as 553 Lincoln Lane, or;

That part of the Northeast quarter of Section 27, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Tract 1 of Certificate of Survey 3176 on file in the office of the Clerk & Recorder of said County, under Document No. 3263321.

WHEREAS, the City has concurrently entered into a HOME Contract with HUD whereby the City will receive and administer HOME moneys to provide financing, in part, for the new construction project to be undertaken by the Developer.

WHEREAS, Developer is desirous of obtaining such financing on the Project and is willing to assume obligations to the City under the HOME Contract on the terms and conditions, as provided herein.

WHEREAS, the Developer desires to build the structures for affordable rental housing, and the Developer desires to use HOME funds for land acquisition, closing costs, site work, and related development costs;

WITNESSETH THAT the City of Billings and the Developer, mutually agree as follows:

PURPOSE

The purpose of this Agreement is to provide HOME funding for project activities approved by the City under its Home Investment Partnerships Program (HOME); and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act* (Title II, Public Law 101-625, approved November 1990, 104 Stat. 4079, 42 U.S.C. 12701-12839), as amended.

B. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT

NOT ATTACHED HERETO:

The Developer agrees to comply with all appropriate federal, state, and local laws applicable to activities undertaken through this agreement, including: Program requirements under the HOME Investment Partnerships Program 24 CFR Part 92, and the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the

application, acceptance, and use of federal funds for this program, Developer's project application statements, as well as the Uniform Relocation Act and Section 104 (d). Incorporated by reference is Title VI of the Civil Rights Act of 1964. Executive Order 11246, Section 3, Federal Labor Standards set forth in 24 CFR 570-605 and the Americans with Disabilities Act.

C. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

1. The Developer will comply with all applicable parts and requirements of the *National Affordable Housing Act of 1990* (as amended), as now in effect or as they may be amended during the term of this Agreement; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
2. The Developer agrees to comply with Exhibit A, Scope of Services & Project Restrictions, together with the attachments thereto marked Exhibits A(1) through A(5), all of which are attached and incorporated herein by reference: as if fully set forth.
3. The Developer agrees that all contracts entered into by the Developer for the completion of the activities described in Section K of this Agreement will contain provisions requiring Developers to comply with all applicable HOME requirements. These contract provisions are to be included in all subcontracts and are attached as Exhibit A(4).
4. The Developer expressly agree to repay to the City of Billings any funds paid on behalf on the Developer or its subcontractors that are expended in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME program, or if for some reason the project is unable to move forward in a timely manner.
5. Period of Affordability. The Developer agrees that all units constructed under this Agreement will initially be rented to a low to moderate income tenant under the terms of the Deed Restriction Agreement attached as Exhibit A (5). For purposes of this Agreement, the period of affordability, during which time Developer agrees to monitor and report on the project as required by the City of Billings, is as follows, whichever is greater:
 - a. Period Of Affordability: 20 years

D. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the Developer or its subcontractors.

E. COMPENSATION

The City of Billings shall compensate the Developer for all eligible project costs as identified in the Scope of Services of this Contract in the total amount of \$ 300,000. Notwithstanding

anything to the contrary here, the City's obligation to make periodic or final payment to the Developer shall be conditioned upon the receipt by City of grant funds sufficient to make such payment.

F. PAYMENT METHOD

Payment for reimbursement of actual and proper expenditures of funds plus an estimation of funds needed for a reasonable length of time shall be made in accordance with the Development Agreement between City and Developer. City may withhold any payment if the Developer has failed to comply with program objectives, contractual terms, or reporting requirements. City may withhold payment of the final five percent (5%) of the total Contract amount until the Developer has submitted and City has accepted all required financial and performance report information required pursuant to either the Grant or City requirements.

G. DEVELOPER AN INDEPENDENT DEVELOPER

The Developer shall be an independent Developer, and may not be the agent or employee of City, and shall have no authorization, express, implied, or apparent, to bind City to any agreements, settlements, liability, or understanding except as expressly set forth herein.

H. PERSONNEL

The Developer represents that it has, or shall secure, at its own expense, all personnel required in performing the services under this Development Agreement. All of the services required hereunder shall be performed by the Developer, or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services provided hereunder, the Developer and any subcontractors shall be properly licensed therefore.

I. TIME OF PERFORMANCE

This Contract shall become effective upon its execution. The Project shall commence as soon as practicable after the execution of this Contract and shall be undertaken and performed in accordance with the schedule set forth in the Development Agreement between the City and Community Development, Inc. CDI, Inc agrees that time is of the essence in the performance of its obligations under this Agreement, and that completion of the Project shall occur no later than the termination date plus authorized extensions as set forth in the Development Agreement between the City and Developer.

J. TERMINATION DATE

This contract shall terminate no later than 24 months after the date upon which it was executed, plus authorized extensions as set forth in the Development Agreement between the City and the Developer.

K. SCOPE OF ACTIVITIES

The Developer will carry out the activities as set forth in Exhibit A and the attachments thereto. The major components of the project include: new construction of 8 six-plex buildings which will house 45 units of affordable, rental housing for low to moderate income households and will be located at 533 Lincoln Lane. Five of the three & four bedroom units will be HOME assisted.

L. PROJECT BUDGET

The project budget is included in Exhibit A (2). The Developer may modify this budget only after having requested and received the City's written approval of the adjustment.

M. LIAISON AND NOTICE

Vicki Lapp, CD Program Coordinator, is the City's liaison with the Developer.

C. Fred Cornforth is the Developer's liaison with the City.

Notice will be sufficient if given in writing and mailed to the parties' liaison at the addresses described above.

N. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any subcontractor pursuant to this Agreement are to be the property of the Developer, and the City, which each have the nonexclusive and unrestricted authority to release, publish or otherwise use in whole or in part, information relating to it. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written permission of the City of Billings and the Developer.

O. ACCESS TO RECORDS

The Developer will supply to the City copies of all pertinent records, including, but not limited to, contracts, approved invoices and lien releases. The City will retain records of the Developer's performance under this Agreement and will allow access to these records at any time during normal business hours by the Developer, the U.S. Department of Housing and Urban Development, and the Comptroller General. These records will be kept at the Community Development Office, 510 N. Broadway, Billings, Montana.

Project Records Required:

1. Documentation that the project meets applicable property standards for HOME rehabilitation activities;
2. Documentation that the rents charged in each HOME assisted unit conforms to HOME Program requirements;
3. For each household renting a HOME assisted unit, a copy of the rental application, income verification, and lease agreement and subsequent annual income verifications.

The records described above must be retained for a period of five years after project closeout. The records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five years after the required period of affordability. If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular five-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

P. PROGRESS REPORTING

The Developer will promptly submit status reports on project progress at the request of, and in the format prescribed by, the City of Billings.

Q. AVOIDANCE OF CONFLICT OF INTEREST

The Developer will comply with the provisions of 24 CFR § 92.356; and with § 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, regarding the avoidance of conflict of interest.

No officer, employee, or agent of the Developer or immediate relative (spouse, parent, sibling, child) shall be an investor, officer, employee or agent of the City or Developer or receive any compensation from the Developer during the term of this agreement.

R. MODIFICATION AND ASSIGNABILITY OF AGREEMENT

This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement.

This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein. The City & Developer accept responsibility for adherence to the terms of this Agreement by contractor, subcontractor or sub-recipient entities and by its agents, if any, to which it delegates authority to carry out portions hereof.

S. CONSTRUCTION AND VENUE

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the Thirteenth Judicial District in and for the County of Yellowstone, State of Montana.

T. INDEMNIFICATION

The Developer waives any and all claims and recourse against the City, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Developer's or any contractor, subcontractor or sub-recipient's performance of this Agreement.

Further, Developer will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the Developer or any contractor, subcontractor or sub-recipient's performance of this Agreement. In the event that the City of Billings is named as a co-defendant in any action relating to activities to be performed by the Developer or sub-recipient under this Agreement, the Developer will notify the City of such fact.

U. TERMINATION OF AGREEMENT

This Agreement may be terminated as follows:

Termination Due to Loss of Funding. The parties hereto expressly recognize that Developer is to be paid, reimbursed, or otherwise compensated with federal HOME funds provided to City under the HUD HOME Contract for the purpose of contracting for the services provided for herein or with program income; and therefore, Developer expressly understands and agrees that all its rights, demands, and claims to compensation arising under this contract are contingent upon receipt of such funds by City. In the event that such funds or any part thereof are not received by City, City may immediately terminate or amend this agreement.

Termination for Cause. If, through any cause, Developer shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the Developer shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Developer of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. It is understood that the

Developer and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination, if City shall so request in writing. If the Agreement is terminated by the City as provided herein, the Developer will be reimbursed in an amount equal to the actual expenses incurred as of the date of termination.

Notwithstanding the above, the Developer shall not be relieved of liability to City for any damages sustained by City by virtue of any breach of contract by the Developer, and the City may withhold any payment to the Developer for the purpose of setoff until such time as the exact amount of damages due to the City from the Developer is determined.

Return of Material. In event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Developer under this Agreement, shall, at the option of the City, become its property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Compensation. In the event of termination, Developer shall be paid an amount which bears the same ratio to the total compensation as the services actually performed up to the effective date of termination bear to the total services of Developer covered by this Contract, less payments of compensation previously made: provided, however, that if less than sixty (60) percent (60%) of the services covered by this Agreement have been performed upon the effective date of such termination, Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Agreement) incurred by Developer during the Agreement period which are directly attributable to the incomplete portion of the services covered by this Agreement.

Remedies. Where either party violates or breaches contract terms, the other party, in its discretion, may, in addition to terminating this Agreement, institute such administrative, contractual, legal or equitable remedies available as may be appropriate. In such event, the party found in violation of the Agreement shall pay the other party's costs and reasonable attorney's fees incurred thereby.

V. CONTRACT SUSPENSION

If the Developer fails to comply with any contractual provision, City may, after notice to the Developer, suspend the Agreement and withhold further payments or prohibit the Developer from incurring additional obligations of contractual funds, pending corrective action by City or a decision to terminate in accordance with provisions herein. City may determine to allow such necessary and proper costs which the Developer could not reasonably avoid during the period of suspension provided such costs were necessary and reasonable for the conduct of the project.

W. UNIFORM RELOCATION ACT

The Developer will be subject to compliance with the federal Uniform Relocation Act, be solely responsible for the cost to comply with those requirements, and be subject to termination of this Agreement. Should relocation assistance be triggered, the Developer will be responsible for all costs associated with providing this assistance.

X. COMPLIANCE WITH LAWS

1. **Median Income Level:** The City & Developer agrees that 40 of the units to be built will be occupied by households at 50% or less of Area Median Income, and 8 will be occupied by households at 60% of AMI, as defined in Exhibit A, Section 2. In the event that less than 40 of the units rented to households at or below 50% of the area median income at any given time, this imbalance shall be corrected by assuring future units rented in the project will be rented to a household at or below 50% of area median income until the imbalance is corrected and the 40 units are achieved.
2. **Political Activities:** None of the funds, materials, property or services provided directly or indirectly under this agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for public office.
3. **Insurance Coverage:** The Developer shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Developer or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - a. Public Liability Insurance in an amount not less than \$1,000,000 for injuries, including accidental death to any one person;
 - b. Builder's Risk Insurance in an amount not less than the completed value of the whole property, or \$100,000, whichever is greater.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above, before the work under this agreement is begun. The Public Liability Insurance certificate shall be maintained during the life of the agreement. The Builders Risk Insurance shall be secured prior to initiating construction on the first unit. All insurance certificates shall name the City as an insured party and contain the following language, "The company agrees that it will give the City of Billings, Montana 10 days prior written notice of its intent to cancel or materially change the described policy. " This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable. The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Developer will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with State Law.

4. **Construction Contracts:** The Developer agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24CFR Part 24. The Developer will provide the City with the names of contractors and subcontractors prior to entering into contracts. The City, within five (5) working days, will provide the Developer a written notice if the contractors are ineligible.
5. **Lead-Based Paint:** The Developer agrees that any construction of residential structures with assistance provided under this agreement shall be subject to HUD Lead-Based Paint Regulations at 24CFR 570.608, and 24CFR Part 35 which results in the prohibition of the use of lead-based paint for this project. Because this is new construction, Lead-Based Paint requirements do not apply.
6. **HOME Subsidy:** The HOME per unit subsidy is \$70,000. The maximum subsidy for a 3 bedroom unit is \$81,563, so five of the three and/or four bedroom units will be HOME assisted.
7. **Environmental Review:** The Developer will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the Developer does not assume the City's responsibility for the environmental review which will be completed by the City prior to the beginning of construction;
8. **Religious Organization:** The Developer will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in 24 CFR 92.257.
9. **Drug-Free Work Place:** The Developer certifies that it will provide a drug- free work place.

Y. GRANT CONTROLS

Notwithstanding any provision herein to the contrary, the performance and administration of this Contract shall be subject to the applicable provisions of the HUD Contract. Accordingly, the Developer hereby assumes all obligations under the Contract as a condition to Developer's obligation to perform under this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

Witness:

Officer

C. Fred Cornforth, Chief Executive
Community Development, Inc

On this ____ day of _____ 2007, before me, a Notary Public for the State of Montana, personally appeared C. Fred Cornforth, Chief Executive Officer, CDI, known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that he / she (they) executed the same as him / her (their) free act and deed.

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

Printed

Name _____

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

Attest:

CITY OF BILLINGS

City Clerk

RON TUSSING
Mayor

STATE OF MONTANA)
County of Yellowstone) :ss

On this _____ day of _____ 2007, before me, a Notary Public for the State of Montana, personally appeared **Ron Tussing, Mayor** known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

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

Printed

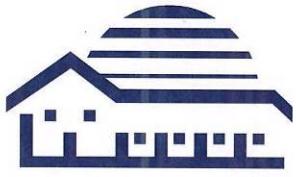
Name

Notary Public for the State of Montana

Residing at _____

My Commission Expires _____

Community Development, Inc.



"Building Homes...Building People"

4110 Eaton Avenue, Suite A, Caldwell, ID 83607
Phone 208.459.8522 Fax 208.459.9692 www.cdinet.us

January 29, 2007

Ms. Brenda Beckett
Community Development Manager
P.O. Box 1178
Billings, MT 59103

RE: Lincoln Springs an Affordable Housing Community

Dear Ms. Beckett:

Community Development Inc. thanks the Community Development Department for their continued support for affordable housing in the City of Billings.

The Lincoln Springs Development has been in planning for the past few years. As your organization is aware the project was awarded Tax Credits and HOME funds in 2005. As a result of rapidly increasing construction costs, CDI chose to return the 2005 Tax Credits to allow the funds to be efficiently used in 2006, since we couldn't build the quality of development that we felt our residents deserved for the amount of funding we were awarded. Since Tax Credits are awarded once a year the February 2, 2007 application date is the first time that we could apply for the Tax Credit funding necessary to complete the development. During this time the Lincoln Springs development retained its HOME award for use when the Tax Credits were reawarded to the project.

CDI has adapted to the rise in construction costs and has implemented changes in budgeting which anticipates the rise in costs; this is now tempered with the stabilizing of costs in this market. We are confident in our budget for this Tax Credit round. CDI bid out the development as designed and represented in the HOME application awarded in 2005. When the bid was received we put together the application for Tax Credits for the Montana Board of Housing. Unfortunately this created a problem that we hope the Community Development Department will help us solve. Our ultimate goal has always been to create safe, decent, affordable housing for Heights Neighborhood residents.

*Alaska	*California	*Hawaii	*Idaho	*Montana
*New Mexico	*Oregon	*Utah	*Washington	*Wyoming
*West Coast Affordable Housing - Arizona, Nevada				

With this recent bid we are now \$34,000 annually over the amount of tax credits that we are allowed to apply for per development in the QAP. We have value reengineered the development to decrease unnecessary costs, but have retained the integrity of the development. We have also reduced our soft costs on the development.

We are proposing reducing the size of the development to 45 units from 49 units to stay within the Tax Credit regulations in the QAP by bringing the total cost down. We will then qualify for the maximum amount of tax credit. However, since we were awarded HOME and CDBG funds on a 49 unit development we need your approval to change the size of the development. We want to make sure that you understand that the amount of HOME units will not change and we will still be within the 40% of the units at 50% AMI rule.

CDI is confident in the project and its ability to be completed in this funding round. This issue could not have been addressed at an earlier time, since an earlier bid would not have accurately reflected current costs of construction in Billings, which the construction contracts will be based off of. Hitting the per-development cap was not an issue when the development was first conceived since construction costs didn't limit the size of the development at that time. CDI is trying to address the limitations that have been placed on the development with the rise of the cost of construction over the past few years and is asking for your help to do so.

Will you approve our reduction in size of the development to 45 units which will bring the project in line with the allowed amount of tax credits and allow us to maintain our HOME and CDBG funding?

Thank you for your consideration.

Sincerely,



Kelly Gill
Regional Development Manager

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

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 2007

TITLE: DISPOSAL OF "TROUGH" SCULPTURE

DEPARTMENT: CITY ATTORNEY

PRESENTED BY: BRENT BROOKS, CITY ATTORNEY

CRAIG HENSEL, DEPUTY CITY ATTORNEY

PROBLEM/ISSUE STATEMENT:

First Northwestern Bank donated a large sculpture known as "Trough" to the City of Billings in 1982. The City Council accepted the sculpture on March 1, 1982, during a Regular City Council meeting and the sculpture was placed in front of the bank (now Wells Fargo) located at 175 N. 27th Street. The sculpture was placed directly on the property line between the bank and City owned property, and sits half on bank property and half on City property where the City Park II garage is located. The new owner of the Wells Fargo Bank building wants to redo the streetscape in front of the bank, and wants to remove the sculpture. Wells Fargo Bank has agreed to accept the sculpture from the City, have the sculpture moved to the rear of the Yellowstone County Art Museum, and to pay the estimated \$25,000 expenses for the sculpture to be relocated.

ALTERNATIVES ANALYZED:

The only alternative would be for the City to assume the responsibility for moving the sculpture and bearing the expenses associated with the removal or relocation of the sculpture.

FINANCIAL IMPACT:

There is no financial impact to the City for donating the sculpture to the Wells Fargo Bank. If the City does not donate the sculpture to the Wells Fargo Bank, the City will be responsible for removing and/or relocating the sculpture to another location at potential significant expense to the City.

RECOMMENDATION

Staff recommends that Council approves the attached contract, which provides for sale of the “Trough” sculpture to Wells Fargo bank for the sum of \$1.00.

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

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

K1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

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

PROBLEM/ISSUE STATEMENT:

The Yellowstone Rimrunners request the temporary street closures on Sunday, March 18, 2007, from 12:30 pm to 2:00 pm, for their annual Shamrock Run. The route is as follows: Beginning at 3rd Street West and Avenue B, go north on 3rd Street West then west onto Parkhill up to Nordbye, turn around and go east onto Parkhill, turning right on 3rd Street West and then ending at Pioneer Park.

Recommended conditions of approval include Yellowstone Rimrunners:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

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

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

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

K2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Yellowstone Rimrunners Street Closures for Montana Women's Run
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

The Yellowstone Rimrunners request temporary street closures on Saturday, May 12, 2007, from 6:00 am to 12:00 noon, for their annual Montana Women's Run. Closures are as follows: 2nd Ave. from 20th St. to Division St.; Division between 2nd and 3rd Aves.; 3rd Ave. between Division and N. 20th St; and N. 20th St. between 3rd and 2nd Aves. Map is attached.

Recommended conditions of approval include that the Yellowstone Rimrunners:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

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

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

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

K3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Yellowstone Rimrunners Street Closures for Montana Women's Run

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Mike Whitaker, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

The Yellowstone Rimrunners request temporary street closures on Saturday, May 12, 2007, from 6:00 am to 12:00 noon, for their annual Montana Women's Run. Closures are as follows: 2nd Ave. from 20th St. to Division St.; Division between 2nd and 3rd Aves.; 3rd Ave. between Division and N. 20th St; and N. 20th St. between 3rd and 2nd Aves. Map is attached.

Recommended conditions of approval include that the Yellowstone Rimrunners:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

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

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Approval—Application and Agreement for Billings License Plate

DEPARTMENT: City Council/City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: The Billings Kiwanis Club has proposed that the club and the City of Billings create a Billings specialty vehicle license plate to promote civic pride and to serve as a fund-raiser for both organizations. MCA 61-3-473-5 requires that a sponsor applicant for a specialty license plate be a governmental body or organization approved by the state to promote the sale and license of the plate. Kiwanis provided a draft license plate and has offered to pay the \$4,000 application fee up front if the City will make the application. The City would be asked to reimburse Kiwanis from the proceeds of the license plate sale and, after that, to split the net fees of \$20 per plate equally.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the agreement and application;
- Delay the approval; or
- Decide not to participate.

FINANCIAL IMPACT: About 20% of all vehicle license plates sales are of specialty plates. A smaller Montana community has earned about \$12,000 a year from the sale of its license plate. It is expected that the City of Billings and Billings Kiwanis could earn \$10,000 a year each for their projects.

RECOMMENDATION

Staff recommends that Council approve the application and the agreement.

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

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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Annexation Petition #07-04 Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Lana Jean Bittner, property owner, submitted a petition to annex land to the City of Billings under 7-2-4600 MCA. The 10,454-square-foot property is located at 307 Garden Avenue between the Interstate 90 Corridor and the Yellowstone River. The property has one residence on it. The property owners are requesting annexation in order to obtain city water service and be included under the City of Billings process for replacing the water line in Garden Avenue. The property would be subject to a County-instituted Rural Special Improvement District for the water line replacement if the property remained in the County. The City Council's policy is to consider annexations at two separate meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date. At the second meeting the Council conducts the hearing and decides if it will annex the property.

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

FINANCIAL IMPACT: A fiscal impact statement will be included with the public service report to be presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for March 26, 2007, to consider annexing this property.

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

ATTACHMENTS

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

ATTACHMENT A
Annexation #07-04 Property Data

Type of annexation: Petitioned - MCA 7-2-4600

Petitioner: Lana Jean Bittner

Purpose of annexation: Obtain City services, specifically water

Property included: Certificate of Survey 598 in Lot 30, Clark Subdivision

Location: 307 Garden Avenue

Total area: 0.24 acres

Current zoning: Residential-15,000

Zoning after annexation: Residential-9600

Current land use: Single-family residential

Future land use: Single-family residential

ATTACHMENT B
Annexation Petition #07-04

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



NOTICE TO PETITIONER

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

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.
The map must show:
 - a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
1-30-2007	LANA JEAN BITTNER	Lana Jean Bittner (Co-Owner)	307 Garden Ave
		Harold Paulis	Future owner

(continued on separate page)

Augustus A. Paulis - Deceased 5-12-06

Revised 6/99

DESCRIPTION OF THE TERRITORY TO BE ANNEYED TO THE CITY OF
(Should be completed prior to obtaining signatures of resident freeholder electors)

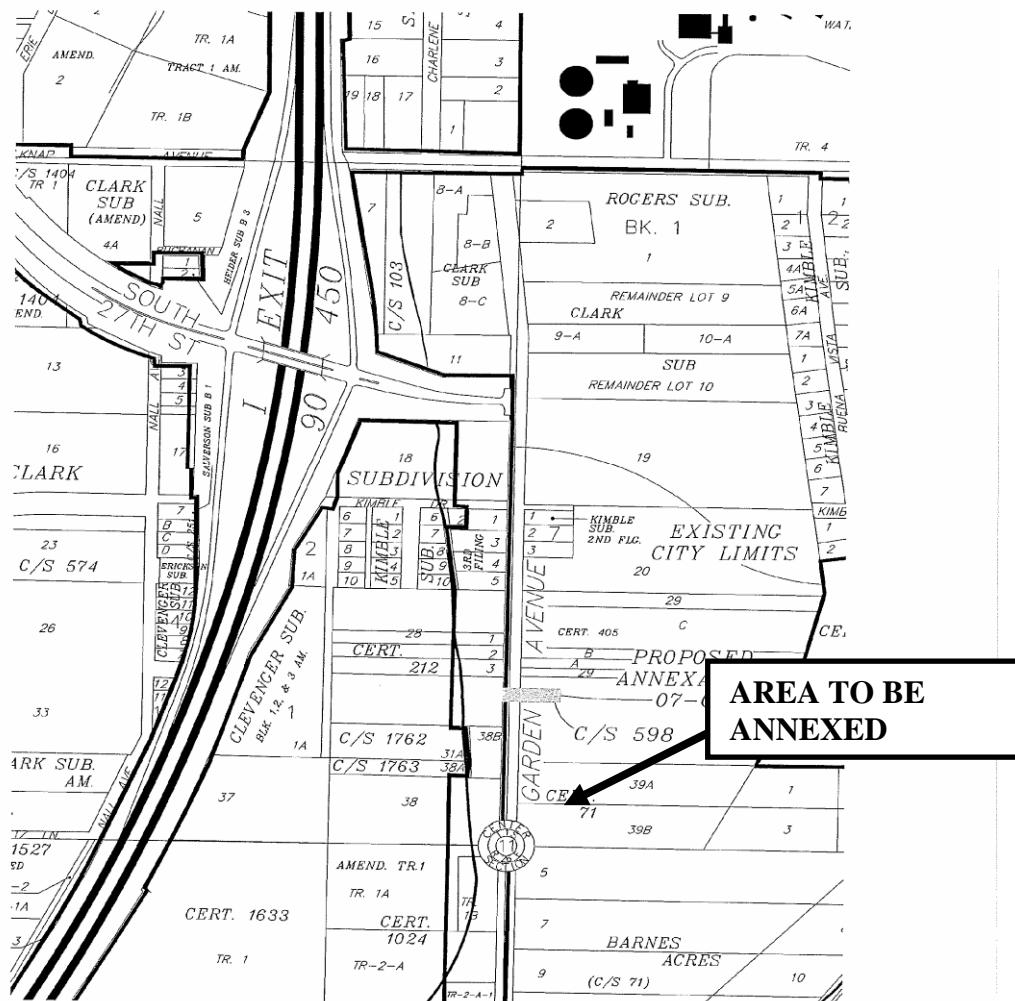
DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF
Date Submitted: 1-31-07
Received By: Nicole Goughell

Revised 6/99

ATTACHMENT C
Annexation Map – Annexation #07-04

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: W.O. 04-13, Schedule I—Filter Building Expansion and Improvements, Resolution to Extend Limits of Administrative Change Order Authority

DEPARTMENT: Public Works

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

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

The original contract amount for the project referenced above (Filter Building project) was for \$16.4 million with COP Construction. To date, there have been 17 change orders, totaling just under \$500,000. Two of the change orders totaling almost \$200,000 are due to design issues, and HDR Engineering (the City's consulting and designing firm) will reimburse the City for these costs. However, the contract with COP has been adjusted by this amount, so it has to be considered when applying the ordinance for Administrator approval.

The project is approximately 80 percent complete, but much of the remaining work involves remodeling existing facilities. Conditions may not be exactly as previous as-built drawings depict, so this type of work could potentially and likely will lead to additional change orders. There are also other issues currently being reviewed that will result in forthcoming change orders.

FINANCIAL IMPACT: Over \$1.3 million was budgeted and approved for contingencies on W.O. 04-13. There is no direct financial impact to passing a resolution allowing City Administrator approval of change orders above the limits listed in Ordinance No. 07-5397. The requested limit, \$775,000, is still much less than what was budgeted, and the amount actually paid by the City will be almost \$200,000 less than that due to HDR's reimbursement.

RECOMMENDATION

Staff recommends that Council pass a Resolution to Ordinance No. 07-5397 allowing the City Administrator to approve change orders totaling up to \$775,000 for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements.

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

ATTACHMENT

A. Resolution Extending Administrative Change Order Approval

ATTACHMENT 'A'

RESOLUTION 07-

**A RESOLUTION ADOPTING EXTENSION OF ADMINISTRATIVE
CHANGE ORDER AUTHORITY FOR W.O. 04-13, SCHEDULE I—
FILTER
BUILDING EXPANSION AND IMPROVEMENTS**

WHEREAS, Ordinance No. 07-5397 authorizes the City Administrator to execute amendments or change orders to all contracts if, among other things, the increase in contract amount does not exceed the lesser of 10 percent of the contract price, \$500,000, or the original budgeted contingency; and

WHEREAS, the original contract for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements was for \$16.4 million; and

WHEREAS, existing change orders total slightly less than \$500,000; and

WHEREAS, the remaining work involves remodeling of existing facilities, likely resulting in additional change orders due to existing conditions not necessarily exactly matching previous as-built drawings.

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

The limit of City Administrator change order authority for W.O. 04-13, Schedule I—Filter Building Expansion and Improvements will be extended to \$775,000.

APPROVED AND PASSED by the City Council of the City of Billings this 12th day of March, 2007.

THE CITY OF BILLINGS

By: _____
Ron Tussing, MAYOR

ATTEST:

By: _____
CITY CLERK

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

O

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 12, 2007

TITLE: Zone Change #797, 2nd 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-6,000 to Community Commercial on Lots 26 & 27, Block 5 of Central Heights Subdivision, 4th Filing located at 2156 Central Avenue. The property is owned by Michael Stock. The Zoning Commission conducted a public hearing on February 6, 2007, and voted 5-0 to recommend approval to the City Council. The City Council held a public hearing on February 26, 2007, and approved the first reading of this zone change.

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 re-developed.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #797 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

Zone Change #797

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lots 26 and 27, Block 5 of Central Heights Subdivision,
4th Filing, containing approximately 14,838 square feet.

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

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

2. **DESCRIPTION.** A tract of land known as Lots 26 and 27, Block 5 of Central Heights Subdivision, 4th Filing, containing approximately 14,838 square feet of land and is presently zoned Residential-6,000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning **for Lots 26 and 27, Block 5 of Central Heights Subdivision, 4th Filing** is hereby changed from **Residential-6,000** to **Community Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial** 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 February 26, 2007.

PASSED, ADOPTED AND APPROVED on second reading March 12, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
CITY CLERK

ZC#797 – Central Heights 4th Filing, Lots 26 and 27, Block 5

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Zone Change #798, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone Amended Lot 65A-4, Sunny Cove Fruit Farms Subdivision, from Agricultural Open (AO) to Community Commercial (CC) and Neighborhood Commercial (NC). The subject property is generally located on the northwest corner of Grand Avenue and 54th Street West and is vacant agricultural land. The owner of the property is Mary Kramer, Charlie Gamble is the representing agent. The property was annexed on February 26, 2007, by the City Council. The Zoning Commission conducted a public hearing on February 6, 2007, and forwarded a recommendation for approval with a vote of 5-0. The City Council held a public hearing on February 26, 2007, and approved the first reading of this zone change.

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 re-developed.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #798 and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

Zone Change #798

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lot 65A-4 of Sunny Cove Fruit Farms Subdivision,
containing approximately 504,860 square feet.

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

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

2. **DESCRIPTION.** A tract of land known as Lot 65A-4 of Sunny Cove Fruit Farms Subdivision, containing approximately 504,860 square feet of land and is presently zoned Agricultural Open and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **Lots 65A-4 Sunny Cove Fruit Farms Subdivision**, is hereby changed from **Agriculture Open** to **Community Commercial on Lot 1 and Neighborhood Commercial on Lots 2 through 5** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial and Neighborhood Commercial** 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 February 26, 2007.

PASSED, ADOPTED AND APPROVED on second reading March 12, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____, City Clerk

ZC#798 – Sunny Cove Fruit Farms Subdivision, Lot 65A-4

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 12, 2007

TITLE: Preliminary Plat of MK Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On February 1, 2007, Charlie Gamble applied for preliminary minor plat approval for MK Subdivision, which contains five (5) lots on approximately 504,860 square feet (11.59 acres) of land for commercial development. The proposed subdivision is located on the north west corner of Grand Avenue and 54th Street West. The owner is Mary Kramer the representing agent is Charlie Gamble with Engineering Inc. providing Engineering services.

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 March 22, 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 and the variances, the subject property may further develop under private ownership, resulting in additional tax revenues.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of MK Subdivision, approval of the variances 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. Variance Justification
- D. Findings of Fact
- E. Mayor's Approval Letter

INTRODUCTION

On February 1, 2007, Charlie Gamble applied for preliminary plat approval for a minor subdivision, MK Subdivision. The subject property contains 504,860 square feet (11.59 acres) of land for commercial development. The surrounding property zoning is; north Residential-7000 Cottonwood Grove Subdivision, south Agricultural Open and Residential-9600 Vintage Estates Subdivision, east Community Commercial and Public, proposed Fire Station, and on the west Agricultural Open.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Division on February 1, 2007.
- The City Council will consider the preliminary plat application on March 12, 2007.
- An annexation of the property was approved by City Council on February 26, 2007.
- A zone change of the property from Agricultural Open to Community Commercial and Neighborhood Commercial was approved by City Council on February 26, 2007.

BACKGROUND

General location:	On the north side of Grand Avenue and west of 54 th Street West
Legal Description:	Lot 65A-4 Sunny Cove Fruit Farms Subdivision
Subdivider:	Mary Kramer
Owner:	Same
Engineer and Surveyor:	Engineering Incorporated
Existing Zoning:	Community Commercial (CC) and Neighborhood Commercial (NC)
Existing land use:	Agricultural
Proposed land use:	Commercial
Gross area:	504,860 square feet
Net area:	504,860 square feet
Proposed number of lots:	5
Lot size:	Max: 158,123 square feet (3.63 acres) Min.: 66,647 square feet (1.53 acres)

Parkland requirements:	A parkland dedication is not required, as this is a minor subdivision for commercial development.
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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 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 minimize the effects to the natural environment, a geotechnical study shall be submitted for review and approval by the Building Official prior to the submission of the final plat application. *(Recommended by City-County Planning)*
2. 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)*
3. To minimize the effect on public welfare, separation between the residential properties to the north and the proposed commercial property, a 25 foot landscape easement along the north property line as shown on the drawing dated 12-13-06, see Attachment A, shall be landscaped according to requirements in Section 27-1105(2) BMCC bufferyard 'C'. *(Recommended by the Planning Division)*
4. To minimize the effects on public health and safety, Section VI(A) Water shall be revised to state: "Each building on each lot shall have a separate connection to city water and sewer from either Grand Avenue or, 54th Street West" *(Recommended by the Public Works Department, Distribution and Collection Division)*
5. To minimize the effects on public health and safety, the first access point on Grand Avenue between proposed Lots 1 and 2 shall be removed. *(Recommended by the Engineering Division and Planning Division)*
6. To minimize the effects on public health and safety, internal access points between proposed Lots 2 and 3 shall be a minimum of 120 feet from the north right-of-way of Grand Avenue. Internal access points between proposed Lots 1 and 5 shall be a minimum of 120 feet from the west right-of-way of 54th Street West. *(Recommended by the Engineering Division and Planning Division)*
7. To minimize the effects on public health and safety, at a future date when it is determined that the intersection of 54th Street West and Grand Avenue warrants a traffic control signal, the City has the option to install a center median in 54th Street West that will make the

access between proposed Lots 1 and 5 a right-in right-out access. This language shall be included in the SIA document. (*Recommended by the Engineering Division*)

8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

A variance from Section 23-406B(6), BMCC requires a 65 foot half width right-of-way on Grand Avenue. Engineering staff is supportive of this variance, as a 60-foot half width is adequate to accommodate the proposed traffic generation for the area. Similar variances have been approved by the City Council for subdivision along Grand Avenue. Allowing the 60-foot half width right-of-way will maintain a consistent width along Grand Avenue. This right-of-way has been depicted on the plat. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

A variance from Section 23-302(f)(1), BMCC requires a geotechnical study to be submitted at the preliminary plat (condition #1). Planning staff is supportive of this variance, as the geotechnical study will be submitted prior to the submittal of the final plat for the subdivision. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformity with the zoning regulations.

The subdivider has submitted variance justifications which have been provided for Council review in Attachment C.

STAKEHOLDERS

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

This property recently went through a zone change request. During that process a letter of opposition was received from a neighboring property owner stating they did not want to see a commercial development in the area because they felt it would create more traffic and be detrimental to the wildlife habitat that is in the area.

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 plat of MK Subdivision, approval of the variances and adoption of the Findings of Fact as presented in the staff report to the City Council.

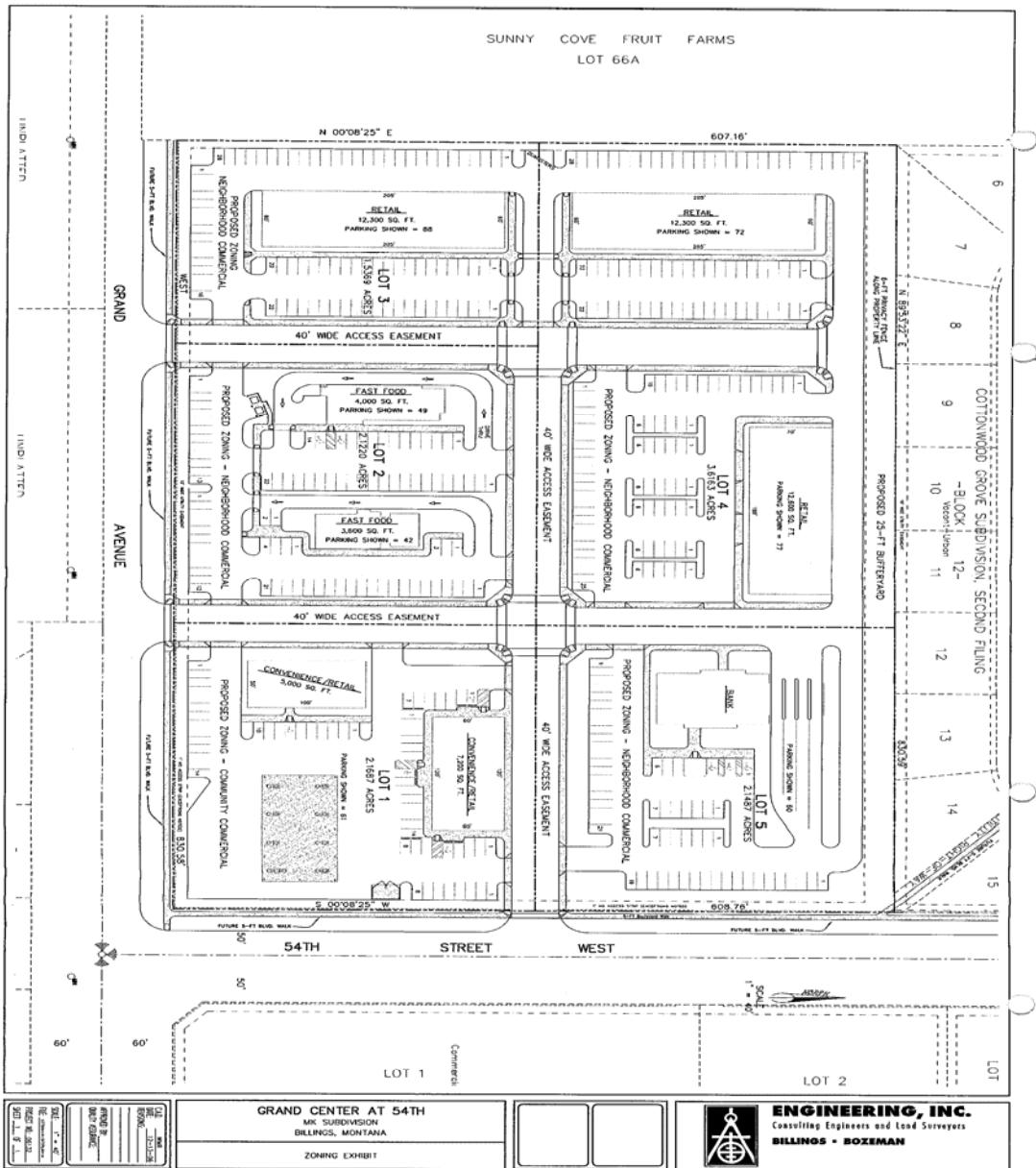
ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of MK Subdivision

PC\ADDON\DD3-F41D-DE49-PP01\06132-Subbing\01\FFP\TA01\01065A-1P\1\eg\Zoning_Evidence\eg_FANGUIT_12-14-2006 2:35:44 PM.xlsbip, 12/14/2006



ATTACHMENT B
Site Photographs



Figure 1: View north across the subject property from Grand Avenue.



Figure 2: View east along Grand Avenue to 54th Street West.

ATTACHMENT C

Variance Justification



ENGINEERING, INC.
Consulting Engineers and Land Surveyors

January 30, 2007

Mr. Dave Green
City of Billings
Planning and Community Services Department
510 North Broadway, Fourth Floor
Billings, MT 59101

Reference: MK Subdivision-Variance Request
E.I. No. 06132

Dear Dave:

We are requesting a variance from the provisions of Section 23-406B(6) of the City of Billings Subdivision Regulations that requires a 65-foot Right of Way width on Grand Avenue. We are providing the following information to address a variance request for this information.

1. The variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties in any way.
2. The variance was discussed and recommended by both the City of Billings Engineering Department and the City of Billings Planning Department.
3. The variance will not result in an increase to taxpayers.
4. The variance will not place the subdivision in nonconformance with any zoning regulations or Growth Policies.
5. The existing right-of-way width along Grand Avenue is 60-feet. This variance will allow the right-of-way width to be consistent along the entire corridor

Please review the above information, and feel free to contact me if you have any questions.

Sincerely,

Will Ralph, PE
Project Manager

WMR:ceg
P:06132_Green_ROW_Variance_Ltr_013007

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



ENGINEERING, INC.

Consulting Engineers and Land Surveyors

January 30, 2007

Mr. Dave Green
City of Billings
Planning and Community Services Department
510 North Broadway, Fourth Floor
Billings, MT 59101

Reference: MK Subdivision-Variance Request
E.I. No. 06132

Dear Dave:

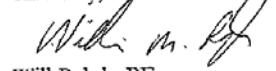
We are requesting a variance from the provisions of Section 23-302(f)(1) of the City of Billings Subdivision Regulations that requires the documents listed in Appendix F of the City of Billings Subdivision Regulations be submitted with the Preliminary Plat Application. Due to confusion on the date of the geotechnical study submittal, we are not able to provide the geotechnical report for this site with the preliminary plat package. It will be forwarded to you immediately upon receipt. In the meantime, we are providing the following information to address a variance request for this information.

1. The variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties in any way.
2. The MK Subdivision site is currently open agricultural property that will not be planted this year. There are residential housing units to the immediate north of the parcel and to the south across Grand Avenue. These projects had geotechnical studies and their findings would lead us to believe that we will have a finding of no significant impact from our report when it is finalized.
3. The variance will not result in an increase to taxpayers.
4. The variance will not place the subdivision in nonconformance with any zoning regulations or Growth Policies.
5. The subdivider will provide a geotechnical report for MK Subdivision prior to the design and approval of the subdivision. The design will be in accordance to the findings of the geotechnical report.

Mr. Dave Green
January 30, 2007
Page 2

We do not want the geotechnical report to delay the platting process. We realize the importance of the full geotechnical report and the subdivision will be designed in accordance with its findings. Please review the above information, and feel free to contact me if you have any questions.

Sincerely,



Will Ralph, PE
Project Manager

WMR:ceg
P:06132_Green_Geotech_Variance_Ltr

ATTACHMENT D

Findings of Fact

Staff is forwarding the recommended Findings of Fact for MK 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 (Sections 23-304(c), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and (23-302(H)(2), BMCC)]

1. Effect on agriculture and agricultural water user facilities

The subject property has historically been utilized for crop production. As specified in the submitted SIA no water rights have been transferred to the lot owners. The proposed subdivision will take approximately 11.59 acres out of agricultural production.

2. Effect on local services

- a. **Utilities** – As required by Public Works, the final documentation shall show changes to the development agreement, Section VI(A) Water; each building on each lot shall have a separate connection to city water and sewer from either Grand Avenue or, 54th Street West (condition #4). Existing proposal shows a water mainline and sewer mainline running under the private road inside the subdivision for each building to connect to. With the water line and sewer line under a private road the City would not be able to access them or make improvements on the lines. There would either need to be an easement for the service lines or for the road to be a dedicated public road for the City to be able to access these lines. As specified in the submitted SIA, there is an existing water main and sanitary sewer line in Grand Avenue and one in 54th Street West. The developer will provide public fire hydrants near the entrance off of 54th Street West and one public fire hydrant each off of the entrances from Grand Avenue.
- b. **Stormwater** – As specified in the submitted SIA, storm water shall be handled on site through surface flow on the streets, inlets and piping, each development within the subdivision shall be responsible for the detention of storm water on their property. Any additional 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.
- 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** – There are three proposed accesses to the subdivision. One access off of 54th Street West, and two accesses off of Grand Avenue. After discussion with City

Engineering Division, the Fire Department and the Planning Division it has been determined that the access off of Grand Avenue located between proposed Lots 1 and 2 poses a health and safety issue. City Engineering has reviewed this subdivision and finds that the access is too close to 54th Street West to allow for proper functioning of the intersection at Grand Avenue and 54th Street West and should be removed. To keep arterials functioning at a high level of efficiency and safety studies show that 300 feet is not far enough from the intersection with speeds above 45 MPH. The current speed limit on Grand Avenue is 60 MPH. Therefore, condition #5 requires it to be removed.

Also of concern are the internal drive accesses and their proximity to the arterial streets. City Engineering states in their review that research indicates, for an ‘internal’ access point to function independently from the driveway intersections at the arterial street, Grand Avenue and 54th Street West, they should be at least 120 feet from the arterial right-of-way to allow for proper queue storage. Therefore, condition #6 requires that all internal access points be a minimum of 120 feet from arterial rights-of-way.

Furthermore City Engineering had concerns regarding the function of the intersection of 54th Street West and Grand Avenue and the proposed access point to the proposed subdivision off of 54th Street West when a traffic control signal is installed at the intersection. Therefore, condition #7 requires the SIA to include language that states at a future date the city may install a center median in 54th Street West that will make the access between Lots 1 and 5 a right-in right-out only.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street (Station #5). There is a new proposed fire station across 54th Street West to the east from this proposed subdivision.
- f. **Schools** - The subdivision is a commercial development and has no effect on schools.
- g. **Parks and Recreation** - Parkland dedication is not required, as this is a minor subdivision for commercial development.

3. Effect on the natural environment

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. There are additional developments in the area. To the north is Cottonwood Grove, to the east is Bishop Fox Subdivision and Grand Peaks Subdivision, and to the south is Vintage Estates Subdivision.

The Soil Survey of Yellowstone County indicates that the soils in this area consist of predominately silty clays, which with the high water table in this area have a potential for flooding, shrinking, and swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A note has been added to the SIA

regarding the presence of these soils and that a geotechnical study may be required with building permit submittals.

Based on the approximate flood hazard study, this area is located within a potential flood zone, though not officially adopted by the Federal Emergency Management Agency (FEMA). The natural drainage for Cove Creek has been obliterated by agricultural development south of Rimrock Road. Consequently, the flood waters tend to spread laterally along the topographic depressions as they head southward. While the subdivision is designed to handle additional runoff resulting from development, the detention facilities are not designed to handle the 100-year flood volumes from Cove Creek. The same problem exists throughout the west end where existing and proposed developments intersect the flood hazard zone. As this is a known area for potential flooding, the submitted SIA contains a condition that runs with the land regarding the potential for flooding.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not effect wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

There are three (3) conditions that exist on the subject property that may potentially create problems for future landowners: flood hazard, special construction needs because of soils, and wildlife. These conditions are noted within the “Conditions that Run with the Land” section of the submitted SIA.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and 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)

The proposed subdivision is consistent with the Growth Policy surrounding neighborhood and the development that is along Grand Avenue. The plan encourages predictable land use. Commercial development at key points near neighborhoods will provide goods and services for residents without having commercial development along the entire length of Grand Avenue.

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)

The subject property is zoned Community Commercial (CC) and Neighborhood Commercial (NC) and is bordered by Agricultural Open on the east; Agricultural Open and Residential 9600 (R-96) on the south; Community Commercial (CC) and Public on the west; and R-7000 (R-70) to the north; the proposed CC and NC development is consistent with creating a buffer zone between a principle arterial and single-family residential.

c. Contiguous development focused in and around existing population centers separated by open space. (Land Use Element Goal, Page 6)

While the subject property is adjacent to an annexed portion of the City, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

2. Urban Area 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The Heritage Trail Plan shows 54th Street West as an on-street route no other trail is identified within this subdivision.

4. West Billings Plan

The proposed subdivision satisfies the following policies of the West Billings Plan:

- The area of the proposed development is shown as a Neighborhood/Community Center node on the planned growth map.
- Condition approval of new development in the West Billings Plan area on the ability to provide infrastructure and public services, including streets, sidewalks, curb, gutter or alternative standards, police, fire, public water and sewer services.

The proposed subdivision is in conflict with the following goal of the West Billings Plan:

- Project could be considered leapfrog development as described in PG1.0.1
- Development of non-irrigated farmland (generally lands located north of the Big Ditch) within the appropriate zoning designation is considered a priority.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and (23-301, BMCC)]

The proposed subdivision, with the proposed conditions, 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 is served by municipal water, sewer and solid waste services. Storm water will be contained on site.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [(23-402, BMCC)]

The subject property is located within the CC and NC zoning district and shall comply with the standards set forth in Section 27-309, BMCC.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and (23-410(A)(1), BMCC)]

The City Engineering Division will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #2 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? [MCA 76-3-608 (3) (d) and (23-406, BMCC)]

Private accesses from Grand Avenue and 54th Street West will provide legal and physical access to the site.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of MK 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, March 12, 2007

Ron Tussing, Mayor

ATTACHMENT E
Mayor's Approval Letter

March 12, 2007

City of Billings
Engineering Department
510 North Broadway, 4th Floor
Billings, Montana 59101

Dear Applicant:

On March 12, 2007, the Billings City Council conditionally approved the preliminary plat of MK Subdivision, subject to the following conditions of approval:

1. To minimize the effects to the natural environment, a geotechnical study shall be submitted for review and approval by the Building Official prior to the submission of the final plat application. (*Recommended by City-County Planning*)
2. 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*)
3. To minimize the effect on public welfare, separation between the residential properties to the north and the proposed commercial property, a 25 foot landscape easement along the north property line as shown on the drawing dated 12-13-06, see Attachment A, shall be landscaped according to requirements in Section 27-1105(2) BMCC bufferyard 'C'. (*Recommended by the Planning Division*)
4. To minimize the effects on public health and safety, Section VI(A) Water shall be revised to state; "Each building on each lot shall have a separate connection to city water and sewer from either Grand Avenue or, 54th Street West" (*Recommended by the Public Works Department, Distribution and Collection Division*)
5. To minimize the effects on public health and safety, the first access point on Grand Avenue between proposed Lots 1 and 2 shall be removed. (*Recommended by the Engineering Division and Planning Division*)
6. To minimize the effects on public health and safety, internal access points between proposed Lots 2 and 3 shall be a minimum of 120 feet from the north right-of-way of Grand Avenue. Internal access points between proposed Lots 1 and 5 shall be a minimum of 120 feet from the west right-of-way of 54th Street West. (*Recommended by the Engineering Division and Planning Division*)
7. To minimize the effects on public health and safety, at a future date when it is determined that the intersection of 54th Street West and Grand Avenue warrants a traffic control signal, the City has the option to install a center median in 54th Street West that will make the access between proposed Lots 1 and 5 a right-in right-out access. This language shall be included in the SIA document. (*Recommended by the Engineering Division*)

8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

The Billings City Council also approved the following variances from the City Subdivision Regulations with the preliminary plat approval:

- *A variance from Section 23-406B(6), BMCC requiring a 65 foot half width right-of-way on Grand Avenue.*
- *A variance from Section 23-302(f)(1), BMCC requiring a geotechnical study to be submitted at the preliminary plat.*

Should you have questions please contact Dave Green with the Planning Division at 247-8654 or by email at greend@ci.billings.mt.us

Sincerely,

Ron Tussing, Mayor

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Final Plat of Western Sugar Cooperative Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Western Sugar Cooperative Subdivision is being presented to the City Council for approval. The subject property is zoned Heavy Industrial and is located on the south side of State Street between Sugar Avenue (west) and Riverside Road (east). On April 28, 2003, the City Council conditionally approved the 1-lot minor plat on 21.6-acres of land for the existing sugar factory and equipment; however the three year time limit for the preliminary plat expired on April 28, 2006. The subdivider submitted a new application for expedited review on November 22, 2006. Pursuant to Section 23-305, BMCC, this subdivision qualifies for an expedited review, as it contains no more than two lots, no land is to be dedicated, it does not require public improvements, and legal and physical access is provided to the lots. The expedited review allows for the plat to go directly through the final plat process for approval by the City Council.

The original 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 Western Sugar Cooperative Subdivision.

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

ATTACHMENT

A: Final Plat

S1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 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 \$808,461.79 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 9, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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

S2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 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 \$720,914.36 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 16, 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, March 12, 2007

TITLE: Public Hearing and Resolution to Create Park Maint. District No. 4036, Josephine Crossing Subdivision

DEPARTMENT: Department of Parks, Recreation, & Public Lands

PRESENTED BY: Mike Whitaker, Director

PROBLEM/ISSUE STATEMENT: Josephine Crossing Subdivision, Phase I, contains approximately 4 acres of dedicated park and public open space. It includes 7 pocket parks located in the residential blocks throughout the Phase I subdivision plat, and a park-trail dedication of 1.55 acres bordering the river bottom and channel in the south east section of the subdivision known as Block 5, Lot 20. The development and improvement of the parks will be by the developer through private contract. The Park Maintenance District needs to be created at this time to provide for the maintenance of the public area improvements as they are completed. As a condition of the Josephine Crossing Subdivision, Phase I, plat approval, the subdivision must establish a park maintenance district. A Homeowners Association will be created to maintain the pocket parks in Blocks 1 – 5, in the Phase I residential section. The Park Maintenance District will maintain the park – trail, and, should the Homeowners Association fail to maintain the pocket park areas, the Park Maintenance District will have the authority to assume control over and maintain those parks, too. The Public Hearing and Resolution to Create the District completes the process to create Park Maintenance District No. 4036 for Josephine Crossing Subdivision. A report of protest and comments received will be provided to the City Council at the start of the Public Hearing.

ALTERNATIVES ANALYZED:

- Create Park Maintenance District 4036 now to assure assessments can be collected in November, 2007, to pay costs of maintenance as park areas are developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create Park Maintenance District 4036 at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$9,090.00 for the first year. The assessment of the maintenance costs will be determined per square foot of property. The assessment amount is \$0.01445 per square foot of lot area. The assessment for the coming year for the phase I lots is shown in "Exhibit D" of the attached PMD documents.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District 4036 as proposed.

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

ATTACHMENTS:

- A. Resolution of Intent to Create Park Maintenance District No. 4036

INTRODUCTION

Approval of the Resolution to Create Park Maintenance District No. 4036 for the maintenance of Josephine Crossing Subdivision parks and public areas completes the process to create the Park Maintenance District.

PROCEDURAL HISTORY

- The preliminary plat of Josephine Crossing Subdivision was considered and approved by the City Council on May 22, 2006.
- The final plat of Josephine Crossing Subdivision was approved on November 27, 2006. The subdivision pocket parks will be appropriately developed with trees, walks, and open grass areas to compliment the surrounding residential lots opening onto them. The lineal park – trailway corridor dedicated in Lot 20 of Block 5 will be planned and developed according to the revised Master Plan being done for Riverfront Park, which it is adjacent to.
- The Resolution of Intent To Create the Park Maintenance District approved by City Council on February 12th, 2007, provides for a public hearing and consideration of the Resolution to Create the district at the March 12th, 2007, regular City Council meeting.
- A Notice of Passage of the Resolution of Intent was advertised on February 15th and 22nd and a notice was mailed to property owners in the proposed district explaining the protest and comment procedures and setting the protest period from February 16th to March 2nd, 2007.
- The Public Hearing and Council consideration of the Resolution to Create the district completes the creation process.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Josephine Crossing Subdivision Improvement Agreements call for the park improvements to the subdivision pocket parks to be made by the developer. The Park Maintenance District will be created to maintain the trailway and park area in Block 5, Lot 20, adjacent to Riverfront Park. The proposed maintenance district includes all lots included in Josephine Crossing Subdivision. Said lots shall not be eligible for assessment until such time as the final plat of that phase is filed and the Restrictions on Transfers and Conveyances are lifted. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Josephine Crossing Subdivision.

Approval of the Resolution to Create Park Maintenance District No. 4036 for Josephine Crossing Subdivision completes the creation process.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in November 2007, to pay costs of maintenance for the spring and summer of 2008 as the park development commences. The approved Subdivision Improvements Agreements call for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.
- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Josephine Crossing Subdivision.
- The 126 lots initially included in the PMD in Josephine Crossing Subdivision consist of single-family residences. The residents and property owners have agreed to the development. Many are strongly supportive of the parks and funding its ongoing maintenance. The rapid build out that is taking place is attributed to the fact that the open space and park amenities will be quickly developed.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city general fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$548,986 to offset maintenance expenses in the 2007 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division Operations & Maintenance budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District 4036 as proposed.

ATTACHMENTS:

1. Resolution of Intent to Create Park Maintenance District No. 4036

RESOLUTION No. 07-

- **A RESOLUTION CREATING PARK MAINTENANCE**
- **DISTRICT NO. 4036 FOR THE PURPOSE OF MAINTAINING EXISTING**
- **AND FUTURE PUBLIC AREA IMPROVEMENTS IN**
- **JOSEPHINE CROSSING SUBDIVISION**
- **CITY OF BILLINGS, MONTANA**

WHEREAS, the City Council of Billings, Montana, hereby finds, determines and declares that:

1. The public interest and convenience require the creation of the above named district.
2. That said district is of more than local or ordinary public benefit.
3. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the costs and expenses of the district.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF

BILLINGS:

1. *Jurisdiction and Creation.* Park Maintenance District Number 4036 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the proposed improvement, and it does hereby create Park Maintenance District Number 4036. All lands included within Park Maintenance District Number 4036 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvement and Maintenance.* The general character of the improvements to be maintained is as follows: landscaping, trails, trees, irrigation systems, irrigation system water services, storm water detention facilities, lighting and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District. The purpose of said district is to provide perpetual maintenance of the above-mentioned items. The Homeowner's Association shall maintain the "pocket parks" within the subdivision. In the event that the

Homeowner's Association does not fulfill said maintenance responsibilities, Park Maintenance District No. 4036 shall accept said maintenance responsibilities and adjust assessments accordingly.

3. *Boundaries.* The Boundaries of the district are described and designated on Exhibit "B" attached hereto.
4. *Ownership.* The ownership records of all properties within the said district are described and designated in Exhibit "C" attached hereto.
5. *Maintenance Estimate.* The estimated cost of the proposed maintenance for the first year will be \$9,090 as described in the Maintenance Estimate attached hereto in Exhibit "D".
6. *Assessment Method.* All eligible properties within the District are to be assessed for a portion of the costs of maintaining the Josephine Crossing Subdivision, public area improvements as specified herein. Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the Josephine Crossing Subdivision, Public Area Improvements, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.
7. *Payment of Assessment.* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that payment of one-half of said annual assessment may be deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute a fund to be known as Fund of Park Maintenance District Number 4036.
8. *Bonds for Improvement.* There will be no bonds sold for this district as it is for maintenance only.
9. *Engineering.* All engineering will be as part of Private Contract No. 566.
10. *District Accounts.* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____
_____ day of _____, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: First Reading of an Ordinance Expanding Ward IV

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On February 26, 2007, the City Council approved the annexation of an approximate 13.01 acre parcel legally described as Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms. The request for annexation was submitted by Mary Kramer, the owner of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV will be conducted at this meeting. The second reading of the ordinance will be conducted on March 26, 2007.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 07-_____

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

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

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

Lot 65A-4, Amended Plat of Lot 65A of the Amended Plat of Amended Lots 65-68, 93-100 and 125-128, Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County, Montana; including all adjacent right-of-way of Grand Avenue and 54th Street West.

Containing 13.008 gross and 11.592 net acres.

(# 07-02 Exhibit "A" Attached)

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

PASSED by the City Council on the first reading this 12th day of March, 2007.

PASSED by the City Council on the second reading this 26th day of March, 2007.

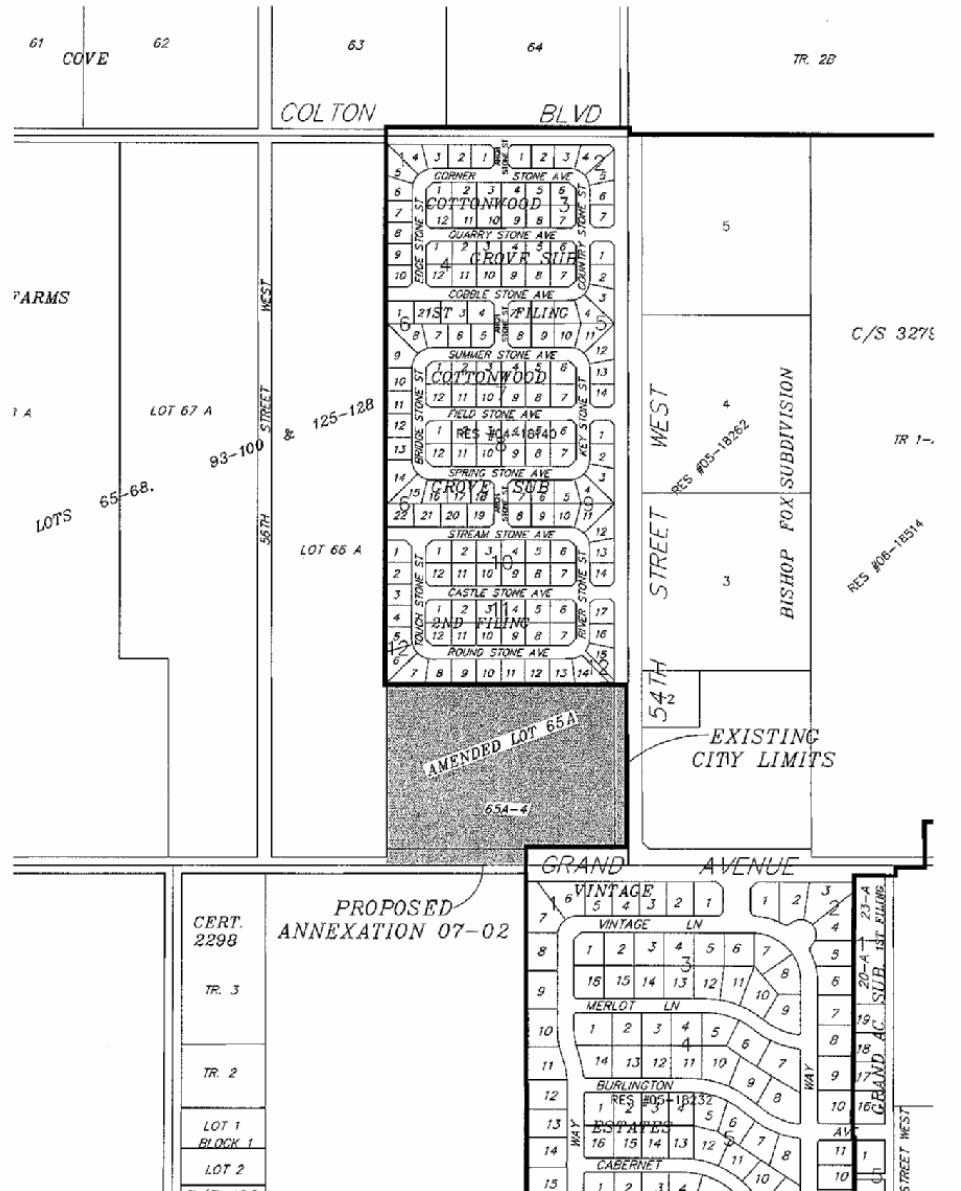
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Public Hearing to Quitclaim Normal Avenue

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: City Council approved the vacation of Marbara and Silver Lanes, a portion of Yucca Street, and North Rim Road at the February 12, 2007, City Council Meeting. The request to deed Normal Avenue was delayed until the March 12, 2007, City Council Meeting to allow advertising of the public hearing. A notice of the public hearing was sent out to all property owners within three hundred feet of Normal Avenue. Currently, there are water, sanitary sewer, and storm drain lines running through the approved vacated areas and Normal Avenue. MSU-B will enter into an easement agreement allowing full access to these lines and will be required to relocate or take over maintenance of the utilities if they ever propose to construct a structure over the lines. Normal Avenue was deeded to the City of Billings in 1954. The deed states that if Normal Avenue ever ceases to function as a street, the City of Billings will be required to deed Normal Avenue back to MSU-B. Once the bridge was taken out near Poly Drive, Normal Avenue ceased to function as a city street and became more of an access to MSU-B from Rimrock Road.

ALTERNATIVES ANALYZED:

3. Approve the quitclaim deed, right of way agreement, and resolution of Normal Avenue to MSU-B.
4. Do not approve the quitclaim deed, right of way agreement, and resolution of Normal Avenue to MSU-B.

FINANCIAL IMPACT: The original deed of Normal Avenue stated that the street would be deeded back to the university at no cost.

RECOMMENDATION

Staff recommends Council approve the quitclaim deed for Normal Avenue, resolution authorizing disposal of land, and a right of way easement agreement for the public utilities.

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

ATTACHMENTS

- A. Quitclaim Deed
- B. Right of Way Easement Agreement
- C. Resolution Authorizing Disposal of Land

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged this _____ day of _____, 20____, the undersigned, the CITY OF BILLINGS, MONTANA, Grantor, do hereby grant, convey, release and forever quitclaim its interest unto Montana University System for the use and benefit of Montana State University - Billings, 1500 University Drive, Billings, Montana 59101, as Grantee, in the following described real property situated in the City of Billings, Yellowstone County, Montana:

A tract of land being situated in the NW1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana, as described in the Right-of-Way Deed recorded in Book 517, Page 118, under Document No. 538385 in the Office of the Clerk and Recorder of said County; said tract being more commonly known as "Normal Avenue".

TO HAVE AND TO HOLD unto the Grantee, and to its assigns and successors forever.

IN WITNESS WHEREOF, the Grantor has herein executed this instrument the day and year first above written.

CITY OF BILLINGS,
MONTANA

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 _____ and
_____, known to me to be the Mayor and City Clerk, respectively,
of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such
capacity and acknowledged to me that they executed the same on behalf of the City of Billings,
Montana.

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

(Signature)

(NOTARIAL SEAL)

(Printed Name)

Notary Public for the State of _____

Residing in _____

My Commission Expires: _____

RIGHT-OF-WAY EASEMENT AGREEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this _____ day of _____, ____, the undersigned, Montana University System for the use and benefit of Montana State University - Billings with an address of 1500 University Drive, Billings, MT 59101, hereinafter called "Grantor", hereby grants and conveys unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter called "Grantee", a non-exclusive right-of-way easement for the purposes set forth across, under and through the following described tracts of real property in Yellowstone County Montana:

DESCRIPTION OF EASEMENT IN NORMAL AVENUE:

A tract of land being situated in the NW1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the southeast corner of Lot 1 of Babcock Subdivision, First Filing; thence NORTH a distance of 1024.20 feet to the southerly right-of-way of Rimrock Road; thence, following said southerly right-of-way, along a non-tangent curve to the left with a radius of 1230.75 feet a distance of 60.09 feet (chord bearing, N 86°59'26" E, chord length, 60.08 feet); thence, leaving said southerly right-of-way, SOUTH a distance of 1192.60 feet; thence S 89°58'00" W a distance of 60.00 feet; thence NORTH a distance of 165.27 feet to the point of beginning; said tract having an area of 71,448 SF.

DESCRIPTION OF EASEMENT IN MARBARA LANE:

A tract of land being situated in the NW1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Beginning at a point which is the northeast corner of Lot 3 of Normand Estates Subdivision; thence WEST a distance of 315.00 feet; thence SOUTH a distance of 20.00 feet; thence WEST a distance of 15.00 feet; thence NORTH a distance of 70.00 feet; thence EAST a distance of 15.00 feet; thence SOUTH a distance of 20.00 feet; thence EAST a distance of 315.00 feet; thence SOUTH a distance of 30.00 feet to the point of beginning; said tract having an area of 10,500 SF.

SILVER LANE ACCESS

Grantor must maintain reasonable access to Grantee for large sanitary sewer cleaning vehicles to access sanitary sewer manhole 79-3 located at the eastern end of Silver Lane. This access must be maintained until Grantor obtains ownership of the sanitary sewer from manhole 79-6 (in Rimrock Road) to 79-1 (North of Poly Drive). Grantee will maintain ownership and

maintenance responsibilities of the sanitary sewer main from manhole 79-7 (located in Rimrock Road) to manhole 79-6 (located in Rimrock Road) and from 79-6 (located in Rimrock Road) to manhole 5-33 (located in Poly Drive) until Grantor can obtain ownership and maintenance responsibilities of this sanitary sewer main. Grantor will obtain ownership and maintenance responsibilities of this sanitary sewer main if and when they obtain ownership of all of the properties served by this sanitary sewer main.

MAINTENANCE AND OWNERSHIP OF WATER, SANITARY SEWER, AND STORM DRAIN MAINS

The Grantee will maintain ownership and maintenance responsibilities of the water lines, sanitary sewer lines, and storm drain lines within Normal Avenue and Marbara Lane. Maintenance responsibilities of the water lines include the maintenance of the fire hydrants. Grantor will assume ownership of and maintenance responsibilities of sanitary sewer main and water main in Marbara Lane if and when Grantor takes over ownership of Lot 1, Normand Estates.

With the vacation of Silver Lane, Grantor agrees to assume ownership of and maintenance responsibilities of the sanitary sewer main from manhole 19-3 (located in Silver Lane) to manhole 19-1 (located north of the BBWA) as shown in the City Of Billings Sanitary Sewer Atlas as of January 2007. Grantor agrees to take over ownership and maintenance responsibilities of the water main within Silver Lane to the point of intersection of the water main in Virginia Lane.

With the vacation of North Rim Road and the easterly 5-feet of Yucca Street, Grantor agrees to assume ownership of and maintenance responsibilities of the sanitary sewer main from manhole 79-12 (located in North Rim Road) to manhole 79-11 (located at the intersection of Yucca Street and North Rim Road) and from manhole 79-11 (located at the north end of Yucca Street) to manhole 79-6 (located in Rimrock Road). Grantor agrees to assume ownership of and maintenance responsibilities of the water main within North Rim Road to the point of intersection of the water main in Yucca Street along with the water main in Yucca Street to the point of intersection of the water main in Rimrock Road.

With the deed of Normal Avenue, Grantor agrees to assume ownership of and maintenance responsibilities of the sanitary sewer main from manhole 79-2 (located east of Normal Avenue on MSU-B's campus) to manhole 79-1 (located west of Normal Avenue).

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

This grant is subject to all grants, easements, leases, mineral leases or rights, reservations, rights and rights-of-way heretofore reserved or granted and/or now existing on the above described property and is further made without warranty of title, express or implied.

Grantor 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:

- a) Grantor agrees not to plant, nor cause to be planted within the right-of-way easement any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except with permission from the City of Billings Public Works Department, which permission shall not be unreasonably withheld, delayed or conditioned.
- b) Grantor agrees that authorized representatives of the City of Billings can travel within the right-of-way easement with their equipment in the performance of their duties at all reasonable times, regardless of outside weather conditions; provided, however, Grantee shall be liable for any damage caused to Grantor's property and roads as a result of such travel.
- c) Grantor shall obtain permission of the City of Billings which permission shall not be unreasonably withheld, delayed or conditioned, prior to placing or removing any fill dirt within the right-of-way easement. In the event such permission is granted and as a result of such placement or removal it is necessary to modify the existing public utilities, then Grantor agrees to perform any work necessary to modify the existing public utilities, which work may be required prior to placing or removing any fill dirt within the right-of-way easement. All such work shall be done at Grantor's expense and without expense to the City of Billings.
- d) Grantor shall obtain permission of the City of Billings, which permission shall not be unreasonably withheld, delayed or conditioned, prior to constructing, or causing to be constructed, within the right-of-way easement, any type of building or structure, such as, but not limited to, houses, garages, shacks, kennels, fences, and other fixed objects of any kind, shape or form. In the event such permission is granted and as a result of such building or structure it is necessary to modify the existing public utilities, then Grantor agrees to perform any work necessary to relocate the existing public utilities out of the right-of-way easement as approved by the City of Billings Public Works Department. All such work shall be done at Grantor's expense and without expense to the City of Billings. Before relocation of public utilities, if it is determined that the existing public utilities need to be upsized due to reasons other than to serve Grantor's property, the cost to upsize the utility will be borne by the City of Billings.

Grantee agrees that any time Grantee and its representatives are on Grantor's property, including the right-of-way easement, Grantee and its representatives shall comply with all of Grantor's safety rules and regulations, and that Grantee shall be liable for any damages to Grantor's property caused by the exercise of Grantee's rights under this Easement. After completion of any construction, replacement, repair or service work to the public utilities by the City of Billings, Grantee shall be responsible for restoring the surface as near as practicable to the condition that existed prior to such activity.

Each party hereto shall reimburse the other party for any and all damage claims paid by the other party 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 such party's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this Easement.

The Grantor and Grantee agree to mutually indemnify, defend and hold each other and their respective officers, employees, agents and contractors, harmless from and against all liabilities, claims, demands, losses, actions, judgments, costs, expenses, attorneys fees or damages of whatever kind or nature, arising out of, resulting from or related to the negligent, intentional or reckless acts or omissions of the Grantor's or Grantee's performance of their respective duties and obligations under this easement agreement.

No waiver of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of a similar or dissimilar nature, unless expressly so stated in writing.

Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing, and delivered personally, by telecopy, by messenger or by certified mail, postage prepaid, return receipt requested as follows:

If to Grantor, addressed to: Montana University System for the use and benefit
of Montana State University - Billings
1500 University Drive
Billings, MT 59101

Either party may change its representative or the address to which notice shall be directed by appropriate written notice to the other party in the manner described above.

The parties understand and agree that the Grantor is the owner of all lots and parcels of land adjacent to or affected by the above-described easement areas except for (i) Lot 1 in Block 1 of Normand Estates Subdivision commonly known as 420 Marbara Lane, and (ii) the S ½ NE ¼ NW ¼ NW ¼ NW ¼ of Section 32, Township 1 North, Range 26 East, commonly known as 2722 Normal Avenue (collectively the "Third Party Tracts"). At such time that Grantor acquires the right, title and interest in and to the Third Party Tracts, then all easements and rights-of-way set forth herein for Marbara Lane shall immediately cease and terminate and this Easement Agreement shall be of no further force and effect with respect thereto and the easement and right-of-way in Normal Avenue shall continue only with respect to the 16-inch water main and storm sewer line in and under said Normal avenue. The parties agree to execute any such documents as may be necessary to evidence and effectuate the termination of said easements and rights-of-way.

The covenants, agreements and all statements in this Easement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties and shall run with the land. This Easement contains all of the agreements and stipulations between Grantor and Grantee with respect to the granting of the easement right-of-way, and is intended solely for the benefit of the parties hereto and shall not create any rights, including without limitation any third party beneficiary rights, in any third party.

Montana University System for the use and benefit of Montana State University - Billings .

BY: _____

ITS: _____

STATE OF _____)
: ss.

County of _____)

On this _____ day of _____, 2007 before me a Notary Public for the State of _____, personally appeared _____, and acknowledged to me that they executed the foregoing instrument of behalf of and as the act of Montana University System for the use and benefit of Montana State University - Billings.

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

_____ (Signature)

(NOTARIAL SEAL)

_____ (Printed Name)

Notary Public for the State of _____

Residing in _____, _____

My Commission Expires: _____

CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this ____ day of _____, 2007, before me, a Notary Public in and for the
State of Montana, personally appeared _____ and
_____, known to me to be the Mayor and City Clerk, respectively,
of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such
capacity and acknowledged to me that they executed the same on behalf of the City of Billings,
Montana.

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

(Signature)

(NOTARIAL SEAL)

(Printed Name)

Notary Public for the State of _____

Residing in _____, _____

My Commission Expires: _____

RESOLUTION 07 - _____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED OF, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to dispose of property it currently known as Normal Avenue in the City of Billings, Yellowstone County, Montana; and

WHEREAS, the location of the public property to be disposed of is more particularly described as follows:

A tract of land being situated in the NW1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana, as described in the Right-of-Way Deed recorded in Book 517, Page 118, under Document No. 538385 in the Office of the Clerk and Recorder of said County; said tract being more commonly known as "Normal Avenue"; and

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 12th day of March, 2007;

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

That the City staff is authorized to proceed with the quitclaim of Normal Avenue under the requirements of Section 22-902 of the Billings, Montana City Code and per the requirements set forth in the original Right-of-Way Deed recorded in Book 517, Page 118, under Document No. 538385 in the Office of the Clerk and Recorder of Yellowstone County.

APPROVED AND PASSED by the City Council of the City of Billings,
Montana this 12th day of March, 2007.

THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

CITY CLERK

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, March 12, 2007

TITLE: Public Hearing & Site Development Ordinance Variance #CC07-01
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings Fire Department desires to construct a new building, Fire Station # 7, at 1501 54th Street West. This property is on Lot 2, Block 1, of the Bishop Fox Subdivision and is located approximately 600 feet north of the Grand Avenue and 54th Street West intersection. The Fire Department is requesting a curb cut of 50 feet and a variance from the Site Development Ordinance, Section 6-1203(h)(3).

ALTERNATIVES ANALYZED:

1. Approve the variance allowing a curb cut of 50 feet within the right-of-way.
2. Do not approve the variance allowing a curb cut of 50 feet within the right-of-way.

FINANCIAL IMPACT: There is no financial impact associated with this variance.

RECOMMENDATION

Staff recommends that Council approve the variance allowing a curb cut of 50 feet within the right-of-way.

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

INTRODUCTION

The City of Billings Fire Department desires to construct a new building, Fire Station # 7, at 1501 54th Street West. This property is on Lot 2, Block 1, of the Bishop Fox Subdivision and is located approximately 600 feet north of the Grand Avenue and 54th Street West intersection. The Fire Department is requesting a variance from the Site Development Ordinance, Section 6-1203(h)(3).

BACKGROUND

The subject property is currently zoned “Public.” Although the Site Development Ordinance, Section 6-1203(h)(3), does not specifically address “Public” zoned areas, it is the intent of the code to limit the size of curb cut openings to 40 feet or less.

The Site Development Ordinance for curb cuts states as follows:

Section 6-1203(h)(3)

In any commercial 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.

The proposed site shows three bays for the fire trucks on the west side of the building and an overall width of 50 feet. The 50-foot curb cut would allow the fire trucks a direct access from the truck bays to 54th Street West.

ALTERNATIVES ANALYSIS

1. Approve the variance allowing a curb cut of 50 feet within the right-of-way. Approval of this variance will allow the fire trucks to pull directly onto 54th Street West.
2. Do not approve the variance allowing a curb cut of 50 feet within the right-of-way. Denying this variance for a curb cut of 50 feet will require the fire trucks to maneuver on site before accessing 54th Street West.

RECOMMENDATION

Staff recommends that Council approve the variance allowing a curb cut of 50 feet within the right-of-way.

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