

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

May 29, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Jim Ronquillo
ROLL CALL
MINUTES – May 14, 2007
COURTESIES
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 2 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) Crosswalk Lighting Upgrades for the Airport Terminal Building. (Opened 5/15/07) Recommend Yellowstone Electric, \$51,114.00.
[\(Corresponding Staff Memo A1\)](#)

(2) Airport Improvement Program (AIP) 33 Taxiway A Drainage and Pavement Rehabilitation Project. (Opened 5/15/07) Recommend Schedule 1: Riverside Sand and Gravel, Inc., \$393,163.70. Schedules II, III and IV: Western Municipal Construction, \$972,698.75.
[\(Corresponding Staff Memo A2\)](#)

(3) New Billings Baseball and Multi-Use Stadium at Athletic Park – West End Excavation. (Opened 5/15/07) Recommend CMG Construction, Inc., \$71,971.00.

[\(Corresponding Staff Memo A3\)](#)

(4) SID 1375 Claremont Road Improvements. (Opened 5/29/07)
Recommend delay of bid award until 6/11/07.

[\(Corresponding Staff Memo A4\)](#)

(5) SID 1377 Greenbriar Road Improvements. (Opened 5/29/07)
Recommend delay of bid award until 6/11/07.

[\(Corresponding Staff Memo A5\)](#)

(6) Work Order 07-01, 2007 Water and Sewer Replacement Project.
(Opened 5/22/07) Recommend delay of bid award until 6/11/07.

[\(Corresponding Staff Memo A6\)](#)

B. Approval of new commercial non-aviation ground lease for a communication site with Gold Creek Cellular of Montana Limited Partnership.

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

C. Approval of two west end hangar ground leases with John M. and/or Marcia A. Nash, Lots 10 and 11.

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

D. CTEP Agreement with Montana Department of Transportation for Main Street Underpass project.

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

E. CTEP Agreement with Montana Department of Transportation for Lake Elmo Drive Path project.

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

F. Agreement with Shiloh Crossing Partners, LLC, for design of improvements to King Avenue West from South 31st Street West to Shiloh Road.

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

G. Turn Key Agreement for Cobb Field with Billings Mustangs, American Legion Baseball Program, and MSU-B Men's Varsity Baseball Program, \$29,000.00.

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

H. Amendment #2, Hazardous Waste Collection Events. Professional Services Contract, Philip Services, \$40,000.00.

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

I. Amendment #2, Paving of Overflow Parking Lots at Billings Logan International Airport. Morrison-Maierle, Inc. \$78,799.00.

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

J. Amendment #3, W.O. 03-25 Rimrock Road. Professional Services Contract, HKM Engineering, Inc., \$29,023.00.

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

K. Amendment #4, Architectural Services for the Airport Terminal Building Roofing Project. CTA Architects Engineers. \$52,768.12.
([Corresponding Staff Memo K](#))

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

(1) Parcel 14: Portion of Tract A, Certificate of Survey 280, Vernon E. West and Judy K. West. \$9,050.00.

([Corresponding Staff Memo L1](#))

(2) Parcel 28: Portion of Unit No. 68 of Imperial Park Condominium, Lot 1, Block 1 of Windsor Imperial Subdivision, Sang Soon Almer. \$4,600.00.

([Corresponding Staff Memo L2](#))

(3) Parcel 59: Portion of Tract 2, Certificate of Survey 1113, The Housing Authority of Billings. \$3,050.00.

([Corresponding Staff Memo L3](#))

M. Briarwood Sanitary Sewer Main Extension Right-of-Way Agreement and Perpetual Right-of-Way Easement with Atchison, Inc. \$23,182.50.

([Corresponding Staff Memo M](#))

N. Street Closures:

(1) St. Vincent's Health Care Heart and Sole Race, 6:00 a.m. to 12:30 p.m., June 10, 2007.

([Corresponding Staff Memo N1](#))

(2) Perfect Pitch, Inc. Montana Avenue Live, 10:00 a.m. to 12:00 a.m. every Friday, June 15 to August 24, N. 25th Street from Montana Avenue to 1st Avenue North.

([Corresponding Staff Memo N2](#))

O. Resolution appointing primary and alternate representatives to the Downtown Billings Partnership, Inc. Board of Directors.

([Corresponding Staff Memo O](#))

P. Resolution of Intent to create SID 1378, Clevenger Avenue Improvements (street, sidewalk, storm drain, drive approach, curb/gutter), and set a public hearing date for June 25, 2007.

([Corresponding Staff Memo P](#))

Q. Resolution of Intent to construct sidewalks and related improvements as part of W.O. 05-17 Highland School Sidewalk Improvements-Billings, Federal Aid No. STPE 1099(48), and set a public hearing date of June 25, 2007.

([Corresponding Staff Memo Q](#))

R. Second/Final reading ordinance expanding Ward IV (Annexation #07-06) for 42.26 acres for the future Cottonwood Park site: located at the northwest corner of Colton Boulevard and 54th Street West. City of Billings, owner.

([Corresponding Staff Memo R](#))

S. Second/Final reading ordinance expanding Ward III (Annexation #07-07) for an approximate 150-acre parcel legally described as: Lots 1-5, Block 1, Western Sky Subdivision. Cal Kunkel and Gerald Krieg, owners.

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

T. Recommendation for change in number of units, Sage Tower Building, Menola Land, Sage Tower, LLC, owners.

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

U. Recommendation for re-allocation of Affordable Housing Funds to complete Phase III infrastructure in King's Green Subdivision.

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

V. Preliminary Subsequent Minor Plat of Lake Hills Sub., 17th Filing, Lots 5 and 6, Block 11.

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

W. Final Plat Approval

(1) Caleb Park Sub.

[\(Corresponding Staff Memo W1\)](#)

(2) Amended Plat of Broso Valley Park Sub., Lots 12 & 13.

[\(Corresponding Staff Memo W2\)](#)

X. Bills and Payroll

(1) April 27, 2007

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

(2) May 4, 2007

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

(3) April 1, 2007 – April 30, 2007 (Municipal Court)

[\(Corresponding Staff Memo X3\)](#)

REGULAR AGENDA:

2. **W.O. 05-02: 2005 - 2006 Miscellaneous/Developer-Related Improvements.** Staff Recommends approval. (Action: approval or disapproval of Staff recommendation.) (Delayed from 4/23/07)

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

3. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #804:** A zone change from Residential Professional (RP) to Residential Multi-Family Restricted (RMF-R) on Lot 1A, Certificate of Survey 2991, and located on the southeast corner of the intersection of Central Avenue and Brookshire Boulevard addressed as 2810 Central Avenue. CBE Properties, LLC, owners. Zoning Commission recommends approval and adoption of the determination of

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

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

4. **PUBLIC HEARING AND SPECIAL REVIEW #845:** A special review to allow an all beverage liquor license with gaming on property described as Lot 20, Block 4, Sunset Subdivision, 1st Filing, in a Community Commercial zoning district and located at 1102 Grand Avenue. X1S Entertainment, owner. Aquilino Diaz, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

5. **PUBLIC HEARING AND SPECIAL REVIEW #846:** A special review to allow a parking lot on existing vacant land zoned Residential-6000 (R-60) described as the west 79 feet of Lot 2, Block 1, Alego Subdivision, and located at 818 Avenue B. Michael D. Stock, owner. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-08:** Property described as Tract 3, Certificate of Survey 2298, located in Section 4, T.1S, R.25E on the southwest corner of the intersection of Grand Avenue and 56th Street West. Hope Evangelical Church, owner and petitioner. Benjamin Gonzales, representative. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

7. **(a) PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-09:** Property described as the NW1/4 of Section 16, and the SW1/4 of Section 9, T.1S, R.26E, located on the southeast corner of the intersection of King Avenue East and Calhoun Lane. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo a7\)](#)

(b) PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #806: A zone change from Residential 15000 (R-150) and Residential Manufactured Home (RMH) to Entryway General Commercial (EGC) generally located on the southwest corner of King Avenue East and Orchard Lane and described as: the E1/2, NE1/4, NW1/4, less Certificate of Survey 3153 and the W1/2, NE1/4, NW1/4, less highway and less Miller Crossing Subdivision, Section 16, T.1S, R.26E, and Certificate of Survey 3153. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo b7\)](#)

8. **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)

JUNE:

6/01/2007	Human Relations Commission	12:15 p.m.	CH Conference Room
6/04/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
6/05/2007	Community Development Board	3:00 p.m.	4 th Floor Library
	Zoning Commission	4:30 p.m.	Council Chambers
	Aviation & Transit Commission	5:30 p.m.	Airport Terminal
6/06/2007	Board of Adjustment	6:00 p.m.	Council Chambers
6/07/2007	EMS Commission	7:30 a.m.	Main Fire Station
	Human Relations Commission	12:15 p.m.	CH Conference Room
6/11/2007	Energy & Conservation Commission	3:00 p.m.	Billings Operations Ctr. 4848 Midland Rd.

	Parking Advisory Board	4:00 p.m.	CH Conference Room
	REGULAR Council Meeting	6:30 p.m.	Council Chambers
6/12/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
	Planning Board	6:00 p.m.	4 th Floor Library
6/13/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
6/14/2007	Library Board	11:30 a.m.	Library
	Committee on Homelessness	1:30 p.m.	3 rd Floor Library
6/18/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
6/19/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
6/21/2007	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
6/25/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
6/26/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
	Planning Board	6:00 p.m.	4 th Floor Library
6/27/2007	Development Process Advisory Review Board (DPARB)	1:00 p.m.	CH Conference Room
	Traffic Control Board	NOON	4 th Floor Library
	Housing Authority	NOON	2415 1 st Avenue North
6/28/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street

JULY:

7/02/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
7/03/2007	Zoning Commission	4:30 p.m.	Council Chambers
	Aviation & Transit Commission	CANCELLED	
7/04/2007	INDEPENDENCE DAY – CITY OFFICES CLOSED		
7/05/2007	Board of Adjustment	6:00 p.m.	Council Chambers
	EMS Commission	7:30 a.m.	Main Fire Station Conf. Rm 2300 9 th Ave. N.
	Human Relations Commission	12:15 p.m.	CH Conference Room
7/09/2007	Energy & Conservation Commission	3:00 p.m.	Billings Operations Ctr. 4848 Midland Rd.
	Parking Advisory Board	4:00 p.m.	CH Conference Room
	REGULAR Council Meeting	6:30 p.m.	Council Chambers
7/10/2007	Community Development Board	3:00 p.m.	4 th Floor Library

	Council Agenda Setting Meeting Planning Board	5:30 p.m. 6:00 p.m.	CH Conference Room 4 th Floor Library
7/11/2007	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
	Community Development Board	3:00 p.m.	4 th Floor Library
7/12/2007	Library Board	11:30 a.m.	Library
	Committee on Homelessness	1:30 p.m.	3 rd Floor Library
7/16/2007	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
7/17/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
7/23/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
7/24/2007	Planning Board	6:00 p.m.	4 th Floor Library
7/25/2007	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
7/26/2007	Yellowstone County Board of Health	CANCELLED	
7/31/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference
1/16/2007	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
1/22/2007	REGULAR Council Meeting	6:30 p.m.	Council Chambers
1/23/2007	Planning Board	6:00 p.m.	4 th Floor Library
1/24/2007	Traffic Control Board Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	4 th Floor Library CH Conference Room
1/25/2007	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street
1/29/2007	Council WORK SESSION	5:30 p.m.	Community Center
1/30/2007	Council Agenda Setting Meeting	5:30 p.m.	CH Conference Room
1/31/2007	Housing Authority	NOON	2415 1 st Avenue North

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Approval of the Award of the Crosswalk Lighting Upgrades for the Airport Terminal Building

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Included in the City's Capital Improvement Program is the Crosswalk Lighting Upgrades project for the Airport Terminal Building. The increasing use of Airport Terminal facilities over the last few years has heightened our concern for the safety of the pedestrian traffic in front the Terminal. This project will provide an upgrade to the existing lighting at each of the crosswalks from the parking lots to the four main entrance doors of the Terminal. The upgrades include the addition of new light poles and lighting fixtures at each crosswalk, repositioning of the existing crosswalk lighting, and new lighting at each of the revolving doors. This project has been advertised in the *Billings Times*, and is on the City's Web site. On May 15, 2007, we received the following bids for this project:

<u>CONTRACTOR</u>	<u>BID</u>
Yellowstone Electric	\$51,114
Colstrip Electric	\$77,900
ESTIMATE	\$60,000

FINANCIAL IMPACT: The total cost of the project is \$51,114. The source of funding for this project is the Department's Capital Budget.

RECOMMENDATION

Staff recommends that the City Council approve the award of Crosswalk Lighting Upgrades to the low bidder Yellowstone Electric, for the amount of \$51,114.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, May 29, 2007

TITLE: Approval of the Award of Airport Improvement Program (AIP) 33 Taxiway A Drainage and Pavement Rehabilitation Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Included in the City's Capital Improvement Program is the Airport Improvement Program (AIP 33) Taxiway A Drainage and Pavement Rehabilitation project. During times of heavy snowmelt or rainstorms, water from the air carrier and Fixed Base Operator (FBO) ramps flows easterly between Taxiway A and the FBO aircraft parking ramps. This flow, which can be several inches deep and six feet wide, creates a hazard to small aircraft and vehicles operating in this area. This project will install a series of slotted drains and underground storm sewer pipes, which will collect the surface water from the ramps and convey it, via underground pipe, to our detention ponds. Additionally, there is a portion of Taxiway A located north of the air carrier parking apron that is well past its expected service life of 15 years and is starting to deteriorate and breakup, creating loose debris that could damage an aircraft if ingested into a jet engine. This project was advertised in the *Billings Times* on April 26, May 3 and 10, and was on the City's website. This project's work was divided into schedules for the drainage and paving work to allow the contractors to either bid the entire project, or just the work in their area of expertise. On May 15, 2007, we received two bids for the Paving Schedule I and two bids for the Drainage Schedules II, III, and IV. The bids we received for these schedules are as follows:

PAVING SCHEDULE I

<u>CONTRACTOR</u>	<u>BID</u>
Riverside Sand and Gravel, Inc.	\$ 393,163.70
JTL Group, Inc.	\$ 437,240.90
ENGINEERS ESTIMATE	\$ 471,979.00

DRAINAGE SCHEDULES II, III, AND IV

<u>CONTRACTOR</u>	<u>BID</u>
Western Municipal Construction	\$ 972,698.75
COP Construction LLC	\$1,308,120.50

ENGINEERS ESTIMATE

\$ 848,487.00

FINANCIAL IMPACT: A bid award to the low bidders would have a **total** cost for the project of \$1,365,862.45. The project will be funded through a 95% FAA AIP grant, with a 5% local match. The FAA's portion will be \$1,297,569.33, and the City's match is \$68,293.12, which will be funded from the Airport's Capital Budget.

RECOMMENDATION

Staff recommends that the City Council approve the award of AIP 33 Taxiway A Drainage and Pavement Upgrades to the low bidders: Riverside Sand and Gravel, Inc., for Schedule I, for the amount of \$393,163.70, and Western Municipal Construction, for Schedules II, III, and IV, for the amount of \$972,698.75.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, May 29, 2007

TITLE: New Billings Baseball and Multi-Use Stadium at Athletic Park – Award of Bid for West End Excavation

DEPARTMENT: Parks, Recreation, and Public Lands Department

PRESENTED BY: Mike Whitaker, Director, PRPL Department

PROBLEM/ISSUE STATEMENT:

On November 7, 2006 the citizens of Billings voted to give the City authority to sell bonds up to \$12.5 Million to design and build a new Billings Baseball and Multi-Use Stadium to replace the existing Cobb Field. HNTB Montana has been retained as the Architects of Record to design, develop contract documents and oversee the construction of the new stadium.

The first phase of this project to remove Athletic Pool is now complete. The second phase is to excavate the western part of the seating bowl in preparation for construction of the new stadium (Phase 3) which is scheduled to begin the middle of July and will be ongoing throughout the baseball season. Bids were opened for the project at the regular bid opening, at 2:00 p.m., on May 15, 2007 at City Hall. Bids were received from 5 firms. The bids ranged from the highest of \$109,000 to the lowest of \$75,971. The Engineers estimate was \$72,922 which was 4% lower than the lowest bid.

FINANCIAL IMPACT:

Funding for the project is through the sale of General Obligation Bonds approved by Voters in the November 7, 2006 General Election.

Location of Work: At Athletic Park comprising the entire block bounded by 27th Street North, 26th Street North, 9th Avenue North and 10th Avenue North.

Funding Sources: Up to \$12.5 Million General Obligation Bond.

The lowest and best bid received was from **CMG Construction, Inc.** of Billings, for a total amount of \$75,971.00. The low bid received is within the budget for the project. The bid tabulation summary is attached.

ALTERNATIVES ANALYZED:

- Award contract to the recommended finalist, or
- Award contract to another finalist, or
- Reject all bid proposals.

RECOMMENDATION:

Staff recommends that Council approve the award of the bid for the West End Excavation to **CMG Construction, Inc.** for the amount of **\$ 75,971.00.**

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

Attachment A: Contract Document

Attachment B: Bid Tabulation

NEW BASEBALL AND MULTI-USE STADIUM
AT ATHLETIC PARK - WEST SIDE EXCAVATION
BILLINGS, MT

COBB-SITE

**SECTION 00300
BID FORM**

Construction Bid For

**NEW BASEBALL AND MULTI-USE STADIUM AT ATHLETIC PARK -
WEST SIDE EXCAVATION**

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
CITY OF BILLINGS, MONTANA

BID FROM: CMB Construction, Inc.
P.O. Box 80252 / Billings, MT 59108

THE UNDERSIGNED BIDDER, having familiarized himself with the work required by the contract documents, the site where the work is to be performed, local labor conditions and all laws, regulations, and other factors affecting performance of the work, and having satisfied himself of the expense and difficulties attending performance of the work;

HEREBY PROPOSES and agrees, if this bid is accepted, to enter into an Agreement in the form attached to perform all work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the work; bonds, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor for the prices set forth in the following unit price or lump sum schedule.

BF-1

NEW BASEBALL AND MULTI-USE STADIUM
AT ATHLETIC PARK - WEST SIDE EXCAVATION
BILLINGS, MT

COBB-SITE

The bid price shall include all temporary or permanent equipment, materials, supplies, and labor necessary to construct the item in accordance with the Contract Documents.

ITEM No.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
101	Mobilization	1	LS	10,000 ⁰⁰	10,000 ⁰⁰
102	Erosion Control Measures	1	LS	2,000 ⁰⁰	2,000 ⁰⁰
103	Demolition	1	LS	2,000 ⁰⁰	2,000 ⁰⁰
104	Unclassified Excavation	6960	CY	10 ⁵⁰	61,971 ⁰⁰
5902 As Per Add #11				TOTAL	\$ 75,971⁰⁰

BASE BID - I will perform all of the work for the lump sum price of:

TOTAL BASE BID \$ 75,971⁰⁰
(Figures)

TOTAL BASE BID Seventy five thousand
nine hundred seventy one⁰⁰
(Words)

The undersigned bidder agrees to be bound by this bid for a period not to exceed that specified in the Invitation to Bid.

The undersigned bidder agrees to furnish the required bonds and to enter into a contract within ten (10) days after Owner's acceptance of this bid, and further agrees to complete all work as specified in the contract Agreement Form after the commencement of contract time, as defined in the General Conditions.

Liquidated damages shall be as specified in the Liquidated Damages Acknowledgement form bound herein.

The undersigned agrees that the unit prices shall govern in checking the bid and, should a discrepancy exist in the total prices and total amount of bid as listed above, after extensions are checked and corrections made, if any, the total amount of the bid as corrected shall be used in awarding the contract.

The undersigned bidder hereby certifies (a) that this bid is genuine and is not made in the interest of, or on the behalf of, any undisclosed person, firm, or corporation and is not

BF-2

NEW BASEBALL AND MULTI-USE STADIUM
AT ATHLETIC PARK - WEST SIDE EXCAVATION
BILLINGS, MT

COBB-SITE

submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly solicited any other bidder to put in a false or sham bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other bidder or over the Owner.

The undersigned bidder acknowledges receipt of the following addenda, which have been considered in preparation of this bid:

No. <u>1</u>	Dated <u>5/10/07</u>
No. _____	Dated _____
No. _____	Dated _____
No. _____	Dated _____

Submitted this 15 day of May, 2007.

SIGNATURE OF BIDDER:

If an individual: _____, doing business as

If a Partnership: _____

by _____, partner

If a Corporation: CMB Construction, Inc.

(a Montana Corporation)

by [Signature]

Title Sec. / Treas. (SEAL & ATTEST)

BF-3

NEW BASEBALL AND MULTI-USE STADIUM
AT ATHLETIC PARK - WEST SIDE EXCAVATION
BILLINGS, MT

COBB-SITE

Business Address of Bidder

P.O. Box 80252
Billings, MT 59108

If bidder is a joint venture, other party must sign below.

If an Individual: _____, doing business

as _____

If a Partnership:

by _____, partner

If a Corporation:

(a _____, Corporation)

by _____

Title _____ (SEAL &
ATTEST)

BF-4

NEW BASEBALL AND MULTI-USE STADIUM
AT ATHLETIC PARK - WEST SIDE EXCAVATION
BILLINGS, MT

COBB-SITE

ACKNOWLEDGEMENT OF LIQUIDATED DAMAGES

This acknowledgement, dated this 15 day of May, 2007, by
Cmlb (CONTRACTOR) wherein Cmlb
(CONTRACTOR) acknowledges and agrees that the public improvement contract, which is
the subject of this submitted bid, contains a liquidated damages clause.

Cmlb (CONTRACTOR) acknowledges and agrees that because
the project involves the construction of public improvements, said liquidated damages clause
is necessary. Cmlb (CONTRACTOR) acknowledges and agrees
that the City of Billings is damaged in the amount of \$500.00 for each day past the contract's
completion date that this project is not completed.

Cmlb (CONTRACTOR) acknowledges and agrees that because
this is a public improvement project, it is extremely difficult to calculate the City of Billings'
actual damages for delay in completing the project, but that this mutually agreed upon figure
for liquidated damages of \$500.00 is the best approximation possible, is reasonable, and is
not a penalty. This mutually agreed upon liquidated damages amount has been specifically
taken into account in arriving at the dollar amount of Cmlb
(CONTRACTOR'S) submitted bid. This liquidated damages amount shall be included in the
public improvement project contract and Cmlb (CONTRACTOR)
acknowledges and agrees to be bound by this amount should Cmlb
(CONTRACTOR) be awarded the public improvement contract.

This mutually agreed upon amount may be deducted from money due or to become due
Cmlb (CONTRACTOR) should Cmlb
(CONTRACTOR) be awarded the public
improvement contract and should Cmlb (CONTRACTOR) fail to
complete the work within the time specified in this contract.

By: [Signature]
(CONTRACTOR)

Its: Sec/Treas.

BF-5

Attachment B – Bid Tabulation

City of Billings
 PARKS, RECREATION AND PUBLIC LANDS
 Bid Tabulation for
 New Baseball and Multi-Use Stadium at Athletic Park – West side
 Excavation
 May 15, 2007

General Contractor	Base Bid	Total
CMG Construction, Inc	\$ 75,971	\$ 75,971
Overtime Enterprises, Inc	\$ 88,775	\$ 88,775
JTL Group, Inc. - Billings	\$ 103,368	\$ 103,368
Riverside Sand and Gravel, Inc.	\$ 106,628	\$ 106,628
Huppert Construction Co.	\$ 109,000	\$ 109,000
Lowest and Best Bid: CMG Construction, Inc.		\$ 75,971

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: SID 1375 Claremont Road Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: SID 1375 Claremont Road was bid on Tuesday, May 29, 2007. This project will construct water, sanitary sewer, storm drain, curb and gutter, and street improvements to Claremont Road between Gleneagles Boulevard and Lake Hills Drive.

ALTERNATIVES ANALYZED:

1. Delay award of SID 1375 until June 11, 2007, City Council Meeting to allow staff to review the bids.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$424,476.45. The costs of the Improvements are to be paid from the following sources: (1) \$110,000.00 of Special Improvement District bonds to be assessed to 4 properties with equal assessments; and (2) \$314,476.45 of cash contribution by Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District.

RECOMMENDATION

Staff recommends that Council delay award of SID 1375 until the June 11, 2007, City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: SID 1377 Greenbriar Road Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: SID 1377 Greenbriar Road was bid on Tuesday, May 29, 2007. This project will construct water, sanitary sewer, storm drain, curb and gutter, and street improvements to Greenbriar Road between Hillcrest Drive and Lake Hills Drive.

ALTERNATIVES ANALYZED:

1. Delay award of SID 1375 until June 11, 2007, City Council Meeting to allow staff to review the bids.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$158,449.80. The costs of the Improvements are to be paid from the following sources: (1) \$58,000.00 of Special Improvement District to be assessed to 3 properties; and (2) \$100,449.80 of cash contribution by Ron Hill, owner of 5 of the 8 lots in the District.

RECOMMENDATION

Staff recommends that Council delay award of SID 1377 until the June 11, 2007, City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Work Order 07-01, 2007 Water and Sewer Replacement Project
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids are scheduled to be received and evaluated for the 2007 Water and Sewer Replacement Project on May 29, 2007; however, in order to allow for sufficient evaluation of the bids, City staff recommends delaying award of the project until the June 11, 2007, City Council Meeting. W.O. 07-01 will replace approximately 4,500 feet of water main and about 12,700 feet of sewer main in various City locations as identified by City staff.

ALTERNATIVES ANALYZED:

1. Receive bids on May 29 for W.O. 07-01, and delay awarding the project until the June 11, 2007, City Council Meeting.

FINANCIAL IMPACT: Finances will not be impacted by a delay of Work Order 07-01.

RECOMMENDATION

Staff recommends that Council delay awarding Work Order 07-01, 2007 Water and Sewer Replacement Project until the June 11, 2007 City Council Meeting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

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

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Gold Creek Cellular of Montana Limited Partnership, DBA, Verizon Wireless, desires to establish a second cell tower on Airport property. This second tower would be located on the east end of the Airport for the purpose of providing coverage to the Alkali Creek residential area, which currently has some locations with less than adequate Verizon cell phone coverage. The first cell tower Lease with Gold Creek Cellular was established in October 1997, and is located on the west end of the Airport near the City's red and white water tower. Gold Creek Cellular has previously allowed other cell phone companies to co-locate on the west end tower, due to its strategic location overlooking the valley.

The new tower will be 50 feet in height and located northeast of the Airport's overflow ponds. The initial term is for five (5) years for a 50-foot by 60-foot parcel. The parcel for the tower and support building will be fenced, and the tower will have an obstruction light in compliance with Federal Aviation Administration (FAA) requirements. This new tower will be 100 feet west of an existing FAA Low Level Wind Shear Alert System (LLWAS) tower. The FAA has reviewed the proposed tower and location, and has approved its construction. A copy of the Lease is on file at the City Clerk's office for review.

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

RECOMMENDATION

Staff recommends that Council approve the new Commercial Non-Aviation Ground Lease for a Communication Site with Gold Creek Cellular of Montana Limited Partnership.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Council Approval of Two West End Hangar Ground Leases with John M. and/or Marcia A. Nash, Lots 10 and 11

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On September 25, 2006, the Council approved two leases to John M. And Marcia A. Nash, on which they subsequently constructed a one hundred and twenty-foot (120') by sixty-foot (60') duplex-style aircraft hangar. Mr. and Mrs. Nash desire to construct a second one hundred and twenty-foot (120') by sixty-foot (60') aircraft hangar in the City's West End General Aviation area located at the Billings Logan International Airport. This area was specifically developed in the early 1990's to accommodate the general aviation tenants with this type of lease and hangar construction. The proposed hangar will have a steel partition wall that separates the hangar into two separate units, similar to a duplex. Each hangar unit will have its own hangar door. This will allow Mr. Nash the flexibility to sell each side of the hangar in the future. To simplify potential future sale and assignment transactions, staff has opted to provide Mr. and Mrs. Nash with two lease parcels – Lots 10 and 11, that adjoin down the center of the proposed hangar, making a sales transaction and assignment of each of the hangar sides fairly straight forward. These two twenty (20) year ground Leases would be for two adjoining 5,525 square foot parcels on the south side of general aviation Taxilane "C" for a total of 11,050 square feet. The ground lease rate of \$.174 per square foot per annum is very similar to the rate being paid by the other ground lease tenants in this area. We have compared our ground lease rates with other commercial service airports and have found that our ground lease rates are comparable. The format of the two Lease documents is very similar to the Airport ground lease documents used for the past number of years. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language. This is a regular business transaction for the Airport.

FINANCIAL IMPACT: Each of the two ground Leases will generate \$961.35 in the first year of the Lease, for a total of \$1,922.70. Future lease year rentals will be adjusted annually by the Consumer Price Index (CPI-U).

RECOMMENDATION

Staff recommends that Council approve the authorization for the Mayor to execute two new twenty-year West End Hangar Ground Leases at the Billings Logan International Airport with John M. and/or Marcia A. Nash.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: CTEP Project Specific Agreement – Main Street Underpass
DEPARTMENT: Planning and Community Development
PRESENTED BY: Candi Beaudry, AICP, Director

PROBLEM/ISSUE STATEMENT: The City of Billings submitted to the Montana Department of Transportation (MDT) a Community Transportation Enhancement Project (CTEP) grant application for the Main Street Underpass project in November, 2006. The Main Street Underpass project consists of planning, designing, boring and placement of 200 lineal feet of bicycle and pedestrian tunnel and 300 lineal feet of hard-surfaced, shared-use path. The project is located under Main Street adjacent to the Alkali Creek Drainage. The total cost of the project is \$733,277. This project was recommended by City Council to the Policy Coordinating Committee on October 23, 2006. The Committee approved the application submittal which was subsequently approved by MDT. The Project Specific Agreement represents the formal agreement between the City and MDT for the project's scope, funding and federal aid compliance. Council must authorize the Mayor to execute a Project Specific Agreement for the Main Street Underpass project to begin project development.

ALTERNATIVES ANALYZED:

- Approve the CTEP Project Specific Agreement.
- Do not approve the CTEP Project Specific Agreement. This would result in the loss of CTEP funding for this project.

FINANCIAL IMPACT: The funding breakdown for this project is as follows:

CTEP Grant	\$292,883
Local Match (GO Bond)	\$45,394
<u>TCSP Grant</u>	<u>\$395,000</u>
Total Funds Available	\$733,277

The three funding sources for this project are CTEP grant, Transportation, Community and System Preservation (TCSP) grant, and the 1999 General Obligation Bond. Both the CTEP grant

and local match figures include the Montana Department of Transportation's Indirect Cost Accounting Procedures (ICAP). State law requires MDT to now charge for indirect or overhead expenses for all projects it administers. This charge is referred to in item 14 of the attached agreement and amounts to 10.91% of the total CTEP and local match amount. It is not charged against additional contributions made by the local government. The ICAP charge for this project, which will be billed to the City, is \$4,952.48.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the CTEP Project Specific Agreement for the Main Street Underpass project.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

- A. CTEP Project Specific Agreement

CTEP PROJECT AGREEMENT

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

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, Control Number 6396, titled ALKALI CREEK DRAINAGE PATH-BLNGS (hereinafter the "project"); and,

WHEREAS, the State and the City recognize the need to develop and construct the project, and are willing to share in its costs in accordance with this agreement; and,

WHEREAS, the State and Federal Highway Administration (FHWA) will not participate in the development and construction of the project unless the City agrees to the conditions set forth; and,

WHEREAS, the estimated cost of the project's development and construction is \$733,277.00; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal-aid funds made available in federal fiscal 2007; and,

WHEREAS, the federal-aid funds provided are described in the Catalog of Federal Domestic Assistance (CFDA), number 20.205, Highway Planning and Construction; and,

WHEREAS, it is understood that all costs associated with the project in excess of these federal-aid funds will be financed by the City; and,

WHEREAS, this document must be executed and submitted to the State before the project development and construction process will be authorized to start; and,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree that:

1. The City will develop a CTEP project described as: the planning, design, boring, and placement of 200 lineal feet of bicycle and pedestrian tunnel and 300 lineal feet of hard-surfaced shared use path.
2. The project is located under Main Street (US 87/N16) in the Alkali Creek Drainage.
3. The purpose of this project is to provide a safe and convenient bicycle and pedestrian facility.
4. The initial federal-aid program to be requested for the development and construction of this project, by federal-aid account, is as follows:

Federal-Aid Program Account By Project Phase (Maximum CTEP Share)

[9102] Preliminary Engineering (86.58%)	\$	49,910
[9202] Right-of-Way/Easement Acquisition (86.58%)	\$	-0-
[9302] Incidental Construction (64.93%) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58%)(including contract administration and inspections)	\$	49,910
[9502] Construction (86.58%)	\$	238,457
[9702] Other (86.58%)	\$	-0-
Total	\$	338,277

	<u>Project</u>	<u>CTEP Funds</u>	<u>Local Match</u>	<u>ADD. Contribution</u>
City of Billings	\$ 733,277	\$ 292,883	\$ 45,394	\$ 395,000
TOTAL	\$ 733,277	\$ 292,883	\$ 45,394	\$ 395,000

5. The general method of development includes: the City must engage a project engineer for preliminary engineering, contract bid document preparation and construction engineering. Construction must be by competitive bid. The State will perform a final inspection to ensure substantial compliance with project plans, specifications and estimates.
6. The City and any consultant and/or contractor it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) goals, Americans with Disabilities Act (ADA) and Federal Labor Requirements.
7. The City will provide documentation necessary to comply with applicable environmental requirements, including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.
8. The City will complete and submit the applicable supporting documentation to the State for review and concurrence prior to beginning the next step in the project's development or construction process, as identified in the CTEP Guidelines.
9. The City will allow inspection of all work and project-related records by the personnel or agents of the State and FHWA.
10. Cities subject to the authority of the Montana Single Audit Act will secure an independent audit in compliance with OMB Circular A-133 and submit a copy to the Montana Department of Administration, Local Government Services Bureau, P O Box 200547, Helena, MT, 59620-0547.
11. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees, the City agrees that it will protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them from any cause whatever from the project, and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its construction or use or maintenance.
12. The City will retain project-related records and documents for a period of three years after the closing of the project.

13. The City will be responsible for \$440,394.00 and Federal participation will be \$292,883.00 of the estimated total project cost of \$733,277.00. The City will be responsible for 100% of all costs exceeding the proposed \$733,277.00 that may be required to complete the project.
14. **It is understood and agreed between the parties that:** Section 17-1-106. MCA, requires any state agency, including MDT, that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 10.91% for fiscal year 2007 (July 1, 2006 to June 30, 2007).

For this project, MDT billings to the City will include a charge for the indirect costs, pertaining only to the federal funds provided and the required local match, at the current fiscal year indirect cost rate, which amount will be applied toward the required project contribution of the City. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]
15. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Office for the project development and/or construction costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share.
16. This agreement shall become effective upon execution by both parties. It may be modified only by prior written agreement of both parties.
17. The City will service, maintain, and pay the cost of operating the project described in this agreement.
18. During the performance of this Agreement the City, for itself, its assignees and successors in interest, agrees as follows:

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

- (1) Compliance with Regulations: The City shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The City, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.

- (4) Information and Reports: The City will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this Agreement, the State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the City under the Agreement until the City complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The City will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The City will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the State to enter into the litigation to protect the interests of the State, and, in addition, the City or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

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

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

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

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

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

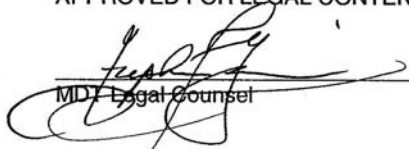
STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION
Jim Lynch, Director of Transportation

BY


Chief Engineer, Engineering Division

April 25, 2007

APPROVED FOR LEGAL CONTENT


MDJ Legal Counsel

CITY OF BILLINGS

ATTEST-CITY CLERK

MAYOR

By _____

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

[OFFICIAL SEAL]

City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: CTEP Project Specific Agreement – Lake Elmo Drive Path
 DEPARTMENT: Planning and Community Development
 PRESENTED BY: Candi Beaudry, AICP, Director

PROBLEM/ISSUE STATEMENT: The City of Billings submitted to the Montana Department of Transportation (MDT) a Community Transportation Enhancement Project (CTEP) grant application for the Lake Elmo Drive Path project in November, 2006. The Lake Elmo Drive Path project consists of the installation and construction of 4,000 lineal feet of sidewalks, 1,000 lineal feet of drive approaches, 5,000 lineal feet of shared use path, ADA ramps, street lighting, landscaping, bulbouts, and street crossings. The project is located along Lake Elmo Drive between Hilltop Road and Wicks Lane. The total cost of the project is \$2,898,464. This project was recommended by City Council to the Policy Coordinating Committee on October 23, 2006. The Committee approved the application submittal which was subsequently approved by MDT. The Project Specific Agreement represents the formal agreement between the City and MDT for the project's scope, funding and federal aid compliance. Council must authorize the Mayor to execute a Project Specific Agreement for the Lake Elmo Drive Path project to begin project development.

ALTERNATIVES ANALYZED:

- Approve the CTEP Project Specific Agreement.
- Do not approve the CTEP Project Specific Agreement. This would result in the loss of CTEP funding for this project.

FINANCIAL IMPACT: The funding breakdown for this project is as follows:

CTEP Grant	\$426,596
Local Match	\$66,122
<u>Additional Contribution</u>	<u>\$2,405,750</u>
Total Funds Available	\$2,898,648

There are numerous funding sources for the additional contribution and local match, including Gas Tax, SID Bonds, and other School Route funds. Both the CTEP grant and local match figures include the Montana Department of Transportation's Indirect Cost Accounting Procedures (ICAP). State law requires MDT to now charge for indirect or overhead expenses for all projects it administers. This charge is referred to in item 14 of the attached agreement and amounts to 10.91% of the total CTEP and local match amount. It is not charged against additional contributions made by the local government. The ICAP charge for this project, which will be billed to the City, is \$6,504.00.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the CTEP Project Specific Agreement for the Lake Elmo Drive Path project.

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

ATTACHMENT

- A. CTEP Project Specific Agreement

CTEP PROJECT AGREEMENT

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

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, Control Number 6401, titled LAKE ELMO DRIVE PATH-BLNGS (hereinafter the "project"); and,

WHEREAS, the State and the City recognize the need to develop and construct the project, and are willing to share in its costs in accordance with this agreement; and,

WHEREAS, the State and Federal Highway Administration (FHWA) will not participate in the development and construction of the project unless the City agrees to the conditions set forth; and,

WHEREAS, the estimated cost of the project's development and construction is \$2,898,468.00; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal-aid funds made available in federal fiscal 2007; and,

WHEREAS, the federal-aid funds provided are described in the Catalog of Federal Domestic Assistance (CFDA), number 20.205, Highway Planning and Construction; and,

WHEREAS, it is understood that all costs associated with the project in excess of these federal-aid funds will be financed by the City; and,

WHEREAS, this document must be executed and submitted to the State before the project development and construction process will be authorized to start; and,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree that:

1. The City will develop a CTEP project described as: the installation and construction of 4,000 lineal feet of sidewalks, 1,000 lineal feet of drive approaches, 5,000 lineal feet of shared use path, ADA ramps, street lighting, landscaping, bulbouts, and street crossings.
2. The project is located along Lake Elmo Drive between Hilltop Road and Wicks Lane in Billings.
3. The purpose of this project is to provide a safe and convenient bicycle and pedestrian facility.
4. The initial federal-aid program to be requested for the development and construction of this project, by federal-aid account, is as follows:

Federal-Aid Program Account By Project Phase (Maximum CTEP Share)

[9102] Preliminary Engineering (86.58%)	\$	-0-
[9202] Right-of-Way/Easement Acquisition (86.58%)	\$	-0-
[9302] Incidental Construction (64.93%) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58%)(including contract administration and inspections)	\$	44,364
[9502] Construction (86.58%)	\$	448,354
[9702] Other (86.58%)	\$	-0-
Total	\$	492,718

	<u>Project</u>	<u>CTEP Funds</u>	<u>Local Match</u>	<u>ADD. Contribution</u>
City of Billings	\$ 2,898,464	\$ 426,596	\$ 66,122	\$ 2,405,750
TOTAL	\$ 2,898,464	\$ 426,596	\$ 66,122	\$ 2,405,750

5. The general method of development includes: the City must engage a project engineer for preliminary engineering, contract bid document preparation and construction engineering. Construction must be by competitive bid. The CTEP portion will be let in conjunction with the reconstruction of Lake Elmo Drive. The State will perform a final inspection to ensure substantial compliance with project plans, specifications and estimates.
6. The City and any consultant and/or contractor it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) goals, Americans with Disabilities Act (ADA) and Federal Labor Requirements.
7. The City will provide documentation necessary to comply with applicable environmental requirements, including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.
8. The City will complete and submit the applicable supporting documentation to the State for review and concurrence prior to beginning the next step in the project's development or construction process, as identified in the CTEP Guidelines.
9. The City will allow inspection of all work and project-related records by the personnel or agents of the State and FHWA.
10. Cities subject to the authority of the Montana Single Audit Act will secure an independent audit in compliance with OMB Circular A-133 and submit a copy to the Montana Department of Administration, Local Government Services Bureau, P O Box 200547, Helena, MT, 59620-0547.
11. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees, the City agrees that it will protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them from any cause whatever from the project, and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its construction or use or maintenance.

12. The City will retain project-related records and documents for a period of three years after the closing of the project.
13. The City will be responsible for \$2,471,872.00 and Federal participation will be \$426,596.00 of the estimated total project cost of \$2,898,468.00. The City will be responsible for 100% of all costs exceeding the proposed \$2,898,468.00 that may be required to complete the project.
14. **It is understood and agreed between the parties that:** Section 17-1-106, MCA, requires any state agency, including MDT, that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 10.91% for fiscal year 2007 (July 1, 2006 to June 30, 2007).

For this project, MDT billings to the City will include a charge for the indirect costs, pertaining only to the federal funds provided and the required local match, at the current fiscal year indirect cost rate, which amount will be applied toward the required project contribution of the City. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

15. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Office for the project development and/or construction costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share.
16. This agreement shall become effective upon execution by both parties. It may be modified only by prior written agreement of both parties.
17. The City will service, maintain, and pay the cost of operating the project described in this agreement.
18. During the performance of this Agreement the City, for itself, its assignees and successors in interest, agrees as follows:

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

- (1) Compliance with Regulations: The City shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The City, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurement of

materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.

- (4) Information and Reports: The City will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this Agreement, the State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the City under the Agreement until the City complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The City will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The City will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the State to enter into the litigation to protect the interests of the State, and, in addition, the City or the State may request the United States to enter into such litigation to protect the interests of the United States.

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

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

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

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

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

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


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

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

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

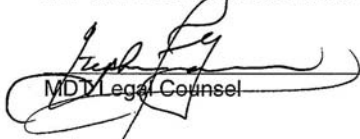
STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

Jim Lynch
Director of Transportation

BY  _____
Chief Engineer, Engineering Division

April 25, 2007

APPROVED FOR LEGAL CONTENT

 _____
MDT Legal Counsel

CITY OF BILLINGS

ATTEST-CITY CLERK

MAYOR

_____ By _____

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

[OFFICIAL SEAL]

City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Agreement for Design of Improvements to King Avenue West from S. 31st Street West to Shiloh Road

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The developer of the southeast corner of King Avenue West and Shiloh Road (Shiloh Crossing Partners, LLC) wishes to enter into an agreement with the City of Billings for design of street improvements to King Avenue West from approximately S. 31st West to Shiloh Road. These improvements generally consist of widening King Avenue West from a two-lane road section to a five-lane road section with curb/gutter, sidewalks and storm drainage improvements. This project was originally in the 2013 CIP, but with this agreement, construction will begin later this year. The developers will hire a consultant to design the project in accordance with this agreement, but bidding and construction administration will be done by the City of Billings.

FINANCIAL IMPACT: All cost for design of street improvements shall be born by the developer.

RECOMMENDATION

Staff recommends that Council approve the agreement with the developer.

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

ATTACHMENT

- A. Agreement for Design of Improvements to King Avenue West from S. 31st Street West to Shiloh Road

AGREEMENT

Between

City of Billings

And

Shiloh Crossing Partners, LLC

Date: _____, 2007

AGREEMENT

This Agreement is entered into this ____ day of _____, 2007 between the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as the "**CITY**" and **SHILOH CROSSING PARTNERS, LLC**, of Billings, Montana, hereinafter referred to as "**SCP**" or "**DEVELOPER**".

RECITALS

WHEREAS, the Capital Improvement Plan ("CIP") for the CITY provides for the reconstruction of King Avenue West and for surface and storm drain improvements from 31st Street West to Shiloh Road in 2013 (hereinafter the "King Avenue West Surface Improvements"). The CITY intends to fund the design of the King Avenue improvements in fiscal year 2012, with actual construction scheduled for fiscal year 2013; and

WHEREAS, in its current CIP, the CITY plans to reconstruct and/or install water and sewer mains under King Avenue West from 31st Street West to Shiloh Road during 2009. Under this Agreement, the City shall accelerate the installation and the reconstruction or installation of the aforementioned utility improvements in the fall of 2007 and spring of 2008. The CITY has funding available for the reconstruction and/or installation of all water and sewer mains associated with this Project, inclusive of the necessary lift station. The CITY also has the ability to borrow funds from other CITY accounts in order to accelerate the construction schedule of the King Avenue Surface Improvements to 2007-2008; and

WHEREAS, in order to facilitate the earlier construction of the King Avenue West Surface Improvements, DEVELOPER has offered to finance the engineering and design of the Surface Improvements at a cost to DEVELOPER of approximately \$263,294.46; and

WHEREAS, the CITY recognizes that there is substantial financial benefit to the CITY if the King Avenue West Surface Improvements are constructed prior to September 30, 2008;

NOW THEREFORE, the CITY and DEVELOPER desire to enter into the following Agreement.

AGREEMENT

The CITY and DEVELOPER stipulate and agree as follows:

1. **PROJECT.** The Project shall mean the design and construction of King Avenue West surface and storm drain improvements from 31st Street to Shiloh Road. The Project shall encompass widening King Avenue to be a minimum of a five-lane section. The Project shall also include the installation of appurtenant curbs, gutters, sidewalks, traffic signals and/or roundabouts and signage, and storm drains. The Project shall be designed and constructed to city standards.

2. **COMPLETION DATE.** The Final Completion Date for the Project shall be on or before September 30, 2008. The city will make all reasonable efforts to achieve this date.

3. **WATER AND SEWER MAINS.** The City shall be solely and exclusively responsible for the reconstruction and/or installation of the water and sewer mains, inclusive of the necessary lift station. The Water and Sewer Utility Improvements within the ROW from 31st Street West to Shiloh Road shall be substantially completed on or before September 30, 2008.

4. **DESIGN OF THE SURFACE IMPROVEMENTS.** DEVELOPER shall retain Engineering, Inc. to design the Surface and Storm Drain Improvements, including the five-lane road section from 31st Street West to Shiloh Road, and the appurtenant curbs, gutters, sidewalks, traffic signals and roundabouts and signage, and storm water systems. Engineering, Inc.'s design of the King Avenue West Surface Improvements shall comply with all City standards and requirements and shall be subject to the final approval of the CITY. DEVELOPER estimates that its design cost for the Surface Improvements will be approximately \$263,294.46. DEVELOPER shall pay Engineering, Inc. directly for the services that Engineering, Inc. provides to the CITY and DEVELOPER in connection with the design of the Surface Improvements. The DEVELOPER shall not seek reimbursement of the design costs from the CITY. The DEVELOPER's design costs shall be a contribution to CITY in order to facilitate the accelerated construction of King Avenue West Improvements.

5. **THE CITY'S CONSTRUCTION OBLIGATION.** The CITY will plan and commence the construction of the King Avenue West Surface Improvements so that the Project will be completed on or before the Final Completion Date of September 30, 2008. The CITY has sole and exclusive responsibility for soliciting public bids in accordance with the State statutes required for bidding projects with Public Funding and for all aspects of construction including, but not limited to retaining contractors and subcontractors, for purchasing materials, and for supervising the Project. The CITY shall also provide all construction administration services including, but not limited to, construction inspection, field staking, construction engineering management, materials testing utilizing geotechnical sub consultant, processing of payment applications, and other contract administrative duties, and preparation and submittal of final record drawings.

6. **DEVELOPER'S ROLE.** DEVELOPER's role in connection with the Project shall be strictly limited to funding the engineering and design for the King Avenue West Surface Improvements. DEVELOPER shall have no responsibility or duty in the areas of design, bidding, hiring, construction, construction administration, maintenance, supervision, and/or acceptance of the Project. The parties acknowledge that DEVELOPER is making a financial contribution of approximately \$263,294.46 to facilitate the accelerated construction of the King Avenue West Improvements, and that DEVELOPER shall have no further duties or responsibilities, of any kind whatsoever, in connection with the Project.

7. **EXPENSE OF ENFORCEMENT.** If either party brings a lawsuit, at law or in equity, to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including but not limited to appellate proceedings in addition to any other remedy granted.

8. **DEFAULT.** In the event of any default under this Agreement, the non-defaulting party shall have all of its rights and remedies allowed at law and in equity. In the event of default, the non-defaulting party may provide written notice of default to the defaulting party. The defaulting party shall take all actions reasonably necessary to cure or eliminate its default as promptly as is reasonably possible. In the event that the default cannot be promptly cured or eliminated, the defaulting party shall provide reasonable assurances of future performance to the non-defaulting party, and shall hold the non-defaulting party harmless of and from any costs, expenses, or damages that may be suffered or incurred as a result of the default.

9. **RIGHT TO TERMINATE.** The CITY shall have the right to terminate this Agreement if the bids for the Surface Improvements to King Avenue West are unacceptable to the CITY, for reasons other than the dollar amount bid. The CITY shall also have the right to terminate this Agreement if the lowest acceptable bid exceeds the engineer's cost estimate by 15% or more. The CITY may terminate this Agreement by giving written notice of termination to DEVELOPER within fifteen (15) calendar days of the opening of the sealed bids. In the event the CITY elects to terminate this Agreement, the CITY shall reimburse DEVELOPER for all design costs incurred by DEVELOPER as of the date of the termination plus interest thereon at 5.5% per annum until paid. The CITY will reimburse DEVELOPER for the design costs plus interest thereon on or before July 1, 2012. The CITY shall then have no further obligation to DEVELOPER under this Agreement.

10. **NOTICES.** Any notice, demand, request or other instrument which may be or is required to be given under this Agreement shall be delivered personally, or sent by United States certified mail, postage prepaid, and shall be addressed as follows:

To Developer

Shiloh Crossing Partners, LLC
Attn: Steven J. Corning
2280 Grant Road, Suite A
PO Box 80510
Billings, MT 59108-0510
Telephone (406) 651-4300
Facsimile (406) 651-1300

And a Copy to:

Moulton, Bellingham, Longo & Mather, P.C.
Attn: Doug James
27 North 27th Street, Suite 1900
PO Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731
Facsimile (406) 248-7889

To The City

City of Billings
Attn: Tina Volek, City Administrator
PO Box 1178
Billings, MT 59103
Telephone (406) 657-8430
Facsimile (406) 657-8390

And a Copy to:

Brent Brooks, City Attorney
PO Box 1178
Billings, MT 59103-1178
Telephone (406) 657-8205
Facsimile (406) 657-3067

11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana.

12. **COMPLETE AGREEMENT.** This Agreement sets forth all of the covenants, promises, agreements, conditions, and understandings between the CITY and DEVELOPER concerning the Project, and there are no covenants, promises,

agreements, conditions, and understandings between them with respect to the Project other than as contained herein. No subsequent alterations, amendment, change, or addition to this Agreement shall be binding upon either the CITY or DEVELOPER unless reduced to writing and signed by both parties.

13. **SEVERABILITY.** The unenforceability, invalidity or illegality of any provision shall not render the other provisions of this Agreement unenforceable, invalid, or illegal.

14. **INTERPRETATION.** This Agreement has been negotiated by the CITY and DEVELOPER, and accordingly shall not be deemed to have been prepared by either the CITY or DEVELOPER, but by both equally. Accordingly, the rules of strict construction shall not apply to this Agreement. This Agreement shall not be construed in favor of or against either party, but shall be construed neutrally.

15. **RELATIONSHIP OF THE PARTIES.** The relationship between the CITY and DEVELOPER is strictly that of independent contracting parties to an agreement. Neither the CITY nor the DEVELOPER shall have any fiduciary or similar duties to the other party. The relationship between the CITY and DEVELOPER shall not constitute a joint venture or partnership.

16. **ASSIGNMENT.** This Agreement shall not be assigned by either party without the prior express written consent of the other party, which consent shall not be unreasonably withheld.

17. **TIME.** Time is of the essence of this Agreement and each and every provision thereof.

18. **NO WAIVER.** The failure of either party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies that the party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

19. **CONSTRUCTION.** If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid, the remainder of this Agreement shall not be affected thereby, and any provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. **DISCRETION.** Whenever either party is entitled to exercise discretion hereunder, or to give or withhold its consent to some proposed action, each party agrees that it shall act reasonably in exercising its discretion, or withholding its consent,

unless the relevant provisions of this Agreement permit such party to act in its absolute discretion or sole judgment.

21. **CONTINGENT APPROVAL.** This Agreement is contingent upon the approval of the City Council of the City of Billings and the signature of the Mayor of the City of Billings. Upon such approval and signature, this Agreement shall be binding upon the CITY and the DEVELOPER.

IN WITNESS WHEREOF, the CITY and DEVELOPER have caused this Agreement to be executed on the date set forth herein.

CITY OF BILLINGS, MONTANA,
A municipal corporation

By _____
Ronald Tussing, Mayor

ATTEST: CITY OF BILLINGS, CITY CLERK

By _____

DEVELOPER: SHILOH CROSSING
PARTNERS, LLC

By _____
Steven J. Corning
Its Managing Member

APPROVED AS TO FORM

Brent Brooks
City Attorney

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Approval of 2007 Cobb Field Stadium Turn Key Agreement
DEPARTMENT: Department of Parks, Recreation & Public Lands
PRESENTED BY: Mike Whitaker, PRPL Director

PROBLEM/ISSUE STATEMENT: This agreement is for the period from January 1, 2007, to September 17, 2007. The existing agreement is recommended to be renewed with minor changes for the final season of use of the Cobb Field stadium and playing field. The Turn Key Agreement between the City of Billings and the Billings Mustangs, and American Legion Baseball Program and the Montana State University for a Men's Varsity Baseball program will, with council approval, continue until the end of the 2007 playing season in September. The agreement is acceptable to the three baseball programs for the final Cobb Field season. The changes being recommended other than the dates are to require a lump sum payment from the MSU-B baseball program instead of any number of hours of in-kind work by the team and program staff. All 3 baseball programs share proportionately in the facility and field preparation and maintenance costs. The Park, Recreation, and Cemetery Board has considered the proposed agreement at the March 14th regular meeting, and with minor changes, at the April 11th regular meeting, and recommends that council approve the agreement as presented.

ALTERNATIVES ANALYZED: The alternatives analyzed were to:

- Continue agreement with minor changes as a final season agreement, ending with the final game of the 2007 season, and develop a new operational agreement to be put into effect in 2008 before the start of the season. Staff recommendation.
- Operate the final season at Cobb Field by continuing under the existing agreement.

FINANCIAL IMPACT: As called for in the Agreement the baseball organizations will pay \$3,000 from the Legion Program, estimated \$26,000 from the Mustangs, and \$1,000 from the MSU-B Baseball program, for a total of \$30,000 to the city for the use of the stadium in 2007. Minor repairs may be necessary to keep the stadium operable through the season but will be minimized to the extent possible. The agreement provides for the routine stadium and ball field maintenance to be performed at the expense of the 3 baseball programs. The proposed compensation by the Ball Clubs includes the addition of a \$1,000 charge to the MSU-B program.

RECOMMENDATION:

Staff recommends that Council authorize the Mayor to sign the 2007 Turn Key Agreement for Cobb Field Stadium as proposed.

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

ATTACHMENTS:

- A. Agreement
- B. Certificates of Insurance
- C. Financial Statement for 2006.

INTRODUCTION

The City, the Billings Mustangs, and the American Legion Baseball Program have a turnkey agreement that is considered and renewed by the City Council every year. Since 2005 it also includes the MSU-B Men's Baseball program. It spells out the terms and conditions for the use of Cobb Field Stadium by the 3 Baseball programs.

PROCEDURAL HISTORY:

The steps for the renewal of the agreement were as follows:

- Preliminary discussions in early January, 2007, to discuss the agreement for the final year of Cobb Field operation and other issues and concerns related to the stadium and use by the baseball organizations;
- Draft of this year's proposed agreement circulated to staff for comment;
- Draft sent to Baseball organizations with changes for review and comment;
- Discussion in late-January, 2006, of the agreement and proposed changes;
- Negotiations of changes and wording;
- Final draft circulated to staff and then to the baseball organizations for signatures;
- Final draft to Parks, Recreation, and Cemetery Board for consideration and action, March 14th, 2007. The PRC Board discussion concerned the following items:
 - A penalty clause that would apply if payments were not remitted to the City as called for in the agreement;
 - A clarification of the official name for the Billings Mustangs Corporation. It is listed by the state as the Billings Pioneer Baseball Club; and
 - Inclusion of the Mustangs Boosters in the agreement as a subsidiary part of the Billings Mustangs;
 - Extend the Term for the Agreement to January 31st, 2008, since that is the end of the Billings Mustangs financial year when they are able to calculate payment and complete their financial reports;
 - The PRC Board action was to table the agreement until April 11th to allow those items to be addressed.
- PRC Board consideration at the April 11th, 2007, regular meeting. Action is a recommendation that the City Council adopt the agreement for the 2007 season as amended.
- The Billings Mustangs, American Legion Baseball Program, and Montana State University – Billings Athletic Department have reviewed and approved the changes requested by the PRC Board.

BACKGROUND

With the establishment of the Billings Mustangs in the early 1930's, Athletic Park was acquired for the city by a group of businessmen, and Cobb Field Stadium constructed to house the team. It has also been the home for the 2 American Legion Baseball teams. Over the years, it has also

been used for Little League Baseball, football by both the High Schools and MSU-Billings (then Eastern Montana College), and special events. The current agreement for the use of Cobb Field Stadium was put in place after the last major remodel of the stadium in the early 1980's. It has not changed significantly in that period between then and now, except as otherwise noted. With the replacement of the stadium through a G.O. Bond Issue under way, the operating agreement will need to be substantially restructured before the new ballpark is completed in June of 2008. The current agreement, with minor changes, is appropriate for the 2007 season of use. The goal with the agreement is to provide for the seasonal operation and maintenance of Cobb Field Stadium in the most cost effective way possible.

The Turn Key agreement contains the following requirements:

- Requires the Baseball organizations to clean and maintain the stadium during the baseball season with an emphasis on better cleaning and maintenance of the public toilets;
- Provides for payment by the 3 baseball organizations into a fund to provide for stadium repairs and to go toward stadium renovation or reconstruction;
- MSU-B will pay a sum of \$1,000 to the City for the 2007 season. In 2005, the MSU-B Baseball program did not use the stadium, and the 2006 season was the first ever. The admission cost is \$5.00 for adults and \$3.00 for grades 7-12, and 6 and under are admitted free. MSU-B Students get in at no charge with their Student ID. The MSU-B home games at Cobb Field start in mid-March. There is no water and no locker rooms or other amenities available at the stadium until midway through their home schedule on April 18th, when the facility is turned on and all fixtures are checked and made operable for the season. They will provide portable toilets for their home games and have a concession trailer in the parking lot. They will pay, similar to the American Legion, \$250 per day to the Mustangs for stadium operation and field maintenance and preparation for their games.
- The Mustangs Boosters are a subsidiary of the Billings Mustangs and are bound by the terms of this agreement as part of the Billings Mustangs program and operations;
- The Baseball organizations are required to meet fire and safety codes and regulations in their operations and use of the stadium;
- Enhances the Billings and downtown area economy by providing top tier youth Baseball games, college level games, and professional level Baseball entertainment for the Billings Region; and
- Operates the existing stadium at a minimal cost to the City of Billings.

ALTERNATIVES ANALYZED:

- Approve an agreement for the 2007 season with minor changes
 - Make no significant changes to the agreement for the 2007 season, and proceed with the replacement of the ballpark for the 2008 season.
 - This reflects the fact that the stadium and its operation are unchanged until a new ballpark has been constructed.
 - This is the Staff and PRC Board recommendation.
- Operate for the 2007 season under the 2006 agreement without modification or change.

RECOMMENDATION:

Staff recommends that Council authorize the Mayor to sign the 2007 Turn Key Agreement for Cobb Field Stadium as proposed.

ATTACHMENTS:

- A. Agreement
- B. Certificates of Insurance
- C. Financial Statement for 2006.

2007 TURNKEY AGREEMENT

COBB FIELD STADIUM IN ATHLETIC PARK

THIS AGREEMENT, by and between the following:

THE CITY OF BILLINGS, a Montana Municipal Corporation, Billings, Montana, by and through its duly constituted Department of Parks, Recreation and Public Lands, hereinafter designated as CITY; and

THE BILLINGS PIONEER BASEBALL CLUB (BILLINGS MUSTANGS), a Montana corporation and the MUSTANGS BOOSTERS CLUB; Billings, Montana; and

AMERICAN LEGION POST NO. 4, Billings, Montana; and

THE MONTANA STATE UNIVERSITY – BILLINGS Athletics Department;

hereinafter designated as the BALL CLUBS;

WITNESSETH:

WHEREAS, the CITY owns a certain premises known as Cobb Field Stadium, which is suitable for baseball games; and

WHEREAS, the BALL CLUBS engage in the sport of playing and business of playing baseball games; and

WHEREAS, the CITY desires to provide Cobb Field Stadium to the BALL CLUBS; and the BALL CLUBS desire to play their baseball games at Cobb Field Stadium.

NOW THEREFORE, in consideration of this Agreement for the use of the same premises, the payments to be received hereunder, the mutual covenants, promises and representations herein made, the Parties agree as follows:

1. TERM: The term of this Agreement begins **January 1, 2007**, and ends **January 31, 2008**.
2. PREMISES: The premises hereby to be used are known as Cobb Field Stadium, which is located in Athletic Park at North 27th Street and 9th Avenue North, in Billings, Montana. The premises included in this agreement are the stadium and the ballfield, and agreed upon access corridors.
3. USE: The BALL CLUBS shall use the premises for baseball games, practice, and related functions from **March 1, 2007**, through **September 17, 2007**.
 - A. Said premises shall be used exclusively by the BALL CLUBS during that period except by mutual agreement where it may be necessary to allow for construction of the new ballpark
 - B. Any lost revenue or other expenses incurred by the BALL CLUBS as a result of an unapproved event scheduled by the CITY shall be reimbursed to the BALL CLUBS. Any lost revenue or other expenses incurred by the CITY as a result of an unapproved event scheduled by the BALL CLUBS shall be reimbursed to the CITY.

4. EXAMINATION: The BALL CLUBS have carefully examined the premises and all of its facilities and equipment, know the condition thereof, agree to accept the same in the condition which they are now, and agree to return the same in their present condition except for ordinary and reasonable wear and tear, and damage by the elements.
5. BALL CLUB RESPONSIBILITY: The BALL CLUBS shall, in consideration of their use of the Cobb Field Stadium:
 - A. The **BILLINGS MUSTANGS** shall pay to the City an amount equal to 15% of gross ticket sale revenues for the season. Payment shall be made to the City no later than January 31, 2008, and be accompanied by a standard financial statement for the Billings Mustangs and any subsidiary organizations signed and certified by a Certified Public Accountant. All records shall be made available for an independent audit if requested by the City or its designee. All direct and related costs for such an audit shall be paid by the City; and
 - B. The **AMERICAN LEGION BASEBALL PROGRAM** from ticket sales shall pay to the City a sum of Three Thousand and No/100 Dollars (\$3,000) for the 2007 season. Payment shall be made to the City no later than December 31, 2007, and be accompanied by a standard financial statement signed and certified by a Certified Public Accountant. All records shall be made available for an independent audit if requested by the City or its designee. All direct and related costs for such an audit shall be paid by the City; and
 - C. The **MONTANA STATE UNIVERSITY – BILLINGS** shall pay to the City a sum of One Thousand and No/100 Dollars (\$1,000) for the 2007 season. Payment shall be made to the City no later than December 31, 2007, and be accompanied by a standard financial statement signed and certified by a Certified Public Accountant all records shall be made available for an independent audit if requested by the City or its designee. All direct and related costs for such an audit shall be paid by the City; and
 - D. If payment of the amounts are not made within the time specified in accordance with the terms of this agreement, the CITY shall provide the BALLCLUBS notice of non-Payment and shall allow the BALLCLUBS fourteen (14) days from the receipt of said Notice to submit payments to the CITY. Thereafter, the BALLCLUBS shall pay interest on the past due amounts at the lesser of (i) the rate of one and one-half percent (1½ %) per month, or (ii) the maximum, non-usurious interest rate permitted by applicable law.
 - E. The BALL CLUBS assume an obligation and a duty to preserve and maintain the premises, including, but not limited to the payment of all operational maintenance expenses and improvements. This includes the care and marking of the infield, clean up, and removal of trash from the premises. There shall be priority given to the clean up and maintenance of the stands, entrances. BALL CLUBS shall monitor Public restroom conditions hourly and provide cleaning as needed during games. Needed repairs in restrooms and other public areas in the Stadium shall be reported to the City within One (1) working day from when discovered. Other needed repairs shall be reported as discovered. All parties to this agreement will attempt to make such repairs within Twenty Four working hours of being reported.
 - F. On or about June 29, July 20, and August 24, 2007, depending upon scheduled use, the BALL CLUBS shall wash the grandstand area with soap and water. An inspection of the washed area on these three occasions shall be made by the City Park Superintendent to insure that the grandstand area has been adequately cleaned. In the event the BALL

CLUBS do not do this cleaning or the cleaning is not satisfactory, the City shall have the right to hire a third-party to perform such cleaning and charge the cost of this cleaning to the BALL CLUBS.

6. OPERATIONS COMMITTEE: A facility Operations Committee shall coordinate the operation, repair and further development of the Cobb Field Baseball Stadium. Said Committee shall consist of a representative of each BALL CLUB and a representative of the City, who shall be the Superintendent of Parks, or other representative appointed by the Director of Parks, Recreation and Public Lands. Meetings shall be no less often than once each year. All proposed uses, maintenance programs and capital improvement projects shall be approved by this Committee prior to such use, maintenance or improvement taking place.
7. CONCESSION REVENUE: The City shall receive no percentage of the gross revenue from the sale of concessions, no percentage of the gross revenue from the sale of outfield fence advertising, and no percentage of the gross revenue from special event productions, such as Little League Night, except as provided elsewhere.
8. ASSIGNMENT: This Agreement is not assignable by the BALLCLUBS in whole or in part without the prior written approval of the City Administrator for the City of Billings.
9. That batting cages will be used by all baseball players using the premises during all practice sessions.
10. That a copy of the scheduled MSU-B baseball games shall be supplied to the CITY by March 10th and of the Mustangs and Legion baseball games by April 10th of 2007.
11. INDEMNIFICATION / INSURANCE: The BALLCLUBS shall each indemnify and have the duty to defend the CITY and hold it harmless from and against all claims, liabilities, damages, losses and expenses arising out of or resulting from the BALLCLUB's negligent acts or omissions or those of a sub-contractor, agent, volunteer or anyone directly or indirectly employed by the BALLCLUBS.

Each of the **BALL CLUBS** shall carry **minimum** liability insurance, including liquor liability insurance as approved by the Billings City Attorney covering the Billings Mustangs and Mustangs Boosters beer and wine sales, that will be equivalent to the amount of **Seven Hundred and Fifty Thousand and No/100 Dollars (\$750,000) per claim, and One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000) per occurrence (MCA Section 2-9-108(1)(2005)) in effect for the period of the season of practicing and playing at Cobb Field Stadium in 2007.** Prior to the start of the use at Cobb Field in 2007, the **BALL CLUBS** shall each provide the City a **Certificate of Insurance made out to the City of Billings and naming the City of Billings as a primary, non-contributory insured.** The city shall be notified in writing thirty (30) days prior to any cancellation or nonrenewal of the policy. The notice of cancellation must be sent to the Director of the City Department of Parks, Recreation and Public Lands.

11. NON-DISCRIMINATION: The undersigned, either as an individual or on behalf of a group or organization, hereby agrees that this facility shall not be used in any manner that would discriminate against any person or persons on the basis of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin.
12. RIGHT OF INSPECTION: The City shall have the right to inspect the premises at all times during the term of this Agreement.

13. MONTHLY INSPECTIONS REQUIRED: Monthly inspections shall be conducted during the operating season of housekeeping related to fire hazard and safety, of electrical wiring and equipment, fire extinguishers, storage arrangements, flammable liquids handling and storage, and observance of smoking restrictions. Records of each inspection shall be maintained and shall be available for review by the CITY, and authorized Safety and Risk Inspectors.

14. FIRE WATCH AND LIFE SAFETY CODES: Because the grandstand is constructed of wood and is susceptible to fire, the BALL CLUBS agree to post and conduct a fire watch during each event or occasion that the premises are in use, and for a period of no less than two (2) hours following each such use, which fire watch shall be conducted by two (2) or more responsible adults who shall, at least every thirty (30) minutes, inspect the areas under the grandstand, bleachers, and the kitchen for fire and/or fire hazards; such inspection shall be conducted pursuant to any reasonable instructions, training, and/or verification procedures as the City may require. In addition, the BALL CLUBS agree to comply with the Life Safety Code, and in specific, the following items:

A. Emergency lighting shall be provided as follows:

- (1) Two (2) units in the grandstand seating area and exit areas and two (2) units in the areas underneath the grandstand.
- (2) Illuminating exits are required by each exit. This includes angles in means of egress passage ways and stairways. The illuminating exit lights will meet the requirements for emergency lighting.

B. Any concession stand grill will have an approved hood system according to the codes in the National Fire Prevention Association Pamphlet No. 96.

C. Fire extinguishers shall be inspected monthly and the date and initials of each inspection noted on an inspection card attached to each extinguisher. The present Class A fire extinguishers will be serviced and properly mounted. In addition, a Type K extinguisher will be placed in or near each cooking area. (FD)

D. The fire hoses shall be inspected monthly during the operating season and all deteriorated hose and corroded hose connections will be replaced according to the Uniform Fire Codes. Compliance with the above Fire Codes will be done at BALL CLUB'S expense. (FD)

E. Cobb Field Stadium is a smoke free facility and smoking shall not be permitted anywhere within the ticket booths and entrance fences, lower levels, stadium seating, and field areas, except in approved clearly designated and signed locations outside the stadium.

F. The handicapped lift is classified and regulated as a freight elevator and as such shall be monitored, controlled, and supervised by assigned staff at all times during games and shall be operated by the assigned staff each time it is used to transport handicapped individuals, as required by the Montana Department of Labor and Industry Building Codes Bureau.

15. **COOKING:** The BALL CLUBS agree that they will not permit any cooking of food or beverage preparation without first meeting the standards of the City Health, Fire and Building Codes, at the BALL CLUB'S expense. The BALL CLUBS agree that no frying will take place on the stoves in the concession area that will involve food that emits grease onto the grills or into the air.
16. **ANNOUNCEMENT:** The BALL CLUBS agree to make the following announcement before each event that takes place at the Stadium:
- "Ladies and Gentlemen:**
- We would like welcome you to Cobb Field, owned by the City of Billings and managed in partnership with the Billings Mustangs, American Legion Baseball and Montana State University – Billings.**
- The City of Billings, for your safety, would like you to take a moment to familiarize yourself with the exits to be used in case of fire or other emergencies.**
- These exits are located at (description of exits).**
- Also, we would like to remind you that the Stadium is a SMOKE-FREE facility by order of the Billings City Council.**
- Thank you for your cooperation."**
17. **UTILITIES:** The CITY will pay for the water used in the Stadium, turn on all Stadium water lines and connect restroom and shower facilities. The CITY will drain and disconnect the same in the Fall. The BALL CLUBS shall be responsible for all other utilities.
18. **REPAIRS AND IMPROVEMENTS:** Repairs and improvements to the premises shall be mutually agreed upon by the BALL CLUBS and CITY representatives in the Operations Committee. The BALL CLUBS agree to make capital improvements only after review and approval by the CITY. The CITY reserves the right to make repairs and improvements on the premises; provided that such changes and improvements do not interfere with the BALL CLUBS' use of the premises.
19. **BREACH:** Should this Agreement be violated, a notice thereof in writing shall be issued; and if said breach is not corrected within (5) days of said notice, this Agreement may be terminated at the option of the Party wronged without further notice; provided, however, that this clause shall not necessitate the termination of this Agreement, nor shall it prevent the issuance of any other remedy at law or in equity.
20. **ATTORNEY'S FEES AND COSTS:** In the event it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement, then the prevailing party shall be entitled to a reasonable attorney's fee and costs.
21. **AMENDMENTS AND MODIFICATION:** The Parties hereby agree that any amendments or modifications to this Agreement or any provisions herein shall be made in writing and executed in the same manner as the original document and shall, after execution, become a part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this _____ day of _____, 2007.

CITY:

CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
Ron Tussing, Mayor

APPROVED:

CITY ATTORNEY

ATTEST:

By: _____
City Clerk

BALL CLUBS:

THE BILLINGS MUSTANGS BASEBALL CLUB,
A Montana Corporation

By: _____

AMERICAN LEGION POST NO. 4

By: _____

MONTANA STATE UNIVERSITY – BILLINGS

By: _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Contract Amendment #2 – Hazardous Waste Collection Events – Philip Services

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division recommends approval of Contract Amendment #2 for professional services with Philip Services in the amount of \$40,000 to oversee the thirteenth annual Household Hazardous Waste (HHW) collection event and the twelfth annual Conditionally Exempt Small Quantity Generator (CESQG) collection event for area businesses. The events are scheduled for June 1st and 2nd. A contract approved in 2005 allowed the City to use Philip Services for up to three years if the firm's performance was acceptable. With an existing contract value of \$77, 175, this amendment exceeds the City Administrator's approval authority and thus needs Council approval.

ALTERNATIVES ANALYZED:

- Solicit Requests for Proposals and select a Consultant to provide the necessary services and enter into a contract based upon the RFP selection process.
- The recommended alternative is to approve the Contract Amendment with Philip Services to provide the necessary services for the collection events.

FINANCIAL IMPACT: The current FY07 Solid Waste Division budget includes adequate funds for the city's annual hazardous waste collection events.

RECOMMENDATION

Staff recommends that City Council approve Contract Amendment #2 for professional services with Philip Services in the amount of \$40,000 to oversee the annual HHW and CESQG collection events.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Amendment #2 to a Contract with Philip Services

INTRODUCTION

For the past twelve years, the Solid Waste Division has conducted a one-day HHW collection event where area landfill users can bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. In addition, the Solid Waste Division sponsors a one-day collection event for area businesses that qualify as Conditionally Exempt Small Quantity Generators (CESQG) of hazardous waste. The Solid Waste Division completed a formal Consultant selection procedure in 2005 and the City Council approved a contract with Philip Services on March 28, 2005. This contract amendment would provide for necessary services to complete the 2007 events.

BACKGROUND

Since 1995, the Solid Waste Division has sponsored a one-day HHW collection event for area residents to bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. The program is open to all households served by the Billings Regional Landfill, including residents of Yellowstone, Carbon, Stillwater, Musselshell, and Treasure counties. The purpose of this event is to divert household toxic waste from the landfill, provide appropriate disposal options for HHW, and educate the public on the use of alternative non-hazardous products. To date, approximately 190 tons of pesticides, paint, solvents, antifreeze and used oil have been drummed and transported to hazardous waste disposal facilities for reclaiming, recycling, incineration or disposal in a hazardous waste landfill.

The Solid Waste Division also sponsors an additional one-day collection event for area businesses that qualify as CESQGs of hazardous waste. The purpose of the business event is to provide an economic alternative to area businesses to safely dispose of their hazardous waste. The 2007 CESQG event is scheduled for Friday, June 1st; the HHW collection event is scheduled for Saturday, June 2nd.

ALTERNATIVES ANALYSIS

The alternatives analyzed included requesting proposals and selecting a firm based upon that process and enter into a new contract, or approve a Contract Amendment with Phillip Services. Staff is recommending the contract amendment because it is the most cost effective. There are a limited number of companies that provide this type of service and none are located in Montana. There are no recycling, incineration, or disposal facilities for this type of waste in Montana, therefore the waste needs to be transported to the closest facilities, which are in Washington and Oregon. In 2005 the Solid Waste Division requested proposals and Philip Services was the selection committee's recommendation of the three companies that submitted proposals.

Councilman Veis served on the selection committee. The selection process included the intent to utilize the same company for up to three years if their performance was acceptable. Philip Services did an excellent job in 2005 and 2006. Requesting proposals every year only adds cost to the project in the form of advertising costs and staff time. Since the first collection event, we have requested proposals every three years, and if the selected company performed satisfactorily, a contract amendment would be utilized for up to two more years. There are also cost efficiencies associated with having a firm that is familiar with our facility and program. The contract amendment is based upon the same charges as the 2005 Professional Services Contract with Philip Services.

RECOMMENDATION

Staff recommends that City Council approve Contract Amendment #2 for professional services with Philip Services in the amount of \$40,000 to oversee the annual HHW and CESQG collection events.

ATTACHMENT

A: Amendment #2 to a Contract with Philip Services

CONTRACT AMENDMENT NO. 2

2007 HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT

The Agreement dated March 28th, 2005 between the City of Billings, Montana (City) and Philip Services, Corporation (Consultant) shall be amended as follows:

SCOPE OF SERVICES

See attached *Estimated Costs for 2007 HHW Collection*, dated April 17, 2007 for additional services to be performed.

AGREEMENT

THIS AMENDMENT IS HEREBY AGREED UPON BY BOTH PARTIES.

PHILIP SERVICES CORP.

CITY OF BILLINGS, MONTANA

NAME: Mike O'Donnell

BY: _____

Mayor

BY:  _____

DATE: _____

TITLE: HHW Business Manager

ATTEST: _____

DATE: 4/17/07

City Clerk

APPROVED AS TO FORM:

BY: _____

City Attorney

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29 2007

TITLE: Approval of Amendment Two with Morrison-Maierle, Inc. for Engineering Services for Paving of the Overflow Parking Lots at Billings Logan International Airport

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide the design surveys for the project, development of projects plans, specifications and bidding documents, contract administration, to include coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, and construction surveys. The base five-year contract is amended each time a new project is undertaken, and Amendment Two for \$78,799 includes all of the services indicated above for the paving of the Airport overflow parking lots. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff and have been approved as reasonable for the work. Including Amendment Two, the total cost of the engineering work under this contract has totaled \$618,324 and has produced over \$2,594,762.63 in construction projects.

FINANCIAL IMPACT: The total cost of engineering Amendment Two with Morrison-Maierle, Inc. is \$78,799. The source of funding for this Amendment is the Department's Capital Budget.

RECOMMENDATION

Staff recommends that the City Council approve Amendment Two to the Morrison-Maierle, Inc. Engineering Services Contract in the amount of \$78,799 for the engineering services for the Paving of the Overflow Parking Lots project at Billings Logan International Airport.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Amendment #3 to Professional Services Contract for WO 03-25 Rimrock Road

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The Urban Highway Pilot Involvement Program is a collaboration between the City of Billings and the Montana Department of Transportation to construct an Urban System project. The project that will be constructed will be Rimrock Road between Shiloh Road and 54th Street West. At the November 13, 2006, City Council Meeting, City Council approved Amendment #2 to HKM's contract to include a Phase II SUE Survey to identify potential utility conflicts. There were many conflicts with existing utilities identified with the Phase II SUE Survey. MDT has requested that further Subsurface Utility Exploration be completed to identify exactly how much utility relocation needs to occur. Amendment #3 is for \$29,023.00. The Montana Department of Transportation requested both Amendment #2 and Amendment #3 be done, and has assured our office that this is their normal design procedure.

FINANCIAL IMPACT: The professional services contract with HKM Engineering, Inc. was approved at the July 12, 2004, City Council Meeting for the amount of \$364,986. Per the Rimrock Road Urban Highway City State Agreement, the City is obligated to pay 13.42% of the professional services contract. Amendment #1 to the contract (\$39,199.00) cost the city an additional \$5,260.50, Amendment #2 (\$33,994.00) cost the city an additional \$4,561.99, and Amendment #3 (\$29,023) will cost the city an additional \$3,894.89. Gas tax dollars in the amount of \$174,757.00 were allocated in the FY'05 CIP to pay for the professional services contract. The City will be reimbursed by the Montana Department of Transportation for the remainder of the contract (86.58%) utilizing Federal Funds. Construction of this project will be paid for by the Montana Department of Transportation utilizing Federal Funds. The estimate, including the design and the amendments to the design, is approximately \$3,150,000. Additional federal funds have been allocated to complete this project.

RECOMMENDATION

Staff recommends that Council approve Amendment #3 to the professional services contract for WO 03-25 with HKM Engineering, Inc. in the amount of \$29,023.00.

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

ATTACHMENT

- A. Amendment #3 to WO 03-25 Rimrock Road Professional Services Contract with
 HKM

AMENDMENT NO. 3
TO
CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND
ENGINEERING SERVICES
CITY OF BILLINGS WORK ORDER 03-25
RIMROCK ROAD

THIS AGREEMENT, made and entered into on May 9, 2007 by and between the following:

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

And

HKM Engineering Inc.
222 N. 32nd Street, Suite 700
Billings, Montana 59101
Hereinafter designated the Contractor

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated July 12, 2004, for Contractor to provide engineering services to the City for Work Order 03-25, Rimrock Road, and;

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

WHEREAS, the Contractor was selected to perform engineering services for a period determined by the Montana Department of Transportation, and;

WHEREAS, the City has need for engineering services associated with the reconstruction of Rimrock Road, and;

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

WHEREAS, the Contractor and the Contractor's Subconsultant represent that they are qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

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

Amendment 3 - Page 1 of 2

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10/31/06 - 2

Appendix B, Section 3 Scope of Work. Add the following:

At the request of MDT, provide additional information regarding underground utility locations in relation to planned storm drainage improvements to append to the Phase II SUE (Subsurface Utility Exploration) plan for the Rimrock Road reconstruction project. The additional information collected will be used for the identification and relocation of utilities for the installation of storm drainage improvements along the project corridor.

The additional Phase II SUE will be performed by an outside Subconsultant with expertise in this area. Coordination with the outside Subconsultant as well as CAD services related to the collected information and the transmittal of this information to MDT will be necessary by the Consultant to complete the utility coordination for this project.

Appendix C, Section 1 Payments for Basic Services, item B. Add the following:

- B. For additional services related to Amendment No.3, the Engineer shall be paid an additional **Twenty-Nine Thousand, Twenty-Three and no/100 Dollars (\$29,023.00).**

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

CONSULTANT

NAME: Karen B. Fagg

BY: _____

TITLE: President

DATE: _____

CITY OF BILLINGS, MONTANA

NAME: _____

BY: _____

TITLE: _____

DATE: _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Approval of Amendment Four with CTA Architects Engineers for Architectural Services for the Airport Terminal Building Roofing Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Due to the specialized nature of architectural services required for airport facilities design and remodel projects, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide architectural services at the Airport. On November 27, 2006, the City approved a five-year contract with CTA Architects Engineers to provide the design, development of project plans, specifications and bidding documents, and contract administration items such as coordination meetings, pay requests, and change orders, etc. The base five-year contract is amended each time a new project is undertaken, and Amendment Four for \$52,768.12 includes all of the services indicated above for the re-roofing of approximately 45,000 square feet of the Airport Terminal Building. The scope of work and associated fees have been reviewed and negotiated by Airport staff and have been approved as reasonable for the work. Including Amendment Four, the total cost of the architectural work under this contract has totaled \$136,271.54, and has produced over \$1,278,000 in construction projects.

FINANCIAL IMPACT: The total cost of architectural Amendment Four with CTA Architects Engineers is \$52,768.12. The source of funding for this Amendment is the Department's Capital Budget.

RECOMMENDATION

Staff recommends that the City Council approve Amendment Four to the CTA Architects Engineers Services Contract in the amount of \$52,768.12 for the architectural services on the Airport Terminal Building Roofing Project.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, May 29, 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 #14, a Portion of Tract A of Certificate of Survey No. 280 with Vernon E. West and Judy K. West

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 #14 of the parcels to be acquired (there are some numbered parcels within the project limits from which 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 \$9,050.00. 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 \$9,050.00. 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 #14, a Portion of Tract A of Certificate of Survey No. 280 with Vernon E. West and Judy K. West in the amount of \$9,050.00, 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 #14, a Portion of Tract A of Certificate of Survey No. 280 with Vernon E. West and Judy K. West in the amount of \$9,050.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
14	Tract A, Certificate of Survey Number 280	22	1N	26E

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

Vernon E. and Judy K. West
948 Lake Elmo Drive
Billings, MT. 59105
252-2912

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.)

3,037 square feet by deed (includes the area of the existing perpetual road easement)	\$ 5,070.00
Improvements (trees/shrubs, sod, concrete)	\$ 3,827.00
3. OTHER COMPENSATION:

438 square feet Temporary Construction Permit	\$ 147.00
---	-----------
4. TOTAL COMPENSATION (rounded) (includes all damages to the remainder): \$9,050.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$9,050.00, to be made payable to Vernon E. and Judy K. West and mailed to 948 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 Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES

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

Signature: Vernon E. West 4/30/07
(Date)

Signature: Judy K. West 4/30/07
(Date)

Signature: _____ (Date)

RECOMMENDED FOR APPROVAL:

N/A
Boyd Darlow, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas P. Bauling 4/30/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-014.200 West

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

Project No. W.O. 04-33 Parcel No. 14 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 30th day of April, 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:**

VERNON E. WEST AND JUDY K. WEST
948 LAKE ELMO ROAD
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. 14 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract A, Certificate of Survey Number 280, on file under Document No. 459729, Yellowstone County, Montana, as shown by the shaded areas on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 3,037 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 438 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 al 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. 14

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Vernon E. West Judy K West

State of Montana)

County of Yellowstone)

This instrument was acknowledged before me on 4-30-07
(date)

by Vernon E West + Judy K West
(names)



Rebecca L Klein
Notary Signature Line

Rebecca L Klein
Notary Printed Name

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

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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)

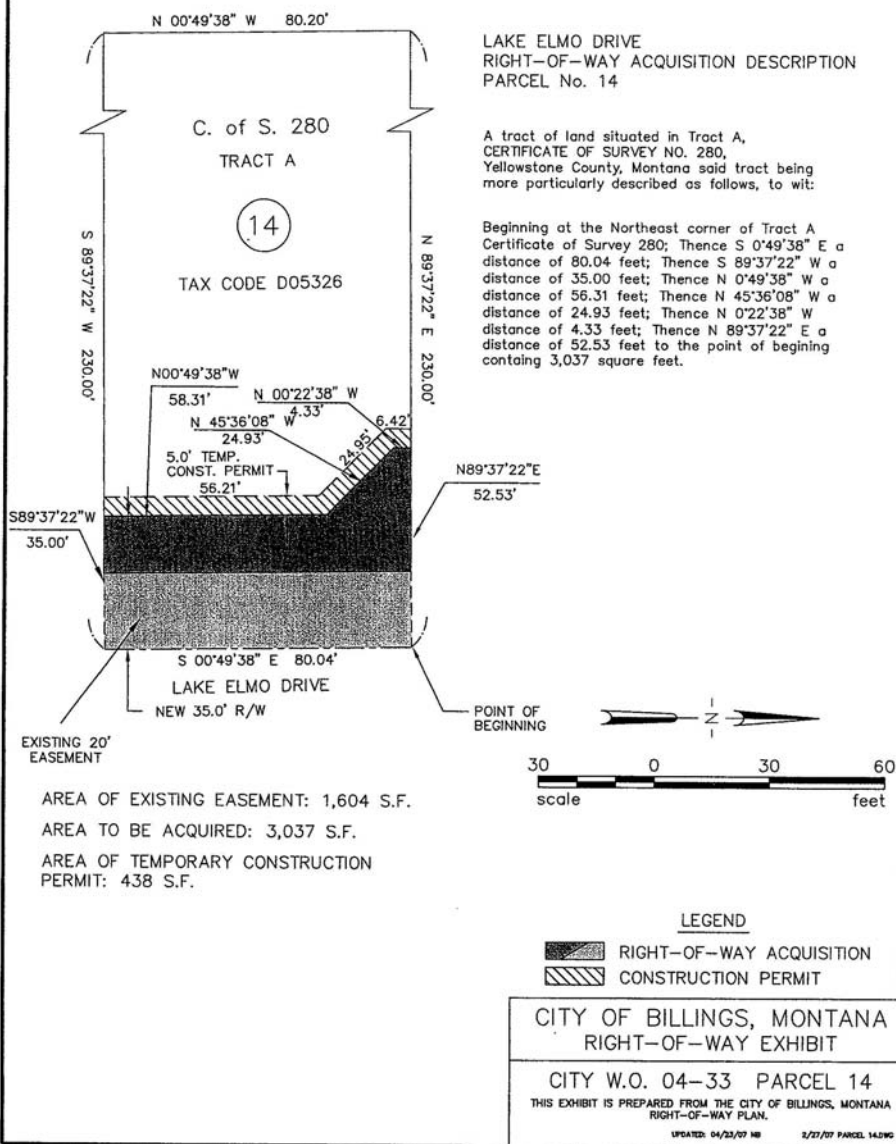
On this _____ day of _____, 200__, before me, a Notary Public in and for the State of Montana, personally appeared _____ as Mayor and _____ City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledge to me that they executed the foregoing instrument. IN WITNESS WHEREOF, 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 TRACT A, CERTIFICATE OF SURVEY NO. 280, YELLOWSTONE COUNTY, MONTANA



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, May 29, 2007

TITLE: W.O. 04-33, Lake Elmo Drive (Hilltop Road to Wicks Lane) - Right-of-Way Acquisition, Approval of Right-of-Way Agreement and Right-of-Way Easement for Parcel #28, a Portion of Unit No. 68 of Imperial Park Condominium, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision With Sang Soon Almer

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 #28 of the parcels to be acquired (there are some numbered parcels within the project limits from which right-of-way does not need to be acquired). The appraisal for this easement made a conclusion of value for the easement, any appurtenant features, and the construction permit at a value of \$4,600.00. A perpetual easement for right-of-way purposes has the same value as a fee simple acquisition. An easement was negotiated for this parcel because the property owner did not want the new property boundary to be within approximately 12 feet from their existing mobile home. A copy of the right-of-way agreement; easement; appraisal; tax documents; file memoranda; and negotiation history for this property is on file with the City Clerk.

FINANCIAL IMPACT: The total payment for this acquisition is \$4,600.00. The cost of this easement is equal to the sum of the appraised value of the easement, any appurtenant features, and the construction permit. Funding is available for this easement from project funds.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #28, a Portion of Unit No. 68 of Imperial Park Condominium, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision with Sang Soon Almer in the amount of \$4,600.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

Approved By: City Administrator _____ City Attorney ____

INTRODUCTION

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

PROCEDURAL HISTORY

Completed Items

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

Future Items

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

BACKGROUND

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

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

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

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

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

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and Right-of-Way Easement for easement acquisition for Parcel #28, a Portion of Unit No. 68 of Imperial Park Condominium, a Condominium on Lot 1, Block 1, of Windsor Imperial Subdivision with Sang Soon Almer in the amount of \$4,600.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

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

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
28	Unit No. 68, of Imperial Park Condominium, a condominium on Lot 1, Block 1, of Windsor Imperial Subdivision	22	1N	26E

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

SANG SOON ALMER
398 WINDSOR CIRCLE NORTH
BILLINGS, MT. 59105-2410
248-3436

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.)

561 square feet by easement	\$2,945.00
Improvements (Fencing, sod)	\$1,012.00
3. OTHER COMPENSATION:

563 square feet Temporary Construction Permit	\$ 296.00
Trim trees from right-of-way	\$ 300.00
4. TOTAL COMPENSATION PER THE APPRAISAL ROUNDED (includes all damages to the remainder): \$4,600.00
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$4,600.00 to be made payable to SANG SOON ALMER and mailed to 398 WINDSOR CIRCLE NORTH, BILLINGS, MT. 59105-2410
6. IT IS UNDERSTOOD that the City is acquiring this right-of-way in order to improve Lake Elmo Road. The improvements will include, but not be limited to, street widening, curb & gutter, sidewalks, storm drain improvements, drive approaches, a multi-use path and related features. Some of these improvements may be constructed with property assessments to the adjoining properties in accordance with the City's policies in effect at the time of project creation.
7. The Grantor hereby grants the City of Billings a Temporary Construction Permit, as shown on Exhibit A of the Right-of-Way Easement, and made for the period of the street improvements construction project plus the one-year warranty period.
8. This agreement, upon execution by an agent of the City and presentation to the Grantor so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantor
9. At no expense to the Grantors and at the time of street construction, permission is hereby granted the City to enter upon the Grantors' land, where necessary, at the location and for the purpose described as:

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

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

(Continued from Previous Page)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE:

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

X Sang Soon Almer 7.29.07
Signature: SANG SOON ALMER (Date)

Signature: (Date) Tax ID No.

Signature: (Date) Tax ID No.

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 3-29-07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Richard A. Bailey 4/30/07
City of Billings, Public Works Department (Date) City Clerk (Date)

LER-028.200 ALMER

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

RIGHT-OF-WAY EASEMENT

THIS INDENTURE, made and entered into this 29th day of March, 2007, by and between the following:

SANG SOON ALMER
398 WINDSOR CIRCLE NORTH
BILLINGS, MT. 59105-2410

hereinafter referred to as **GRANTOR** and

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

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

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

Parcel No. 28 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 Unit No. 68, of Imperial Park Condominium, a condominium on Lot 1, Block 1, of Windsor Imperial Subdivision, in the City of Billings, 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 561 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 563 sq. ft..

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

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

Project No. : W.O. 04-33

Parcel No. 28

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

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

IN WITNESS WHEREOF

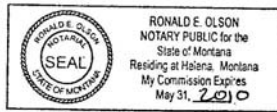
x Sang Soon Almer _____

State of MONTANA)

County of Yellowstone)

This instrument was acknowledged before me on March 28, 2007
(date)

by Sang Soon Almer
(names)



[Signature]
Notary Signature Line

Notary Printed Name

Notary Public for State of _____

Residing at: _____

My Commission Expires: _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

CITY OF BILLINGS,
a Montana Municipal Corporation

By: _____
MAYOR

ATTEST:

City Clerk

STATE OF MONTANA)
COUNTY OF _____) ss

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

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, May 29, 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 #59, a Portion of Tract 2 of Certificate of Survey No. 1113 with The Housing Authority of Billings

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 #59 of the parcels to be acquired (there are some numbered parcels within the project limits from which 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 \$3,050.00. 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 \$3,050.00. 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 #59, a Portion of Tract 2 of Certificate of Survey No. 1113 with The Housing Authority of Billings in the amount of \$3,050.00, 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 #59, a Portion of Tract 2 of Certificate of Survey No. 1113 with The Housing Authority of Billings in the amount of \$3,050.00, and authorize the Mayor to execute these documents.

ATTACHMENT

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

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Lake Elmo Road Hilltop Road to Wicks Lane
DESIGNATION

Work Order: 04-33
Project No. 05153

Yellowstone
COUNTY

Parcel No.	Parcel Description	Section	Township	Range
59	Tract 2 of Certificate of Survey No. 1113	22	1N	26E

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

HOUSING AUTHORITY OF BILLINGS
2415 1st AVENUE NORTH
BILLINGS, MT. 59101
245-6391

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

1,559 square feet by deed	\$2,728.00
---------------------------	------------
3. OTHER COMPENSATION:

1,559 square feet Temporary Construction Permit	\$273.00
---	----------
4. TOTAL COMPENSATION (includes all damages to the remainder): \$3,050.00.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$3,050.00, to be made payable to HOUSING AUTHORITY OF BILLINGS and mailed to 2415 1st AVENUE NORTH, BILLINGS, MT. 59101
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 1

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

Signature: *Tracy Bunn* 3/27/07
City of Billings (Date)

Signature: _____ (Date)

Tax ID No. _____

Signature: _____ (Date)

Tax ID No. _____

RECOMMENDED FOR APPROVAL:

Ronald E. Olson 3-22-07
Ronald E. Olson, Olson Land Services (Date)

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Mayor, City of Billings (Date)

ATTEST:

Nicholas V. Bailey 4/30/07
City of Billings, Public Works Department (Date)

City Clerk (Date)

LER-057.200 Housing Authority of billings

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

Project No. W.O. 04-33 Parcel No. 59 County of YELLOWSTONE
Designation LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

WARRANTY DEED

THIS INDENTURE, made this 28th day of MARCH, 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:

HOUSING AUTHORITY OF BILLINGS
2415 1st AVENUE NORTH
BILLINGS, MT. 59101

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. 59 on the City of Billings Lake Elmo Road - Hilltop Road to Wicks Lane Project. Said parcel is also described as a tract of land within Tract 2 of Certificate of Survey No. 1113, on file under Document No. 836569, situated in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, Township 1 North, Range 26 East, P.M., M., Yellowstone County, Montana, as shown by the shaded area on Exhibit A, consisting of one sheet, attached hereto and made a part hereof, containing an area of 1,559 sq. ft..

Together with a temporary construction permit for the period of construction plus a one-year construction warranty period as shown by the hatched area on said Exhibit A, containing an area of 1,559 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. 59

Designation : LAKE ELMO ROAD - HILLTOP ROAD TO WICKS LANE

Lucy Brown for #113 Housing Authority (Billings)

State of MONTANA)

County of Yellowstone)

This instrument was acknowledged before me on MARCH 28, 2007
(date)

by Lucy Brown
(names)



Diane A. Hanson
Notary Signature Line

Diane A. Hanson
Notary Printed Name

Notary Public for State of MONTANA

Residing at: BILLINGS

My Commission Expires: June 28, 2008

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

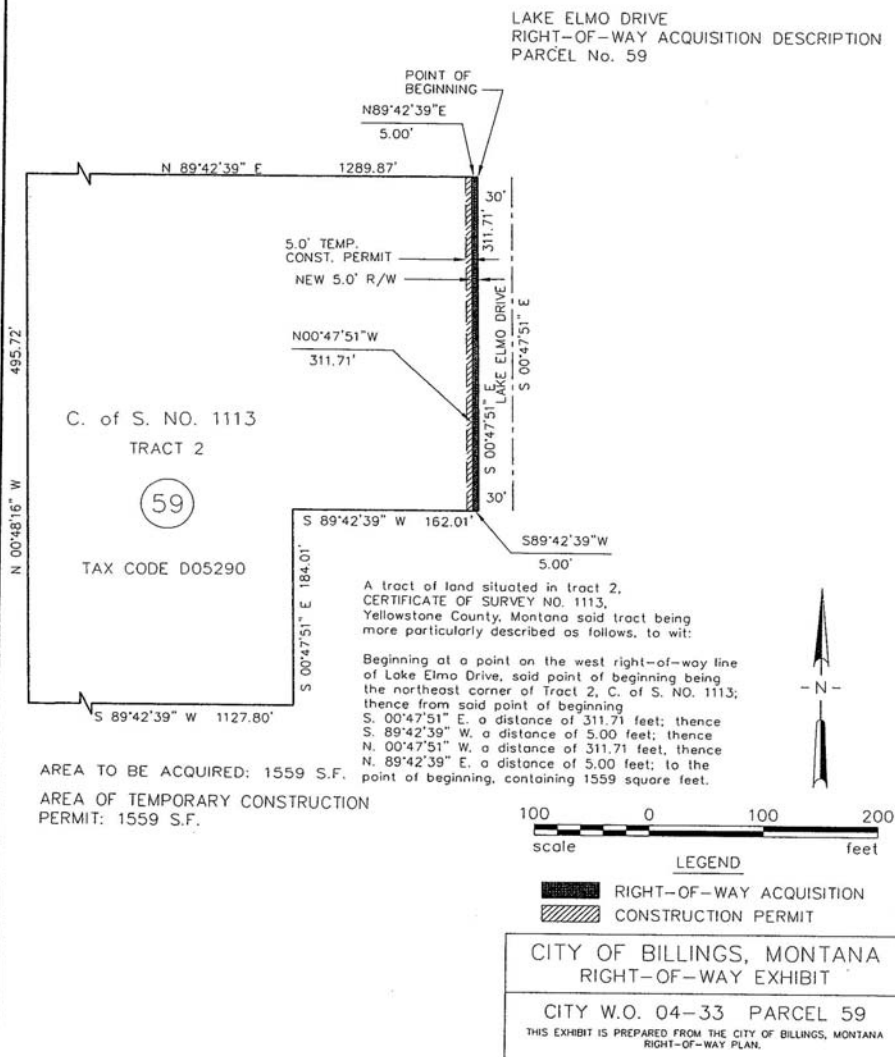
County of Yellowstone)

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 TRACT 2, CERTIFICATE OF SURVEY NO. 1113, YELLOWSTONE COUNTY, MONTANA



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: W.O. 04-36 – Briarwood Sanitary Sewer Main Extension, Approval of Right-of-Way Agreement and Perpetual Right-of-Way Easement with Atchison, Inc.

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The preferred alternative identified in the Preliminary Engineering Report (PER) for the above-named project recommended that the new sewer main generally follow a route along Blue Creek Road so that the southerly portion of the new sewer main will drain via gravity from Briarwood to the area of Santiago Boulevard. From the Santiago area, a sewer lift station is needed to convey sewerage via a force main across the Yellowstone River then to the existing sewer in the South Frontage Road of I-90. Due to utility congestion and/or adverse slopes in most places along the Blue Creek Road (MDT) right-of-way, it is necessary to obtain easements from property owners along the proposed sewer route. There are a total of thirteen (13) easements necessary from eleven (11) different property owners; three easements were approved by Council in 2006, and one easement was approved by Council on March 26, 2007. Council approved a resolution authorizing condemnation for all of the other necessary easements, also on March 26, 2007. The total cost of this easement is \$23,182.50. This cost represents five percent (5%) above the appraised value of the easement area and temporary construction permit plus the actual “cost to cure.” “Cost to cure” describes the cost to a property owner to remedy a depreciation. In this case for example, the sewer main construction will interrupt access to Blue Creek for horses located in the Atchisons’ pasture and the “cost to cure” includes the cost of hauling water. A copy of the right-of-way agreement, easement, appraisal, review appraisal, correspondence, and negotiation history for the Atchison, Inc. property is on file with the City Clerk.

FINANCIAL IMPACT: Funding is available from project funds. The budgeted amount for this entire project (CIP# PWB-1), including engineering, right-of-way acquisition, and construction is \$600,000 in FY 2005 and \$4,335,350 in FY 2007.

RECOMMENDATION

Staff recommends that Council approve the Right-of-Way Agreement and the Perpetual Right-of-

Way Easement with Atchison, Inc. for \$23,182.50., and authorize the Mayor to execute these documents.

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

ATTACHMENT

- A. Right-of-Way Agreement and Perpetual Right-of-Way Easement (9 pages)

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

Brianwood Sewer Main Extension
DESIGNATION

Work Order: 04-36
MMI Project No. 0686.170-0211

Yellowstone
COUNTY

Subdivision	Section	Township	Range
NE¼	28	1S	26E

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

ATCHISON, INC.
2601 BLUE CREEK ROAD
BILLINGS, MT 59101
855-4248

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

0.552 acre by easement	\$16,218.00
Administrative Settlement	\$ 982.50
3. OTHER COMPENSATION:

1.102 acres temporary construction easement (rounding from appraisal)	\$3,432.00
COST TO CURE	
1. cost to haul water for 45 days construction period = \$675	
2. cost of 250 LF of new fence near the creek after construction = \$1,250	
3. cost to buy hay to compensate for loss of grass = \$625	\$2,550.00
4. TOTAL COMPENSATION (includes all damages to the remainder): \$23,182.50.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

A warrant in the amount of \$23,182.50, to be made payable to ATCHISON, INC. and mailed to 2601 BLUE CREEK ROAD, BILLINGS, MT 59101
6. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
7. It is understood and agreed at no expense to the Grantors, the City will construct the fencing (including gates) listed below per Montana Department of Transportation specifications. It is further understood and agreed that a closure will be maintained at all times during the construction of the fence and the Grantors grant permission to the City to enter upon their property where necessary for the purpose of constructing fence as follows:

A. Station <u>28+50</u> to Station <u>42+60</u> * on the southerly boundary of the temporary construction permit area to be constructed before construction begins on Grantor's property.	Build 4 strand barbles wire, metal posts, set 16½' on center, tie to existing fencing with a brace post
Gate:	
B. Station <u>42+60</u>	City agrees to install 16' metal tube gate.
C. Station <u>28+50</u> at the southeast end of property	City agrees to install 16' metal tube gate.

Said gate will have double locks with each party receiving a key to their respective lock.

Said fence shall become the property of the Grantors and will be the Grantors' obligation thereafter to maintain and repair unless damage occurs due to entry by the city or its personnel.
8. City agrees to install geocell on the permanent access surface area of the easement and maintain if necessary.

(Continued from Previous Page)

9. In the event a disagreement, or dispute may arise between the parties hereto, relative to the terms or condition of this agreement, the parties agree that the prevailing party shall have all reasonable attorney's fees reimbursed by the non-prevailing party.
10. The City agrees to provide 24-hour non-emergency notice to the Grantors before entering the easement area and provide a notice of meeting for any future meetings pertinent to the property (which includes the weekly/bi-weekly meetings General Contractor will have during construction process) City needs to call Scott @ 406-855-4248.
11. The City agrees seed disturbed areas at the City's expense with Dry Land Restore Mix grass. City will be required to re-seed if grass hasn't been restored to original condition after 2 years. City also agrees to restore future disturbance areas and re-vegetate with said grass.
12. The City agrees to limb and deck the trees removed by the construction of the sewer line at two on-site areas as designated by the Grantors. Said trees must be at least 3 inches in diameter and cut in lengths not to exceed 15 feet. Trees with diameters less than 3 inches shall be removed from the property by the City.

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DA

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

J. S. Atchison 4/23/07
Signature: (Date)

Marcus E. Atchison 4/23/07
Signature: (Date)

Signature: (Date)

Tax ID No.

RECOMMENDED FOR APPROVAL:

APPROVED FOR AND ON BEHALF OF CITY OF BILLINGS:

Ronald E. Olson 5-4-07
Ronald E. Olson, Olson Land Services (Date)

Mayor, City of Billings (Date)

Michael P. Bailey 5/8/07
City of Billings, Public Works Department (Date)

ATTEST:
City Clerk (Date)

B-02.200 Atchison

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 23 day of April, 2007, the undersigned,

ATCHISON, INC.
2601 BLUE CREEK ROAD
BILLINGS, MT 59101

hereinafter called "Grantor(s)", hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a temporary construction easement for the period of construction plus the one-year construction warranty period, together with An access easement and perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

SEE ATTACHED EXHIBIT "A" AND EXHIBIT "B"

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

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

1. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
3. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
4. Grantee agrees to provide 24-hour non-emergency notice to the Grantors before entering the easement area.
5. Grantee agrees to restore the line and grade and re-seed future disturbance areas.
6. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.
7. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.

8. HOLD HARMLESS AGREEMENT:

- Grantors shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked, split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from easement right-of-way by authorized representatives of the City of Billings in the exercise of any of their rights under this easement.
 - Grantors shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by the failure of Grantors or their agents to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.
 - The City of Billings shall reimburse the Grantors for any and all damage claims paid by the Grantors for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by the failure of Billings or their agents to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement, except damages occasioned by necessary and reasonable maintenance activities of the City of Billings in the right of way.
 - Grantors agree to indemnify, defend, save and hold the City of Billings harmless from any claims, lawsuits, or liability, including reasonable attorney's fees and costs, to the extent caused by the Grantor's negligent acts under this agreement or any negligent acts of Grantors' agent or agents.
 - The City of Billings agrees to indemnify, defend, save and hold Grantors harmless from any claims, lawsuits, or liability, including reasonable attorney's fees and costs, to the extent caused by the City's negligent acts in connection with this agreement and the acts of Billings' agents or employees.
 - Neither the Grantors nor Billings shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
9. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder. The Right-of-Way Agreement attached hereto and made a part hereof as Exhibit "C", completes the terms of perpetual use.

I H Atchison
Marion E Atchison
State of MONTANA)
County of YELLOWSTONE)
This instrument was acknowledged before me on April 23rd 2007
by Irvin Atchison & Marion Atchison (date)
as President + Vice President (name of person(s))
(type of authority, e.g., officer, trustee, etc.)
of ATCHISON, INC.
(name of party on behalf of whom instrument was executed)

Karal Doyle
Notary Signature Line
Karal Doyle
Notary Printed Name
Notary Public for State of Montana
Residing at: Billings
My Commission Expires: 08-26-2011

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

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

Mayor, City of Billings Date

ATTEST: _____
City Clerk

STATE OF MONTANA)
: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

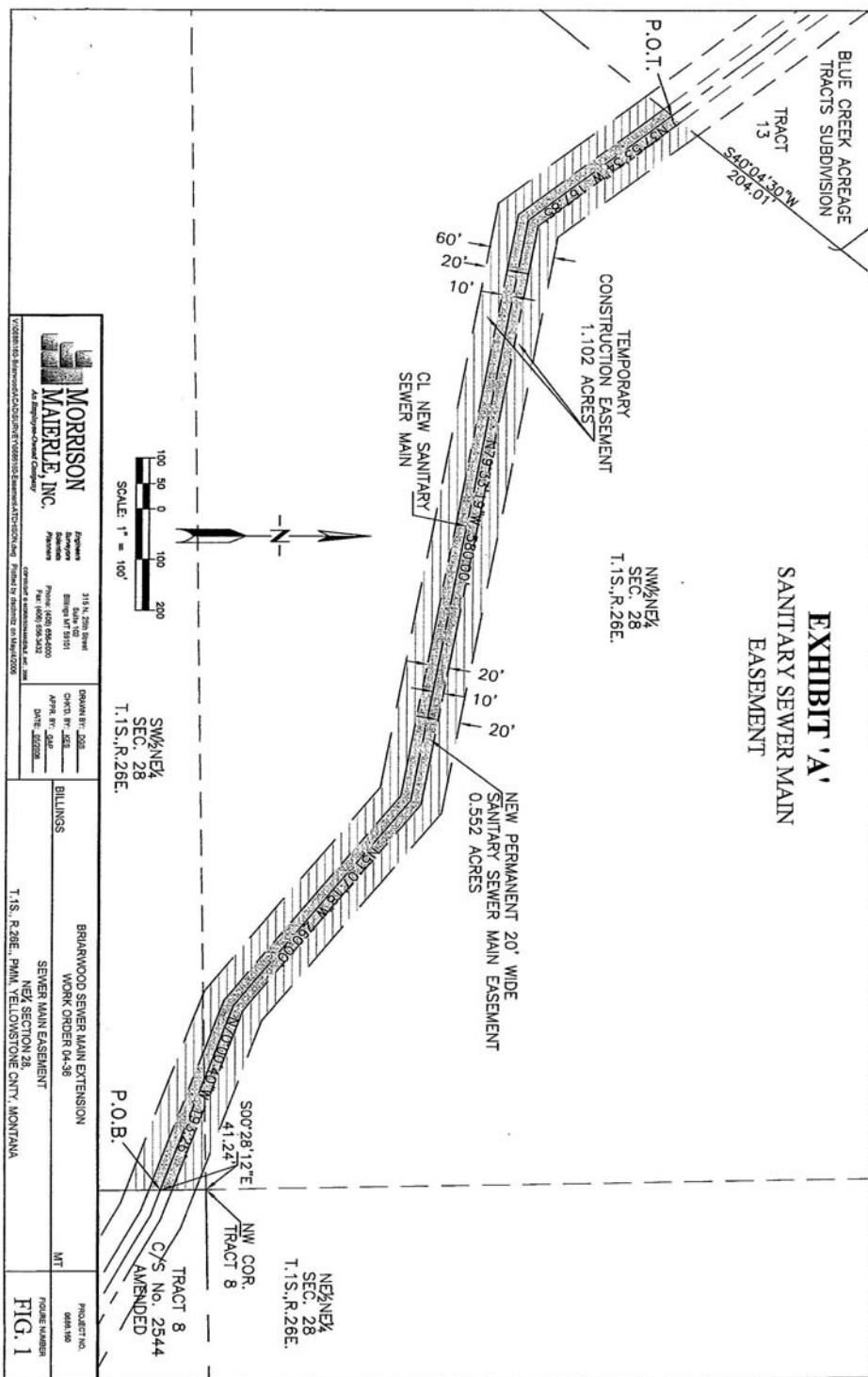


EXHIBIT 'B'

DESCRIPTION:

A permanent 20.0 foot wide sanitary sewer easement across a portion of the Northeast quarter of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, being 10 feet on each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of Tract 8, Certificate of Survey No. 2544 Amended, thence S00°28'12"E along the West line of said Tract 8, a distance of 41.24 feet, to the Point of Beginning; thence N70°00'40"W, a distance of 193.26 feet; thence N51°07'18"W, a distance of 260.00 feet; thence N79°33'19"W, a distance of 580.00 feet; thence N37°53'34"W, a distance of 167.85 feet to the Point of Termination on the Easterly line of Tract 13, Blue Creek Acreage Tracts Subdivision, being S40°04'30"W, a distance of 204.01 feet from the Northeast corner of said Tract 13, containing an area of 0.552 acres, more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

Together with a Temporary Easement for construction purposes 20.0 feet wide on each side being contiguous, adjacent and parallel to the previously described easement, containing an area of 1.102 acres, more or less, and all according to Exhibit A attached hereto.

EXHIBIT "C"

CITY OF BILLINGS

(hereinafter referred to as City)

RIGHT-OF-WAY AGREEMENT

Briarwood Sewer Main Extension
DESIGNATION

Work Order: 04-36
MMI Project No. 0686.170-0211 Yellowstone
COUNTY

Subdivision
NE¼

Section
28

Township
1S

Range
26E

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

ATCHISON, INC.
2601 BLUE CREEK ROAD
BILLINGS, MT 59101
855-4248

1. In consideration of the payments herein set forth and the specific agreements to be performed by the parties hereto and written in this agreement, the parties bind themselves to the terms and conditions stated herein. No verbal representations or agreements shall be binding upon either party. This agreement is effective upon execution by the City or a designated representative, and possession of the property is granted to the City when it sends the payment(s) agreed to below. Grantors contract that they will, on City's request, execute an easement required by the City for all real property agreed to be conveyed by this agreement.
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0.552 acre by easement	\$16,218.00
Administrative Settlement	\$ 982.50
3. OTHER COMPENSATION:

1.102 acres temporary construction easement (rounding from appraisal)	\$3,432.00
COST TO CURE	
1. cost to haul water for 45 days construction period = \$675	
2. cost of 250 LF of new fence near the creek after construction = \$1,250	
3. cost to buy hay to compensate for loss of grass = \$625	\$2,550.00
4. TOTAL COMPENSATION (includes all damages to the remainder): \$23,182.50.
5. IT IS UNDERSTOOD AND AGREED THE CITY SHALL MAKE PAYMENT AS FOLLOWS:

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6. This agreement, upon execution by an agent of the City and presentation to the Grantors so designated, constitutes a written offer of compensation in the full amount of the appraised value, a summary of the property and property rights being acquired and notice that possession need not be given until payment has been received by the Grantors
7. It is understood and agreed at no expense to the Grantors, the City will construct the fencing (including gates) listed below per Montana Department of Transportation specifications. It is further understood and agreed that a closure will be maintained at all times during the construction of the fence and the Grantors grant permission to the City to enter upon their property where necessary for the purpose of constructing fence as follows:
 - A. Station 28+50 to Station 42+60 * on the southerly boundary of the temporary construction permit **area to be constructed before construction begins on Grantor's property.** Build 4 strand barbless wire, metal posts, set 16½' on center, tie to existing fencing with a brace post
 - Gate:
 - B. Station 42+60 City agrees to install 16' metal tube gate.
 - C. Station 28+50 at the southeast end of property City agrees to install 16' metal tube gate.

(Continued from Previous Page)

Said gate will have double locks with each party receiving a key to their respective lock.

Said fence shall become the property of the Grantors and will be the Grantors' obligation thereafter to maintain and repair unless damage occurs due to entry by the city or its personnel.

8. City agrees to install geocell on the permanent access surface area of the easement and maintain if necessary.
9. In the event a disagreement, or dispute may arise between the parties hereto, relative to the terms or condition of this agreement, the parties agree that the prevailing party shall have all reasonable attorney's fees reimbursed by the non-prevailing party.
10. The City agrees to provide 24-hour non-emergency notice to the Grantors before entering the easement area and provide a notice of meeting for any future meetings pertinent to the property (which includes the weekly/bi-weekly meetings General Contractor will have during construction process) City needs to call Scott @ 406-855-4248.
11. The City agrees seed disturbed areas at the City's expense with Dry Land Pasture Mix grass. City will be required to re-seed if grass hasn't been restored to original condition after 2 years. City also agrees to restore future disturbance areas and re-vegetate with said grass.
12. The City agrees to limb and deck the trees removed by the construction of the sewer line at two on-site areas as designated by the Grantors. Said trees must be at least 3 inches in diameter and cut in lengths not to exceed 15 feet. Trees with diameters less than 3 inches shall be removed from the property by the City.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, May 29, 2007

TITLE: St. Vincent's Health Care Heart and Sole Race Street Closures
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: St. Vincent's Health Care requests temporary street closures as outlined in the attached event route maps on Saturday, June 9, 2007, from 6:00 am to 1:00 pm for the annual Heart and Sole Race.

Recommended conditions of approval include St. Vincent's Health Care:

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 St. Vincent's Health Care.

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from St. Vincent Health Care outlining event (1 page)
- B. Right of Way Special Activity Permit (2 pages)
- C. Course map and supporting document (2 pages)

March 26th, 2007
Heart and Lung Wellness Program
2900 12th Ave. N. Suite 10W
Billings, MT 59102

To Whom It May Concern:

On June 9th, Saint Vincent Healthcare will be holding the annual Heart and Sole Race. This event includes a ½ mile stroll, 2 mile health walk, 5K and 10K run. The race will again be held at Grand View Park, north of the hospital. We would like to use Grandview Park from 6AM to 1 PM.

The proceeds from this race will be benefiting people to attend Cardiac Rehabilitation after serious heart and lung problems. This year we will also be giving part of the proceeds to help benefit the Montana Heritage Trail Systems.

Respectfully Yours,



Estela C. Kaufman RN
Heart and Lung Wellness Program
Heart and Sole Race co-chair

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

PLEASE COMPLETE BOTH SIDES

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

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

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

APPLICANT SIGNATURE Evelyn C. Kasper DATE 3-26-07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

DATE: _____

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

Heart and Sole Run
June 9th, 2006
6:30AM – 12:30 PM
March 26th, 2007
Street closures/Barricades:

12th Ave and 30th
11th Ave and 30th
32nd and Locust
Grandview and Ash
Poly and University
Poly and Medical Center (so cars can turn around in MSU Parking Lot)
Elevation and 29th
Elevation and 30th
Ave F and Virginia Lane
Beverly Hills Blvd and Virginia Ln
32nd and Parkhill
10th Ave. N and N 30th

These barricades will only be in place long enough for runners to go by and taken down immediately afterwards

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, May 29, 2007

TITLE: Perfect Pitch, Inc Montana Avenue Live
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Mike Whitaker, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Perfect Pitch, Inc. requests the closure of N. 25th from Montana Avenue to 1st Ave North for the Montana Avenue Live event every Friday night starting June 15th and continuing until August 24th, from 10:00 am – 12:00 am.

Recommended conditions of approval include; Perfect Pitch, Inc:

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

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above for the Montana Avenue Live events.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Letter from Tim Goodridge, Perfect Pitch, Inc. outlining the event (2 pages)

- B. Right of Way Special Activity Permit (2 pages)
- C. Course Map (2 pages)

April 23, 2007

MONTANA AVENUE LIVE is an outdoor concert series held every Friday night in the parking lot at the McCormick Café on The Stillwater Stage located at 2419 Montana Ave. Starting on June 15 and continuing until August 24, for a total of ten concerts, it features National Recording Artists in Blues, Jazz, Country and Rock n Roll. The lot is set with concert quality sound, stage, tents, tables, chairs and temporary fencing to transform it into an outdoor concert house.

This concert series offers fans a chance to see world class music in an intimate setting. In the past all these great acts just rolled on by down I90. Now, with Montana Avenue Live, they have an excellent place to stop and play. This series is a production of Perfect Pitch, a 501(c) 3 non profit. Shows will be staffed by volunteers from School District 2 bands, orchestras, choirs, parents, teachers and the Magic City Blues Festival.

"Montana Avenue Live provides premiere musical entertainment for the Billings community and contributes to a terrific cause – music in our schools! We are grateful to Perfect Pitch for the support and dedication the organization has shown towards enhancing music programming for students in Billings Public Schools."

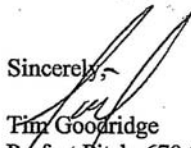
Anne Cole, Billings Public Education Foundation

Perfect Pitch's mission is to develop the live music culture in Billings on a grass roots level. Our mission will address two pressing needs in our city: diminished funding for music education in public schools and the infrequency of affordable national caliber concerts. We will support and fund educational opportunities and also stage shows that feature national recording artists in affordable, intimate settings. All efforts will be made to connect talented students with the artists in forums and teaching situations. Profits from these events will be used in part to support music programs in Billings Public Schools as well as build the capacity of Perfect Pitch to provide other educational opportunities in Billings.

Perfect pitch requests the closure of N. 25th from Montana Avenue to 1st Avenue North to launch the Montana Avenue Live series with the first concert on Friday, June 15. This closure will allow us to create a great set up for the first concert, increase the capacity and generate excitement for the ensuing shows that follow. We would like to close the street from 10 am on June 15 until 1 am for proper set up and clean up. Fencing will be in place only from Montana Avenue to the alley. The alley will not be blocked.

Principal organizers of the Magic City Blues Festival will be coordinating this event to ensure it is done with the same professionalism and attention to detail that characterizes the Bluesfest. Billings Construction Supply will provide the necessary barricades and traffic controls to ensure the closure is done safely and with minimal inconvenience. The bus depot already has procedures in place to deal with closures on N. 25th because this closure has occurred before. Insurance in the amount of \$1,000,000 per claim and \$2,000,000 total is in place for the McCormick and Carlin and can easily be assigned to the city.

Sincerely,


Tim Goodridge
Perfect Pitch 670-2329

So Hot, Way Cool!

Every Friday night all summer long eat, drink and dance in the street to world class music on Montana Avenue.

MONTANA AVENUE LIVE is an outdoor concert series held every Friday night in the performance plaza at the McCormick Café on The Stillwater Stage located at 2419 Montana Ave. Starting on June 15 and continuing until August 24, for a total of ten concerts, it features exciting National Recording Artists in Blues, Jazz, Country and Rock n Roll. The plaza is set with concert quality sound, stage, tents, tables and chairs to transform it into a first class outdoor nightclub.

Shows will be staffed by volunteers from School District 2 bands, orchestras, choirs, parents, teachers and music fans.

"Montana Avenue Live provides premiere musical entertainment for the Billings community and contributes to a terrific cause – music in our schools! We are grateful to Perfect Pitch for the support and dedication the organization has shown towards enhancing music programming for students in Billings Public Schools."

Anne Cole, Billings Public Education Foundation

Perfect Pitch, a 501(c)3 non profit, has a mission to develop the live music culture in Billings on a grass roots level. We will support and fund educational opportunities and also stage shows that feature national recording artists in affordable, intimate settings. All efforts will be made to connect talented students with the artists in forums and teaching situations. Profits from these events will be used in part to support music programs in Billings Public Schools as well as build the capacity of Perfect Pitch to provide other educational opportunities in Billings.

Perfect Pitch donated \$5,000 to school music programs last year and would like to double that this year. To help us achieve this goal we are asking you to purchase season tickets for the Montana Avenue Live series. The cost to do this is \$175 per person or \$350 for a couple. The attached schedule shows the artists currently booked. Season tickets are not redeemable for the Magic City Blues Festival.

Our goal for Montana Avenue Live is to establish an annual, outdoor summer concert series that presents ten shows each year. This project has two objectives: (1) to present artists that are advancing or sustaining American music traditions and (2) to build the capacity of Perfect Pitch to provide educational opportunities in Billings Public Schools.

Please call 697-6975 to order your season tickets.

www.montanaavenuelive.com

Thanks for supporting live music and music education in Billings.

Tim Goodridge

Todd Buchanan



CITY OF BILLINGS RIGHT-OF-WAY ACTIVITY PERMIT APPLICATION

ATTACHMENT B



Please check the type of activity you are applying for:

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

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

PERSON MAKING APPLICATION Tim Goodridge
ORGANIZATION MAKING APPLICATION Perket Pitch, Inc. 501(c)(3) non-profit
PHONE 670-2329
ADDRESS 2990 Lakof Dr Billings MT 59102
City STATE ZIP

APPROXIMATE TIME EVENT WILL:

Assemble 10 am Start 6:00 pm Disband 12 am

DATE OF EVENT June 15, 2007

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

Outdoor concert featuring The Fabulous Thunderbirds

EVENT ROUTE DESIRED: (Please attach map.)

N 25th from Montana Ave to 15th Ave N.

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

Volunteer clean up. Trash will be main item to clean off street.

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

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

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



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

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

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

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

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

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

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

APPLICANT SIGNATURE [Signature] DATE 4/23/07

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

FOR CITY USE ONLY

FEE: _____

APPLICANT NOTIFIED BY: _____

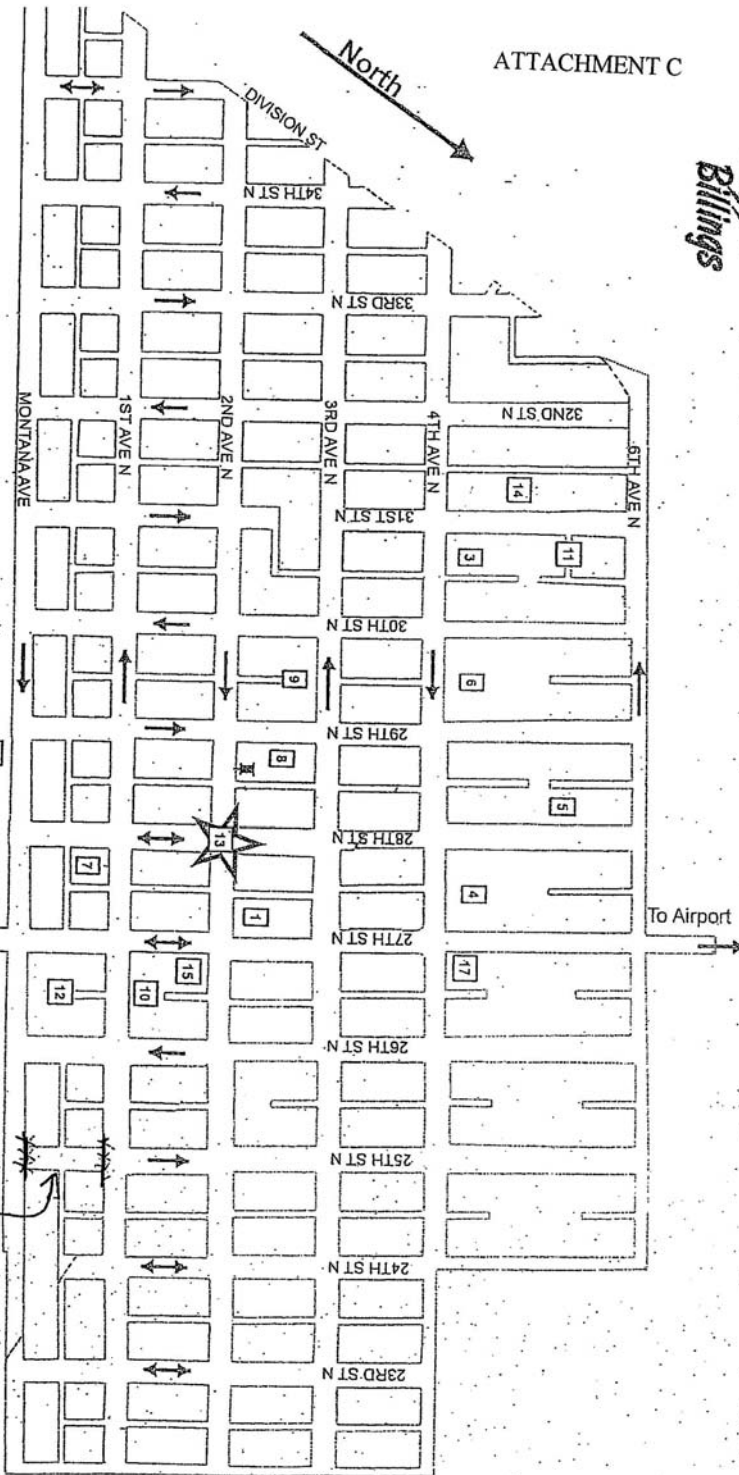
DATE: _____

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

Downtown Billings Street Map



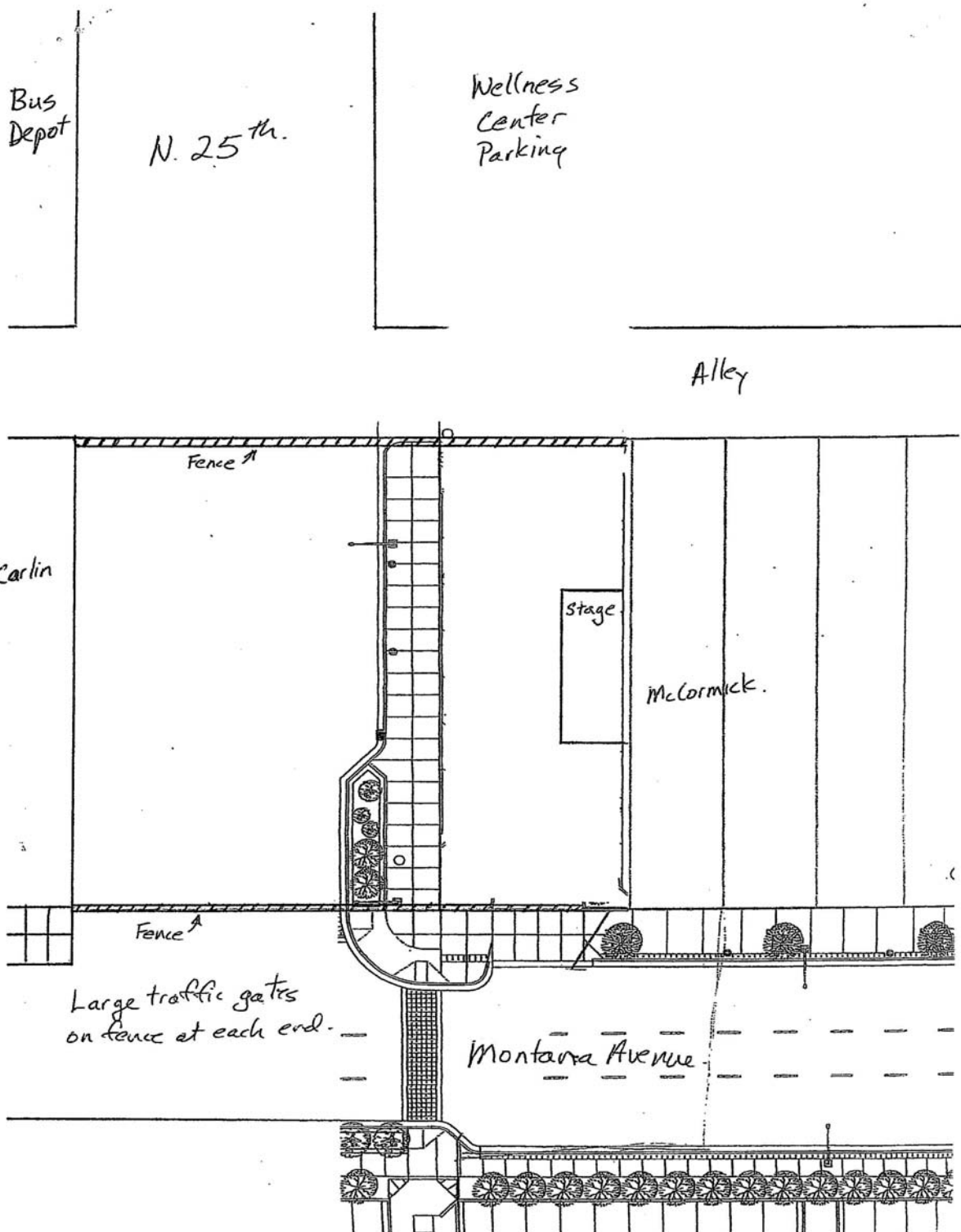
ATTACHMENT C



- | | | |
|----------------------|----------------------------------|-----------------------------|
| 1. Hall / Park III | 6. Lincoln Center | 12. Sheraton Building |
| 2. Interstate Center | 7. Northern Hotel | 13. Sky Point |
| 3. Interstate Center | 8. Old Hart-Albin Parking Garage | 14. Transwestern Complex |
| 4. Interstate Center | 9. Park I | 15. Wells Fargo Building |
| 5. Interstate Center | 10. Park II | 16. Western Heritage Center |
| | 11. Park IV | 17. Yellowstone Art Museum |

DBA Offices -- Event Applications Available Here

section for closure request.



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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Resolution Appointing Primary and Alternate Representatives to the
Downtown Billings Partnership, Inc. Board of Directors

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Downtown Billings Partnership, Inc. (DBP) contracts with the City to administer the Tax Increment District programs. DBP is a non-profit corporation that has a Board of Directors and the bylaws require that City primary and alternate representatives be appointed to the Board. After discussing these appointments at its May 7 work session, the Council will consider adopting a resolution that names the DBP board members.

ALTERNATIVES ANALYZED: Because there is a potential conflict of interest if a governing body member serves as a voting DBP board member, the Council may:

- Appoint the Mayor and/or Councilmembers as the City representatives; but, when a DBP issue comes to the Council for final approval, the representative governing body member(s) would be required to declare a conflict of interest and refrain from discussing or voting on the topic.
- Appoint City staff members as the City representatives because they are not voting members of the governing body and therefore serving as DBP board members does not present a conflict of interest.
- Appoint a City staff member as the primary representative and a governing body member as the alternate representative. This option keeps the City Council engaged with the DBP in a meaningful way. It allows a staff member, who does not have a conflict of interest, to vote on most DBP issues and allows a governing body member to vote at the DBP if the primary representative is unable to attend board meetings. If a City Councilmember votes as a DBP board member, he/she will need to declare a conflict of interest on those issues that are referred to the City Council for final approval.

FINANCIAL IMPACT: This matter has no direct financial impact.

RECOMMENDATION

Staff recommends that Council adopt the attached resolution that names City Administrator Tina Volek as the City's primary representative and Councilmember Nancy Boyer as the City's alternate representative to the Downtown Billings Partnership, Inc. Board of Directors.

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

ATTACHMENTS

A: Resolution naming DBP representatives

RESOLUTION NO. 07-_____

A RESOLUTION OF THE BILLINGS MONTANA CITY COUNCIL
DESIGNATING A PRIMARY REPRESENTATIVE AND AN ALTERNATE
REPRESENTATIVE FOR THE DOWNTOWN BILLINGS PARTNERSHIP,
INC. BOARD OF DIRECTORS

WHEREAS, the Downtown Billings Partnership Inc. is 501(c) non-profit corporation operating within the City of Billings and the State of Montana, and

WHEREAS, the Downtown Billings Partnership Inc.'s purpose is to assist with revitalizing downtown Billings, and

WHEREAS, the City of Billings is an integral partner for financing and guiding downtown revitalization, and

WHEREAS, the Downtown Billings Partnership Inc. bylaws call for the City Council to appoint a City of Billings primary representative and an alternate representative to the Downtown Billings Partnership Inc. Board of Directors.

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

Section 1. Primary member: City Administrator Tina Volek is hereby appointed as the City's primary representative to the Downtown Billings Partnership, Inc. Board of Directors.

Section 2. Alternate member: City Councilmember Nancy Boyer is hereby appointed as the City's alternate representative to the Downtown Billings Partnership, Inc. Board of Directors.

Section 5. Term: Both City representatives shall serve in their respective Board positions until replaced by the Billings City Council.

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

Attest:

THE CITY OF BILLINGS:

Cari Martin, City Clerk

BY: _____
Ron Tussing, Mayor

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: SID 1378 Clevenger Avenue Resolution of Intent to Create District and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The residents along Clevenger Avenue have the desire to construct public improvements to their street. These improvements generally consist of street, sidewalk, drive approach and curb/gutter improvements to Clevenger Avenue as shown on the attached exhibit. Storm drain improvements will consist of extending the main in Hallowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue.

ALTERNATIVES ANALYZED:

2. Approve the Resolution of Intent to Create SID 1378 and set a public hearing for the June 25, 2007, City Council Meeting; or
3. Do not approve the Resolution of Intent to Create SID 1378.

FINANCIAL IMPACT: The total estimated costs of the improvements are \$235,000. All costs associated with the improvements will be paid for by assessments levied against the properties addressing off of Clevenger Avenue.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1378 and set a public hearing date for June 25, 2007.

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

ATTACHMENT

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1378 Clevenger Avenue Resolution of Intent

INTRODUCTION

The residents along Clevenger Avenue have the desire to construct public improvements to their street. These improvements generally consist of street, sidewalk, drive approach and curb/gutter improvements to Clevenger Avenue as shown on the attached exhibit. Storm drain improvements will consist of extending the main in Hollowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue.

PROCEDURAL HISTORY

- May 29, 2007 – Resolution of Intent to Create SID 1378.
- June 25, 2007 – Public Hearing and Resolution Creating SID 1378.
- Summer 2007 – Resolution Authorizing for Construction Bids and Construction Contract Award.

BACKGROUND

A majority of the homeowners along Clevenger Avenue have approached the City with a desire to create and SID to obtain a paved street and a fix to their current storm drain problem at the intersection of Clevenger Avenue and Hollowell Lane. The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include street, curb/gutter, sidewalk and drive approach improvements. Storm drainage will most likely consist of extension of the main in Hollowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue.

The public hearing will be held at the June 25, 2007, Council Meeting. If approved, it is anticipated that construction of SID 1378 will begin in the summer of 2007 and be completed by the fall of 2007.

RECOMMENDATION

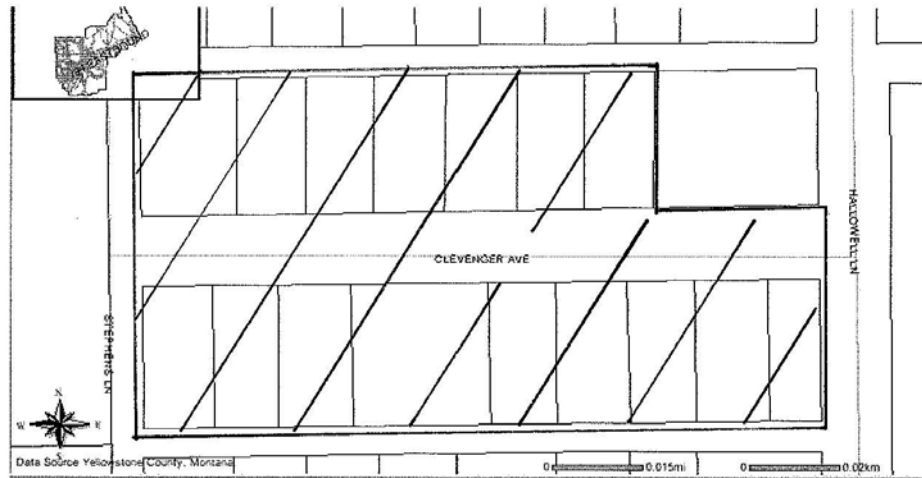
Staff recommends that Council approve the Resolution of Intent to Create SID 1378 and set a public hearing date for June 25, 2007.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1378 Clevenger Avenue Resolution of Intent

SID 1378 – CLEVINGER AVENUE

Exhibit A Boundary Map



CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1378; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on May 29, 2007 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;
voted against the same: _____;
or were absent: _____.

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

Cari Martin City Clerk

RESOLUTION NO. 07-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1378; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

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

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of Clevenger Avenue, as more particularly described in Section 5. The total estimated costs of the Improvements are \$235,000.00. The costs of the Improvements are to be paid by \$235,000.00 of Special Improvement District bonds hereinafter described. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$235,000.00. The Bonds are to be payable from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1378 of the City of Billings, Montana.

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

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and F are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit E, is the construction of curb and gutter, sidewalks, street and storm drain improvements for the 4200 Block of Clevenger Avenue.

Section 6. Engineer and Estimated Cost. The City of Billings – Public Works Department shall perform the design and construction administration for this project. The City Engineer's Office has estimated that the costs of the Improvements, including all incidental costs, are \$235,000.00.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the equal amount methods described in Section 7-12-4162, 7-12-4163, M.C.A., as particularly applied and set forth in this Section 7.

7.1.1 Equal Amount Method.

Assessment #1 will include street improvements to be constructed on the 4200 Block of Clevenger Avenue and storm drain improvements to be constructed on Hallowell Lane between Bruce Avenue and Clevenger Avenue. The properties to be assessed for these improvements include Kisse Subdivision 1st Filing, Block1, Lots 3-10 and Block 2 Lots 1-10 as described in Part III. For the purposes of equitably apportioning special benefit to each parcel of land in the District, as above-mentioned, the Engineer has determined that each parcel of land, receiving street and storm drain improvements, shall equally bear the costs of the improvements as set forth in Part III hereto to arrive at an equal cost for the street and storm drain improvements. The total estimated cost of Assessment #1 is \$178,432.10 and shall be assessed against each parcel of land within the District, as above-mentioned, receiving street and storm drain improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$11,152.01. Only Kisse Subdivision 1st Filing, Block1, Lots 3-10 and Block 2 Lots 1-10, as described in Part III, will be assessed for Assessment #1.

7.1.2 Linear Footage Method

Assessment #2 will include curb and gutter improvements to be constructed on the 4200 Block of Clevenger Avenue. The properties to be assessed for these improvements include Kisse Subdivision 1st Filing, Block1, Lots 3-10 and Block 2 Lots 1-10 as described in Part III. For the purposes of being fair and equitable to each parcel of land in the District, as above-mentioned, the Engineer has determined that each parcel of land, receiving curb and gutter improvements shall bear the costs of only the improvements along their lot frontage as set forth in Part III hereto to arrive at a lineal footage method for curb and gutter improvements. The total estimated cost of Assessment #2 is \$18,574.54 and shall be assessed against each parcel of land within the District, as above-mentioned, receiving curb and gutter improvements, on a lineal footage amount basis based on the bid price to be received. The lineal foot assessment is estimated to be \$17.51 per lineal foot. Only Kisse Subdivision 1st Filing, Block1, Lots 3-10 and Block 2 Lots 1-10, as described in Part III, will be assessed for Assessment #2.

Assessment #3 will include sidewalk improvements to be constructed on the 4200 Block of Clevenger Avenue. The properties to be assessed for these improvements include Kissee Subdivision 1st Filing, Block1, Lots 3-10 and Block 2 Lots 1-10 as described in Part III. For the purposes of being fair and equitable to each parcel of land in the District, as above-mentioned, the Engineer has determined that each parcel of land, receiving sidewalk improvements shall bear the costs of only the improvements along their lot frontage as set forth in Part III hereto to arrive at a lineal footage method for sidewalk improvements. The total estimated cost of Assessment #3 is \$37,993.37 and shall be assessed against each parcel of land within the District, as above-mentioned, receiving sidewalk improvements, on a lineal footage amount basis based on the bid price to be received. The lineal foot assessment is estimated to be \$35.83 per lineal foot. Only Kissee Subdivision 1st Filing, Block1, Lots 3-10 and Block 2 Lots 1-10, as described in Part III, will be assessed for Assessment #3.

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

Section 8. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$235,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

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

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$53,836 to \$70,536, and is set forth in Exhibit F. The average market value is \$61,214.75 with the median being \$60,587.50. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(a) **Diversity of Property Ownership.** There are a total of 16 parcels within the district boundaries. Public water and sewer currently serve each existing lot. Separate owners own each lot.

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

(c) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 16 properties, zero (0) properties were delinquent, and is set forth in Exhibit F.

(e) **The Public Benefit of the Improvements.** The total estimated costs of the Improvements are \$235,000.00. All costs of the Improvements are to be paid from the sale of Special Improvement District bonds hereinafter described. All lots within the District are zoned Residential 9600, and all lots included the District are fully built with water and sewer service.

Section 10. Reimbursement Expenditures.

10.1. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.2. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning

of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.3. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$235,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

10.4. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

10.5. Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (June 22, 2007), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 25th day of June 2007, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on June 7th and June 14th, 2007, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 29th day of May, 2007.

Mayor

Attest:

City Clerk

SID 1378 – CLEVENGER AVENUE

Exhibit B Boundary Description

Beginning at the northwest property corner of Lot 10, Block 1 Kisse Subdivision; thence southerly 310.62' along the west property line of the subdivision, the east boundary line of the Stephens Lane Right-of-Way, to the southwest property corner of Lot 10, Block 2 Kisse Subdivision; thence easterly 601.5' along the southern boundary of the subdivision to the southeast property corner of Lot 1, Block 2 Kisse Subdivision; thence northerly 185' to the southeast property corner of Lot 1, Block 1 Kisse Subdivision; thence westerly 142.5' to the southwest property corner of Lot 3, Block 1 Kisse Subdivision; thence northerly 125.59' to the northwest property corner of Lot 3, Block 1 Kisse Subdivision; thence easterly 459' ending at the northwest property corner of Lot 10, Block 1 Kisse Subdivision.

11-May-07

EXHIBIT C

SID 1378 - Clevenger Avenue

ENGINEER'S ESTIMATE OF PROBABLE COST

All Improvements

This estimate is based on approximate quantities and costs for improvements, complete in-place to serve the 4200 Block of Clevenger Avenue

ALL ITEMS ARE COMPLETE IN-PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	Total Cost
<u>Streets & Storm Drain</u>					
101	1	LS	Mobilization and Insurance (5%)	@ \$898.00 / LS = \$	5,898.00
102	1	LS	Clearing and Grubbing	@ \$1,000.00 / LS = \$	1,000.00
103	1,050	CY	Unclassified Excavation	@ \$6.25 / CY = \$	6,562.50
104	800	CY	1 1/2-inch Base Gravel	@ \$19.25 / CY = \$	15,400.00
105	900	SF	HC Ramps	@ \$11.00 / SF = \$	9,900.00
106	2,800	SF	6-inch Thick Drive Approach	@ \$6.00 / SF = \$	16,800.00
107	378	TN	Asphalt (3-inch Thick)	@ \$40.00 / TN = \$	15,120.00
108	235	LF	Curb & Gutter	@ \$11.00 / LF = \$	2,579.50
109	0	LF	4-inch Thick Sidewalk	@ \$22.50 / LF = \$	-
110	23	TN	Asphalt Oil (6%)	@ \$200.00 / TN = \$	4,600.00
111	2	EA	New Traffic Control Signs	@ \$300.00 / EA = \$	600.00
112	700	LF	Curb & Gutter Removal	@ \$4.00 / LF = \$	2,800.00
113	1,000	SF	Flatwork Removal	@ \$15.00 / SF = \$	15,000.00
114	2	EA	Storm Drain Inlets	@ \$1,500.00 / EA = \$	3,000.00
115	1	EA	36" Storm Drain Manholes	@ \$2,500.00 / EA = \$	2,500.00
116	220	LF	15" Storm Drain Pipe	@ \$60.00 / LF = \$	13,200.00
117	50	LF	12" Lateral SD Pipe	@ \$40.00 / LF = \$	2,000.00
118	1	LS	Erosion Control	@ \$500.00 / LS = \$	500.00
119	1	LS	Traffic Control	@ \$500.00 / LS = \$	500.00
Subtotal - Streets					= \$ 117,960.00
<u>Curb & Gutter (New)</u>					
201	1	LS	Mobilization and Insurance (5%)	@ \$613.97 / LS = \$	613.97
202	1,061	LF	Standard Curb & Gutter	@ \$11.00 / LF = \$	11,665.50
Subtotal - Curb/Gutter					= \$ 12,279.47
<u>Sidewalk (New)</u>					
301	1	LS	Mobilization and Insurance (5%)	@ \$1,255.86 / LS = \$	1,255.86
302	1,061	LF	4-inch Thick Sidewalk	@ \$22.50 / LF = \$	23,861.25
Subtotal - Sidewalk					= \$ 25,117.11
Total Construction Costs					\$ 155,356.58
Construction Contingency (10%)					\$ 15,535.66
TOTAL COST OF CONSTRUCTION IMPROVEMENTS					= \$ 170,892.24
<u>Construction & S.I.D. Administrative Costs</u>					
Design and Construction Administration					= \$34,178.45
TOTAL ADMINISTRATIVE COSTS					= \$34,178.45
CONSTRUCTION & ADMINISTRATION SUBTOTAL					= \$205,070.68

11-May-07

EXHIBIT D
SID 1378 - Clevenger Boulevard
TABLE OF ESTIMATED ASSESSMENTS PER ITEM

CODE #	ASSESSMENT ITEM	RAW CONSTRUCTION COSTS	% OF CONSTRUCTION	TOTAL THRU ADMINISTRATION CONTINGENCY	SID TOTAL THRU ADMINISTRATION COSTS	TOTAL UNITS PER ITEM	RATE PER UNIT	TOTAL UNITS TO BE ASSESSED PER ITEM	CASH CONTRIBUTION COST	% APPLIED TO ADMINISTRATION COSTS	ADMINISTRATION COSTS	TOTAL THRU COSTS	UNIT COST PER ASSESSMENT
1	Streets & Storm Drain	\$ 117,960.00	75.95%	\$ 11,796.00	\$129,756.00	16.00	\$8,731.70	16.00	\$155,707.20	75.95%	\$22,724.90	\$178,432.10	\$11,152.01
2	Curb & Gutter (New)	\$ 12,279.47	7.90%	\$ 1,227.95	\$13,507.42	1,061	\$12.28	1,061	\$16,208.91	7.90%	\$2,365.63	\$18,574.54	\$17.51
3	Sidewalk (New)	\$ 25,117.11	16.17%	\$ 2,511.71	\$27,628.82	1,061	\$31.26	1,061	\$33,154.58	16.17%	\$4,834.79	\$37,989.37	\$35.83

EXHIBIT E

SID 1378 Clevenger Avenue SID

K. PROJECT DESCRIPTION

Special Improvement District No. 1378 shall construct the following improvements to Clevenger Avenue.

- 1) Construction of street, curb, gutter, sidewalks and drive approaches on the 4200 Block of Clevenger Avenue.
- 2) Extension of a storm drain main in Hallowell Lane from the intersection of Bruce Avenue to the intersection of Clevenger Avenue to serve storm drain needs on Clevenger Avenue.

SID 1378 - Clevenger Avenue						
Exhibit F						
Tax Code	SID #	SID Balance	Delinquent	SID 1378 Assessment	SID Pay-off + Delinquent + SID 1378 Assessment	Estimated Market Value
A09629	1344	\$ 5,098.42	\$ -	\$15,419.27	\$ 20,517.69	\$ 67,979.00
A09628			\$ -	\$14,352.45	\$ 14,352.45	\$ 64,575.00
A09627A			\$ -	\$14,619.16	\$ 14,619.16	\$ 64,702.00
A09627	1344	\$ 4,964.19	\$ -	\$14,885.86	\$ 19,850.05	\$ 70,536.00
A09626A	1344	\$ 4,830.19	\$ -	\$14,352.45	\$ 19,182.64	\$ 58,869.00
A09626			\$ -	\$14,459.13	\$ 14,459.13	\$ 58,335.00
A09625A			\$ -	\$14,459.13	\$ 14,459.13	\$ 63,100.00
A09638	1344	\$ 4,826.79	\$ -	\$14,352.45	\$ 19,179.24	\$ 60,172.00
A09637			\$ -	\$14,352.45	\$ 14,352.45	\$ 59,565.00
A09636	1344	\$ 4,826.79	\$ -	\$14,352.45	\$ 19,179.24	\$ 61,003.00
A09635			\$ -	\$17,552.90	\$ 17,552.90	\$ 58,972.00
A09634			\$ -	\$14,352.45	\$ 14,352.45	\$ 53,836.00
A09633			\$ -	\$14,352.45	\$ 14,352.45	\$ 56,106.00
A09632			\$ -	\$14,352.45	\$ 14,352.45	\$ 55,610.00
A09631			\$ -	\$14,352.45	\$ 14,352.45	\$ 63,069.00
A09630	1344	\$ 4,846.70	\$ -	\$14,432.46	\$ 19,279.16	\$ 63,007.00
Average		\$ 4,898.85	\$ -	\$ 14,687.50	\$ 16,524.57	\$ 61,214.75
Median		\$ 4,838.45	\$ -	\$ 14,352.45	\$ 14,539.15	\$ 60,587.50
Low		\$ 4,826.79	\$ -	\$ 14,352.45	\$ 14,352.45	\$ 53,836.00
High		\$ 5,098.42	\$ -	\$ 17,552.90	\$ 20,517.69	\$ 70,536.00

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48), Resolution of Intent and Set a Public Hearing Date

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings submitted a Montana Department of Transportation (MDT) Community Transportation Enhancement Program (CTEP) grant funding application for the Highland School Sidewalks project in 2004. The Highland School Sidewalks project was approved through the local CTEP selection process and approved by MDT. Council approved the CTEP Project Specific Agreement (PSA) for this project on January 9, 2006. This project will construct sidewalks and associated public improvements along 11th Street West, O'Malley Drive, and Azalea Lane between Poly Drive and Delphinium Drive. Associated with this project are two other enhancements: (1) a permanent crossing at 11th St W & Poly Drive, and (2) sidewalks along Beverly Hills Boulevard, funded through a Safe Routes to School (SR2S) grant. The proposed sidewalk assessments follow the SID Policy adopted by Council in 2004, as the missing public improvements will be assessed to adjoining property owners. The permanent crossing enhancements at 11th Street West and Poly Drive are funded through Arterial Street fees. The sidewalks along Beverly Hills Boulevard are funded through a Safe Routes to School (SR2S) grant.

FINANCIAL IMPACT: Sidewalk assessments for this project are an integral part of the entire project's budget that has already been authorized in the City's Capital Improvement Plan (CIP). The approved funding information for this project is as follows:

11th St W, O'Malley Dr. and Azalea Ln

CTEP Grant	\$ 40,000
Storm Drain	\$ 10,000
Property Assessments	\$ 50,000
Gas Tax	\$ 45,000
Subtotal	\$145,000

Poly Drive & 11th St W Intersection

Arterial Funds	\$40,000
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Beverly Hills Blvd.

Safe Routes to Schools \$ 25,000

RECOMMENDATION

Staff recommends that Council pass a Resolution of Intent to construct the sidewalk and related improvements identified in W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48), and establish a Public Hearing date of June 25, 2007.

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

ATTACHMENT

- A. W.O. 05-17 Highland School Sidewalks-Billings, Resolution of Intent With Exhibits A, B and C (12 pages)

INTRODUCTION

This project will construct sidewalks and associated public improvements along 11th Street West, O'Malley Drive, and Azalea Lane between Poly Drive and Delphinium Drive; will construct permanent crossing improvements at the 11th Street West and Poly Drive intersection; and along Beverly Hills Boulevard between Highland Elementary School and 7th Street West. This project will enhance accessibility for students attending Highland School. Property assessments for missing public improvements (e.g. sidewalks) along the east side of 11th Street West, north side of O'Malley Drive, and east side of Azalea Lane are an integral part of the project's funding. The proposed sidewalk assessments follow the SID Policy adopted by Council in 2004, as the missing public improvements will be assessed to adjoining property owners. The permanent crossing enhancements (to replace the temporary improvements installed in 2005) at 11th Street West and Poly Drive are funded through Arterial Street fees. The sidewalks along Beverly Hills Boulevard are funded through a Safe Routes to School (SR2S) grant.

PROCEDURAL HISTORY

- Completed Items
 - CTEP Project Specific Agreement Signed by City Council – January 2006
 - Public input meetings held – July and August 2006
 - Resolution of Intent – May 29, 2007 (**This memo**)
- Future Items
 - Notify affected property owners of proposed project – May 31, 2007
 - Public Hearing for proposed project – June 25, 2007
 - Resolution ordering construction of the improvements – June 25, 2007
 - Bid advertisement and bid award – July 2007
 - Construction begins – August 2007

BACKGROUND

With passage of the Resolution of Intent, staff will notify each property owner within the proposed project area. This notice will include a detailed listing of the proposed work fronting each property, the estimated direct property assessment, and the date, time and place of the Public Hearing. If Council orders the improvements after the Public Hearing, property owners will receive a 30-day notice to complete the improvements prior to construction of this project.

The average estimated assessment (including administrative fees) for the proposed project is \$1,787, the median assessment is \$1,615, the highest assessment is \$4,553, and the lowest assessment is \$0.00. The total estimated assessed cost of the missing sidewalks is approximately \$37,000, including all administrative fees, but exclusive of interest charges.

STAKEHOLDERS

There are two groups affected by the proposed project. The first group is the public-at-large, which would benefit from construction of the improvements. The Highland Neighborhood Task

Force is strongly in favor of this project as are the staff and Parent-Teacher Association of Highland School. The second group is the property owners within the proposed project area, who would benefit directly from construction of the improvements, but who would also receive direct property assessments for the construction costs.

Several public meetings have been held regarding this project.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

In 2004, Council adopted the SID Policy to address the issue of assessments for missing sidewalks and other public improvements along streets in the community. The proposed sidewalk assessments follow this SID Policy in that missing public improvements will be assessed to adjoining property owners.

RECOMMENDATION

Staff recommends that Council pass a Resolution of Intent to construct the sidewalk and related improvements identified in W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48), and establish a Public Hearing date of June 25, 2007.

ATTACHMENT

- A. W.O. 05-17 Highland School Sidewalks-Billings, Resolution of Intent With Exhibits A, B and C (12 pages)

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 07-_____, entitled: **"A RESOLUTION RELATING TO W.O. 05-17 - HIGHLAND SCHOOL SIDEWALKS-BILLINGS, FEDERAL AID NO. STPE 1099(48); DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND; AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE"** (the "Resolution"), on file in the original records of the City Council of the City at a meeting on May 29, 2007, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____

Voted against the same: _____
Abstained from voting thereon: _____
or were absent: _____

WITNESS my hand officially this 29th day of May, 2007.

CITY CLERK

RESOLUTION NO. 07- _____

A RESOLUTION RELATING TO W.O. 05-17 - HIGHLAND SCHOOL SIDEWALKS-BILLINGS, FEDERAL AID NO. STPE 1099(48); DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

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

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

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

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibit "A" and Exhibit "B" attached hereto.
2. AFFECTED PROPERTIES. All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit "B" attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$37,000.00, as described below:

Construction Costs	\$27,114.00
Contingency (3.3%)	\$ 886.00
Subtotal to Be Assessed to Property Owners	\$28,000.00
Engineering & Administration (12.5%)	\$ 4,625.00
Bond Revolving Fund (5%)	\$ 1,850.00
Bond Discount and Issuance Costs (5%)	\$ 1,850.00
Bank Fees	\$ 750.00
Roundoff	\$ (75.00)
TOTAL ASSESSED COSTS	\$37,000.00

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

<u>Construction Items:</u>	<u>Unit Price:</u>
Remove Concrete Flatwork	\$12.00/square yard
Remove Concrete Curb & Gutter	\$ 7.50/linear foot
Concrete Saw Cut	\$ 7.00/linear foot
New Concrete Sidewalk	\$ 5.50/square foot
New Concrete Curb and Gutter	\$22.00/linear foot
New Concrete Drive Approach	\$ 6.00/square foot

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

4. ASSESSMENT OF COSTS. All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs, will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit "C", assessments will be levied against 19 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The estimated costs, for construction only, for a typical lot requiring construction for new sidewalk, appurtenant structures and alley approaches, are \$1,343. The average total assessment, including engineering, administrative, and bond costs is estimated to be \$1,787, with a high of \$4,553, a low of \$0.00, and a median of \$1,616.

5. PERIOD OF ASSESSMENT. The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS. In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.
7. METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS. The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount not to exceed \$37,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in MCA Section 7-12-4225 in respect to the Bonds.

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

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$2,527,185. The average market value is \$133,010, with a high of \$493,339, a low of \$89,428, and median value of \$105,270. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 19 total lots, parcels, or tracts in the Project, there are 19 separate owners. All parcels are under separate individual ownership. Given the diversity of ownership, it is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.
- (c) Comparison of Special Assessments, Property Taxes and Market Value. Currently, no parcels have SID's levied against them.

As noted in Section 4, the estimated average assessment levied by this project will be \$1,787. With an average market value of \$133,010, and an average yearly principal payment of \$149

(monthly principal of \$12.41), the amount of assessment versus the value of the property would appear to be acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "C".

- (d) Delinquencies. For tax years 2001-2006, no parcels were delinquent. This represents a 100% collection rate within the project area. This rate is above the average city collection rate of 95%.

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

- (e) The Public Benefit of the Improvements. Under current City ordinances and City Council policies, the cost of installation of new curb & gutter, sidewalk, drive approaches, and some or all of the street section is to be borne by the adjoining property owners.

The subject sections of City streets are identified as being on an identified priority school walking route. The main purpose of these improvements is to provide a safe, accessible walking surface for school children and other pedestrians walking along the streets. A portion of the assessed costs to property owners is to be offset by a federal grant under the Community Transportation Enhancement Program (CTEP) administered by the Montana Department of Transportation (MDT). City funding sources will fund the costs to replace non ADA compliant but otherwise serviceable drive approaches; to replace deteriorated curb & gutter; to build curb extensions; to build minor bridge modifications; and to build corner accessibility ramps. The funding sources for the City contribution to this project include gas tax funds, arterial street funds, and storm drain funds.

The project improvements are generally located along Poly Drive; 11th Street West; O'Malley Drive; and Azalea Lane.

8. REIMBURSEMENT EXPENDITURES.

- (a) Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.
- (b) Declaration of Intent. The City desires to comply with requirements of the Regulations with respect to certain projects, the scope and costs of which are identified in Exhibit "A" and Exhibit "B attached hereto (the "Improvements"). The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$37,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

- (c) Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.
- (d) Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.
- (e) Reimbursement Allocations. The City's Financial Services Manager shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.
9. PUBLIC HEARING. On Monday, June 25, 2007, at 6:30 p.m., in the Council Chambers located on the Second Floor of City Hall, 220 North 27th Street, Billings, Montana, the City Council will conduct a public hearing concerning this project, and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.
10. NOTICE OF PASSAGE OF RESOLUTION OF INTENTION. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on May 31 and June 7, 2007, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

PASSED by the City Council and APPROVED this 29th day of May 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

CITY CLERK

RE: W.O. 05-17 Highland School Sidewalks-Billings, Federal Aid No. STPE 1099(48)

Exhibit "A"

Locations of Work

W. O. 05-17 – Highland School Sidewalks, Federal Aid No. STPE 1099(48)

- A) **Sidewalks, Drive Approaches, Accessibility Ramps, and Miscellaneous Related Improvements:** The east side of 11th Street West between Poly Drive and O'Malley Drive; the north side of O'Malley Drive between 11th Street West and Azalea Lane; and the east side of Azalea Lane between O'Malley Drive and Delphinium Drive;



EXHIBIT B
OWNERSHIP REPORT
WO 05-17
Highland School Route Improvements



Tax Account Tax Owner		Lot Block Subdivision	Alley Approach Information	
A08062			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
BUCHANAN, JUDITH K		6 2 GRAHAM SUB		
Physical Address	2315 AZALEA LN BILLINGS MT 59102	Legal Description: LT 6 BLK 2 GRAHAM SUB Taxable Sq. Ft. 9,600	Engineer's Estimate: \$1,082.81 Final Cost: \$0.00	
Mapping Address	2315 AZALEA LN BILLINGS MT 59102			
A08059			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
KRESSLEIN, JANET & JOSEPH G		1 & 2 2 GRAHAM SUB		
Physical Address	2211 AZALEA LN BILLINGS MT 59102	Legal Description: LT 1&2 BLK 2 GRAHAM SUB Taxable Sq. Ft. 21,600	Engineer's Estimate: \$1,615.63 Final Cost: \$0.00	
Mapping Address	2211 AZALEA LN BILLINGS MT 59102			
A08060			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
DONLIN, CHARLOTTE M		3 2 GRAHAM SUB		
Physical Address	2215 AZALEA LN BILLINGS MT 59102	Legal Description: LOT 3 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,800	Engineer's Estimate: \$1,344.93 Final Cost: \$0.00	
Mapping Address	2215 AZALEA LN BILLINGS MT 59102			
A08060A			<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
HANSON, EARL J & PEGGY L		4 2 GRAHAM SUB		
Physical Address	2301 AZALEA LN BILLINGS MT 59102	Legal Description: L-4 B-2 GRAHAM SUB Taxable Sq. Ft. 10,800	Engineer's Estimate: \$2,181.10 Final Cost: \$0.00	
Mapping Address	2301 AZALEA LN BILLINGS MT 59102			

Tax Account		Lot		Alley Approach Information	
Tax Owner		Block Subdivision			
A08061		5 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
JARRATT, JEANETTA L					
Physical Address	2313 AZALEA LN BILLINGS MT 59102				
Mailing Address	2313 AZALEA LN BILLINGS MT 59102				
		Legal Description: LT 5 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,800		Engineer's Estimate: \$1,264.43 Final Cost: \$0.00	
A08063		7 & 8 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
ELIASON, JIM & DEBBIE FAMILY TRUST					
Physical Address	2323 AZALEA LN BILLINGS MT 59102				
Mailing Address	2323 AZALEA LN BILLINGS MT 59102				
		Legal Description: LTS 7 & 8 BLK 2 GRAHAM SUB Taxable Sq. Ft. 20,620		Engineer's Estimate: \$1,784.38 Final Cost: \$0.00	
A08064		9 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
CRIPPEN, BRUCE D (3					
Physical Address	947 O MALLEY DR BILLINGS MT 59102				
Mailing Address	PO BOX 80747 BILLINGS MT 59108				
		Legal Description: LT 9 BLK 2 GRAHAM SUB Taxable Sq. Ft. 17,400		Engineer's Estimate: \$171.88 Final Cost: \$0.00	
A08065		10 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
ALLEN, GLADYS I					
Physical Address	1005 O MALLEY DR BILLINGS MT 59102				
Mailing Address	1005 O MALLEY DR BILLINGS MT 59102				
		Legal Description: LT 10 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,950		Engineer's Estimate: \$2,190.63 Final Cost: \$0.00	
A08066		11 2 GRAHAM SUB		<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
ELLETSON, JOHANNAH					
Physical Address	1011 O MALLEY DR BILLINGS MT 59102				
Mailing Address	1011 O MALLEY DR BILLINGS MT 59102				
		Legal Description: LT 11 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,517		Engineer's Estimate: \$4,553.13 Final Cost: \$0.00	

Tax Account Tax Owner	Lot Block Subdivision	Alley Approach Information
A08067 PUMPHREY, ROBERT M JR Physical Address: 1017 O MALLEY DR MT 59102 Mailing Address: 1017 O MALLEY DR MT 59102	12 2 GRAHAM SUB Legal Description: LT 12 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,288	<input type="checkbox"/> Alley 1: Alley 2: Alley 3: Engineer's Estimate: \$2,675.00 Final Cost: \$0.00
A08068 NICHOL, JACK & LOIS B Physical Address: 1035 O MALLEY DR MT 59102 Mailing Address: 1035 O MALLEY DR MT 59102	13 2 GRAHAM SUB Legal Description: LT 13 BLK 2 GRAHAM SUB Taxable Sq. Ft. 10,376	<input type="checkbox"/> Alley 1: Alley 2: Alley 3: Engineer's Estimate: \$3,179.18 Final Cost: \$0.00
A12918 COPPLE, C ROCKNE & REBECCA JO Physical Address: 2428 11TH ST W MT 59102 Mailing Address: 2428 11TH ST W MT 59102	2, E5'OF1 & E72.76'OF N5' POLY ADDN Legal Description: LT 2 E5 FT LT 1 E72.76 FT N5 FT LT 8 POLY Taxable Sq. Ft. 9,627	<input type="checkbox"/> Alley 1: Alley 2: Alley 3: Engineer's Estimate: \$0.00 Final Cost: \$0.00
A12919 KOCH, ZENDA N Physical Address: 2421 11TH ST W MT 59102 Mailing Address: 2421 11TH ST W MT 59102	N90' OF 3 TO 4 POLY ADD Legal Description: N90 FT LT 3-4 POLY ADD Taxable Sq. Ft. 12,174	<input type="checkbox"/> Alley 1: Alley 2: Alley 3: Engineer's Estimate: \$876.56 Final Cost: \$0.00
A12920 SANDER, SILVY KURTH & GEORGIA W Physical Address: 2417 11TH ST W MT 59102 Mailing Address: 2417 11TH ST W # T MT 59102	S 30' 3 TO 5 POLY ADD Legal Description: S30 FT 3-5 POLY ADD Taxable Sq. Ft. 12,141	<input type="checkbox"/> Alley 1: Alley 2: Alley 3: Engineer's Estimate: \$1,220.31 Final Cost: \$0.00

Tax Account Tax Owner		Lot Block Subdivision	Alley Approach Information	
A12921				
HAWKINS, MARY E TRUSTEE				
Physical Address	2411 11TH ST W BILLINGS MT 59102	6 & N 11' OF 7 POLY ADD	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
Mailing Address	2411 11TH ST W BILLINGS MT 59102	Legal Description: LT 6 N11 FT LT 7 POLY ADD Taxable Sq. Ft. 13,599	Engineer's Estimate: \$1,332.04 Final Cost: \$0.00	
A12922				
CUFF, HARRY A & JUDITH B				
Physical Address	2405 11TH ST W BILLINGS MT 59102	7 LESS N 11' POLY ADD	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
Mailing Address	2405 11TH ST W BILLINGS MT 59102	Legal Description: LT 7 LESS N11 FT POLY ADD Taxable Sq. Ft. 10,882	Engineer's Estimate: \$971.09 Final Cost: \$0.00	
A12941				
FRANKEL, SHERRON ANN FAMILY TRUST				
Physical Address	1055 O MALLEY DR BILLINGS MT 59102	28A-1 POLY ADD 2ND	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
Mailing Address	1055 O MALLEY DR BILLINGS MT 59102	Legal Description: LT 28A-28B AMEND LT 28A-1 POLY ADD 2ND Taxable Sq. Ft. 8,502	Engineer's Estimate: \$1,976.56 Final Cost: \$0.00	
A12941A				
VENTRELL, LOUIS & CAROL L				
Physical Address	1065 O MALLEY DR BILLINGS MT 59102	28A & 28B, AMEND 28B- POLY ADDN 2ND	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
Mailing Address	1065 O MALLEY DR BILLINGS MT 59102	Legal Description: LOTS 28A & 28B AMEND LT 28B-1 Taxable Sq. Ft. 9,359	Engineer's Estimate: \$3,367.03 Final Cost: \$0.00	
A16107				
CASHMORE, CHARLES R & KATHLEEN A				
Physical Address	955 DELPHINIUM DR BILLINGS MT 59102	9 5 SUNCREST ACRES 1ST	<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
Mailing Address	955 DELPHINIUM DR BILLINGS MT 59102	Legal Description: LT 9 BLK 5 SUNCREST ACRES SUB 1ST Taxable Sq. Ft. 10,610	Engineer's Estimate: \$2,182.03 Final Cost: \$0.00	
Wednesday, May 16, 2007			Page 4 of 5	

Tax Account Tax Owner		Lot Block Subdivision		Alley Approach Information	
A18688				<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
SCHOOL DISTRICT NO 2					
729 PARKHILL DR					
BILLINGS					
Physical Address					
415 N 30TH ST					
BILLINGS		MT			
Mailing Address					
		59101			
				Engineer's Estimate: \$0.00 Final Cost: \$0.00	
Z123				<input type="checkbox"/> Alley 1: Alley 2: Alley 3:	
CITY OF BILLINGS					
VARIOUS					
BILLINGS		MT			
Physical Address					
PO BOX 1178					
BILLINGS		MT			
Mailing Address					
		59103			
				Engineer's Estimate: \$0.00 Final Cost: \$0.00	

Exhibit C

Tax ID	SID #	SID Payoff	Amount Delinquent	W.O. 05-17 Assessment	SID Pay-off + Delinquent + W.O. 05-17 Assessment	Market Value	Estimated Market Value After Improvements	Percent of Total Assessment in District	Buildings on the Lots (Yes or No)
A08059	N/A	\$ -	\$ -	\$ 1,615.63	\$ 1,615.63	\$ 160,896.00	\$ 162,511.63	4.76%	Yes
A08060	N/A	\$ -	\$ -	\$ 1,344.93	\$ 1,344.93	\$ 134,987.00	\$ 136,331.93	3.96%	Yes
A08060A	N/A	\$ -	\$ -	\$ 2,181.10	\$ 2,181.10	\$ 101,693.00	\$ 103,874.10	6.42%	Yes
A08061	N/A	\$ -	\$ -	\$ 1,264.43	\$ 1,264.43	\$ 110,901.00	\$ 112,165.43	3.72%	Yes
A08062	N/A	\$ -	\$ -	\$ 1,082.81	\$ 1,082.81	\$ 105,270.00	\$ 106,352.81	3.19%	Yes
A08063	N/A	\$ -	\$ -	\$ 1,784.38	\$ 1,784.38	\$ 493,339.00	\$ 495,123.38	5.25%	Yes
A08064	N/A	\$ -	\$ -	\$ 171.88	\$ 171.88	\$ 122,961.00	\$ 123,132.88	0.51%	Yes
A08065	N/A	\$ -	\$ -	\$ 2,190.63	\$ 2,190.63	\$ 102,540.00	\$ 104,730.63	6.45%	Yes
A08066	N/A	\$ -	\$ -	\$ 4,553.13	\$ 4,553.13	\$ 134,458.00	\$ 139,011.13	13.40%	Yes
A08067	N/A	\$ -	\$ -	\$ 2,675.00	\$ 2,675.00	\$ 89,428.00	\$ 92,103.00	7.87%	Yes
A08068	N/A	\$ -	\$ -	\$ 3,179.18	\$ 3,179.18	\$ 94,298.00	\$ 97,477.18	9.36%	Yes
A12918	N/A	\$ -	\$ -	\$ -	\$ -	\$ 98,552.00	\$ 98,552.00	0.00%	Yes
A12919	N/A	\$ -	\$ -	\$ 876.56	\$ 876.56	\$ 92,197.00	\$ 93,073.56	2.58%	Yes
A12920	N/A	\$ -	\$ -	\$ 1,220.31	\$ 1,220.31	\$ 98,466.00	\$ 99,686.31	3.59%	Yes
A12921	N/A	\$ -	\$ -	\$ 1,332.04	\$ 1,332.04	\$ 89,772.00	\$ 91,104.04	3.92%	Yes
A12922	N/A	\$ -	\$ -	\$ 971.09	\$ 971.09	\$ 102,180.00	\$ 103,151.09	2.86%	Yes
A12941	N/A	\$ -	\$ -	\$ 1,976.56	\$ 1,976.56	\$ 141,684.00	\$ 143,660.56	5.82%	Yes
A12941A	N/A	\$ -	\$ -	\$ 3,367.03	\$ 3,367.03	\$ 140,496.00	\$ 143,863.03	9.91%	Yes
A16107	N/A	\$ -	\$ -	\$ 2,182.03	\$ 2,182.03	\$ 113,067.00	\$ 115,249.03	6.42%	Yes
Average		\$ -	\$ -	\$ 1,787.83	\$ 1,787.83	\$ 133,009.74	\$ 134,797.56		
Median		\$ -	\$ -	\$ 1,615.63	\$ 1,615.63	\$ 105,270.00	\$ 106,352.81		
Low		\$ -	\$ -	\$ -	\$ -	\$ 89,428.00	\$ 91,104.04		
High		\$ -	\$ -	\$ 4,553.13	\$ 4,553.13	\$ 493,339.00	\$ 495,123.38		
Total				\$ 33,968.72	\$ 33,968.72	\$ 2,527,185.00			

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

R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Second Reading of an Ordinance Expanding Ward IV for
Annexation 07-06 Property

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: On April 23, 2007, the City Council approved the annexation of the future Cottonwood Park site at the northwest corner of Colton Blvd. and 54th St. W. (Annexation #07-06) containing 42.26 acres. The City of Billings owns the property and the Parks, Recreation, and Public Lands Department requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV was held on May 14, 2007. The second reading of the ordinance is scheduled for Council action on May 29, 2007.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 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:

Tracts of land situated in the E1/2 of Section 31, and the NW1/4 Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tracts 1 & 2, of Certificate of Survey 1323, Recorded June 27, 1973, under Document No. 9397800, Records of Yellowstone County;
Tract 1, of Certificate of Survey 1815, Recorded September 7, 1978, under Document No. 1103210, Records of Yellowstone County;
Tract 2D, of Corrected Amended Tract 2 of Certificate of Survey 1952, Recorded September 22, 1988, under Document No. 1498658, Records of Yellowstone County;
Park land, Yellowstone Meadows-Phase One, Recorded December 15, 1970, under Document No. 873104, Records of Yellowstone County;
Park land, Yellowstone Meadows-Phase Three, Recorded December 6, 1976, under Document No. 1035948, Records of Yellowstone County;
Lots 33, 34, 63 and 64 of Sunny Cove Fruit Farms, Recorded April 27, 1910, under Document No. 21540, Records of Yellowstone County.
Including that portion of adjoining Yellowstone County Road easement for 54th Street West, also described as a portion County Road Petition Number 49, filed April 20, 1892, Notice of Opening Road filed June 14, 1892, and all adjacent right-of-way of 54th Street West, 56th Street West and Colton Boulevard.

Containing 42.262 gross acres, and 38.334 net acres.
(# 07-06) See Exhibit "A" Attached

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes

and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 14th day of May, 2007.

PASSED by the City Council on the second reading this 29th day of May, 2007.

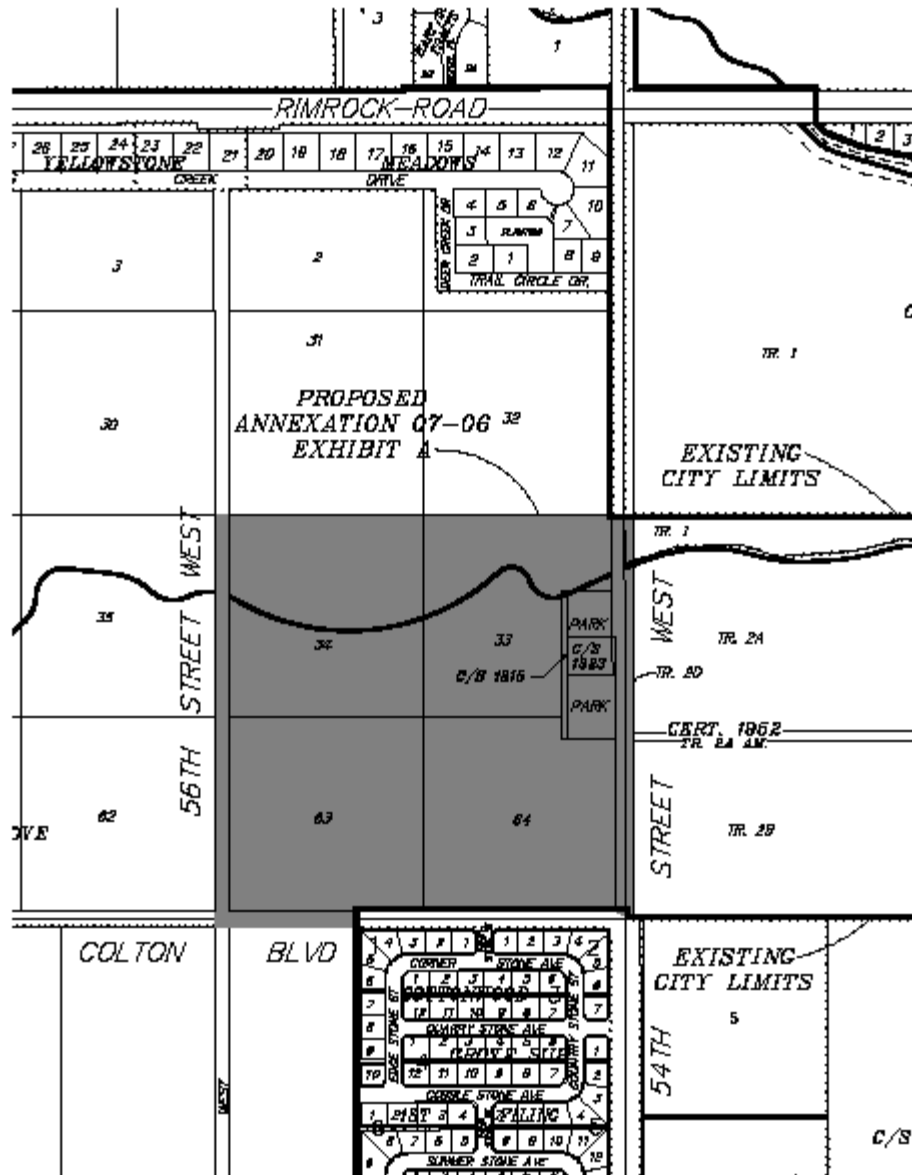
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Second Reading of an Ordinance Expanding Ward III:
Annexation 07-07

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On April 23, 2007, the City Council approved Annexation #07-07 of an approximate 150-acre parcel legally described as Lots 1-5, Block 1, Western Sky Subdivision. The request for annexation was submitted by Cal Kunkel and Gerald Kreig, the owners of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward III was conducted on May 14, 2007. The second reading of the ordinance will be conducted at this meeting.

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

RECOMMENDATION

Staff recommends that the City Council approve the 2nd reading of this ordinance that adds property to City Ward III.

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

ATTACHMENT

B. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 06-_____

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

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

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

Western Sky Subdivision, Recorded April 19, 2006, under Document No. 3374355, Records of Yellowstone County; Including that portion of adjoining Yellowstone County Road easement for 48th Street West, also described as a portion County Road Petition Number 20, Petition filing date April 6, 1911, date road Granted May 18, 1911, and all adjacent right-of-way of King Avenue West.

Containing 164.134 gross acres, and 150.862 net acres.

(# 07-07 Exhibit “A” Attached)

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

PASSED by the City Council on the first reading this 14th day of May, 2007.

PASSED by the City Council on the second reading this 29th day of May, 2007.

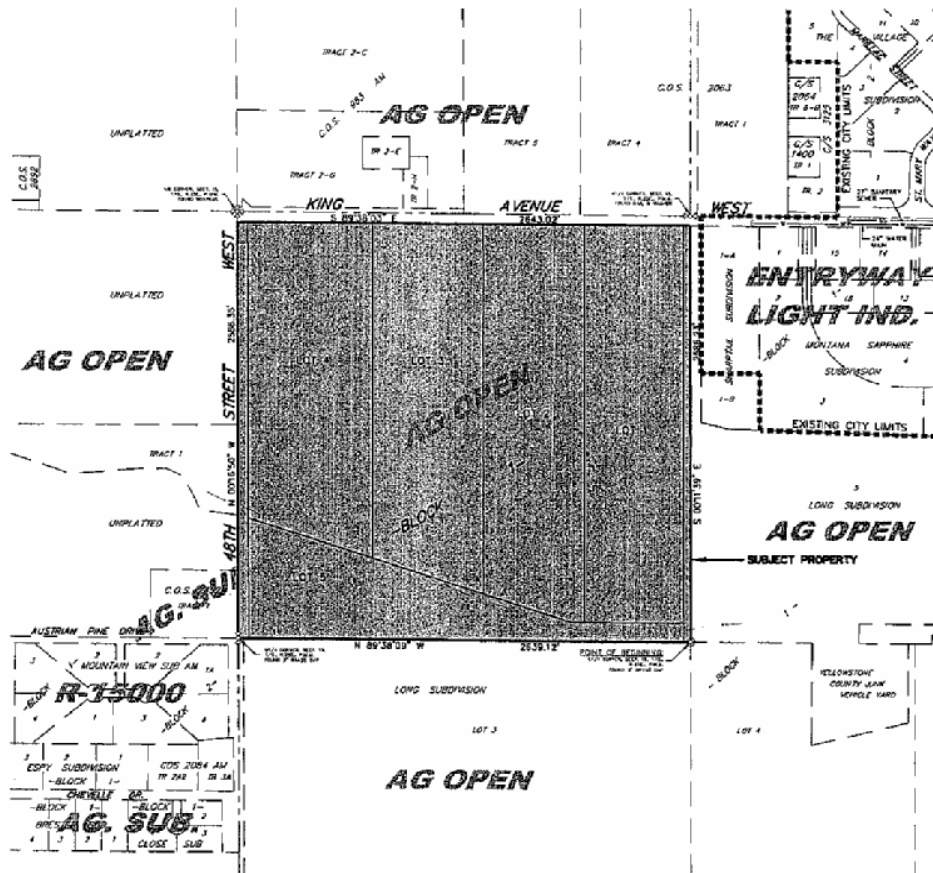
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

EXHIBIT A



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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, May 29, 2007

TITLE: Staff Recommendation for Sage Tower change in units

DEPARTMENT: Community Development Division

PRESENTED BY: Brenda Beckett, Community Development Manager
Vicki Lapp, CD Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Menola Land, Sage Tower, LLC to assist them with acquisition and substantial rehab of the Sage Tower building. The original proposal was to combine a number of the efficiency units into 1 bedroom, 2 bath units and reduce the total units to 90. The developers are now requesting an additional reduction in units of 9, to bring the total units down to 81 due to increasing vacancies in Sage Towers efficiency units. Additional rehabilitation activities include new appliances, interior painting, new floor coverings, updating the emergency call system and the central kitchen, as well as additional accessibility features. There will be no reduction in the number of Section 8 units.

ALTERNATIVES ANALYZED: Alternatives would be: Alternatives would be (1) To approve the change in the number of units; thereby assisting in providing 81 units of quality, affordable housing for elderly. (2) Not approve the change in the number of units.

FINANCIAL IMPACT: There has been no request for additional funding for this project. \$175,000 in HOME funds have already been committed to the project as a 1% interest loan, deferred over 20 years.

RECOMMENDATION

CD Board and staff recommend City Council approve the request from Menola Land, Sage Tower to further reduce the number of units in the project to 81 and execute a new Development Agreement.

Approved By: City Administrator_____ City Attorney_____

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. This report lists the critical concerns identified related to rental housing. They were affordability, condition, 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. This project is being targeted specifically to house elderly (55 years old and above).

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed 2/3 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 in Billings under 50% Median Family Income(MFI). The Housing Needs Assessment 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 type of project.

33.7% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the second most needed housing type only behind affordable single family homes for purchase. The Census Tract the project is located in is 70 - 100% Low Moderate Income (LMI).

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

- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.
- Promote the preservation of the existing supply of affordable housing in the community.

PROCEDURAL HISTORY

- June 6, 2005 – Staff presented the Sage Tower project to the CD Board
- July 11, 2006 -- Staff recommendation is made to the CD Board
- August 14, 2006 -- CD Board recommendation will be made to City Council.
- April 2007 – Developers request a further reduction in the number of units.
- May 2007 – Reduction in units is presented to CD Board for approval.

BACKGROUND

Organizational Strengths

The Burgwyn Company will be responsible for management of HOME funds. They have several similar projects currently underway, including Fraser Tower & Rose Park Plaza Apartments here in Billings. Tamarack Property Management will be responsible for the day to day operations of the facility. They are a very reputable local Management Company with extensive experience in managing these types of facilities, as well as they are currently managing Sage Tower. This will be the 3rd project in which the Burgwyn Company has used HOME

funds. Their recently completed projects have added approximately 400 units to the affordable housing stock; mostly affordable to less than 60% Area Median Income (AMI).

Other considerations during the project review

The property is located within the City limits and is located in the Tax Increment District, as well as an identified difficult to develop area . HOME funds will be used for acquisition. During completion of the Environmental Review (ERR) process, a Noise Assessment will be required due to the proximity of 1st Avenue North, which is considered a major roadway. Some mitigation may be required through the installation of additional insulation on the side facing 1st Avenue, as well as requiring air conditioners be installed in the units. Other possible mitigation may be required because of temporary relocation of the tenants during the rehabilitation period.

Financial Plan

Total project cost is \$2,961,200 and sources of funds to complete the project financing are as follows:

City of Billings HOME funds	\$ 175,000
Bond Issue by MT Board of Housing	\$ 750,148
Construction/Permanent Loan	\$ 1,734,600
General Partner Contribution	\$ 166,859
Reserves	\$ 42,236
Construction Period Operations	\$ 92,357

The permanent loan is amortized over a 40 year period at 6.10% interest. The HOME funds are also a loan at 1% interest for 20 years. These two loans would mean an annual payment of \$126,995, which is reflected in the proforma and is also the maximum mortgage the property can support.

HOME Requirements Review

The HOME cost per unit is \$43,750 which is just below the maximum subsidy allowed of \$46,267 for an efficiency unit. They have indicated the four efficiency units that will be left in the complex will be HOME subsidized. Other, similar projects cost per unit that have recently been funded include: Lincoln Springs at \$70,000, the ACME at \$7,547, Southern Lights at \$15,000, and the Schwend project at \$27,533. Menola Land is proposing 6% of total cost out of HOME funds and 4% of the units will be HOME assisted.

The HOME 25% match requirement of \$43,750 is being met through owner equity, plus a percentage of the bond issue for a total of \$301,452. An intent to purchase has been signed. An Environmental Review Record must be completed before the Development Agreement can be signed, however a Phase I Environmental Assessment has been completed. The project has an acceptable Affirmative Marketing Plan. Section 504 Requirements call for five units to be specifically designed for accessibility to individuals with mobility impairments and an additional 2 units must be designed for individuals with sensory impairments. These requirements will be met.

Low Income Housing Tax Credits(LIHTC) Restrictions & Requirements

This application did not qualify for Low Income Housing Tax Credits, however the Developer has negotiated with the Montana Board of Housing to issue bonds for this portion of the financing package and will comply with stringent LIHTC requirements. LIHTC require that owners target no less than 40% of the units to be rented to 60% AMI or less. Menola Land, Sage Tower is targeting 92% of the units to 60% or less AMI. Seven of the units will be market rate rents. They also require projects must remain rent and income restricted for a minimum period of 15 years. Menola Land is proposing to extend the HUD rental assistance contract for an additional 20 years and have applied for an additional 38 project-based vouchers to ensure all the units remain affordable. The rent and income restrictions will be enforced through restrictive covenants that are recorded against the title of the property at closing. All residents, except the market rate units will pay 30% of their income for their rent.

In reviewing the application for the following cost limitations, Menola Land has followed the LIHTC as well as industry standard allowed percentages with regard to construction contingency, Developer's Fees, builder's overhead and General Requirements. All are a percentage of the construction costs minus the land costs. The breakdown is as follows:

	LIHTC allowed	Sage Tower
Construction Contingency	N/A	12%
Developers fee	15%	15%
Builder's Overhead	2%	2%
General Requirements	6%	6%

Summary

An overall review of the funding for the project reveals it to be consistent with other similar projects that the City has funded. The HOME subsidy amount being requested is consistent with the number of HOME assisted units, and is not over the subsidy limitation. Match requirements are being appropriately met, as well as Section 504 requirements and ADA accessibility. Menola Land, Sage Tower will contract with a Tamarack Management company for the day-to-day management services. This project is also consistent with our Consolidated Plan.

There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment, as well as a Market Analysis completed for the Tax Credit application. The owner/developer has extensive experience, in developing and managing Low Income Housing Tax Credit projects. The developer/owner has two other similar projects in Billings.

ALTERNATIVES ANALYZED: Alternatives would be: Alternatives would be (1) To approve the change in the number of units; thereby assisting in providing 81 units of quality, affordable housing for elderly. (2) Not approve the change in the number of units.

RECOMMENDATION

CD Board and staff recommend City Council approve the request from Menola Land, Sage Tower to further reduce the number of units in the project to 81 and execute a new Development Agreement.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Staff Recommendation for Affordable Housing Fund Re-allocation

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. Recently a change in the number of units from 49 to 45 was approved by City Council. Community Development, Inc did not receive the funds needed to complete the complex and wishes to withdraw their request for CDBG / HOME funds. Because it has been so long in the development stage, staff has been proactive in watching the development of this complex and has an alternative option for these funds.

ALTERNATIVES ANALYZED: Alternatives would be (1) To immediately approve reallocating the funds to Phase III of the King's Green Subdivision infrastructure and continue developing this highly successful project. (2) To not approve reallocating the funds to King's Green and wait to see if another developer might come forward and apply for them. This option could jeopardize the funds and the City would stand the risk of losing them completely.

FINANCIAL IMPACT: \$350,000 of HOME / CDBG funds were committed to the project. These funds will be available to reallocate and must be used by December 2007, or the City will risk recapture by HUD. Engineer's Preliminary Estimate of Probable Costs for King's Green completed in 2006 was \$390,590, including a 15% contingency. We have a balance of funds from the previous phase of \$37,052, giving us a total balance of funds available for this project of \$387,052; a difference of \$6,462.

RECOMMENDATION

Community Development Board and Staff recommend City Council approve the change in use of the funds and allocate them to completing Phase III infrastructure in the King's Green Subdivision.

Approved By: City Administrator ____ City Attorney ____

Attachment

A. Email from Kelly Gill, CDI

Lapp, Vicki

From: Kelly Gill [kelly@cdinet.us]
Sent: Tuesday, April 10, 2007 8:48 AM
To: Lapp, Vicki
Cc: Beckett, Brenda
Subject: Lincoln Springs

Dear Vicki and Brenda,
After all of our hard work we were not awarded Tax Credits on Lincoln Springs this year. I wanted to let you know as soon as possible that we will be unable to utilize the HOME/ CDBG funds that were allocated to the development. I need to know what you need from us in order to return this money. I appreciate all of your work with us as we have tried everything we could to get this project off the ground. I apologize for the inconvenience this will cause you and wish the City of Billings good luck in its pursuit of affordable housing.

Sincerely,
Kelly Gill
Regional Development Manager
Community Development, Inc.
P: 208-459-8522
F: 208-459-9692

"We must be the change we wish to see." -- M.K. Gandhi

4/10/2007

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Preliminary Subsequent Minor Plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On April 16, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing, which contains three lots on approximately 28,824 square feet for residential development. The subject property is located southwest of the intersection of Lake Hills Drive and Greenbriar Road in the Heights and is zoned Residential 9600 (R-96). The owner and subdivider is Ron Hill and the representing agent is Engineering, Inc.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 35 working days to act upon this subsequent minor plat; the 35 working day review period for the proposed plat ends on June 1, 2007. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary subsequent minor plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

On April 16, 2007, the subdivider applied for preliminary subsequent minor plat approval of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing, which contains three lots on approximately 28,824 square feet for residential development. The subject property is located southwest of the intersection of Lake Hills Drive and Greenbriar Road in the Heights and is zoned R-96.

PROCEDURAL HISTORY

- A pre-application meeting was conducted between the subdivider's representative and city staff on March 22, 2007.
- The preliminary plat application for this subdivision was submitted to the Planning Department on April 16, 2007.
- The City Council will consider the preliminary plat on May 29, 2007.

BACKGROUND

General location:	Southwest of the intersection of Lake Hills Drive and Greenbriar Road in the Heights
Legal Description:	Lots 5 and 6, Block 11, Lake Hills Subdivision, 17 th Filing
Subdivider/Owner:	Ron Hill
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-96
Existing land use:	Vacant
Proposed land use:	Single Family Residences
Gross area:	28,824 square feet
Net area:	28,824 square feet
Proposed number of lots:	3
Lot size:	Max: 9,624 square feet Min.: 9,600 square feet
Parkland requirements:	A parkland dedication is not required, as this is a subsequent minor subdivision.

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.1.A shall state that the property is served by the Heights Water District. *(Recommended by the City-County Planning Department)*
3. To minimize effects on wildlife and wildlife habitat, a note shall be added to the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner. *(Recommended by the City-County Planning Department)*
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary subsequent minor plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

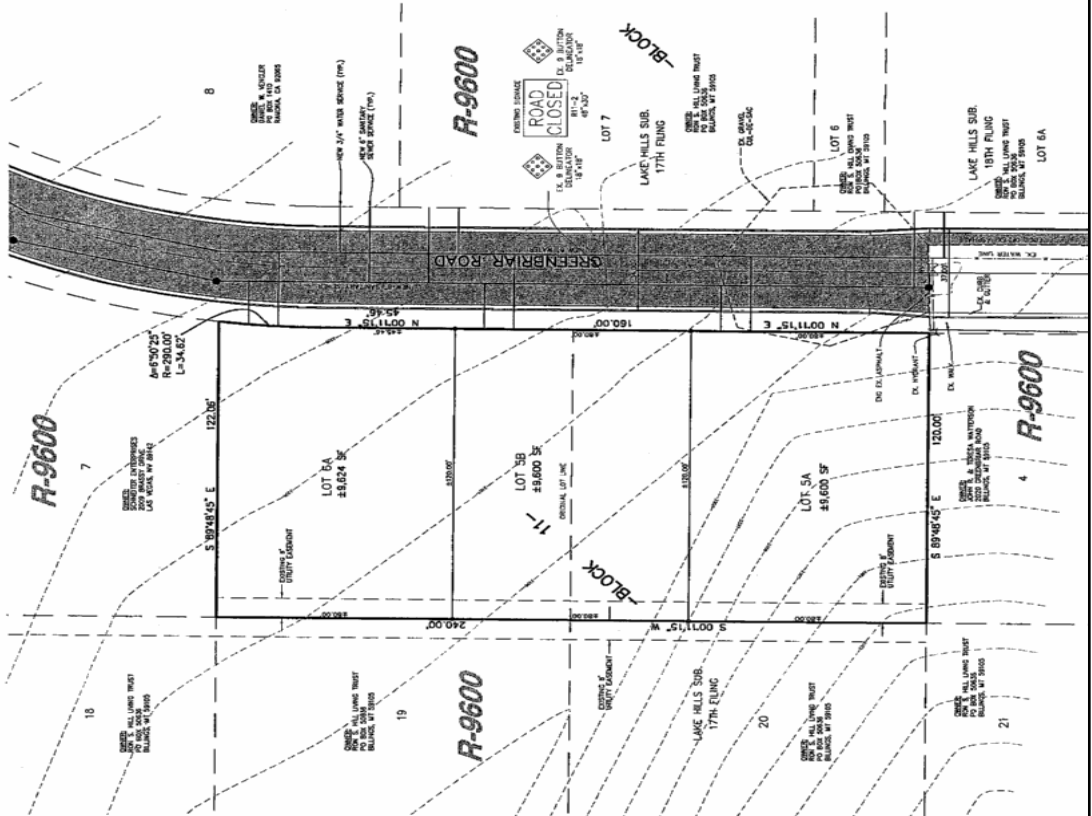
ATTACHMENT A

Preliminary Plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing

PRELIMINARY AMENDED PLAT OF LOTS 5 & 6, BLOCK 11 LAKE HILLS SUBDIVISION, SEVENTEENTH FILING SITUATED IN THE NW 1/4 OF SECTION 16, T. 1 N., R. 26 E., P.M.M. YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : RON S. HILL LIVING TRUST
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 20'

MARCH 2007
BILLINGS, MONTANA



SITE



PLAT DATA

GROSS AREA	28,824 SQ. FT.
NET AREA	28,824 SQ. FT.
NUMBER OF LOTS	3
MINIMUM LOT SIZE	9,600 SQ. FT.
MAXIMUM LOT SIZE	9,624 SQ. FT.
LINEAL FEET OF STREETS	N/A (PREVIOUSLY MET)
PARKLAND REQUIREMENT	N/A
PARKLAND DEDICATION	N/A
EXISTING ZONING	R-9600
SURROUNDING ZONING:	
NORTH	R-9600
SOUTH	R-9600
EAST	R-9600
WEST	R-9600
EXISTING LAND USE	RESIDENTIAL DEVELOPMENT
PROPOSED LAND USE	RESIDENTIAL DEVELOPMENT

ATTACHMENT B
Site Photographs



Figure 1: View northwest across the subject property from Greenbriar Road.



Figure 2: View south across Greenbriar Road toward existing single family residences.

ATTACHMENT C
Findings of Fact

The Planning Board is forwarding the recommended Findings of Fact for the preliminary subsequent minor plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (23-303(H)(2), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The proposed subdivision should have no effect on agriculture or agricultural water user facilities. The subject property is not currently used for agriculture and no irrigation facilities are located on the subject property.

2. Effect on local services

- a. **Utilities** –Water to the subject property will be extended from the 8-inch main line within Greenbriar Road created through Special Improvement District (SID) 1377. Sanitary sewer will be extended from the 8-inch main line within Greenbriar Road. The subject property is located within the County Water District of Billings Heights and will be subject to their review and approval during the time of construction. Condition #2 requires that a statement be added to VI.1.A of the SIA that the property is served by the Heights Water District.
- b. **Stormwater** – As specified in the submitted SIA, onsite storm drainage shall comply with the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department. The storm drainage improvements have already been funded and will be constructed through SID 1377.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – Access to the proposed lots will be via private driveways from Greenbriar Road. Greenbriar Road is a 50-foot wide dedicated right-of-way with 34-feet of back to back of curb width. The portion of Greenbriar Road fronting the proposed subdivision has not been constructed at this time; however will be constructed this year through SID 1377.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6).
- f. **Schools** - The subdivision is located within School District #2. Sandstone Elementary, Castle Rock Middle School and Skyview High School will serve the children in this

subdivision. A response was received from Sandstone Elementary School indicating that they have room for 40 additional students and that the proposed subdivision is located on a bus route. Responses from the other schools were not received at the time this report was written.

- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a subsequent minor plat.
- h. **Mail Delivery** - The United States Postal Service has recommended individual mailboxes at each lot in this particular subdivision. Mail boxes will be installed upon lot development.

3. Effect on the natural environment

A geotechnical study was submitted with this application and has been determined sufficient by the Building Official.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property; however the property is located near open lands, where the likelihood of wildlife interaction is high. As required by Condition #3, a note shall be added to the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)

An Environmental Assessment is not required, as this is a subsequent 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 surrounding residential uses.

- 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 compatible with the surrounding single-family residential uses.

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

The property is located within an existing subdivision in an urbanized portion of the city and is considered infill development.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

A Heritage Trail corridor is not identified within this subdivision.

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

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)

The property is served by Heights water and city sewer, storm drain and solid waste services.

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

The subject property is located within the R-96 zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

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

The City Engineering Department will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)

Access to the lots will be through private driveways from Greenbriar Road.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and 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, May 29, 2007

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

May 29, 2007

Ron S. Hill
P.O. Box 50636
Billings, MT 59105

Dear Applicant:

On May 29, 2007, the Billings City Council conditionally approved the preliminary plat of Amended Lots 5 and 6, Block 11, Lake Hills Subdivision, 17th Filing, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the plat. *(Recommended by the Engineering Division)*
2. To minimize effects on local services, Section VI.1.A shall state that the property is served by the Heights Water District. *(Recommended by the City-County Planning Department)*.
3. To minimize effects on wildlife and wildlife habitat, a note shall be added to the SIA under general conditions that run with the land that future property owners should be aware that the proposed subdivision is located within prime deer and antelope habitat. Any damage caused by wildlife is the responsibility of the owner. *(Recommended by the City-County Planning Department)*
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Aura Lindstrand with the Planning Division at 247-8663 or by email at lindstranda@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

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

W1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Final Plat of Caleb Park Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Caleb Park Subdivision is being presented to Council for approval. On April 24, 2006, the City Council conditionally approved the 11-lot major subdivision on approximately 3.76 acres. The subject property is located on the southeast corner of the intersection of Hawthorne Lane and Wicks Lane in the Heights. The property is zoned Residential 5000 and is proposed for single-family residences; the existing church on proposed Lot 11 will remain. The owner is First Free Will Baptist Church and the representing agents are Bill Hanser and Westly Prouse. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: Should the City Council approve the final plat, the subject property may further develop, resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Caleb Park Subdivision.

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

ATTACHMENT

A: Plat

186 of 254

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Final Plat of Amended Plat of Lots 12 and 13 Broso Valley Park Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The final plat of Amended Plat of Lots 12 and 13, Broso Valley Park Subdivision is being presented to the City Council for approval. On December 11, 2006, the City Council conditionally approved the 2-lot subsequent minor plat on approximately 289,238 square feet (6.64 acres) for commercial development. The subject property is zoned Controlled Industrial and is located east of Zoo Drive and south of Gabel Road. Eugene and Carol Brosovich and Brandon Legg Development Corporation Billings Ventures LP are the owners and the representing agent is Engineering Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

FINANCIAL IMPACT: Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Plat of Lots 12 and 13 Broso Valley Park Subdivision.

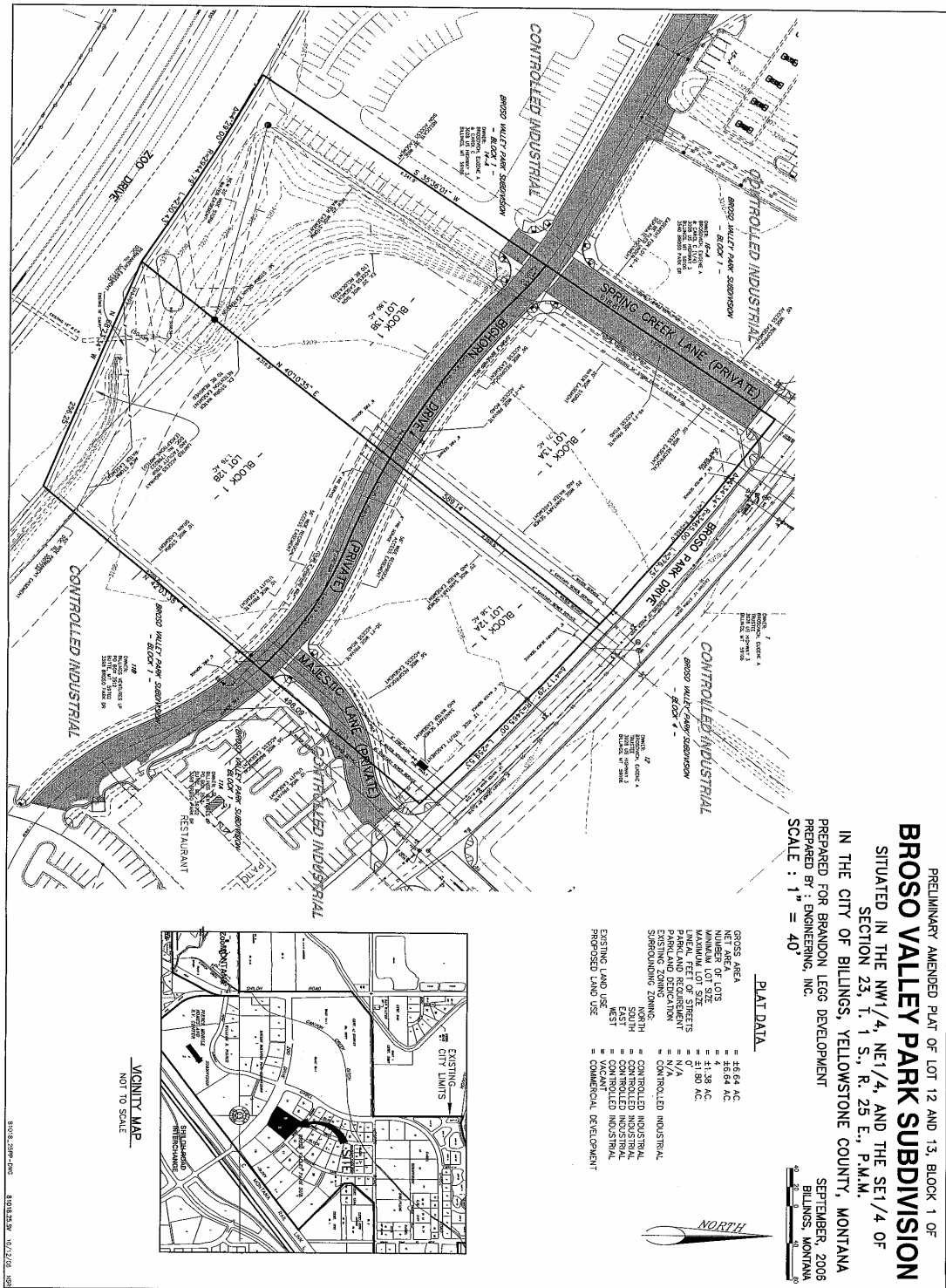
Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Final Plat

ATTACHMENT A

Final Plat



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

X1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 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 \$1,561,222.72 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 27, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

X2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,201,726.11 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 4, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

X3



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

SUBJECT: Payment of Claims
DEPARTMENT: Municipal Court
PRESENTED BY: Nikki R. Schaubel, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$183,542.42 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 1, 2007 to April 30, 2007 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: W.O. 05-02, 2005 and 2006 Miscellaneous/Developer Related Project

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: On February 26, 2007, Council passed a Resolution of Intent for this project and established a Public Hearing date of March 26, 2007. At the April 23, 2007, City Council Meeting, Council asked to reconsider WO 05-02, 2005 and 2006 Miscellaneous/Developer Related at the May 29, 2007, City Council Meeting.

FINANCIAL IMPACT: The proposed project is funded through multiple sources, including direct property assessments for a total project cost of \$616,020, as follows:

Estimated Assessed Costs	\$343,000
Street Light Funds	\$ 5,000
Curb and Gutter Funds	\$ 50,000
Corner Lot Funds	\$ 60,000
Storm Drain Funds	\$ 50,000
Gas Tax Funds	\$100,000
Public Works Belknap Funds	\$ 5,000
Parks and Rec. Funds	\$ 3,020

Funding for the proposed project has already been authorized in the Capital Improvement Plan and is identified in the Fiscal Year 2007 budget.

RECOMMENDATION

Staff recommends that Council approve Work Order 05-02, 2005 and 2006 Miscellaneous/Developer Related Project.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Zone Change #804 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone the southern 3.93 acres of Lot 1A, Certificate of Survey 2991 from Residential Professional (RP) to Residential Multi-Family Restricted (RMF-R). The subject property is located on the southeast corner of the intersection of Central Avenue and Brookshire Boulevard and is addressed as 2810 Central Avenue. The owners are CBE Properties, LLC and the Engineer is HKM Engineering, Inc. A 2-lot subsequent minor subdivision on this property was submitted May 1, 2007, and will be on the Council Agenda June 11, 2007. The Zoning Commission conducted a public hearing on May 1, 2007, and forwarded a recommendation of approval on a 5-0 vote.

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

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

FINANCIAL IMPACT: Upon development, the proposed zone change should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #804 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

A: Site Photographs

B: Zoning Exhibit

C: Ordinance

INTRODUCTION

The applicant is requesting to rezone the southern 3.93 acres of Lot 1A, Certificate of Survey 2991 from Residential Professional (RP) to Residential Multi-Family Restricted (RMF-R). The subject property is located on the southeast corner of the intersection of Central Avenue and Brookshire Boulevard and is addressed as 2810 Central Avenue.

PROCEDURAL HISTORY

- On March 1, 2007, a pre-application meeting was conducted for proposed subsequent minor plat.
- On April 2, 2007, the rezone application was submitted to the Planning Department.
- On May 1, 2007, the City Zoning Commission conducted a public hearing for the proposed zone change and forwarded a recommendation of approval to the City Council on a 5-0 vote.
- On May 1, 2007, an application for a preliminary subsequent minor subdivision was submitted to the Planning Department.
- On May 29, 2007, the City Council will conduct the public hearing and 1st reading of the proposed zone change.
- On June 11, 2007, if approved on the first reading, the City Council will conduct the second reading of the proposed zone change. The subsequent minor preliminary plat will be on the consent agenda at this meeting.

BACKGROUND

The applicant is requesting to rezone the southern 3.93 acres of Lot 1A, Certificate of Survey 2991 from Residential Professional (RP) to Residential Multi-Family Restricted (RMF-R). The subject property is located on the southeast corner of the intersection of Central Avenue and Brookshire Boulevard and is addressed as 2810 Central Avenue. It is the property owner's intent to subdivide Tract 1A into two lots to separate the southern 3.93 acres proposed for the zone change from the northern RP zoned property. If rezoned, the applicant is proposing to construct approximately 40 residential units on the property. During the first phases of construction, the units will be utilized as rental apartments and in the future as condominium units.

The Zoning Commission is forwarding a recommendation of approval for this application and has based this recommendation on the 12 criteria for zone changes discussed below.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zoning is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)*

This property is in an area of West Billings that is experiencing rapid commercial and residential growth. The rezoning of this parcel will focus new growth in a developing and expanding population center.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The proposed zoning will be compatible with the multi-family residential uses located to the south and will provide a transitional zone between the commercial uses along Central Avenue and the single-family residences and duplexes located to the southwest of the subject property.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit multi-family residential uses, which will provide for more housing choices in this neighborhood.

2. *Is the new zoning designed to lessen congestion in the streets?*

The proposed zoning is expected to generate more traffic than the current vacant use. During the subdivision review, the Engineering Department will determine if any improvements are necessary to the intersection of Brookshire Boulevard and Central Avenue based on the increased traffic generation anticipated for the proposed multi-family use.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

Brookshire Boulevard along the western border of the property is an existing private street that provides access to the property. The Fire Department reviewed the proposal at the subdivision pre-application meeting and determined that access is sufficient.

4. *Will the new zoning promote health and general welfare?*

The proposed zoning will permit multi-family uses. The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements, as well as height restrictions for the proposed zoning district.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed density for the subject property is approximately 40 residential units. This will not cause an undue concentration of population, as there is surrounding residentially developed properties.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: Any improvements identified by the City Engineering Department will be required with the subdivision approval.

Water and Sewer: Water and sewer lines are located within Central Avenue and will be extended through Brookshire Boulevard.

Schools and Parks: The proposed zoning could result in an overcrowding of West High School which is currently over capacity. The middle and elementary schools that serve this property have capacity for additional students. Further review of the parks and schools will be completed with the subdivision.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service will be further reviewed with the subdivision.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will be similar in character with the adjacent multi-family residential uses and duplexes to the south.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The applicant has proposed the RMF-R south of the commercial properties fronting Central Avenue, which provides for a transition zone between the commercial uses and the single-family residential uses and duplexes located to the southwest of the property.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will permit multi-family residential uses, which are compatible with the surrounding commercial and residential uses.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 1, 2007, and forwarded a recommendation of approval to the City Council on a 5-0 vote. Kevin Katzenberger with HKM Engineering, Inc. was present to discuss the proposed zone change. There was no public comment received at the hearing. Planning staff did receive a call from a property owner within the condominiums to the south who had concerns whether the units would be apartment rentals or condominiums. Staff explained that during the first phases of construction, the units will be utilized as rental apartments and in the future as condominium units.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval to the City Council for Zone Change #804 and adoption of the 12 Zoning Commission Determinations on a 5-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Zoning Exhibit
- C: Stewart Park Condominiums Site Plan
- D: Ordinance

ATTACHMENT A
Site Photos – Zone Change #804



Figure 1: View east along Central Avenue along the northern boundary of Tract 1A toward Stewart Park.



Figure 2: View south from Central Avenue toward the existing office park located on the northern portion of the subject property.

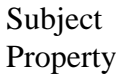


Figure 3: View west along Central Avenue along the northern boundary of the subject property.

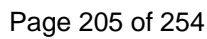


Figure 4: View north from Central Avenue toward Millice Park.

Zoning Map – Zone Change #804



Zone Change #804 - Stewart Park Condominiums Site Plan



ATTACHMENT D

Zone Change #804

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR the south 3.93 acres of Tract 1A, Certificate of Survey
2991 located in the NW1/4, Section 12, Township 1S, Range
25E

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 described as the south 3.93 acres of Tract 1A, Certificate of Survey 2991 located in the NW1/4, Section 12, Township 1S, Range 25E and is presently zoned Residential Professional and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential Professional** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Multi-Family Restricted** 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 May 29, 2007.

PASSED, ADOPTED AND APPROVED on second reading June 11, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
City Clerk

ZC #804

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, MAY 29, 2007

TITLE: Public Hearing for Special Review #845
DEPARTMENT: Planning & Community Services
PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: This is a request for a special review to allow an all beverage liquor license with gaming for a proposed restaurant at 1102 Grand Avenue (formerly the Texas BBQ Restaurant), legally described as Lot 20, Block 4, Sunset Subdivision, 1st Filing in a Community Commercial zoning district. The owner is X1S Entertainment and the representing agent is Aquilino Diaz. The Zoning Commission conducted a public hearing on May 1, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

FINANCIAL IMPACT: The special review should not have any financial impact on the City.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #845 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Zoning/Location Map

B: Pictures of the Site

INTRODUCTION

This is a special review request to allow an all beverage liquor license with gaming on a property described as Lot 20, Block 4, Sunset Subdivision, 1st Filing, addressed as 1102 Grand Avenue and zoned Community Commercial (CC).

PROCEDURAL HISTORY

- On April 2, 2007, the special review application was submitted to the Planning Department.
- On May 1, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 5-0 vote.
- On May 29, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

BACKGROUND

This is a special request to locate an all beverage license with gaming for the former Texas BBQ Restaurant located at 1102 Grand Avenue. The property is zoned CC and on-premise consumption of alcoholic beverages can be allowed only by special review approval. The Texas BBQ Restaurant has vacated the building and at this time the property is owned by X1S Entertainment Corporation. The owner proposes to re-model the interior of the building for the purpose of establishing a restaurant. The applicant also owns the adjacent Lucky Lady Casino and states in his application that landscaping improvements will be made both around the subject property and the Lucky Lady Casino and the primary entrance.

There is one all beverage license within the immediate area. This license is located at the Lucky Lady Casino located directly west of the subject property. There are no schools, churches, or playgrounds with equipment within 600 feet of the proposed location.

The Building Division did provide comment on this application stating that the proposal and the remodel may require the addition of an automatic sprinkler system.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) The application complies with all parts of the Unified Zoning Regulations, 2) The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to the first criteria in so far that it is within a CC zoning district where on premise consumption of alcoholic beverages may be allowed by special review approval.

The application does conform to the second and third criteria. The zoning regulations adopted by the City Council have designated several zoning districts where on premise consumption of alcoholic beverages may be allowed. The proposed restaurant would be the second all beverage license within the immediate area. The other location is the Lucky Lady Casino located adjacent to the subject property. The Community Commercial zone is *“intended primarily to accommodate community retail, service and office facilities offering a greater variety than would normally be found in a neighborhood or convenience retail development. Facilities within the classification will generally serve the community, and is commensurate with the purchasing power and needs of the present and potential population within the trade area.”*

The addition of an all beverage license will fit in with the intention to provide a variety of services to residents to this area and the local population. The proposal is consistent with goals of the 2003 Growth Policy, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns.

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

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

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 20, Block 2, Sunset Subdivision, 1st Filing located at 1102 Grand Avenue.
2. The special review approval is for an all beverage liquor license with gaming and no other use or expansion of this use is approved or implied with this authorization.
3. The addition of an outdoor patio lounge will require another special review approval as required by Section 27-613 of the Unified Regulations.
4. There shall be no outdoor public address system or outside announcement system of any kind.
5. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
6. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
7. A reciprocal parking agreement shall be made with the Lucky Lady Casino to ensure adequate parking. A copy of this agreement shall be submitted to the City of Billings Public Works Department, Engineering Division.
8. All new signage must meet requirements as stated in BMCC 27-705(c).

9. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
10. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

STAKEHOLDERS

The City Zoning Commission conducted a public hearing on May 1, 2007. Darrell Kreitzberg, the representing selling agent, was present at the hearing to answer any questions from the Zoning Commission. There were no surrounding property owners present; and no letters in favor or opposed to the application were received by the Planning Department.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Coordinate economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

RECOMMENDATION

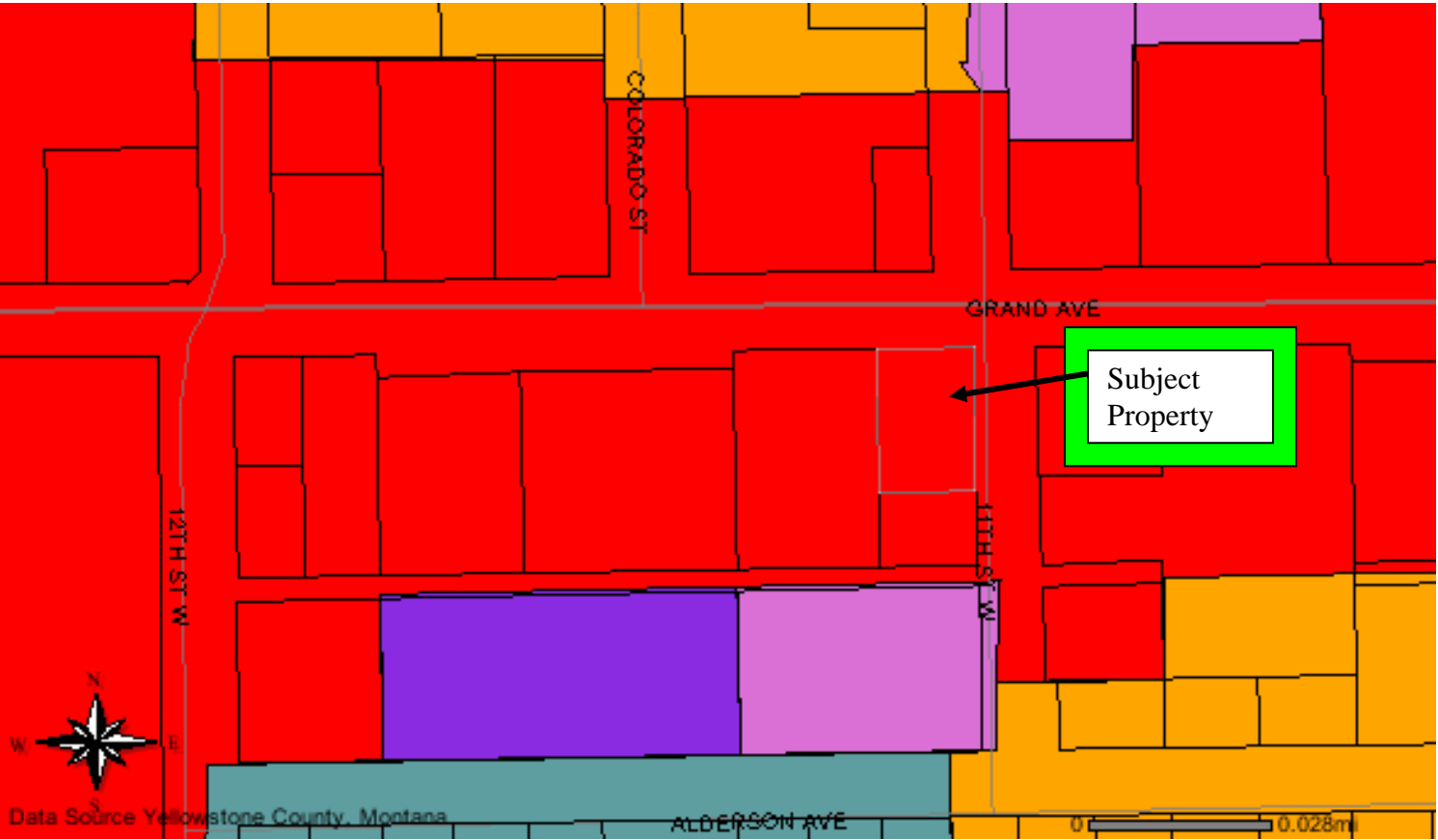
The Zoning Commission is forwarding a recommendation of conditional approval of special review #845 on a 5-0 vote.

ATTACHMENTS

A: Zoning/Location Map

B: Pictures of the Site

Attachment A
Zoning Map – Special Review #845



Attachment B
Site photos –Special Review 845



Subject property at 1102 Grand Avenue



View east from subject property – Former Dairy Queen site and businesses along Grand



View north from subject property – Taco John parking lot and Mountain Mudd Coffee Kiosk



View west from subject property – Lucky Lady Casino

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, MAY 29, 2007

TITLE: Public Hearing for Special Review #846

DEPARTMENT: Planning & Community Services

PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: This is a special review request to allow a parking lot on existing vacant land zoned Residential-6000 (R-60) at 818 Avenue B, legally described as the West 79 feet, Lot 2, Block 1, Alego Subdivision. The owner is Michael D. Stock. The Zoning Commission conducted a public hearing on May 1, 2007, and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of Special Review #846 on a 5-0 vote.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Zoning/Location Map

B: Pictures of the Site

C: Site Plan and Proposed Elevation

D: Resident Correspondence Received

INTRODUCTION

This is a special review request to allow a parking lot on existing vacant land zoned R-60 at 818 Avenue B, legally described as the West 79 feet, Lot 2, Block 1, Alego Subdivision.

PROCEDURAL HISTORY

- On April 2, 2007, the special review application was submitted to the Planning Department.
- On May 1, 2007, the Zoning Commission conducted a public hearing on this request and forwarded a recommendation of Conditional Approval to the City Council on a 5-0 vote.
- On May 29, 2007, the City Council will vote to approve, conditionally approve, or deny the special review.

BACKGROUND

This is a special request to allow a parking lot on an existing vacant lot zoned R-60 on the West 79 feet, Lot 2, Block 1, Alego Subdivision located at 818 Avenue B. The special review request for a parking lot on the R-60 zoned lot is to accommodate a retail building directly south along the Grand Avenue Corridor. Public parking lots are allowed in residential zones with a special review.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all special reviews shall comply with the following three (3) criteria: 1) The application complies with all parts of the Unified Zoning Regulations, 2) The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to the first criteria in so far that it is within a residential zone, a parking lot may be constructed as an accessory use through the special review process and approval.

The application does not conform to the Highland Neighborhood Plan. The plan through the development of Preferred Future Land Use Map shows that the neighborhood prefers that the commercial zoning/development currently located along Grand Avenue not encroach further into the neighborhood than to mid-block of Avenue B. However, the parcel is not being rezoned to accommodate commercial development, rather, to provide parking to a commercially zoned parcel located along Grand Avenue. Finally, the application does comply with the third criteria as adjacent to this parcel to the west is an existing parking lot zoned CC. Also, the conditions applied to this application should mitigate adverse affects on the surrounding uses.

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;

14. Usable open space;
15. Signs and lighting; and/or
16. Noise, vibration, air pollution and similar environmental influences.

CONDITIONS OF APPROVAL

11. The special review approval shall be limited to the West 79 feet, Lot 2, Block 1, Alego Subdivision located at 818 Avenue B.
12. This special review approval is to allow a parking lot on an existing residential lot and no other use or expansion of this use is approved or implied with this authorization.
13. All exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
14. At no time shall a dumpster or waster receptacle be located on the residentially zoned lot.
15. A 3 foot stone wall shall be constructed along the Avenue B side of the development to shield neighborhood properties from vehicle headlights per Section 27-604 of the Unified Zoning Regulations.
16. A 6 foot site obscuring fence shall be constructed along the east side of the residentially zoned lot per Section 27-604 of the Unified Zoning Regulations.
17. Landscaping shall be provided as required by Section 27-1100 of the Unified Zoning Regulations.
18. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

STAKEHOLDERS

The City Zoning Commission conducted a public hearing on May 1, 2007. Michael Stock discussed his proposal of developing a retail or office development along the front portion of this lot (Grand Avenue and zoned CC). With the existing lot being so narrow, flow through traffic to Avenue B is important to the development. Mr. Stock also stated that his intentions do not include a casino or any other high traffic business. Mr. Stock did suggest one potential use of the site, a coffee shop. There was one resident who spoke in opposition to the special review at the Zoning Commission Meeting. Mr. Don Agan of 1517 7th Street West is concerned about continued strip development along Grand Avenue that increases traffic along the Avenue Streets from Senior High School students going to and from the fast food restaurants located along Grand. Also, the Planning Division on May 1, 2007 at petition signed by 16 residents opposing the special review request. Mr. Stock addressed this petition in his rebuttal. He spoke to residents and learned that the residents concerns centered on that the site would be developed as a casino. Staff informed the Zoning Commission that any request for a liquor license with

gaming would be required to go through another special review. Mr. Stock also produced email correspondence he received from the residents directly across Avenue B from this special review request that stated that she did not protest this request. Copies of the petition and the email correspondence are attached to this staff report.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the following goal of the 2003 City of Billings/Yellowstone County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Coordinate economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval of special review #846 on a 5-0 vote.

ATTACHMENTS

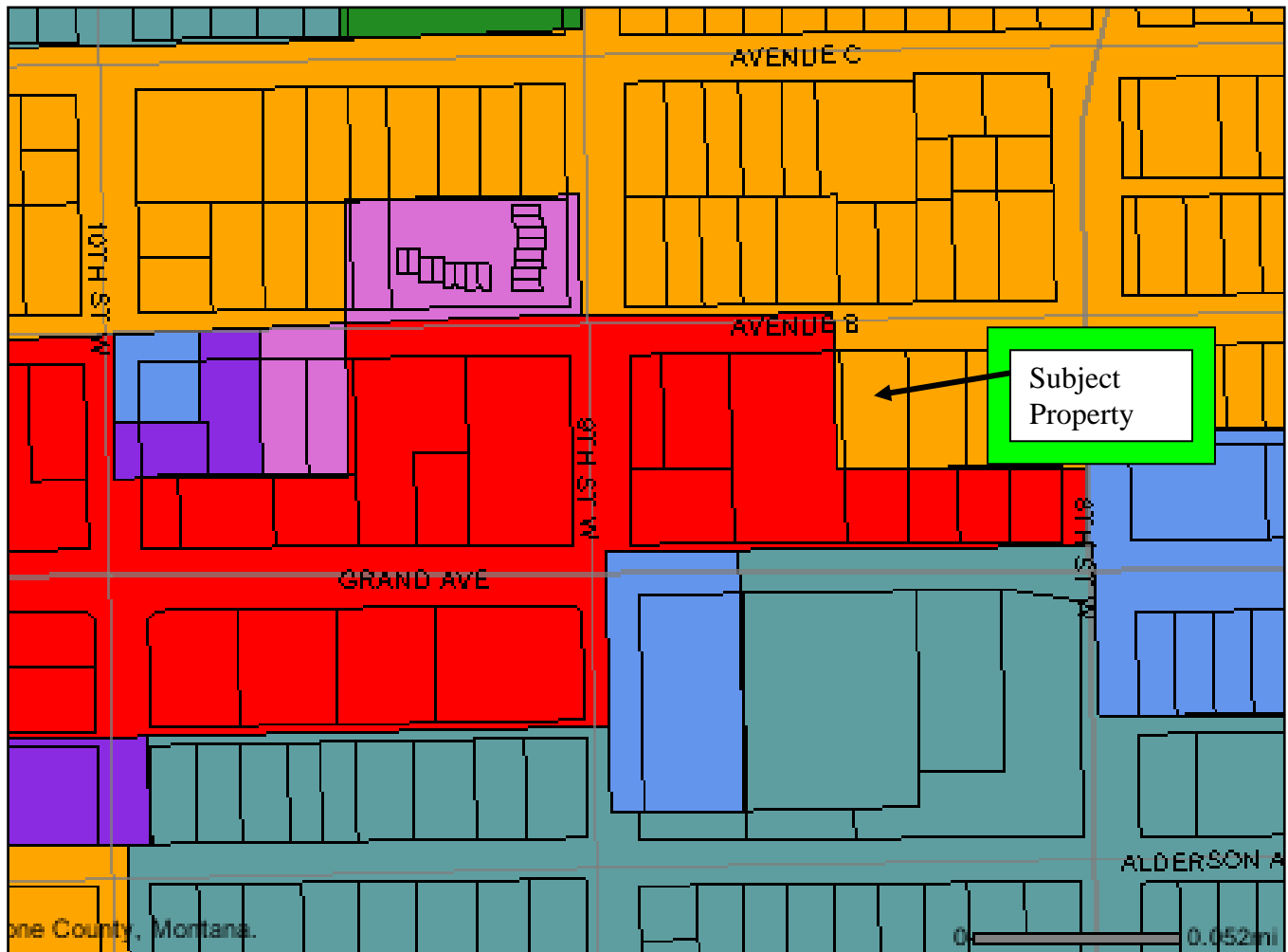
A: Zoning/Location Map

B: Pictures of the Site

C: Site Plan and Proposed Elevation

D: Resident Correspondence Received

Attachment A
Zoning Map – Special Review #846



Attachment B
Site photos –Special Review 846



Subject property at 818 Avenue B



View west from subject property along Avenue B – Adjacent CC zoned parking lot for existing Liquor Store/Casino



View north from subject property – Existing single-family development



View east from subject property – Existing single-family development

Attachment C
Site Plan and Proposed Elevation

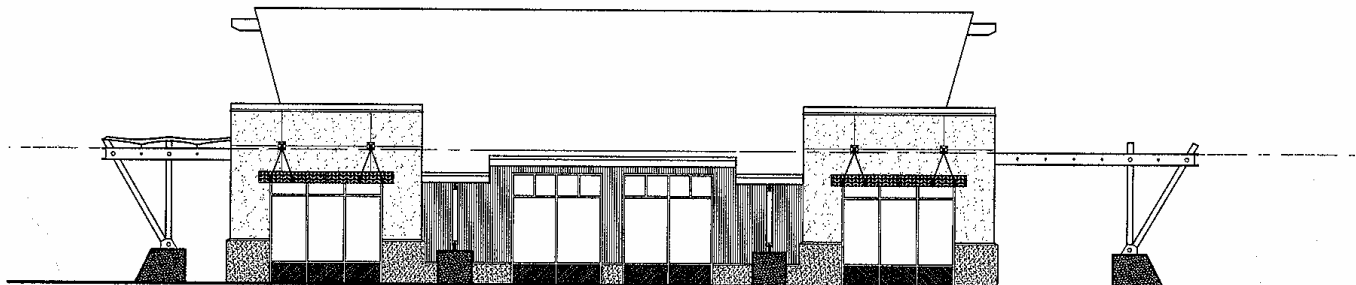
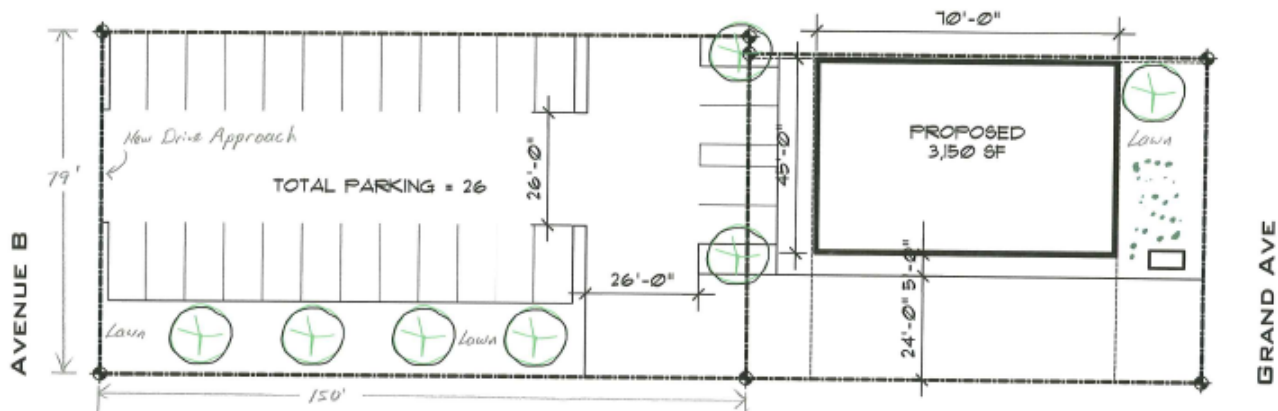
SITE INFORMATION:

LOT #2

LEGAL: W79FT LT2 BLK 1 ALGEO SUB
ADDRESS: 818 GRAND AVE
ZONING: R-6000
LOT SIZE: 11,850 SF

LOT #1

LEGAL: W75 FT LT1 BLK 1 ALGEO SUB
ADDRESS: 819 GRAND AVE
ZONING: COMMUNITY COMMERCIAL
LOT SIZE: 8,025 SF



PRELIMINARY ELEVATION

SCALE: nts

Resident Correspondence Received

SUBJECT: PETITION TO OPPOSE APPROVAL OF SPECIAL REVIEW
#846 AT 818 AVENUE B

TO: City Zoning Commission

DATE: April 30, 2007



The undersigned neighbors of this requested Special Review oppose the allowance of a parking lot at the above address.

This proposal does not comply with the Highland Neighborhood Plan—the plan developed by the neighborhood and the City Planning Department to guide development of the area. It cannot, therefore, meet the second required compliance criteria for Special Review—that of meeting the 2003 Growth Policy.

The application is not compatible with adjacent property uses on 50 percent of its area—and therefore does not meet the required third criteria for approving a Special Review. As can be seen in the pictures accompanying the application, the property is bordered by well-kept, middle-income, single-family residences to the immediate east and directly north of the site. The exit from the proposed parking area will adversely affect the properties to the immediate north, especially at night with the headlights directly and in close proximity falling on the homes along the north side.

The example used by staff of the new Dairy Queen parking lot to the west does not include an access onto Avenue B; this is an important difference.

PRINTED NAME	ADDRESS	SIGNATURE
CAL CUMIN	907 AVE B	<i>[Signature]</i>
CURT LAYMAN	905 AVE B	<i>[Signature]</i>
Jolene Medeo	1506 9th Street West	<i>[Signature]</i>
Clarence Horn	1506 9th St W	<i>[Signature]</i>
Bonnie Lee	1506 9th St W	<i>[Signature]</i>
Ruth D. Rogers	815 Ave B, Billings & Mt.	<i>[Signature]</i>
Elke Duncan	801 Ave B BSS Mt	<i>[Signature]</i>
Don Appleby	816 Ave B	<i>[Signature]</i>
Michael Johnson	837 Ave B	<i>[Signature]</i>
Cliff Peters	911 Ave B	<i>[Signature]</i>
Whitney Weiler	911 Ave B	<i>[Signature]</i>
Martha GEIGER	901 Av B	<i>[Signature]</i>
BRUNA LUTHER	1001 9th STREET	<i>[Signature]</i>
MARK KISHER	1504 9th	<i>[Signature]</i>
BRYAN TONEY	835 AVE B	<i>[Signature]</i>
Gunnar Hagstrom	817 AVE B	<i>[Signature]</i>

BRESNAN
OnLineLogged in as: **mtstock**

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Sender: "Rosin, Sara" <srosin@amttitlemontana.com>[E-mail Source](#)**Subject:** Property located at 818 Avenue B, Billings, MT 59102**Date:** Tue, 1 May 2007 15:11:54 -0600**To:** <mtstock@bresnan.net>

Dear Mr. Stock,

I was approached by Cal Cummins on the evening of April 30th with the option to sign a petition protesting the zoning of the vacant lot across the street from my residence. He asked me if I knew who owned the property and what they were planning to build. He informed me that your intent for the property is to construct a casino on the lot. I informed him that I did know the property owner and that my understanding was that you planned to build a complex utilized for office space with parking space available on the adjoining lot.

I have reviewed the tentative plan for the property and have contacted you to be assured that it is not your intent to build a casino. I do not protest the rezoning of the lot located at 818 Avenue B, Billings, MT 59102.

Please let me know if I can be of any further assistance.

Sincerely,

Sara E. Rosin

819 Avenue B

Billings, MT 59102

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

TITLE: Public Hearing and Resolution for Annexation #07-08
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Hope Evangelical Church, represented by Benjamin Gonzales, is requesting annexation of an approximate 4.92 acre property legally described as Tract 3, Certificate of Survey 2298, located in Section 4, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the southeast corner of the intersection of Grand Avenue and 56th Street West. The petitioner is requesting annexation in order to obtain city water and sewer services. The subject property currently has a church on it and is zoned Agricultural Open Space (AO).

ALTERNATIVES ANALYZED: The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide municipal services to the subject property. Annexation of the property would not increase tax revenue for the city.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution Annexing Tract 3, Certificate of Survey 2298, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

ATTACHMENT

A. Resolution

INTRODUCTION

This petition for annexation is for an approximate 4.92 acre property legally described as Tract 3, Certificate of Survey 2298, located in Section 4, Township 1S, Range 25E, into the City of Billings pursuant to Section 7-2-4600 MCA. The subject property is on the southeast corner of the intersection of Grand Avenue and 56th Street West. The petitioner is requesting annexation in order to obtain city water and sewer services. The subject property currently has a church building on it and is zoned AO. It is located within the Urban Planning Area and is identified on the Limits of Annexation map for annexation within the next five years.

PROCEDURAL HISTORY

- On April 2, 2007, the Annexation Petition and zone change application was submitted to the Planning Department.
- On May 14, 2007, the City Council acknowledged the annexation petition and set a public hearing date for May 29, 2007.
- On May 29, 2007, the City Council will conduct the public hearing and may adopt a resolution annexing the subject property.
- On June 11, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary V will be conducted.
- On June 25, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The subject property is surrounded by properties located outside the City Limits but is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004 and updated in 2006.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexations may affect the City's ability to provide services to annexed properties without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements for the subdivision, including streets, satisfy City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably. No comments were received from Yellowstone County.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** The property would be subject to the local (square-foot) water and sewer main construction fees as well as system development fees. There is a water main, 20 inch, in Grand Avenue and no water main in 56th Street West. The city's water and sanitary sewer master plan shows a 20 to 30 inch water main that must be installed in 56th Street West. This water main in 56th Street West would be required to be constructed to the south edge of the property proposed for annexation. This would be classified as a local main and the developer could: (1) wait until this main extension is in the city's CIP, or (2) it could be part of a compensation agreement with the city (depending on funding), or (3) could be part of a reimbursement agreement with the neighboring properties.
- **Sewer:** The property would be subject to the local (square-foot) water and sewer main construction fees as well as system development fees. There is a 27 inch sanitary sewer main in Grand Avenue. It is anticipated that this property would be serviced from that existing sewer main. There is no sanitary sewer line in 56th Street West.
- **Storm water:** There currently are no storm water improvements to this property; they will have to retain storm water on site.

- **Transportation:** Current traffic issues and flow appear to work fine for the church currently on the site. If development on the property is changed, traffic issues will be addressed during the site planning process.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 604 S 24th Street West (Station #5). The proposed fire station on 54th Street West on Lot 2, Bishop Fox Subdivision will serve this property when it is completed.
- **Parks:** No comment was received from the parks department. Since this land is currently developed as a church the impact on parks will be minimal.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Along the western boundary of the site, 56th Street West is identified as a primary bikeway; however, no improvements are required at this time.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department did state with the new police sub-station on 54th Street West they will be close to the property and will be able to serve the annexed property. Also if annexations continue without an increase in assets it will affect the departments ability to respond to calls in a timely manner.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance has indicated that they will not be negatively impacted.

- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on May 11, 2007, and published in the Billings Times on May 10, 2007. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).

RECOMMENDATION

Staff recommends that the City Council approve the Resolution of Tract 3, Certificate of Survey 2298, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

ATTACHMENT

- A. Resolution

RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
APPROVING PETITIONS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

Territory situated in the NW1/4 of Section 4, and the NW1/4 of Section 5, T.1S, R.25E, P.M.M., and the SE1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 3, of Certificate of Survey 2298, Recorded January 9, 1985, Under Document No. 1336053, Records of Yellowstone County, Montana; including a portion of Yellowstone County road easement for 56th Street West also described as a portion of County Road Petition Number 19, filed January 2, 1886, Road Established June 9, 1886, and all adjacent right-of-way of Grand Avenue.

Containing 5.619 gross and 4.269 net acres.

(# 07-08 Exhibit "A" Attached)

2. CONDITIONS. The annexation is approved, subject to the following conditions:
- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 29th day of May, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

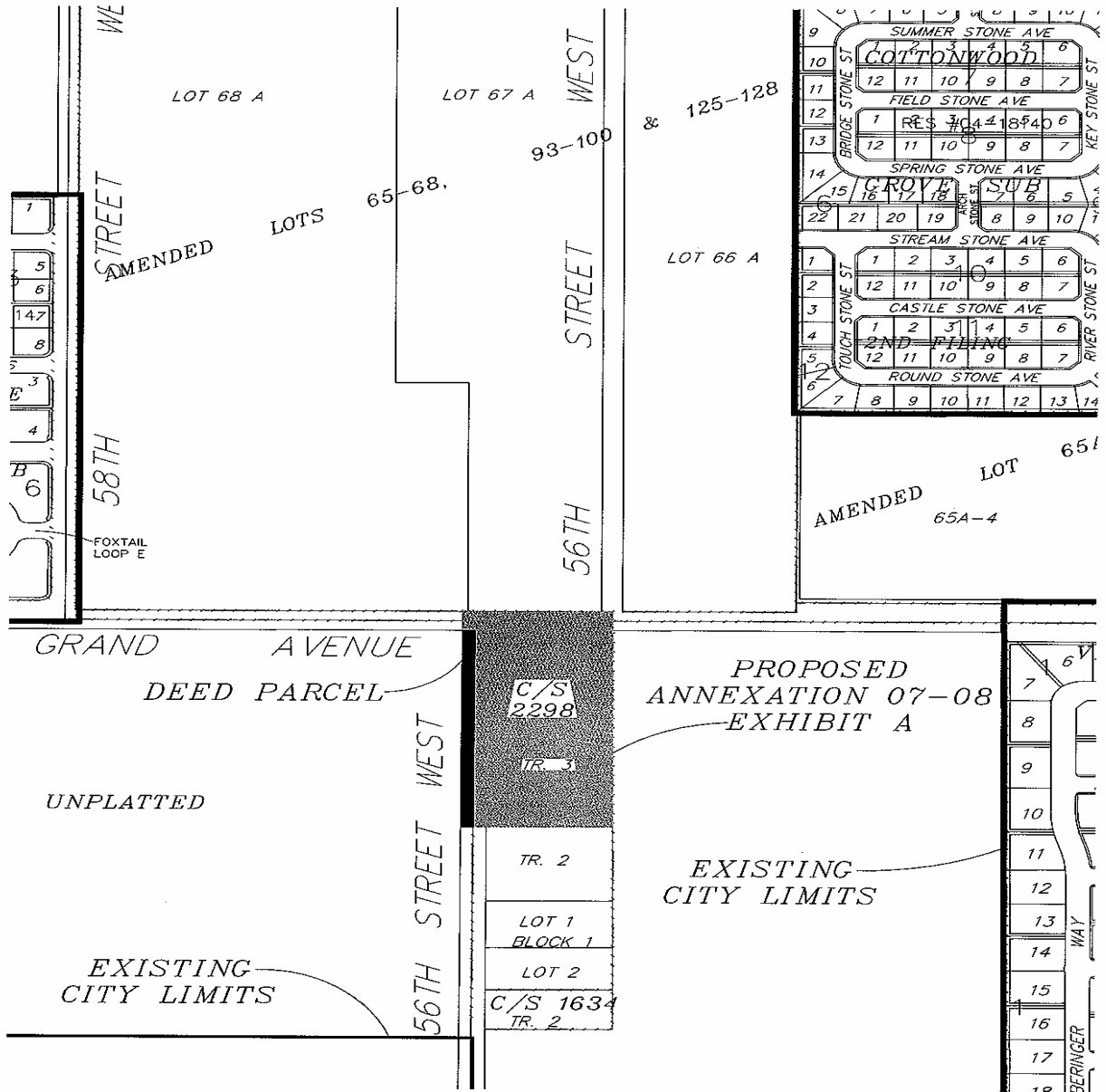
ATTEST:

BY: _____

Cari Martin, CITY CLERK

(AN 07-08)

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Tuesday, May 29, 2007**

TITLE: Public Hearing and Resolution for Annexation #07-09
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Miller Trois LLC, is requesting annexation of an approximate 14.08 acre property legally described as NW 1/4 of Section 16, and the SW 1/4 of Section 9, T.1S., R.26E., into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the southeast corner of the intersection of King Avenue East and Calhoun Lane. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a commercial subdivision including a zone change on the property. The subject property is currently vacant agricultural land and is zoned Residential 15000 (R-150). A concurrent zone change has been submitted for the subject property.

ALTERNATIVES ANALYZED: The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide municipal services to the subject property. If the proposed annexation and zone change is approved, the property could further develop as commercial, thereby increasing the tax revenue for the city.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution Annexing W ½ NE ¼ NW ¼, Less Highway and Less a Portion of Miller Crossing Subdivision, located in Section 16, Township 1S, Range 26E

- c. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

- d. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

ATTACHMENT

B. Resolution

INTRODUCTION

This petition for annexation is for an approximate 14.08 acre property legally described as NW 1/4 of Section 16, and the SW 1/4 of Section 9, T.1S., R.26E., into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is on the southeast corner of the intersection of King Avenue East and Calhoun Lane. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a commercial subdivision including a zone change on the property. The subject property is currently vacant agricultural land and is zoned Residential 15000 (R-150). It is located within the Urban Planning Area and is identified on the Limits of Annexation map for annexation within the next five years.

PROCEDURAL HISTORY

- On April 2, 2007, the Annexation Petition and zone change application were submitted to the Planning Department.
- On May 1, 2007, the Zoning Commission conducted a public hearing for the zone change and forwarded a recommendation of approval to the City Council by a 5-0 vote.
- On May 14, 2007, the City Council acknowledged the annexation petition and set a public hearing date for May 29, 2007.
- On May 29, 2007, the City Council will conduct the public hearing and may adopt a resolution annexing the subject property. At the same meeting, the council will conduct a public hearing on the proposed zone change and take action on the first reading.
- On June 11, 2007, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted. In addition, if the zone change is approved on first reading, the 2nd reading of the proposed zone change will be conducted.
- On June 25, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading for ward boundary expansion.

BACKGROUND

The subject property is surrounded on two sides by properties located within the City Limits and is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004 and updated in 2006.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexations may affect the City's ability to provide services to annexed properties without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

5. The area is located within the Limits of Annexation and within the Urban Planning Area.
6. The City is able to provide adequate services.

7. The proposed improvements for a subdivision or development, including streets, satisfy City standards.
8. Upon approval of a final subdivision plat, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably. No comments were received from Yellowstone County.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** There is a 12 inch water main in King Avenue East that can be used to provide water to the subject property.
- **Sewer:** The property will be able to connect into a 48-inch main off the southwest property corner. This main is within City right-of-way, so no easements would be necessary.
- **Stormwater:** It is anticipated that this property will use the city/county drain to the north along King Avenue East. Public works sees no problem with storm water for this area. Specifics of the storm water system will be addressed during the site plan review process.
- **Transportation:** The subject property will be accessed from King Avenue East. Street/Traffic Division is able to adequately serve this additional area proposed to be annexed since it is nearly surrounded by properties already in the city limits.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 476 6th Street West (Station #4).
- **Parks:** Since the proposed subdivision is for commercial purposes, a parkland dedication is not required if the property is subdivided.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Along the northern boundary of the site, King Avenue East is

identified as a primary bikeway; and improvements may be required at the time of development.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department sent no response to the review.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance has indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on May 11, 2007, and published in the Billings Times on May 10, 2007. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns (Land Use Element Goal, page 5)
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)

- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing the NW 1/4 of Section 16, and the SW 1/4 of Section 9, T.1S, R.26E., subject to the following conditions of approval:

- c. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- d. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

ATTACHMENT

- B. Resolution

RESOLUTION NO. 07-

**A RESOLUTION OF THE CITY OF BILLINGS
APPROVING PETITIONS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

Territory situated in the NW 1/4 of Section 16, and the SW 1/4 of Section 9, T.1S.,

R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Being a portion of the NE1/4 NW1/4 of said Section 16, wholly surrounded by Tract 1, Certificate of Survey No. 2350, Recorded November 18, 1985, Under Document No. 1372518, Records of Yellowstone County to the north; King Avenue East right-of-way and the E1/2 NE1/4 NW1/4 of said Section 16 less Certificate of Survey 3153 to the east; Interstate Highway 90 to the south; and Tract 1, Certificate of Survey No. 2655, Recorded December 10, 1991, Under Document No. 1617045, Records of Yellowstone County, Lot 2A of Amended Plat of Lots 2, 3, 4, and 5, Block 1, Miller Crossing Subdivision Recorded May 28, 2003, Under Document No. 3232279, Records of Yellowstone County and King Avenue East right-of-way to the west. Including all adjacent Right-Of-Way of King Avenue East, Parcel 7 of Montana Highway Project No. IR 90-8(120)447, Recorded June 14, 1991, Book 1361, Page 2150, Under Document No. 1598191, Records of Yellowstone County, and Parcel 12 of Montana Highway Project No. IR 90-8(120)447, Recorded December 15, 1992 Book 1387, Page 4193, Under Document No. 1664260, Records of Yellowstone County.

Containing 24.889 gross acres and 14.838 net acres, more or less.

(# 07-09 Exhibit "A" Attached)

2. CONDITIONS. The annexation is approved, subject to the following conditions:
 - c. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - d. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.
3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 29th day of May, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

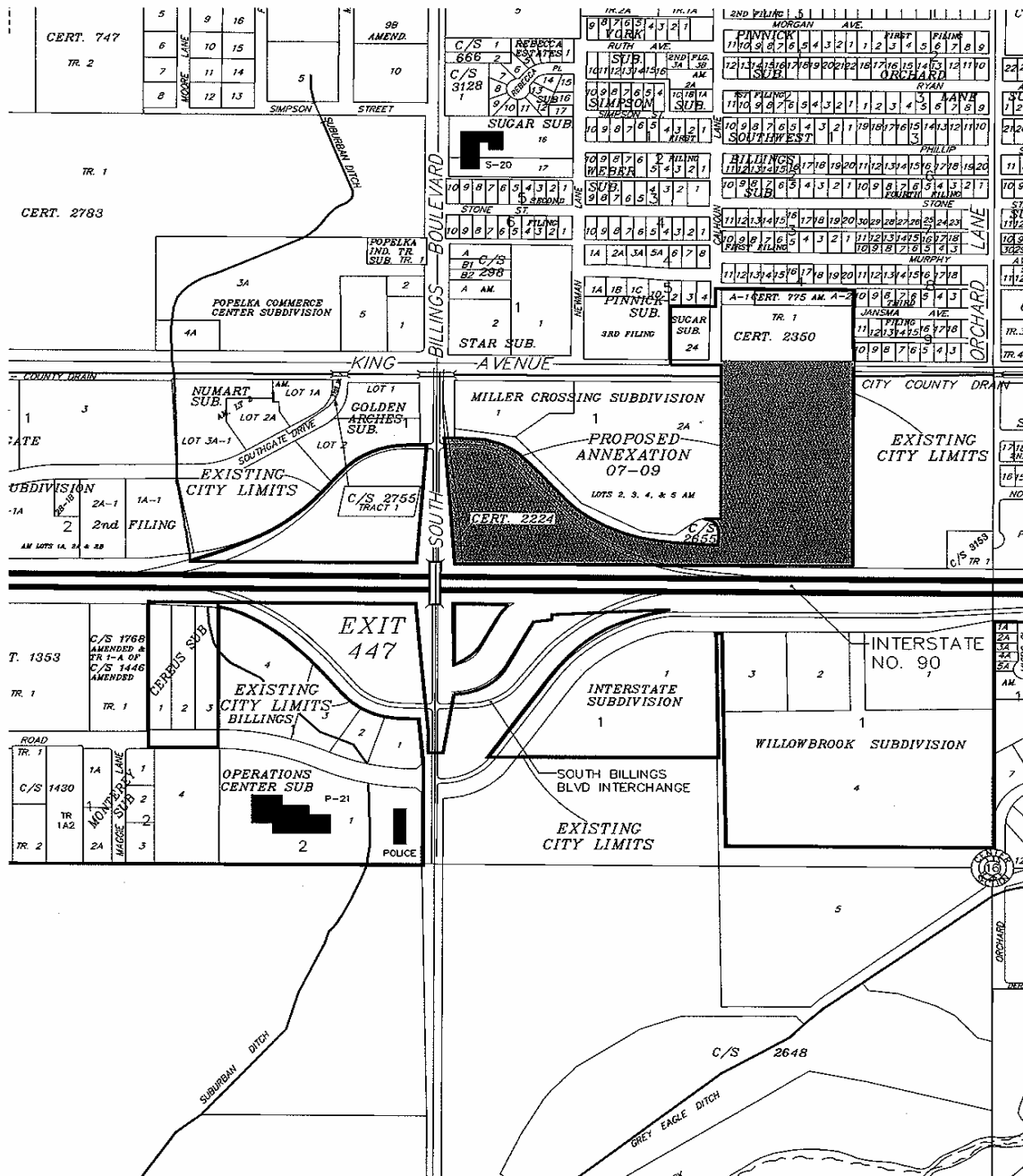
ATTEST:

BY: _____

Cari Martin, CITY CLERK

(AN 07-09)

EXHIBIT A



(Back to Consent Agenda)

b7

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, May 29, 2007

SUBJECT: Zone Change #806, Southwest corner of King Avenue East and Orchard Lane Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The applicant is requesting to rezone E1/2 NE1/4 NW1/4, less Certificate of Survey (COS) 3153 and W1/2 NE1/4 NW1/4, less highway and less Miller Crossing Subdivision, Section 16, T.1S, R.26E, and COS 3153 from Residential 15000 (R-150) and Residential Manufactured Home (RMH) to Entryway General Commercial (EGC). The subject property is generally located on the southwest corner of King Avenue East and Orchard Lane and is currently vacant agricultural land. There is an annexation request in the process for half of this property, which will be heard by the Billings City Council on May 29, 2007. The Zoning Commission conducted a public hearing on May 1, 2007, and is forwarding a recommendation for approval with a vote of 5-0.

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

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

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

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #806 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Ordinance

INTRODUCTION

The applicant is requesting to rezone E1/2 NE1/4 NW1/4, less COS 3153 and W1/2 NE1/4 NW1/4, less highway and less Miller Crossing Subdivision, Section 16, T.1S, R.26E, and COS 3153, a 29.68 acre parcel, from R-150 and RMH to EGC. The proposed zoning will allow for commercial uses on the property. It is the developers stated intent to include a variety of uses ranging from large retail to hotel and food services.

The developer states that they intend to develop this new retail/commercial center to be a ‘state-of-the industry’ facility meeting all of the requirements of the Interchange/Entryway building and site development requirements.

The Zoning Commission conducted a public hearing on May 1, 2007, and is forwarding a recommendation for approval with a vote of 5-0.

PROCEDURAL HISTORY

- A zone change request was received on April 2, 2007, for the subject properties.
- The Zoning Commission conducted a public hearing on May 1, 2007, and recommended approval to the City Council by a 5-0 vote.
- The City Council will conduct a public hearing and first reading on May 29, 2007, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on June 11, 2007.

BACKGROUND

The applicant is requesting to rezone E1/2 NE1/4 NW1/4, less COS 3153 and W1/2 NE1/4 NW1/4, less highway and less Miller Crossing Subdivision, Section 16, T.1S, R.26E, and COS 3153, a 29.68 acre parcel, from R-150 and RMH to EGC. The proposed zoning will allow for commercial uses on the property. It is the developers stated intent to include a variety of uses ranging from large retail to hotel and food services.

The South Billings Boulevard Master Plan, adopted in 1990 and revised on September 27, 2002, shows the property to the west of these three parcels as Entryway General Commercial which is

the zoning the developer is requesting for these parcels. According to the Master Plan the objective of this zoning is “To encourage the development of large, well planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area”. Another objective is “To present a favorable and attractive image for Billings from Interstate 90, King Avenue and South Billings Boulevard”.

To the north of this property is single family residential development, including Orchard Lane Subdivision 3rd Filing, Sugar Subdivision and Pinnick Subdivision 3rd Filing, zoned Residential 7000 (R-70); Tract 1, COS 2350 zoned Residential 9600 (R-96); Star Subdivision, Southgate Mobile Home Court zoned Residential Manufactured Home (RMH), and Entryway Light Commercial (ELC). To the west is a Burger King in Miller Crossing Subdivision zoned Entryway General Commercial (EGC). To the east is Southwest Billings Subdivision 2nd Filing zoned RMH, and Ponderosa Park zoned Public (P). To the south is Interstate 90. Across the interstate is Montana Auto Auction which is a PUD and International Truck Sales and Service in Interstate Subdivision zoned Entryway General Commercial.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. Since the Zoning Commission is recommending approval of the proposed zone change, the Zoning Commission’s determinations are outlined below:

Prior to any recommendation to the City Council, the Zoning Commission shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed annexation is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)*

This property is in an area of West Billings that has been built out with mostly residential growth. The areas around the Interstate 90 exit has been identified as locations that are desirable for commercial development as identified in The South Billings Boulevard Master Plan. The addition of this parcel will focus new commercial growth at an interchange where commercial activities are encouraged.

- *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 South Billings Boulevard Master Plan has identified areas off of this freeway interchange as desirable for commercial development. With the proposed zoning the development will have more strict requirements for building facades and site development to present a favorable and attractive image for Billings from Interstate 90. However, there is low density housing located to the north of this property.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit large scale commercial uses intended to serve the residential neighborhoods and the area surrounding Billings.

2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning is expected to generate more traffic than current uses. With a commercial development traffic on King Avenue East would increase. Traffic on Calhoun Lane and Orchard lane, both residential streets, would both see an increase in traffic with the commercial development. A Traffic Accessibility Study (TAS) will be submitted for the development agreement or the subdivision process. At that time the Engineering Division will be able to review what is proposed and make recommendations for mitigation of possible problems.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

This property has public street frontage on King Avenue East and is a short distance from South Billings Boulevard to the west and Interstate 90. The property is served by the City Fire Department and Police Departments. The property is served by Billings Water and has public sanitary sewer services. No public health or safety issues have been raised with this application.

4. *Will the new zoning promote health and general welfare?*

The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks, landscaping and screening requirements for any new developments.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. This requirement will help prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning is for commercial use which will not cause a concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: A TAS will be submitted during the Development Review or the subdivision process and be reviewed by the Engineering Division. At that time the Engineering division will be able to identify problem areas that may be created with the development and make recommendations for street improvements.

Water and Sewer: The City will provide water and sewer to the property. There are existing water lines in King Avenue East. The sewer will most likely be connected to a line in the south west corner of the property to a line inside the City ROW.

Schools and Parks: The proposed commercial zoning is not required to contribute park land and will have no effect on the school system.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service will be reviewed with the subdivision application.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will be alike in character with the adjacent commercial zoning to the west and will provide services to the adjacent single-family residences to the north and east as well as to the population of Billings and the surrounding area.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district. The South Billings Boulevard Master Plan has identified areas off of this freeway interchange as desirable for large commercial development.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The applicant has proposed the Entryway General Commercial zoning that is more restrictive on building facades and site development, specifically lighting and landscape requirements so it will be less obtrusive next to the residential zone to the north and east. Furthermore it has more restrictive requirements so the finished development will present a better appearance for those traveling along Interstate 90 and enhance impressions of the City of Billings.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The South Billings Boulevard Master Plan goal for this are is “To encourage the development of large, well planned projects designed to serve the area over a long period of time, as opposed to small, hastily conceived projects that do little to add to the overall appearance or economic vitality of the area”, also “To present a favorable and attractive image for Billings from Interstate 90, King Avenue and South Billings Boulevard”. The proposed zoning will permit this type of development.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

Rick Leuthold from Engineering Incorporated spoke in favor of this zone change stating the developer intends to make this a very nice commercial development with the intention of meeting all the requirement of the Entryway General Commercial. The developer also plans to continue the walking path along the drainage ditch on the north of the property making it an amenity to the community.

Joe McClure from Big Sky Economic Development Authority (BSEDA) spoke in favor of this zone change stating that this is a great opportunity to revitalize the neighborhood. The developer is interested in creating a Tax Increment Finance District (TIFD). With the TIFD in place, it would be a great way to finance needed infrastructure upgrades in the surrounding neighborhood.

Norman Miller representing Miller Trois LLC spoke in favor of the development stating that the Miller trust wanted a really good development on the property and they have seen many plans over the years but this is the best one that they are excited about it. He also stated that they have

talked with the South Billings task force and have their support. They do not have a letter of support from the task force but verbal comments of support.

Jean Sigmond spoke in opposition of the zone change wanting the property to be developed as residential not commercial. She also does not want more restaurants in the neighborhood because of smells.

Betty Hamilton spoke in opposition of the zone change stating that the traffic on King Avenue East is already bad enough and the commercial development would make it worse.

Mike Harkey spoke in opposition of the zone change stating he doesn't want commercial development because of increased traffic and the lights on a commercial development would spill over to the residential area. He feels that the lights from the freeway are already a problem. He also doesn't feel that there should be a zone change without more information about what is proposed for the site.

Rick Leuthold in rebuttal stated that the approximate time frame for development is 12-18 months for a development this size; they anticipate beginning work on infrastructure in August if zone change and annexation take place. They do plan on incorporating the drainage drain a site amenity. There will be a Traffic Accessibility Study (TAS) done for the site with the site development process. Rick Leuthold stated that there will definitely be improvements to King Avenue East to make traffic flow better and safer for people to drive on. He reiterated that the Entryway General Commercial zoning requires much more landscaping and site improvements than the standard commercial or industrial zoning to make this development much more aesthetically pleasing.

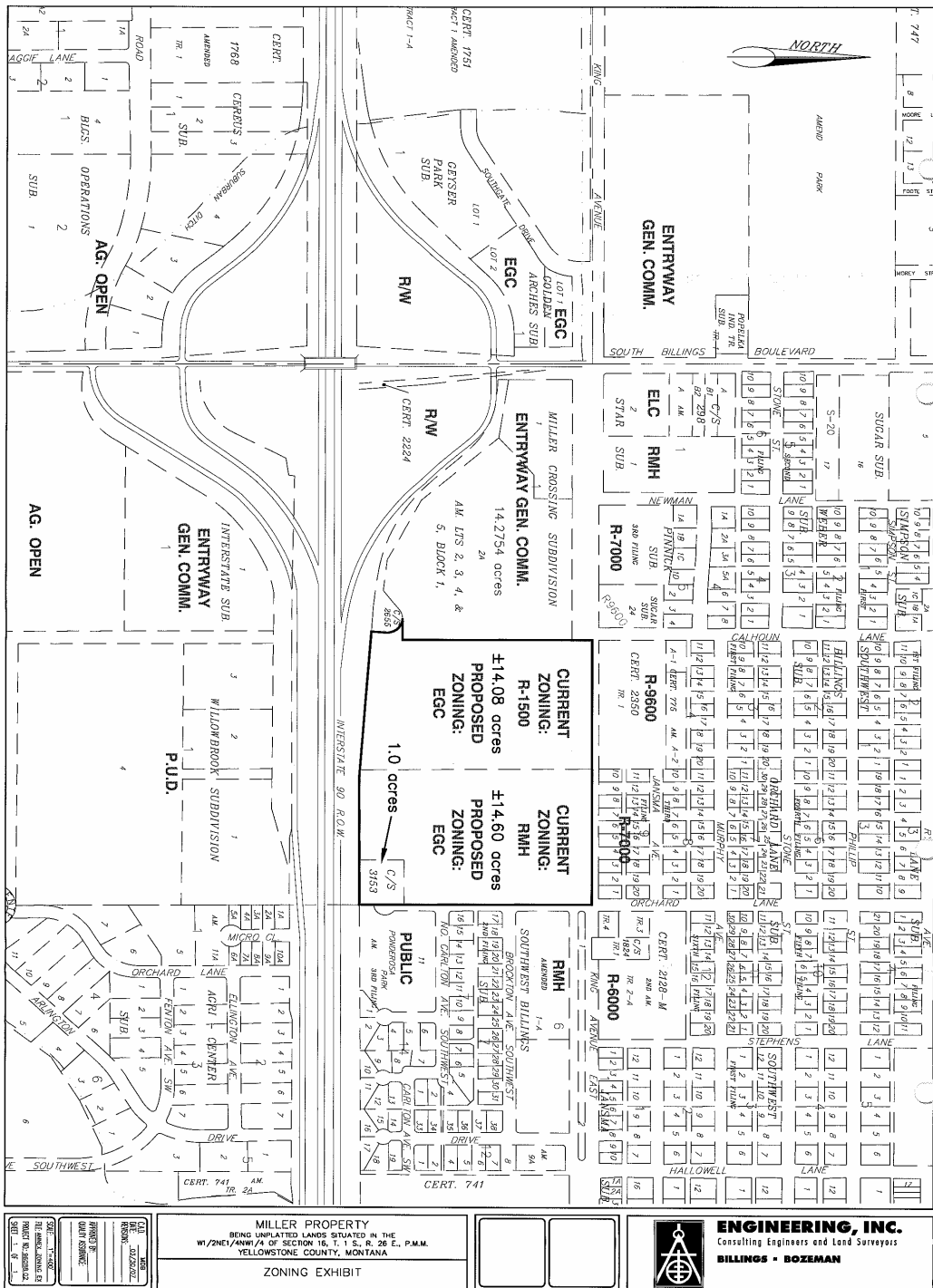
RECOMMENDATION

The Zoning Commission forwards a recommendation of approval to the City Council for Zone Change #806 with a vote of 5-0.

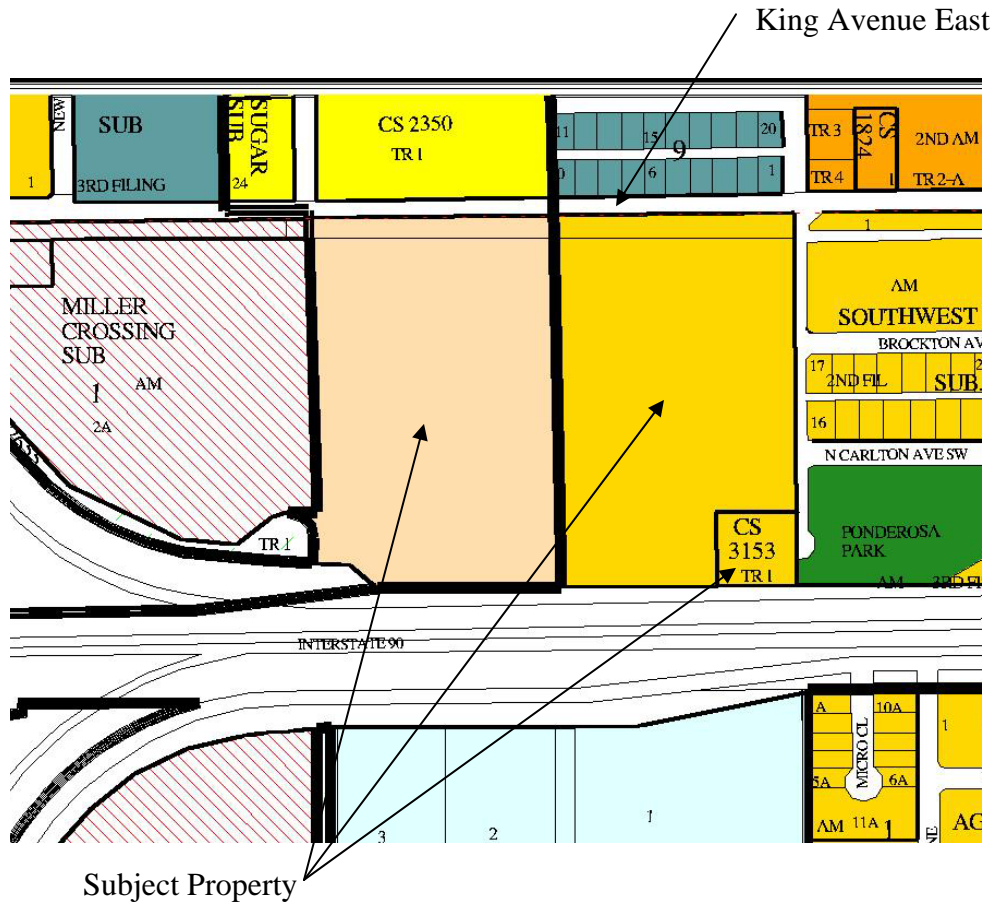
ATTACHMENTS:

- A: Site Map
- B: Surrounding zoning
- C: Site Photographs
- D: Ordinance

Site Map



ATTACHMENT B
Surrounding Zoning Map



ATTACHMENT C

Site Photo



Looking north from subject site toward King Avenue East and Orchard Lane



Looking south across subject property along Orchard Lane



Looking east across Orchard Lane



Looking west across subject property

ATTACHMENT D

Ordinance

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR E1/2 NE1/4 NW1/4, less Certificate of Survey (COS)
3153 and W1/2 NE1/4 NW1/4, less highway and less Miller
Crossing Subdivision, Section 16, T.1S, R.26E, and COS
3153, containing approximately 29.68 acres

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

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

2. DESCRIPTION. A tract of land known as E1/2 NE1/4 NW1/4, less Certificate of Survey (COS) 3153 and W1/2 NE1/4 NW1/4, less highway and less Miller Crossing Subdivision, Section 16, T.1S, R.26E, and COS 3153, containing approximately 29.68 acres and is presently zoned Residential 15000 and Residential Manufactured Home and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 15000 and Residential Manufactured Home to Entryway General Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Entryway General 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 May 29, 2007.

PASSED, ADOPTED AND APPROVED on second reading June 11, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: Cari Martin, City Clerk

ZC #806

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