

# CITY OF BILLINGS

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

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## AGENDA

**COUNCIL CHAMBERS**

**November 13, 2007**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tooley**

**PLEDGE OF ALLEGIANCE – Mayor Tooley**

**INVOCATION – Mayor Ron Tussing**

**ROLL CALL**

**MINUTES – October 22, 2007**

**COURTESIES**

**PROCLAMATIONS**

- **Benjamin C. Steele Day – November 17, 2007**
- **Salvation Army Red Kettle Week – November 19 – 24, 2007**

**BOARD & COMMISSION REPORTS**

**ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4, & #5 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard **ONLY** during the designated public hearing time for each respective item.)

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

### **CONSENT AGENDA:**

**1. A. Approval of Appointments to the Downtown Transit Center Ad Hoc Committee**, Randy Hafer; Kim Barnett; Stephen Wahrlich; Geoffrey Parkins; Greg Krueger; and Kimberly Watson.

[\*\(Corresponding Staff Memo A\)\*](#)

**B. Bid Awards:**

**(1) Cold Storage Steel Building.** (Opened 10/23/07) Recommend Hardy Construction, \$88,000.00.

[\*\(Corresponding Staff Memo B1\)\*](#)

**(2) Sale of Two (2) Aircraft Rescue Fire Fighting Trucks.** (Opened 10/30/07). Recommend Crash Rescue Equipment Service, Inc., \$86,104.00.

[\(Corresponding Staff Memo B2\)](#)

**C. Change Order No. 2 - W.O. 06-18 Broadwater Subdivision, Phase V,** JTL Group, Inc., \$3,525.00.

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

**D. Amendment No. 8 – SID 1379, Utility and Street Improvements to King Avenue West from S. 31<sup>st</sup> Street West to Shiloh Road,** HDR Engineering, Inc., an amount not to exceed \$343,642.00.

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

**E. Contract for Professional Services, W.O. 08-01 2008 Water and Sewer Replacement Project,** Morrison-Maierle, Inc., an amount not to exceed \$926,713.00.

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

**F. Resolution** terminating the Downtown Tax Increment District and **Allocating Funds and Development Agreement** with Downtown Billings Partnership.

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

**G. Annual Agreement** with Yellowstone County to provide Law Enforcement Data Processing Services, \$85,779.00.

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

**H. Annual Agreement** with Yellowstone County for City-County Special Investigations Unit (CCSIU), with no additional cost to the City of Billings.

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

**I. Construction Agreements (3)** with MT Department of Transportation City Maintained Routes, with no cost to the City of Billings.

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

**J. Vehicle Lease Agreement** with Underriner Motors for an Internet Crimes Against Children (ICAC) Task Force Lease Vehicle, 12/1/07 – 2/29/09, \$5,250.00.

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

**K. Assignment and Transfer of West End Hangar Ground Lease** from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White.

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

**L. Commercial Terminal Building Lease** with ARINC Incorporated, 10/1/07 – 10/1/08, first year revenue \$3,110.48.

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

**M. Limited Commercial Ground Lease** with Aerotronics, Inc., 10/1/07 – 9/30/27, first year revenue \$17,456.52.

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

**N. Amendment of Lease** for office space to the Transportation Security Administration (TSA), additional revenue of \$15,705.96, for annual lease rental of \$52,598.07.

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

**O. Airline Operating Permit** with ExpressJet Airlines.

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

**P. Acknowledging Receipt of Request to Annex #07-05:** 13.4 acres of a portion of park land along Zimmerman Trail right-of-way and a portion of Zimmerman Trail right-of-way between Highway 3 and Rimrock Road; City of Billings, requester, and setting a public hearing date for 12/10/07.

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

**Q. Acknowledging Receipt of Request to Annex #07-11:** a 3.74-acre portion of Broadwater Avenue right-of-way west of 30<sup>th</sup> Street West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**R. Acknowledging Receipt of Request to Annex #07-12:** a 1.69-acre portion of Bell Avenue right-of-way west of Shiloh Road; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**S. Acknowledging Receipt of Request to Annex #07-13:** a 1.89-acre portion of Grand Avenue and Zimmerman Trail right-of-way; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**T. Acknowledging Receipt of Request to Annex #07-14:** a 4.86-acre portion of Cove Avenue right-of-way between 46<sup>th</sup> and 50<sup>th</sup> Streets West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**U. Acknowledging Receipt of Request to Annex #07-16:** a 0.359-acre portion of Grand Avenue right-of-way east of 56<sup>th</sup> Street West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**V. Acknowledging Receipt of Request to Annex #07-18:** a portion of 56<sup>th</sup> Street West and Broadwater Avenue rights-of-way; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**W. Acknowledging Receipt of Request to Annex #07-19:** a 6.832-acre portion of Rimrock Road right-of-way from 62<sup>nd</sup> Street West to the city limits; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**X. Acknowledging Receipt of Request to Annex #07-25:** a 2.457-acre portion of 44<sup>th</sup> Street West right-of-way south of King Avenue West; City of Billings, requester, and setting a public hearing date of 12/10/07.

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

**Y. Acknowledging Receipt of Petition to Vacate** a portion of Henry Road right-of-way fronting property located at 1125 Henry Road; John Glenn, owner and petitioner, and setting a public hearing date of 12/10/07.

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

**Z. Acceptance of Donation:** Approval and acceptance of donation from Northwestern Energy to the Cobb Field Fundraising Project, \$2,000.00.

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

**AA. Resolution of Intent** to create a South Billings Boulevard Urban Renewal District with tax increment authority; declaring the existence of blight within the South Billings Boulevard Urban Renewal Area; and setting a public hearing date of 11/26/07.

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

**BB. Resolution** relating to financing of the South Billings Boulevard Tax Increment Financing District; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

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

**CC. Resolution of Intent** to create Special Improvement District 1380, Terra West Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> Filings, for Monad Road Street Frontage Improvements, and set a public hearing date of 12/10/07.

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

**DD. Resolution of Intent** to create Special Improvement Maintenance District No. 4038, Terra West Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> Filings, Monad Road Street Frontage Improvements, and set a public hearing date of 12/10/07.

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

**EE. Resolution of Intent** to create Park Maintenance District No. 4035, Bitterroot Heights Subdivision, and set a public hearing date of 12/10/07.

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

**FF. Second/Final Reading Ordinance for Zone Change #822:** A zone change from Residential 9600 to Residential 7000 Restricted on a 400-acre property north and west of High Sierra Subdivision and Lake Hills Subdivision. Dover Ranch, owner.

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

**GG. Final Plat** of Grand Avenue School Subdivision, Amended Lot 1, Block 1.

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

**HH. Bills and payroll.**

(1) October 5, 2007

[\(Corresponding Staff Memo HH1\)](#)

(2) October 12, 2007

[\(Corresponding Staff Memo HH2\)](#)

(3) October 19, 2007

[\(Corresponding Staff Memo HH3\)](#)

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

## **REGULAR AGENDA:**

**2. ELECTION** of Deputy Mayor.

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward II to include recently annexed property: a 5-acre parcel described as: Tract 1B, Certificate of Survey 1335, Amended, Hanser Capital Holdings LLC, owner. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**4. PUBLIC HEARING AND RESOLUTION** exchanging property described as Lots 19-24, Block 60, Original Town of Billings, with Yellowstone County for adjacent property owned by Yellowstone County to facilitate the construction of a MET Transit Transfer Center. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**5. AGREEMENT** with Lockwood Area/Yellowstone County Water and Sewer District for treatment and disposal of wastewater. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**6. (A) PUBLIC HEARING AND RESOLUTION** approving and adopting a budget amendment for Fiscal Year 2007/2008. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**(B) RESOLUTION** directing payment and budgeting for the Firefighter Lawsuit Judgment. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**(C) PROPOSAL** from Koch Financial Corporation to finance the majority of the Firefighter lawsuit. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

**7. 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**

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**TITLE:** Approval of the Appointments to the Downtown Transit Center Ad Hoc Committee

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** During the September 10, 2007, City Council meeting, a Resolution was approved to create a Downtown Transit Center Ad Hoc Committee composed of one (1) City Council member (Nancy Boyer), one (1) Aviation and Transit Commission member (Mark Kennedy), and seven (7) citizens that may have interest in this project. The Committee's purpose is to review the various design concepts and operational characteristics developed by the design team for the new Transit Center and recommend a preferred design to the City Council.

The closing date for the requests to serve has now expired and applications were received from the following individuals:

- Randy Hafer – Architect
- Kim Barnett – GSA
- Stephen Wahrlich – Clocktower Inn Operator
- Geoffrey Parkins – HDR Engineer
- Greg Krueger – Urban Renewal
- Kimberly Watson – MET Rider

**FINANCIAL IMPACT:** There is no financial impact from this action.

**RECOMMENDATION**

Since only six (6) requests to serve were received for the seven (7) open positions, staff recommends that each applicant be appointed to serve on the Downtown Transit Center Ad Hoc Committee.

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

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, November 13<sup>th</sup>, 2007

TITLE: Cold Storage Steel Building Bid Award  
DEPARTMENT: Public Works Street/Traffic Division  
PRESENTED BY: Dave D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for a new cold storage building for the Street/Traffic Division for the Public Works Department on October 23, 2007. This building consists of a 60' x 40' steel building to be installed on a pre-existing concrete slab located at the BOC complex, 4848 Midland Road. This building will be used to store emergency storm water supplies and off seasonal street traffic equipment such as snow plow blades and blower attachments in the summer months. Summer equipment will be stored in the building in the winter months.

#### **ALTERNATIVES ANALYZED:**

1. Award the contract to Hardy Construction in the amount of \$88,000.00; or
2. Reject all bids and do not award a contract for the cold storage building.

**FINANCIAL IMPACT:** Funding for the cold storage steel building is from the street maintenance funds and the storm water funds. This project is in the approved CIP for FY08. Two bids were received as follows:

<u>Bidder</u>	<u>Bids</u>
Hardy Construction	\$ 88,000.00
Williams Brother Construction	\$121,100.00

#### **RECOMMENDATION**

Staff recommends that council award the bid for Hardy Construction in the amount of \$88,000.00.

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

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## AGENDA ITEM:



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### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA  
Tuesday, November 13, 2007

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TITLE: Bid Award for the Sale of Two (2) Aircraft Rescue Fire Fighting Trucks  
DEPARTMENT: Aviation and Transit  
PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** The Aviation and Transit Department recently placed in service the two (2) new Aircraft Rescue Fire Fighting (ARFF) trucks, which replaced two similar units that were purchased with a 1992 Airport Improvement Program (AIP) Grant. Since the City's "Federal obligation" to retain and maintain the 1992 fire trucks has now expired, the two old trucks were declared surplus equipment by the City Council on October 9, and staff proceeded to advertise for competitive bids for these two trucks. The Call for Sealed Bids was advertised in the *Billings Times* on October 11 and 18, 2007, and posted on the City's Web site on October 11. Additionally, bid packets were mailed to parties interested in the fire trucks.

**FINANCIAL IMPACT:** Bids were opened on October 30, 2007. The following bids were received:

<u>Name of Bidder</u>	<u>Bid Amount</u>	<u>Bid Item #</u>
Crash Rescue Equipment Service, Inc.	\$43,621	C-1
Fire House 66, Inc.	\$22,550	C-1
Crash Rescue Equipment Service, Inc.	\$42,483	C-2
Fire House 66, Inc.	\$21,250	C-2

### RECOMMENDATION

Staff recommends that the City Council approve the award of bids for surplus fire truck Units #1712 (Bid Item C-1) and #1713 (Bid Item C-2) to the highest bidder, Crash Rescue Equipment Service, Inc. in the total amount of \$86,104.

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

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## AGENDA ITEM:




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

 Tuesday, November 13, 2007
 

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TITLE: W.O. 06-18, Broadwater Subdivision – Phase V, Curb/Gutter and Street Reconstruction, Change Order #2  
 DEPARTMENT: Public Works/Engineering  
 PRESENTED BY: David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** This project consists of reconstructing the streets in Broadwater Subdivision and removing/replacing or installing any defective or nonexistent curb/gutter and sidewalk. Added to this project through Change Order #2 will be the installation of 150 lineal feet of 36” inch high chain link fence. The purpose of this fence is to provide added pedestrian safety in areas between handicap ramps and the inlets on the top of the City-County Drain. This project already included Change Order #1 for the addition of structural alley crossings to facilitate garbage truck traffic over the City-County Drain. Change Order #1 and #2 combine for an overall change in the original contract of more than 10% and therefore, City Council action is required for the approval of Change Order #2.

**ALTERNATIVES ANALYZED:**

1. Approve Change Order #2 in the amount of \$3,525.00; or
2. Do not approve Change Order #2.

**FINANCIAL IMPACT:** A breakdown of the project funds is listed below:

Broadwater Phase V Improvements Funding

Storm Drain Funds	\$ 109,400.00
Gas Tax Funds	\$ 415,000.00
Property Assessments (Construction Only)	\$ 194,800.00
Previous Encumbrance	\$ (10,000.00)
Original Contract Amount	\$ (594,500.00)
Change Order #1	\$ (59,400.00)
Change Order #2 (This Memo)	\$ (3,525.00)
<b>Remaining Funds</b>	<b>\$ 51,775.00</b>

## **RECOMMENDATION**

Staff recommends that Council approve Change Order #2 in the amount of \$3,525.00 for W.O. 06-18 Broadwater Subdivision – Phase V.

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

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**TITLE:** SID 1379 – Utility and Street Improvements to King Avenue West from South 31<sup>st</sup> Street West to Shiloh Road

**DEPARTMENT:** Public Works - Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider authorizing Amendment No. 8 to the professional services contract with HDR Engineering in the amount of \$343,642.00 to provide design and construction administration services for water and sewer main and lift station elements of SID 1379. A contract amendment is recommended since HDR designed these King Avenue water and sewer improvements under previous W.O. 04-27. That project was not bid or constructed, and HDR has updated the design using left over funds to include a lift station; this amendment would allow remaining engineering work to be completed.

**ALTERNATIVES ANALYZED:**

1. Authorize the Mayor to sign an amendment to the contract with HDR Engineering as set forth in this staff memorandum.
2. Do not authorize the Mayor to sign an amendment to the contract with HDR Engineering as set forth in this staff memorandum.

**FINANCIAL IMPACT:** Funding for this project has been approved in the CIP projects – Water Main Replacement and Sanitary Sewer Replacement. Funding is sufficient for the engineering services, which are now under consideration, as well as for construction of the lift station which is planned for bidding in early 2008.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract amendment for professional services to provide engineering services for water and sewer main and lift station improvements of SID 1379 in the amount not to exceed \$343,642.00.

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

**ATTACHMENT**

- A. Amendment No. 8 to the HDR Engineering, Inc. Agreement (4 pages)

## **INTRODUCTION**

HDR Engineering would be enabled by this services agreement amendment to provide water and sewer utility construction support and final design services for the SID 1379--Utility and Street Improvements to King Avenue West from South 31<sup>st</sup> Street West to Shiloh Road project as well as provide construction administration, inspection, and final design services for the future construction of the King Avenue lift station project.

## **PROCEDURAL HISTORY**

### **Completed Items:**

- HDR Engineering was previously retained to design and provide construction administration services on King Avenue water and sewer utility improvements under W.O. 04-27, but that project was not bid or constructed. Major portions of this original water and sewer design as well as new design features have already been incorporated into SID 1379 using funds left over from W.O. 04-27. A construction contract for SID 1379 has been recently awarded to The JTL Group to complete designed improvements.

### **Items to be Completed:**

- HDR can provide water and sewer utility construction support and final design services to the City for the construction of water and sewer mains under the recently awarded JTL construction contract.
- Changing demand conditions and recent alternatives analyses have shown that the sewer design should incorporate a lift station rather than extend about 4000 feet of deep sewer. HDR has incorporated most of these design changes and can provide remaining design services, construction administration, and inspection services on the future lift station project.
- Council authorizing the Mayor to sign the Amendment to HDR's Agreement.

## **BACKGROUND**

Segments of 16-inch water line currently exist in King Av. W. between 32<sup>nd</sup> St. W. and Shiloh Rd. that serve single-family, multi-family, assisted living residential, and commercial development; these segments will be connected with approximately 2,500 feet of water main.

Sewer in this area consists of 27-inch main that extends about from about 250 feet east of Shiloh Rd. to about 1,750 feet west of Shiloh Rd. Flow through the 27-inch main currently feeds into a temporary private lift station in Montana Sapphire Subdivision. Wastewater from the lift station is pumped through a force main that discharges into an 8-inch sewer in Olympic Boulevard. The 27-inch sewer main will be extended approximately 700 feet further east in King Ave. W. and will empty into a new lift station. Force mains from the lift station will be extended east approximately 3,100 feet and feed into a new 24-inch gravity sewer which will be extended approximately 2,000 feet further east to tie into a 42-inch sewer at 32<sup>nd</sup> St. W.

Construction of the King Avenue water and sewer mains and street improvements has already been awarded to JTL. HDR would provide water and sewer utility construction support and final design services to the City for the construction of these improvements. Design and construction of a future lift station is not complete. HDR would provide the remaining design services,

construction administration, and inspection services to the City for the lift station which is projected to be bid for construction in early 2008.

Water quality, pressure, system integrity, and fire flow capacities will all be improved in the area as a result of connectivity achieved by project. Sewer main and lift station construction in this area will provide sewer service to areas south of King Av. W. between 36<sup>th</sup> St. W. and Shiloh Rd. as well as to a large area both north and south of King Av. W. west of Shiloh Rd. Development as far north as Central Avenue to about 2,000 feet south of King Av. W. to 72<sup>nd</sup> Street West could be served as a result of this project.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract amendment for professional services to provide engineering services for water and sewer main and lift station improvements of SID 1379 in the amount not to exceed \$343,642.00.

## **ATTACHMENT**

- A. Amendment No. 8 to the HDR Engineering, Inc. Agreement (4 pages)

**AMENDMENT NUMBER EIGHT  
TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN  
THE CITY OF BILLINGS, MONTANA  
AND  
HDR ENGINEERING, INC.**

THIS AMENDMENT NUMBER EIGHT, made and entered into this \_\_\_\_ day of \_\_\_\_, 2007, modifies the Agreement for Professional Services by and between the City of Billings, Montana, and HDR Engineering, Inc., dated May 10, 1999. The Agreement is modified as follows:

Item 1: Page 5, add the following tasks to paragraph 6 for Phase VIII – Water Mains and Sewer Mains, TIME OF BEGINNING AND COMPLETION:

“Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services (365 days)

Task 600 – 2007-08 King Avenue West Lift Station Construction Services (365 days)”

Item 2: Page 8, paragraph 12.1.4.1.4, increase the total payment for services by \$343,642.00.

Item 3: Exhibit A – Consultant’s Scope of Services; Page 2 – Add the following to the summary of Phase VIII – Water Mains and Sewer Mains major work tasks.

- ◆ Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services
- ◆ Task 600 – 2007-08 King Avenue West Lift Station Construction Services

Item 4: Exhibit A – Consultant’s Scope of Services; Page 2, DETAILED SCOPE OF SERVICES. ADD the following task and detailed scope items for Phase VIII:

**Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services**

- ◆ Provide Contract Documents to the City for execution of contract
- ◆ Provide Issue for Construction Documents
- ◆ Attend Pre-Construction Meeting
- ◆ Attend weekly construction meetings
- ◆ Review shop drawings
- ◆ Provide construction staking
- ◆ Assist the City in contractor coordination and interpretation of drawings and specifications
- ◆ Provide change order preparation assistance
- ◆ Provide startup and testing assistance



- ◆ Assist the City in developing a punch list and follow up to the punch list
- ◆ Prepare record drawings
- ◆ Provide warranty services

**Scope does not include providing any resident project representative services.**

**Task 600 – 2007-08 King Avenue Lift Station Construction Services**

- ◆ Provide Contract Documents to the City for execution of contract
- ◆ Provide Issue for Construction Documents
- ◆ Attend Pre-Construction Meeting
- ◆ Attend weekly construction meetings
- ◆ Review shop drawings
- ◆ Provide construction staking
- ◆ Provide a resident project representative for construction observation services at half time for 18 weeks or 360 hours.
- ◆ Assist the City in contractor coordination and interpretation of drawings and specifications
- ◆ Provide change order preparation assistance
- ◆ Provide startup and testing assistance
- ◆ Assist the City in developing a punch list and follow up to the punch list
- ◆ Prepare record drawings
- ◆ Provide warranty services

All provisions of the Agreement dated May 10, 1999, shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number Eight (8) as of the day and year first above written.

CONSULTANT

**HDR Engineering, Inc.**

BY: \_\_\_\_\_  
R. Bradley Martin, VP

TITLE: Vice President

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY

**City of Billings**

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**SUPPLEMENT TO EXHIBIT B  
PHASE VIII PROJECT TASK ADDITIONS  
ESTIMATED FEES**

<b><u>Project Task Additions</u></b>	<b><u>Estimated Fee</u></b>
Task 500 – 2007-08 King Avenue West Waterline, Sewer Lines and Roadway Construction Services	\$ 244,799.00
Task 600 – 2007-08 King Avenue West Lift Station Construction Services	\$ 98,843.00
<b>TOTAL</b>	<b>\$ 343,642.00</b>

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**TITLE:** Work Order 08-01 – Contract for Professional Engineering Services, 2008 Water and Sewer Replacement Projects

**DEPARTMENT:** Public Works - Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider authorizing a Contract for Professional Services with Morrison-Maierle, Inc. in the amount of \$926,713.00 for engineering design services and construction administration on the 2008 Water and Sewer Replacement Projects. Water and sewer mains would be replaced in various city locations as identified by City staff. Morrison-Maierle, Inc. was selected in 2006 to perform these services according to the City's Request for Proposals and Consultant Selection policy for a period of up to three years.

**ALTERNATIVES ANALYZED:**

3. Authorize the Mayor to sign a contract with Morrison-Maierle, Inc. as set forth in this staff memorandum.
4. Do not authorize the Mayor to sign a contract with Morrison-Maierle, Inc. as set forth in this staff memorandum.

**FINANCIAL IMPACT:** Funding for this project has been approved in the CIP projects – Water Main Replacement and Sanitary Sewer Replacement. Funding is sufficient for the engineering design and construction administration portion of the project which is now under consideration, as well as for project construction, which is planned for bidding in May of 2008.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the design and construction administration portion of the 2008 Water and Sewer Replacement Projects with Morrison-Maierle, Inc. in the amount not to exceed \$926,713.00.

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

**INTRODUCTION**

This project would replace water and sanitary sewer lines in various areas of Billings. The water and sewer main replacement program is a long-standing annual program that was developed to maintain the integrity of the utility lines serving the residents of Billings.

## **PROCEDURAL HISTORY**

Completed Items:

- Morrison-Maierle, Inc. was chosen by a selection committee in 2006 to perform engineering services on City water and sewer replacement projects for up to three consecutive years; this selection was completed utilizing the Request for Proposals and Consultant Selection policy.

Items to be Completed:

- Council authorizes the Mayor to sign the Contract with Morrison-Maierle, Inc.
- Morrison-Maierle, Inc. completes the design and performs construction administration of the project once it is bid and awarded.

## **BACKGROUND**

Each year, the City identifies areas in need of replacement based on data collected related to the frequency of main failures in various areas throughout Billings.

Approximately 11,400 linear feet of sewer main and 5,500 feet of water main will be designed for replacement by the 2008 City of Billings projects. Because some projects were designed in previous years and some are being designed for construction in future years or as potential substitutes for other projects this year, design and actual replacement footages are not equivalent. Approximately 11,300 linear feet of sewer and 9,300 feet of water main will be replaced in 2008.

## **ALTERNATIVES ANALYSIS**

If the annual rehabilitation project is not constructed, the City runs the risk of failed utility lines and interruption of services to the residents of Billings.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the 2008 Water & Sewer Replacement Project with Morrison-Maierle, Inc. in the amount not to exceed \$926,713.00.

## **ATTACHMENT**

- A. Professional Services Contract and Basic Services of Engineer (18 pages)

## **Contract for Professional Engineering Services**

### **Project – City of Billings W.O. 08-01 2008 City of Billings Water and Sewer Replacement Project**

In consideration of the mutual promises herein, City of Billings and Morrison Maierle, Inc. agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 8 pages (Basic Services of Engineer);
- Appendix B consisting of 1 page (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Engineer);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 4 pages (Certificate(s) of Insurance)

#### **PART I SPECIAL PROVISIONS**

##### **Section 1. Definitions.**

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" means Morrison Maierle, Inc.

##### **Section 2. Scope of Services.**

- A. The Engineer shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Engineer in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Engineer may provide, at its own expense, any other services that are consistent with this Contract. Additional services may be provided with agreement by both parties as discussed in Appendix C.

- D. The Engineer shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 90 days after the project substantial completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Engineer shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

**Section 3. Time for Performance.**

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Engineer shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2008.

**Section 4. Compensation; Method of Payment.**

- A. Subject to the Engineer's satisfactory performance, Billings shall pay the Engineer no more than Nine Hundred Twenty Six Thousand Seven Hundred Thirteen and No/100 DOLLARS (\$926,713.00) in accordance with this Section.
- B. The Engineer is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Engineer shall have paid all City taxes currently due and owing by the Engineer.

**Section 5. Termination of the Engineer 's Services.**

The Engineer 's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Engineer in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

**Section 6. Duties Upon Termination**

- A. If Billings terminates the Engineer's services for convenience, Billings shall pay the Engineer for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and

unfinished documents and materials prepared by the Engineer shall become the property of Billings.

- B. If the Engineer's services are terminated for cause, Billings shall pay the Engineer the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Engineer's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Engineer under this Contract shall become the property of Billings at its option.
- C. If the Engineer receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Engineer shall not be entitled to any compensation under this Section until the Engineer has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Engineer's services are terminated for whatever reason the Engineer shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Engineer's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Engineer's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

## **Section 7. Insurance.**

- A. The Engineer shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Engineer shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Engineer shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$500,000 per accident.
  - 4. Professional liability in the amount of \$1,500,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all



policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

#### **Section 8. Assignments.**

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Engineer of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Engineer to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

#### **Section 9. Ownership; Publication, Reproduction and Use of Material.**

- A. Except as otherwise provided herein, all data, documents and materials produced by the Engineer under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. The Engineer shall have the right to include photographic or artistic representations of the design and construction of the Project among the Engineer's promotional and professional materials. The Engineer's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Engineer in writing of the specific information considered by Billings to be confidential and proprietary. Billings should make good faith effort to advise the Engineer of confidential and proprietary information.
- B. Equipment purchased by the Engineer with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Engineer from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Engineer's or subconsultant's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

#### **Section 10. Notices.**

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: City Engineer (Debi Meling)  
City of Billings  
Department Public Works  
510 North Broadway – 4<sup>th</sup> Floor  
Billings, Montana 59101 FAX: (406) 657-8252 / PHONE: (406) 657-3097

Engineer: Morrison-Maierle, Inc.  
Carl J. Anderson, PE, Vice President  
315 North 25<sup>th</sup> Street, Ste. 102  
Billings, MT. 59101 FAX: (406) 656-3432 / Phone : (406) 656-6000

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

### **Section 11. Contract Budget.**

In connection with its performance under this Contract, the Engineer shall not make expenditures other than as provided in line items in the Contract budget.

### **Section 12. Force Majeure.**

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
  - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
  - 2. Strikes or Work stoppages.
  - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
  - 4. Order of court, administrative agencies or governmental officers other than Billings.

### **Section 13. Financial Management System.**

The Engineer shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Engineer's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;

- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Engineer;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

#### **Section 14. Funding Requirements.**

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Engineer agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

#### **Section 15. Subcontracts.**

The Engineer may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Engineer delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Engineer.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subconsultant relating to the purchase of goods or services pursuant to the subcontract.

## PART II

### GENERAL CONTRACT PROVISIONS

#### Section 1. Relationship of Parties.

The Engineer shall perform its obligations hereunder as an independent Engineer of Billings. Billings may administer the Contract and monitor the Engineer's compliance with its obligations hereunder. Billings shall not supervise or direct the Engineer other than as provided in this Section.

#### Section 2. Nondiscrimination.

- A. The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Engineer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Engineer agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Engineer shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Engineer shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Engineer shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subconsultant or vendor of the Engineer under this Contract.
- E. The Engineer shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

#### Section 3. Permits, Laws, and Taxes.

The Engineer shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Engineer under this Contract shall comply with all applicable statutes,

ordinances, rules and regulations. The Engineer shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Engineer: Carl J. Anderson, PE, Vice President  
(title of position)

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

## Section 9. Liability.

The Engineer shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Engineer or any subconsultant as a result of the Engineer's or any subconsultant's performance pursuant to this Contract.

- A. The Engineer shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Engineer, the Engineer shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Engineer's or any subconsultant's wrongful or negligent acts occurring as a result from the Engineer's performance pursuant to this Contract.

The City shall indemnify, defend, save, and hold the Engineer harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the City as a result of the City's performance pursuant to this Contract.

- A. The City shall not indemnify, defend, save and hold the Engineer harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the Engineer occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Engineer, the City shall indemnify, defend, save, and hold the Engineer harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the City's wrongful or negligent acts occurring as a result from the City's performance pursuant to this Contract.

## Section 10. Inspection and Retention of Records.

The Engineer shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Engineer is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Engineer shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Engineer shall permit Billings to audit, examine and make copies of such

records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Engineer to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Engineer

\_\_\_\_\_  
City Council or Designee

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

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

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

ATTEST:

IRS Tax ID # \_\_\_\_\_

\_\_\_\_\_  
Cari Martin  
City Clerk

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

STATE OF MONTANA                    )  
  :ss.  
COUNTY OF YELLOWSTONE        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My Commission Expires: \_\_\_\_\_



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

## Appendix A

### Basic Services of Engineer

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#### **Section 1. Engineer's Rights and Duties.**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and Monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.
- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Carl J. Anderson, PE.

## **Section 2. Billings Rights and Duties.**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Randy Straus, PE working under the City Engineer, Debi Meling, PE.

## **Section 3. Scope of Work.**

- 1.1. The Engineer shall perform the work outlined within this agreement that includes the completion of design and construction phase services for Utility Replacement and Rehabilitation; Engineer shall assist Billings identify areas where utilities alignments best serve the needs of the project area. Engineer will coordinate work efforts with other related or unrelated improvement projects expected to be completed concurrently in the project area. Design work for the 2008 City of Billings water and sewer replacement project has approximately 11,400 linear feet of sewer main and 5,500 linear feet of water main; and, construction phase work has approximately 11,300 linear feet of sewer main and 9,300 linear feet of water main.

Completion of said design shall include the following tasks:

### **A. Preliminary Engineering Services (30% Design)**

- 1. Coordinate the Montana State Revolving Fund (SRF) loan program process on behalf of Billings. Complete all program requirements including submittal of application materials, engineering reports, and other materials as required.
- 2. Field surveys within the project limits and extending to appropriate match lines. Data collection shall include establishment of permanent horizontal and vertical control, topographic features and existing property pins. Engineer will provide appropriate temporary traffic control measures for all data collection completed in traffic areas. Field survey data will be utilized by the Engineer to develop preliminary project base mapping.

3. Research will be performed to verify existing right-of-way locations utilizing platted information, ownership records and found property pins. Determine locations where additional right-of-way must be secured and coordinate obtaining necessary construction permits.
4. Apply for all permits, licenses, and approvals necessary to construct the project; this includes, at a minimum, stormwater permits and water/sewer extension approvals from the Montana Department of Environmental Quality will be necessary. All permit and licensing fees will be paid by Billings.
5. Geotechnical engineering shall include field sampling, laboratory testing and review of subsurface soils to determine appropriate pavement section design alternatives, subgrade treatment, groundwater conditions, and foundations for utility installations. Recommendations for specific construction materials and groundwater management established in this review will be included in the project plans and specifications.
6. Coordination with Billings staff and other public and private stakeholders in the development of roadway and utility improvements.
7. Coordination with property owners adjacent to the project.
8. Planning and facilitating one (1) public informational meeting.
9. Design of utility alignments and cross-section; water main; sewer main; storm drainage; and related improvements.
10. Coordination with owners residents in piping or abandonment alternatives within the right-of-way. This may include verification of user(s).
11. Confirm appropriate utility sizing within the project limits. Design replacement of existing utilities.
12. Coordinating the identification and potential relocation of private utilities including, but not limited to, overhead and underground power, cable TV, underground telephone and communications, petroleum oil, and natural gas.
13. Prepare and submit of a Preliminary Design Report, report shall summarize project related design parameters, public utility improvements, right-of-way impacts, stakeholder impacts, traffic operations and traffic control measures, pedestrian improvements, and preliminary construction costs. Up to two (2) conceptual alternatives may also be considered for certain utility improvements. The report will also include a preliminary environmental evaluation, which reviews historical data related to the project area, including hazardous waste research and other known environmental issues. Five (5) copies of the Preliminary Design Report

and three (3) full-size preliminary water and sewer utility plan and profile plan sets will be provided to Billings for review.

**B. Preliminary Engineering Services (70% Design)**

1. The 70% design package will incorporate Billings' comments pertaining to the Preliminary Design Report and preliminary public utility plans. Updated roadway plan and profile sheets will be presented, as well as further development of the water main, sewer main, and other recommended improvements.

Five (5) full-size plan sets, two (2) half-size sets, and three (3) project specifications will be provided to Billings for review.

2. Attend periodic design review meetings with Billings.
3. Send 70% construction plans to the private utilities for review and comment, and hold a subsequent coordination meeting with the private utilities to assemble and evaluate comments.

**C. Final Engineering Services (90% & Final 100% Design).**

1. The 90% design package will incorporate comments received from Billings, after the 70% design package submittal and periodic design review meetings are complete. The plan package will include design of the plan and profile utilities drawings, related traffic control measures, water main, sewer main, and other recommended improvements.

Five (5) full-size plan sets and three (3) project specifications will be provided to Billings for review.

2. Attend periodic design review meetings with Billings.
3. Engineer will provide final design services upon receiving Billings' approval of the 90% plan package submittal. Plans and specifications will be prepared in accordance with the Montana Public Works Standard Specifications, Fifth Edition, March 2003 and City of Billings Standard Modifications, March 1, 2006. This will be completed as follows:
4. Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
5. Computation of project construction quantities and preparation of an engineer's opinion of probable construction cost.
6. Prepare and supply of all project specifications and bidding documents necessary for bidding and construction. Bid advertisement text will be provided to Billings for publication. Schedule and hold a pre-bid

conference, publish meeting minutes and prepare any necessary addenda. Conduct a pre-bid field review with contractors as necessary. Attend the bid opening, analyze bids, submit a bid tabulation, and make a construction contract award recommendation.

7. Preparation of a complete construction traffic control plan. The plan will show required detours, required signing, applicable construction phasing.
8. Submittal of ten (10) half-size and two (2) full-sized plan sets.
9. Submittal of six (6) copies of project specifications and contract bidding documents.
10. Electronic submittal of construction plans and bid documents.
11. Submittal of two (2) copies of the project specifications, two (2) half-size plan sets, contract-bidding documents, design report and certified water and sewer checklists to Montana Department of Environmental Quality (MDEQ) for approval. Also to include permit (including fees) for Storm Water Associated with Construction Activity issued by MDEQ.

#### **D. Construction Services**

1. Construction Layout and Control.
  - i. Provide personnel, equipment, and supplies for construction layout and control. Construction layout shall include, but not be limited to, measurements, lines, locations, and grades necessary for construction.
  - ii. Reference and preserve all existing survey monuments and benchmarks. All monuments required within the project shall be punched and elevations shown on as-built drawings.
2. Inspection and Testing.
  - i. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
  - ii. Provide review of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Review of work shall be made on a full-time basis while any major item of work is in progress. Major items of work shall be water, sanitary sewer, storm drain, and irrigation utilities; subgrade preparation; gravel base course preparation; concrete pouring and finishing; paving; signalization, lighting, and striping. The Engineer shall provide a minimum of **48** hours notice for Billings personnel when specific inspections or testing require their presence on the project. Each daily review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the daily review

reports shall be furnished to Billings as requested during construction. Engineer will notify Billings immediately of contract problems or deviation from approved plans.

- iii. Provide the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality assurance testing and geotechnical engineering between the project engineer, field inspector, and a project construction materials engineer. Geotechnical and materials engineering shall include interpretation and recommendations for the Engineer and Billings based upon field observation.
- iv. The Engineer shall record the location of all underground utilities (including, but not limited to, conduit for all street lighting, signalization, or flasher assemblies) installed under and on the surface within the public right-of-way and show these facilities, together with a representation of the general corridors in which other underground utilities are located, on the record drawings.

3. Submittal Review and Document Preparation.

- i. Review the construction operations and the traffic controls for construction, prior to the start of work. Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- ii. Check shop drawings, samples, equipment, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- iii. Prepare change orders that do not require additional engineering design or inspection.
- iv. Prepare monthly pay estimates and final pay estimates for construction and prepare contract administration forms on a monthly basis. These will be submitted in Billings' approved format.
- v. Issue notice to the Contractor to suspend work in whole or in part when, at the recommendation of the Engineer, it is the opinion of Billings that work is not being performed or cannot be performed in accordance with the contract documents and specifications.
- vi. Contact Billings for any proposed plan or specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept. Plan and specification changes shall be prepared by the design engineer.
- vii. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction. The Engineer is not authorized to order additional work without the approval of Billings' Task Director. Any work resulting in contract overages will be processed by approved change orders using Billings standard forms.

4. Public Involvement Services.

- i. Schedule and hold a neighborhood meeting at the beginning of the project. At a minimum, all affected property owners and businesses shall be invited to attend. Engineer will develop a mailing list to be used for notification.
- ii. Develop an overall public involvement plan to be used during construction. At a minimum, plan will include provisions for providing information to Billings to be included in monthly newsletters; press releases and road closure notifications; weekly construction meetings; and Contractor handouts. Plan to be approved by Billings prior to implementation. Additional approvals by Billings may be required for release of public involvement plan materials to the public.
- iii. In addition to holding one (1) informational meeting during the design phase of the project, schedule and hold a minimum of two (2) public meetings during the course of construction. Meeting times and locations are to be determined by Engineer and approved by Billings.
- iv. Additional meetings if requested by Billings would be compensated for in accordance with the provisions of this contract.

**E. Final Services**

1. Prepare record drawings (As-Built) and furnish Billings with one (1) paper set for review and comment.
2. Following receipt of review comments from Billings, make necessary changes and furnish Billings with a sepia and two (2) paper prints of any sheet involving traffic control devices, signals, signing or striping, and utilities plans. Furnish Billings with two (2) sets of reproducible mylars and one (1) electronic set, in AutoCAD (\*.dwg) format, of record drawings.
  - a) Offset distances measured from the centerline of the right-of-way to all public water mains and sanitary sewers.
  - b) Invert elevations marked for each manhole, structure, and each connection thereto, as well as at the end of each stubbed sanitary sewer line, stubbed wastewater service line, stubbed water main, stubbed water service line and stubbed fire line.
  - c) Locations of water and sewer services based on measurements from property lines.
  - d) Elevations indicating the depth of bury of all public water mains and sanitary sewers. These elevations shall be shown at each street or right-of-way intersection and at such intervals along the public water mains and sanitary sewers as may be deemed appropriate by the City Engineer.
  - e) Permanent bench marks shown.



- f) Record drawings and traffic control submissions are due within 60 days of Contractor's final payment and before final payment to the Engineer.
- 3. Provide one (1) bound copy (may include multiple volumes) of a project manual through final completion. At a minimum, the project manual shall include: project specifications and contract documents, pay estimates, correspondence, any change orders, Contractor submittals, test reports, daily inspection reports, public involvement plan and documentation, and other appropriate project records as determined by Billings.
- 4. Schedule and make final inspection with Billings and certify to Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
- 5. Schedule and make an inspection with Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**TITLE:** Resolution Terminating the Downtown Tax Increment District and Allocating Funds and Development Agreement with the Downtown Billings Partnership

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Downtown Billings tax increment district (TID) will sunset in March, 2008, when the final bond payment is made. State law requires that funds remaining in the City's tax increment account after the district sunsets be distributed to the taxing jurisdictions according to their respective levies. State law also allows the City to retain these funds for allowable TID expenses if the Council adopts a resolution that commits the funds to projects that will extend beyond the sunset date. The Downtown Billings Partnership (DBP) is proposing a development agreement with the City to advocate for and administer three priority projects. The Council is being asked to consider and approve the Resolution and the Development Agreement that will commit the remaining TID funds.

**ALTERNATIVES ANALYZED:** The Council may consider the following alternatives:

- Approve the Resolution and Development Agreement with the DBP and use the funds for priority projects that will be completed after the district sunsets.
- Approve the Resolution committing funds to priority projects but do not approve the Development Agreement and administer the projects with City staff.
- Approve the Resolution committing funds to different projects than the recommended ones and either approve or disapprove the Development Agreement.
- Do not approve the Resolution or Development Agreement and allow the funds remaining in the TID account to be redistributed to the taxing entities according to their respective tax levies.

**FINANCIAL IMPACT:** The estimated account balance will be \$2,500,000 after the final bond payment is made. Those funds may be allocated to 1) the GSA/federal courthouse project to purchase land and to construct parking or other public improvements, 2) to construct the intersection improvements that are needed to create a railroad quiet zone or 3) to convert one-way streets to two-way streets or for other allowable projects that are identified by the Council. DBP estimates their administrative costs to be \$220,000 for completing the projects. If the funds

are returned to the taxing entities, the approximate payments would be City - \$625,000, County - \$360,000, State - \$405,000 (education), and Schools (SD 2 and Co. transport. & retirement) - \$1,100,000. The City's portion would be distributed to the General, Public Safety, Library, MET and debt Funds.

### **RECOMMENDATION**

Staff recommends that Council approve the Resolution that allocates the remaining tax increment funds to priority projects and approve the Development Agreement with the Downtown Billings Partnership to administer the projects.

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

### **ATTACHMENT**

A:        Resolution terminating tax increment district and allocating funds

## **ATTACHMENT A**

### **RESOLUTION RELATING TO CITY OF BILLINGS DOWNTOWN URBAN RENEWAL DISTRICT; PROVIDING FOR TERMINATION OF TAX INCREMENT FINANCING; AND ALLOCATING FUNDS.**

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

#### **SECTION I: RECITALS**

1.01. Pursuant to Title 9, Chapter 14, Part 43, (the Act”) and Resolution No. \_\_\_\_, (the “Resolution”) the City, on December 18, 1978 established its Downtown Urban Renewal District (the “District”), approved an Urban Renewal Plan and elected to use tax increment financing to implement the goals of the Plan.

1.02. Pursuant to Section 7-15-4292 of the Act, the tax increment financing for the District is to terminate on the later of (a) fifteen years from the date of its adoption or (b) the date on which any bonds issued under the Act secured by the tax increment from the District are fully paid or discharged. Pursuant to the Act, the Tax Increment Financing provision for the District shall terminate on March 1, 2008, which is the date on which the last remaining bonds of the District issued by the City in the amount of \$\_\_\_\_\_ and payable from tax increment derived in the District will be discharged.

1.03. Pursuant to the Act, for the fiscal year beginning July 1, 2008 the taxes levied against the incremental taxable revenues of the District will be allocated to all taxing jurisdictions based on the respective number of mills levied and no additional funds from taxes levied after July 1, 2008 against properties located in the District shall be deposited in the Tax Increment Fund. The taxing jurisdictions levying mills against the property in the District are: the City of Billings, Yellowstone County, School District 2, the Big Sky Economic Development Authority and the State of Montana (the “Taxing Jurisdictions”).

1.04. Pursuant to 7-15-4292 of the Act, upon termination of a tax increment district, a municipality may retain and use in accordance with the provisions of the urban renewal plan any tax increment remaining in the Tax Increment Fund related to a binding loan commitment, construction contract or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision.

#### **SECTION II: FINDINGS, DETERMINATION, ALLOCATING FUND FOR PROJECTS AND PROVIDING FOR THE REMITTANCE OF EXCESS TAX INCREMENT REVENUE**

2.01. The City has approved and allocated tax increment funds for the projects in the District as shown on Schedule 1 (the “ Projects”) and costs associated with administering those Projects through completion.

2.02. The City has entered into a development agreement with the Downtown Billings Partnership (the "DBP") to complete each of the Projects. It is anticipated that some but not all of the Projects will be completed by July 1, 2008.

2.03. Pursuant to Section 7-15-4292 of the Act and under authority of this Resolution, the City shall retain on July 1, 2008 tax increment revenues on hand for the completion of each of the Projects shown in Schedule 1, administrative costs related thereto and administrative costs of closing out the District, and effective June 30, 2008, such funds shall be transferred to a Projects and Close Out Account to be maintained by the City.

2.04. If upon completion of any of the Projects, there is a contingency amount remaining and if any other Project currently under contract not yet complete requires additional money to complete, the City may authorize the use of such excess money for such Project. Upon completion of the Projects and the payment in full of all costs of the Projects, including the costs of all administrative activities associated with the Projects and closing out the District, any unexpended moneys shall be remitted to the Yellowstone County Treasurer for distribution to the Taxing Jurisdictions in accordance with the law.

### **SECTION III: TERMINATION OF DISTRICT AND PLAN**

3.01. Upon completion of the Projects herein described and the close out of all District accounts and business, the DBP shall notify the City that the work of the Partnership with respect to the District is complete. The City shall certify the amounts, if any, then on hand in the Project and Close Out Account, which shall then be transferred to the County Treasurer as provided in Section 2.04.

3.02. As of that date, the District and the Plan shall no longer be in effect and neither the City nor the DBP shall have any obligation with respect to the implementation of the Plan in the District.

3.03. Nothing herein shall preclude the City from including in other tax increment districts as may be authorized by law or transferring to other duly created districts land that was originally included in the District as long as such land meets the requirements for inclusion in a new or existing tax increment district.

### **SECTION IV: EFFECTIVE DATE**

4.01. This Resolution shall become effective on the date of adoption hereof.

Passed by the City Council of the City of Billings, Montana, this 13<sup>th</sup> day of November, 2007.

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

ATTEST: \_\_\_\_\_  
Cari Martin, City Clerk

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

---

**TITLE:** City of Billings/Yellowstone County Agreement to provide Law Enforcement Data Processing Services for the period July 1, 2007, through June 30, 2008

**DEPARTMENT:** Administrative Services – Information Technology Division

**PRESENTED BY:** David Watterson, Information Technology Manager

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**PROBLEM/ISSUE STATEMENT:** Approve the annual Data Processing Agreement between the City of Billings and the Yellowstone County Sheriff's Department. The City of Billings has contracted with Yellowstone County for the past several years to provide the Sheriff's Department with New World Public Safety access, disk storage, computer processing, program maintenance and operations to support their existing data processing requirements in exchange for a charge based on the actual cost of resources used during the prior fiscal year. This is an annual agreement.

**FINANCIAL IMPACT:** The annual charge for July 1, 2007, through June 30, 2008, is \$85,779.00. The annual charge for the prior year was \$83,970.00. The increase of \$1,809.00 is due to the increased usage of the Public Safety Systems.

**RECOMMENDATION**

Staff recommends that Council approve the agreement to provide data processing services for the Yellowstone County Sheriff's Department in the amount of \$85,779.00.

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

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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**TITLE:** City-County Special Investigations Unit (CCSIU) Agreement  
**DEPARTMENT:** Police Department  
**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** Each calendar year the CCSIU Agreement with Yellowstone County needs to be approved. The current agreement will expire on December 31, 2007. It is now time to approve the agreement for the year 2008. This agreement has been reviewed with Undersheriff Jay Bell of the Yellowstone County Sheriffs Office. When the Council approves this agreement, it will then be sent over to Yellowstone County for the Commissioners' approval.

**FINANCIAL IMPACT:** There will be no additional financial impact to the City since the officers involved are currently included in the Police Department budget and Fund 718 is where all expenditures are budgeted for CCSIU.

**RECOMMENDATION**

Staff recommends that Council approve and authorize the Mayor to sign the CCSIU agreement with Yellowstone County.

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

**ATTACHMENT**

A-CCSIU Agreement w/Yellowstone County – 4 pages



# ***AGREEMENT***

## ***CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)***

This Agreement establishes and governs the operation of the ***CITY-COUNTY SPECIAL INVESTIGATIONS UNIT (CCSIU)***:

The undersigned public agencies are charged with enforcing the law and protecting their citizens from illegal activity. Recognizing that resources are limited and that such limitations are detrimental to combating crime within Yellowstone County and the City of Billings, and recognizing that the problem can be most effectively resolved by pooling of resources and the joint exercise of respective authorities, a joint CCSIU is established.

***PARTIES:*** This Agreement is between:

- (1) Billings Police Department
- (2) Yellowstone County Sheriff's Office

***DURATION:*** This Agreement is in effect from January 1, 2008 through December 31, 2008.

### **PROJECT DESCRIPTION:**

It is proposed that a joint City-County Special Investigations Unit be established. This Unit will be comprised of personnel assigned from the Yellowstone County Sheriff's Office and the Billings Police Department. It is agreed that full-time investigative personnel will be assigned to the Unit. The CCSIU will be a component of the Rocky Mountain High Intensity Drug Traffic Area (RMHIDTA). Either agency may withdraw from the Unit at any time with 30 days notice.

### **STRUCTURE AND ORGANIZATION:**

The Unit Supervisor and Unit members will be determined by mutual agreement between both agencies. The Unit Supervisor shall be responsible to keep both agencies informed on all matters relating to the operations, including expenditures, accomplishments, problems and all other issues involving the CCSIU.

All persons assigned to the Unit shall work under the immediate supervision and direction of the Unit Supervisor. City Detectives will be indirectly supervised and evaluated by the Captain of Investigations or his designee. All persons assigned to the Unit shall adhere to the rules and regulations as set forth in the Unit's Policy and Procedures Manual, as well as their individual departmental rules, policies and procedures.

For the purpose of indemnification of participating jurisdictions against losses, damages, or liabilities arising out of the services and activities of the Unit, the personnel so assigned by any

jurisdiction shall be deemed to be continuing under the employment of that jurisdiction and its police department.

Each agency contributing personnel to the Unit will continue that employee as an employee of the contributing agency and will be solely responsible for that employee, including wages and benefits.

Any duly sworn peace officer, while assigned to duty with the Unit as herein provided and working at the direction of the Unit Supervisor, shall have the same powers, duties, privileges, protections and immunities as are conferred upon him/her as a peace officer in his/her own jurisdiction. Billings Police Officers will be deputized as Yellowstone County Sheriff's Deputies while assigned, even on a temporary basis, to the CCSIU.

### **CONTEMPLATED UNIT TASKS:**

At the direction of the Unit Supervisor, the CCSIU will concentrate efforts on local cases. Investigations will center around narcotics trafficking and organized criminal activities. In circumstances where a determination of specific priorities of these investigations must be made, the Unit Supervisor will make the determination in consultation with the Sheriff and Police Chief, or their designees.

### **UNIT OBJECTIVES:**

This section identifies specific targeted objectives to be attained by the CCSIU during the program year. Objectives will be reviewed and revised as necessary by December 1, 2008.

- 1) Disrupt illegal drugs, drug/gang and organized criminal activities within the City, County and State.
- 2) Gather and report intelligence data relating to illegal drugs, drug/gang and organized criminal activities within the City, County and State.
- 3) Make arrests that will impact all levels of drug and organized criminal activities.
- 4) Effectively prosecute drug traffickers and organized criminal activity participants.
- 5) Promote law enforcement cooperation through joint investigations and close coordination with other police agencies and task forces.

### **PETTY CASH AND FORFEITURE FUND:**

Agencies involved in the City-County Special Investigations Unit will each place SIX *THOUSAND DOLLARS* (\$6,000.00) into the Petty Cash Fund. The monies will be utilized by the Unit for buys and informants. As financial transactions take place, an equal amount of monies will be deducted from each agency's monies. The Supervisor of the Unit will be responsible for administering the monies as needed and keeping a running log of all

expenditures, to include incident numbers and reason for purchase(s). The money log will be audited by the Yellowstone County Auditor or his/her representative, on a quarterly basis. A copy of the audit will be submitted to the Captain of Investigations or his designee.

Replacement of the Petty Cash Fund will be accomplished by the following procedures:

***CITY OF BILLINGS:***

The Unit Supervisor will make a written request through the Captain in charge of Investigations or his designee, who, in turn, will approve the request and submit it to the City Finance & Administrative Services Department. The City Financial Services Manager will direct monies to the Unit Supervisor, who will deposit the reimbursement back to the Petty Cash Fund.

***YELLOWSTONE COUNTY:***

The Unit Supervisor will make a written request to the Yellowstone County purchasing department to replenish their portion of the fund.

Forfeiture vehicles that are to be sold at auction will be sold at either the Yellowstone County Sheriff's Sale or at auction by the Billings Police Department. Any forfeiture monies acquired by the Unit from any source will be split equally between the agencies. All forfeiture procedures will be handled by the Unit Supervisor and the Yellowstone County Attorney's Office, at no cost to the City.

**INDEMNITY CLAUSE:**

The City shall have the duty to defend Yellowstone County and shall indemnify and hold harmless Yellowstone County and its agents and employees from and against all claims, liabilities, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claims, liability, damage, loss, judgment or expense is caused in whole or in part, by a negligent act, error or omission of the City, its employees or agents.

Yellowstone County shall have the duty to defend the City and shall indemnify and hold harmless the City and its agents and employees from and against all claims, liabilities, damages, losses, judgments and expenses, including attorney's fees, arising out of or resulting from this contract provided that any such claim, liability, damage, loss or expense is caused in whole or in part by any negligent act, error, or omission of Yellowstone County, its employees, officials or agents.

**RESOURCES:**

All available resources that are currently available in the City of Billings Investigations Division and in the Yellowstone County Investigations Division will be made available to the CCSIU. Any specialized equipment that is not being kept at the location of the CCSIU office will need to be borrowed by an assigned CCSIU detective from that agency.

THIS AGREEMENT IS EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

SIGNED:

\_\_\_\_\_  
*MAYOR, CITY OF BILLINGS*

DATE\_\_\_\_\_

\_\_\_\_\_  
*COUNTY COMMISSIONER*

DATE\_\_\_\_\_

\_\_\_\_\_  
*COUNTY COMMISSIONER*

DATE\_\_\_\_\_

\_\_\_\_\_  
*COUNTY COMMISSIONER*

DATE\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CARI MARTIN, CITY CLERK  
CITY OF BILLINGS

\_\_\_\_\_  
TONY NAVE  
CLERK AND RECORDER  
YELLOWSTONE COUNTY

APPROVED AS TO FORM:

\_\_\_\_\_  
BRENT BROOKS, CITY ATTORNEY  
CITY OF BILLINGS

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

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**TITLE:** Construction Agreements with Montana Department of Transportation  
City Maintained Routes

**DEPARTMENT:** Public Works Department – Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** The Montana Department of Transportation (MDT) and the City of Billings propose to construct certain improvements on urban routes in and through the City. The three routes were selected by City Staff due to condition and are Broadwater Ave from Division to 12<sup>th</sup> Street West; Broadwater Ave from 28<sup>th</sup> to Shiloh Road; and Yellowstone River Road from Bench to Iristen. The improvements consist of milling and overlaying. An agreement between the City and MDT is necessary to outline the scope of the project and the responsibility of maintenance for the City. All streets are currently being maintained by the City.

**ALTERNATIVES ANALYZED:**

- Approve the agreement between the Montana Department of Transportation and the City of Billings
- Do not approve the agreement between the Montana Department of Transportation and the City of Billings

**FINANCIAL IMPACT:** These projects are 100% funded by MDT with MDT funds and Federal funds. There is not monetary obligation for the City of Billings.

**RECOMMENDATION**

Staff recommends that Council approve the Construction Agreements between the City of Billings and the Montana Department of Transportation.

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

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J

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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**SUBJECT:** Vehicle Lease Agreement with Underriner Motors for Montana Internet Crimes Against Children (ICAC) Task Force Lease Vehicle

**DEPARTMENT:** Police Department

**PRESENTED BY:** Rich St. John, Chief of Police

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**PROBLEM/ISSUE STATEMENT:** The City has been awarded an Internet Crimes Against Children (ICAC) Grant in the amount of \$250,000, which will provide monies to form a task force to serve the State of Montana, creating satellite offices in Helena and Missoula; hire a task force coordinator/forensic examiner on a contract basis; enlarge the Billings office at the FBI location; secure office furniture, equipment, training, supplies and phone services. The lease vehicle will be for the use of the coordinator/forensic examiner. Underriner Motors has agreed to a lease agreement which will run from December 1, 2007, thru February 29, 2009. City Council is being asked to approve this vehicle lease agreement in the amount of \$5,250 for the ICAC Task Force.

**FINANCIAL IMPACT:** The cost of leasing this vehicle will be \$5,250 (\$350 per month), and the dollars are budgeted in the grant.

**RECOMMENDATION**

Staff recommends Council approval of the attached lease agreement between Underriner Motors and the City of Billings to lease one (1) vehicle for the Internet Crimes Against Children Task Force from December 1, 2007, through February 29, 2009, in the amount of \$5,250.

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

**ATTACHMENT**

A - Lease Agreement with Underriner Motors – 5 pages

# **AUTOMOBILE LEASE AGREEMENT**

This AGREEMENT made November 13, 2007 by and between **UNDERRINER MOTORS** with its principal place of business at 523 North 29th Street, Billings, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of one (1) vehicle for the Internet Crimes Against Children (ICAC) Task Force.

The terms of this agreement is for a period of 15 months from December 1, 2007 through February 29, 2009 with the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of THREE HUNDRED FIFTY DOLLARS (\$350.00) per vehicle for a total of FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00).

2) **MAINTENANCE:** The LESSEE will bear all expense of maintaining the leased vehicle in good operating condition. The LESSEE shall provide and pay for all gasoline, oil, maintenance, washing, tire and battery replacements, and all necessary repairs other than those covered by the standard manufacturer's limited warranty, where applicable. LESSEE also agrees to pay the deductible in connection with any collision losses.

3) **LICENSING:** The LESSEE agrees to pay at its own cost and expense, State License Fees imposed against said vehicle(s). Each lease vehicle shall bear a license plate, and title shall be registered in the name of the LESSOR.

4) **INSURANCE:**

A) The LESSEE agrees to furnish and keep in force and effect an acceptable public liability and property damage insurance policy covering all leased vehicles(s), naming therein or by endorsement thereto, the LESSOR as an additional insured. The minimum limits of liability coverage shall be in the amount of \$500,000 combined single limit for all person(s) killed or injured in any one accident, for property damage or loss of use of property of third persons as a result of any one accident. Prior to delivery of possession of said vehicle(s) hereunder, the LESSEE agrees to furnish the LESSOR with a valid certificate of an acceptable insurance company, licensed in Montana, certifying that such insurance is in force and agreeing that the same shall not be cancelled except upon ten days' prior written notice to the LESSOR.

B) LESSEE agrees that it will, and will cause its agents and employees and their families, to cooperate fully with LESSOR and all insurance carriers required by this lease in the investigation, prosecution, and defense of all claims arising from all hazards insured hereunder.

5) **EXCESS MILEAGE:** LESSEE agrees to pay for excess mileage at the rate of \$.10 per mile in excess of 15,000 miles per year. The payment for excess mileage shall be due at the end of the term of the lease.

6) **PERMISSION TO MOVE:** LESSEE agrees to notify and gain written permission from LESSOR should LESSEE decide to move the leased property as described above from the address stated above to another state on a permanent basis or for an extended period of time (longer than six (6) months).

7) **NOTICE:** LESSEE agrees to inform the LESSOR immediately regarding any accident, collision or other damage to the said vehicle(s). All other notices required to be given under the terms of this lease shall be in writing and shall be sent by United State Registered Mail or Certified Mail addressed to the party to be notified at its address as above stated.

8) **SECURITY AGREEMENT:** LESSOR shall have the right to finance any vehicle(s) now or hereafter covered by this lease by arranging for a Security Agreement thereon or by assigning LESSOR's interest under this lease or both, and LESSEE agrees that such Security Agreement placed by LESSOR shall be superior to this lease.

9) **REASONABLE CARE:** LESSEE agrees to use reasonable care in the operation of said vehicle(s) and, in good faith, to require reasonable care from users authorized by LESSEE hereunder, including the obligation to maintain the vehicle(s). In any event, LESSEE shall be held personally liable to LESSOR pursuant to the terms of this lease, regardless of permissive use by third parties.

10) **REPLACEMENT VEHICLES:** At any time during the initial or any renewal term of the within lease, the LESSOR may replace the above-described vehicle(s) with a vehicle of the same make and year, such replacement vehicle being in equal or better operating condition; in such event, all the terms and conditions of the within lease shall apply to any and all such replacement vehicle(s) for the term of this agreement or any renewal thereof.

11) **AGENTS:** LESSEE agrees to permit said vehicle(s) to be used only by LESSEE, (its) (his) agents or employees, and by no others. No operator or driver of said vehicle(s), including LESSEE shall have authority to act on behalf of the LESSOR under any circumstances.

12) **NON-LIABILITY:** LESSOR shall not be liable for any loss from the interruption of, or damage to the LESSEE'S business, and shall not be liable to any of the authorized uses hereunder, in connection with any operating failure of said vehicle(s) (or substitute vehicles provided to LESSEE during repair of the leased vehicle(s) or its replacement), or in connection with any delay in making repairs thereon or furnishing replacement(s) therefor.

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby releases and agrees to indemnify the LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by



applicable insurance as otherwise herein provided. However, Lessee does not release and indemnify LESSOR for any negligent act or omission of LESSOR arising from this lease.

14) **OWNERSHIP:** It is expressly understood and agreed that this Agreement is a contract for leasing only, and that the LESSEE acquires no ownership, title, or property right or interest in, of, or to the said motor vehicle(s) and equipment, but acquires only the right to use the vehicle(s) in accordance with the provision of this lease. Any accessories installed on said vehicle(s) by the LESSEE may be removed upon expiration of this lease. If such removal shall, in the opinion of the LESSOR, cause damage to said vehicle(s), the LESSEE agrees to pay the Lessor for such damage.

15) **RETURN:** Upon the termination of this lease, the leased vehicle(s), at the expense of the LESSEE, shall be returned to the place of business of the LESSOR in as good condition as when received, ordinary wear and tear excepted. This return provision shall apply to all substitute vehicles which may be the subject of this contract.

16) **EARLY TERMINATION:** Early termination of this Lease may result in an early termination charge to LESSEE.

17) **ASSIGNMENT, PLEDGE, LIENS, AND ENCUMBRANCES:** This lease may not be assigned, except by the LESSOR as provided herein. The LESSEE shall not have the right to pledge or otherwise encumber this lease or any interest therein nor shall the LESSEE have the right to encumber or otherwise suffer any lien to be placed against the leased vehicle(s), or abandon or conceal the leased vehicle(s). The LESSEE shall not sublet the leased vehicle(s) or any replacement vehicle(s) without the written consent of the LESSOR.

18) **WAIVER:** The failure of either party in any one or more instances to insist upon the performance of any of the terms, covenants or conditions of this lease, or to exercise any right or privilege in this lease conferred, or the waiver of any breach of any of the terms, covenants, or conditions of this lease, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect, as if no such forbearance or waiver had occurred.

19) **DEFAULT:** If the LESSEE shall default in the payment in any of the installments of rent as herein provided, or breach any of the terms, conditions or provisions herein contained, or, during the term of this lease, shall file a voluntary petition in bankruptcy, shall make an assignment for the benefit of creditors or shall be adjudicated bankrupt; if a receiver shall be appointed for LESSEE'S business; or if LESSOR deems itself insecure, LESSOR may at its election terminate this Agreement without notice to LESSEE and shall thereupon be entitled to the immediate possession of any and all vehicles in LESSEE'S possession hereunder. In the event this Agreement shall be so terminated, LESSEE shall not be released from any liability to LESSOR for LESSEE'S failure to make any of the payments required by this Agreement or for LESSEE'S failure or inability to perform the conditions of this Agreement, and LESSEE hereby waives all claims for injury suffered through or loss caused by such repossession.

Upon default, the balance of the installments of rent, to the end of this lease or any existing extension of it, shall, without notice or demand by the LESSEE, at once become due and payable; and in addition thereto, the LESSEE hereby authorizes and empowers the LESSOR to enter its premises or any other place where the leased vehicle(s) may be found, forcibly if necessary, to take possession and carry away and remove such vehicle(s), with or without legal process and thereby terminate the LESSEE'S right to retention and use of such vehicle(s). In the event any legal proceedings shall be instituted by LESSOR against LESSEE to recover any sums due or to become due hereunder and/or for the repossession of the vehicle(s) leased hereunder, LESSEE shall pay to LESSOR reasonable attorneys' fees sand costs of repossession.

20) **BINDING EFFECT:** This lease shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and assigns.

21) **ENTIRE AGREEMENT:** This lease together with the Vehicle Lease Disclosure Statement represents the entire Agreement between the parties. All prior negotiations have been merged into this lease, and there are no understandings, representations, or agreements, oral nor written, express or implied, other than those set forth herein. This lease shall not be modified or amended except by an agreement in writing signed by the parties.

22) **CONSTRUCTION:** This lease shall in all respects be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed the day and year first above written.

LESSEE:

CITY OF BILLINGS

BY \_\_\_\_\_  
RON TUSSING, MAYOR

LESSOR:

UNDERRINER MOTORS

BY \_\_\_\_\_  
BILL UNDERRINER  
ITS: OWNER

ATTEST BY:

\_\_\_\_\_  
CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
BRENT BROOKS, CITY ATTORNEY

175.VEHICLE LEASE AGRMT FOR ICAC TASK FORCE

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Assignment and Transfer of West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On May 29, 2007, John M. and/or Marcia A. Nash entered into two (2) twenty-year, West End Hangar Ground Leases with the City of Billings, and subsequently built a 7,200 square foot duplex-style hangar containing two 3,600 square foot units on a leased parcel in Township 1 North, Range 25 East, Section 25, referred to as Lots 10 and 11. This is the second hangar of this size and style built by Mr. and Mrs. Nash. The Nashes have opted to sell one-half of this second hangar, Hangar unit #2807, to Drew C. and/or Jennifer R. White. This Assignment and Transfer will formally transfer the Ground Lease on Lot 11 from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White. The Nashes sold the other one-half of this hangar to James C. and/or Gail G. Heatherly. The Assignment and Transfer to Mr. and Mrs. Heatherly was approved on October 9, 2007.

**FINANCIAL IMPACT:** There is no financial impact from this action. The name on the Lease is all that changes with this Assignment and Transfer; all other terms and conditions remain in full force and effect.

**RECOMMENDATION**

Staff recommends that Council approve the Assignment and Transfer of the West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Drew C. and/or Jennifer R. White.

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

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

L

**AGENDA ITEM:**



**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

**TITLE:** Commercial Terminal Building Lease with ARINC Incorporated

**DEPARTMENT:** Aviation and Transit

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

**PROBLEM/ISSUE STATEMENT:** ARINC Incorporated wishes to lease space in the Terminal Building in which to place equipment for ground-based communication links for support of the Transportation Security Administration (TSA). The twenty-five (25) square foot Lease provides a space for the location of the telecommunications equipment on the west side of the Terminal Building and a rooftop antenna. This Lease will be the third lease for placement of equipment of this type. ARINC will install and maintain the equipment at no cost to the City. Standard insurance and indemnification language is included in the Lease. The Lease term is for one year, with automatic annual renewals.

**FINANCIAL IMPACT:** The first year of this Lease will generate \$3,110.48 of revenue for the City's Airport. Subsequent years will be adjusted on the anniversary date, using the Consumer Price Index - Urban to keep pace with annual inflation.

**RECOMMENDATION**

Staff recommends that Council approve the one year Lease with ARINC Incorporated. The term will commence November 1, 2007, and will be automatically renewed annually, until cancelled by either party.

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Approval of Limited Commercial Ground Lease with Aerotronics, Inc.

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Aerotronics, Inc. has been a long-term tenant of Billings Logan International Airport and recently experienced a change of ownership of the corporation. The new owners requested a new, long-term lease over which to amortize their purchase costs. Additionally, Aerotronics has requested some additional property from its current southern boundary to the security fence. This new twenty (20) year ground Lease would be for 95,915 square feet. Aerotronics is also planning to make future capital improvements in its facility and to repave around the facility. The Lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language.

**FINANCIAL IMPACT:** This ground Lease will generate \$17,456.52 in the first year of the Lease. The ground Lease rate of \$0.182 per square foot per annum is in line with the rate being paid by other ground lease tenants located in this area. Future Lease year rentals will be adjusted annually by the Consumer Price Index for all Urban Consumers (CPI-U).

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a new twenty-year Limited Commercial Aviation Ground Lease at Billings Logan International Airport with Aerotronics, Inc. beginning October 1, 2007, and terminating September 30, 2027.

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

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Amendment of Lease for Office Space to the Transportation Security Administration (TSA)

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** On September 8, 2003, City Council approved a Lease with the U.S. General Services Administration (GSA) for the remodeling and use of Airport Terminal Building space, for use by the Transportation Security Administration (TSA) security screening staff, providing a total of 1,101.20 square feet of usable space for TSA operations. On April 24, 2006, the City Council approved a Lease Amendment for 177 square feet of additional space to store supplies at the Airport Terminal Building, and to provide a private office for their supervisors to handle employee issues, customer complaints, etc. The TSA has requested a second amendment to add 523.53 square feet of space in the basement of the Terminal Building for additional office and storage space.

**FINANCIAL IMPACT:** The additional 523.53 square feet of space will add \$15,705.96 to the annual Lease rate paid to the City by the TSA. This Amendment increases the total leased space to 1,801.73 square feet, and the total annual Lease rental to \$52,598.07. In this particular GSA Lease, the rate is fixed until the Lease expires on May 31, 2009.

**RECOMMENDATION**

Staff recommends that Council approve and the Mayor execute the Lease Amendment for the TSA office and storage space.

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

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



AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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**TITLE:** Airline Operating Permit with ExpressJet Airlines  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** ExpressJet Airlines has entered into an agreement with Frontier Airlines, Inc. and will implement daily service to Billings effective November 15, 2007. ExpressJet will provide this service in the interim, as Frontier transitions to its Lynx operation. To ensure that specific operating requirements will be met, a Scheduled Airline Operating Permit between the City of Billings and ExpressJet is required. This is a standard Operating Permit that is used for various airlines that operate occasionally for the Signatory Airlines that are based in Billings. The Operating Permit ensures that the airline follows certain operating parameters and procedures, including providing proof that the proper insurance coverage is in place.

**FINANCIAL IMPACT:** There will be no financial impact from this operation because the City is already receiving landing fees from Frontier Airlines. ExpressJet will merely be replacing Frontier's aircraft with its own.

**RECOMMENDATION**

Staff recommends that Council approve and the Mayor execute the Scheduled Airline Operating Permit with ExpressJet Airlines.

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

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



## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Road Right-Of-Way and Park Land Annexation Request #07-05,  
Acknowledge Request, Approve Resolution of Intent to Annex, Set a  
Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex a portion of park land along the Zimmerman Trail road right-of-way and portion of the Zimmerman Trail right-of-way to the City of Billings under 7-2-4401, et seq. MCA (See Attachment D). The total property is 13.4 acres in size. Yellowstone County recently quit claim deeded the 4.2 acre parcel of park land to the City and in 2005 quit claim deeded the road right-of-way (See Attachment C). The property borders and includes the Zimmerman Trail road right-of-way as it climbs the rim rocks to Highway 3 (See Attachment B).

The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City from the County in areas where annexations are occurring. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. Since the County has quit claim deeded the road right-of-way and the adjacent park land to the City, and the City limits border these properties to the east, the City now is ready to annex the properties as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is

consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the right-of-way and park land annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. Park Land and Right-Of-Way Quit Claim Deeds
- D. City Annexation Request Letter

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in Section 27, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Zimmerman Trail between Rimrock Road and State Highway No. 3, as recorded in Book 342, Page 349, Recorded May 11, 1949, Under Document No. 450203, Records of Yellowstone County, also described under Quitclaim Deed, Yellowstone County to the City of Billings, Recorded December 5, 2005, Under Document No. 3359157, Records of Yellowstone County, being a strip of land 100.0 feet in width to the following described centerline:

Beginning at a point on the south line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17°28' curve right ( $\Delta=67^{\circ}28'$ ); thence Easterly 165.9 feet on a 25°43' curve right ( $\Delta=42^{\circ}40'$ ); thence South 69°52' East, 96.5 feet; thence South 69°0' East, 202.4 feet; thence Easterly 351.2 feet on an 8°18' curve left ( $\Delta=29^{\circ}09'$ ); thence North 81°51' East, 66.0 feet; thence North 85°18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6°0' curve left, ( $\Delta=22^{\circ}34'$ ); thence North 62°44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41°0' curve left ( $\Delta=75^{\circ}25'$ ); thence North 12°41' West, 219.8 feet; thence N. 19°01' West, 388.0 feet; thence Northwesterly 392 feet on a 24°0' curve left ( $\Delta=92^{\circ}21'$ ); thence S. 68°38' West, 232 feet; thence Northwesterly 450 feet on a 19°0' curve right ( $\Delta=85^{\circ}30'$ ); thence Northeasterly 371.7 feet on a 15°0' curve right ( $\Delta=55^{\circ}45'$ ); thence North 29°53' East, 93.3 feet, more or less to the

intersection with the center line of the new Billings-Broadview road (now known as State Highway No. 3), including all adjacent right-of-way of State Highway No. 3;

Also that portion of Yellowstone County Park land wholly surrounded by the previously described portion of Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5<sup>th</sup> Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6<sup>th</sup> Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

Containing 13.401 gross acres and 4.205 net acres, more or less.  
(# 07-05) See Exhibit "J" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in MCA, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10th, 2007.
5. PROCEDURE. All procedures as required under MCA, Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

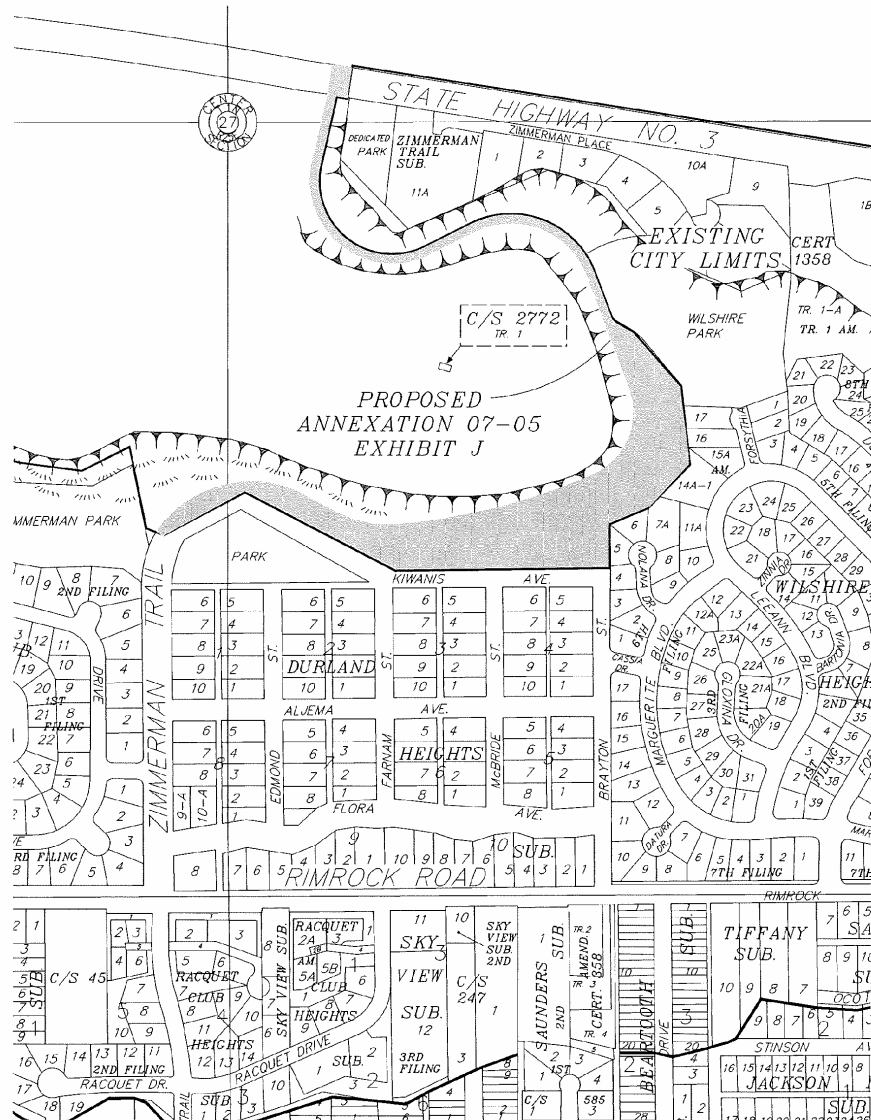
BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-05)

**ATTACHMENT B**  
Annexation Map – Annexation #07-05

*EXHIBIT J*



## ATTACHMENT C

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



3428327  
Page: 1 of 3  
06/28/2007 09:22R

### QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Section 27, T.1N., R.25E., P.M.M., Yellowstone County, Montana:

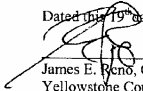
That portion of Yellowstone County Park land wholly surrounded by Zimmerman Trail to the west; Durland Heights Subdivision, Recorded September 22, 1951, Under Document No. 482159, Records of Yellowstone County to the south; Wilshire Heights Subdivision 5<sup>th</sup> Filing, Recorded October 10, 1972, Under Document No. 918177, Records of Yellowstone County, and Wilshire Heights Subdivision 6<sup>th</sup> Filing, Recorded February 9, 1973, Under Document No. 926987, Records of Yellowstone County to the east; and Wilshire Park of Certificate of Survey No. 972, Recorded September 29, 1964, Under Document No. 739703, Records of Yellowstone County to the north.

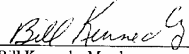
Said Tract containing 4.205 acres more or less.

AS SHOWN BY EXHIBIT "A", consisting of one sheet, attached hereto and made a part of.

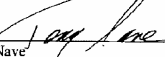
The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its June 19, 2007 meeting.

Dated this 19<sup>th</sup> day of June 2007.

  
James E. Reno, Chairman  
Yellowstone County Commissioner

  
Bill Kennedy, Member  
Yellowstone County Commissioner

  
John Ostlund, Member  
Yellowstone County Commissioner

Attest:  
  
Tony Nave  
Yellowstone County Clerk and Recorder



3428327

Page: 2 of 3  
06/28/2007 08:22

State of Montana }  
County of Yellowstone }

On June 19, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz  
Teri Reitz  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires 2-27-2010

(Notarial Seal)



**ACKNOWLEDGEMENT 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.

Ron Tussing  
Ron Tussing, Mayor, City of Billings

ATTEST:

By: Cari Martin  
Cari Martin, City Clerk



State of Montana }  
County of Yellowstone }

On this 21<sup>st</sup> day of June, 2007, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and Cari Martin known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

Wynnette J. Maddox  
Wynnette J. Maddox  
Notary Public for the State of Montana  
Residing in Billings, Montana Shepherd  
My commission expires 9-16-2010







3359157

Page: 1 of 2  
12/05/2005 09:51A

RETURN TO:

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

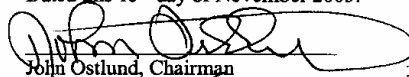
Quit Claim Deed

For valuable consider, Yellowstone County, a political subdivision of the State of Montana, through its Board of County Commissioners, conveys and quit claims to the City of Billings, a government entity, all its interest in the property described below that is located in Yellowstone County, Montana:

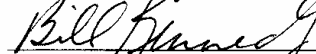
Zimmerman Trail, legally described as a strip of land 100 feet in width in Section 27, Township 1 North, Range 25 East, M.P.M., the center line of which strip of land is more particularly described as follows: beginning at a point on the South line of Section 27, Township 1 North, Range 25 East M.P.M. which point is 2904.9 feet west of the Southeast corner of said section; thence due North, 1105 feet; thence Northeast 382.6 feet on a 17° 28' curve right ( $\Delta = 67^\circ 28'$ ); thence Easterly 165.9 feet on a 25° 43' curve right ( $\Delta = 42^\circ 40'$ ); thence South 69° 52' East, 96.5 feet; thence South 69° 0' East, 202.4 feet; thence Easterly 351.2 feet on an 8° 18' curve left ( $\Delta = 29^\circ 09'$ ); thence North 81° 51' East, 66.0 feet; thence North 85° 18' East, 110.3 feet; thence Northeasterly 376.1 feet on a 6° 0' curve left, ( $\Delta = 22^\circ 34'$ ); thence North 62° 44' East, 90.3 feet; thence Northeasterly, 183.9 feet on a 41° 0' curve left ( $\Delta = 75^\circ 25'$ ); thence North 12° 41' West, 219.8 feet; thence North 19° 01' West, 388.0 feet; thence Northwesterly 392 feet on a 24° 0' curve left ( $\Delta = 92^\circ 21'$ ); thence South 68° 38' West, 232 feet; thence Northwesterly 450 feet on a 19° 0' curve right ( $\Delta = 85^\circ 30'$ ); thence Northeasterly 371.7 feet on a 15° 0' curve right ( $\Delta = 55^\circ 45'$ ); thence North 29° 53' East, 93.3 feet, more or less to intersection with the center line of the new Billings-Broadview road.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2003) at its November 15, 2005 meeting.

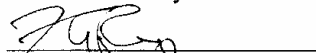
Dated this 15<sup>th</sup> day of November 2005.

  
John Ostlund, Chairman

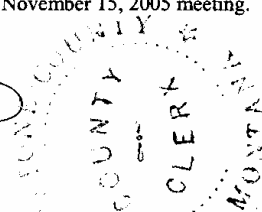
Yellowstone County Commissioner

  
"Bill" Kennedy, Member

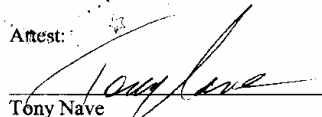
Yellowstone County Commissioner

  
James E. Reno, Member

Yellowstone County Commissioner



Attest:

  
Tony Nave

Yellowstone County Clerk and Recorder

State of Montana }  
ss.  
County of Yellowstone }

I acknowledge that on November 15, 2005, before me, personally appeared John Ostlund, "Bill" Kennedy and James E. Reno, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, the

Quit Claim Deed  
Yellowstone County to City of Billings  
Zimmerman Trail  
1 of 2



3359157

Page: 2 of 2  
12/05/2005 09:51A

Yellowstone County Clerk and Recorder, and executed the attached quit claim deed on behalf of Yellowstone County in their official capacity as Board Members and the Clerk and Recorder.

Harriett Buchman

HARRIETT BUCHMAN

Notary Public For the State of Montana

Residing at Billings, Montana.

My commission expires 3-10-2008

(Notarial Seal)



### Acknowledgment and Acceptance of Conveyance

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

Charles F. Tooley  
Mayor, City of Billings

11/28/05  
Date

Attest: Susan Shunler  
Deputy City Clerk



State of Montana }  
ss.  
County of Yellowstone }

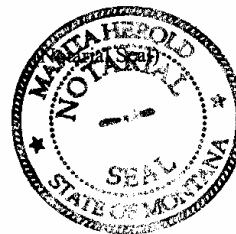
On this 28<sup>th</sup> day of November 2005, before me, a notary public in and for the State of Montana, personally appeared Charles F. Tooley as Mayor and Susan Shunler Deputy City Clerk of Billings known to me to be the persons who signed, respectively, and acknowledged to me that they executed the foregoing instrument. Witness, Whereof, I have hereunto set my hand and my seal the day and year herein above written.

Marita Herold  
Marita Herold

Notary Public For the State of Montana

Residing at Billings, Montana.

My commission expires 7/24/2008



## ATTACHMENT D



### CITY OF BILLINGS OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



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#### Memorandum

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

---

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.



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

Q

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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**TITLE:** Road Right-Of-Way Annexation Request #07-11, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex this 3.74 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City from the County in areas where annexations are occurring. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. Property to the south of this property on Broadwater Avenue was annexed previously and all of the Broadwater Avenue right-of-way was not included in previous annexations. The City is now ready to annex this right-of-way property as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government officials under 7-2-4403, MCA, are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- E. Resolution of Intent to Annex and Set Public Hearing
- F. Map
- G. City Annexation Request Letter

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the N1/2 of Section 2, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 10-A-2, of Amended Tracts 8-A Through 13-A of Certificate of Survey No. 2314, Recorded January 7, 1992, Under Document No. 1619771, Records of Yellowstone County, Montana, less that portion previously annexed under City of Billings Ordinance No. 4421 Passed by the City Council and Approved by the Mayor February 1, 1982.

Containing 3.741 gross acres.  
(# 07-11) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.

2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

BY: \_\_\_\_\_

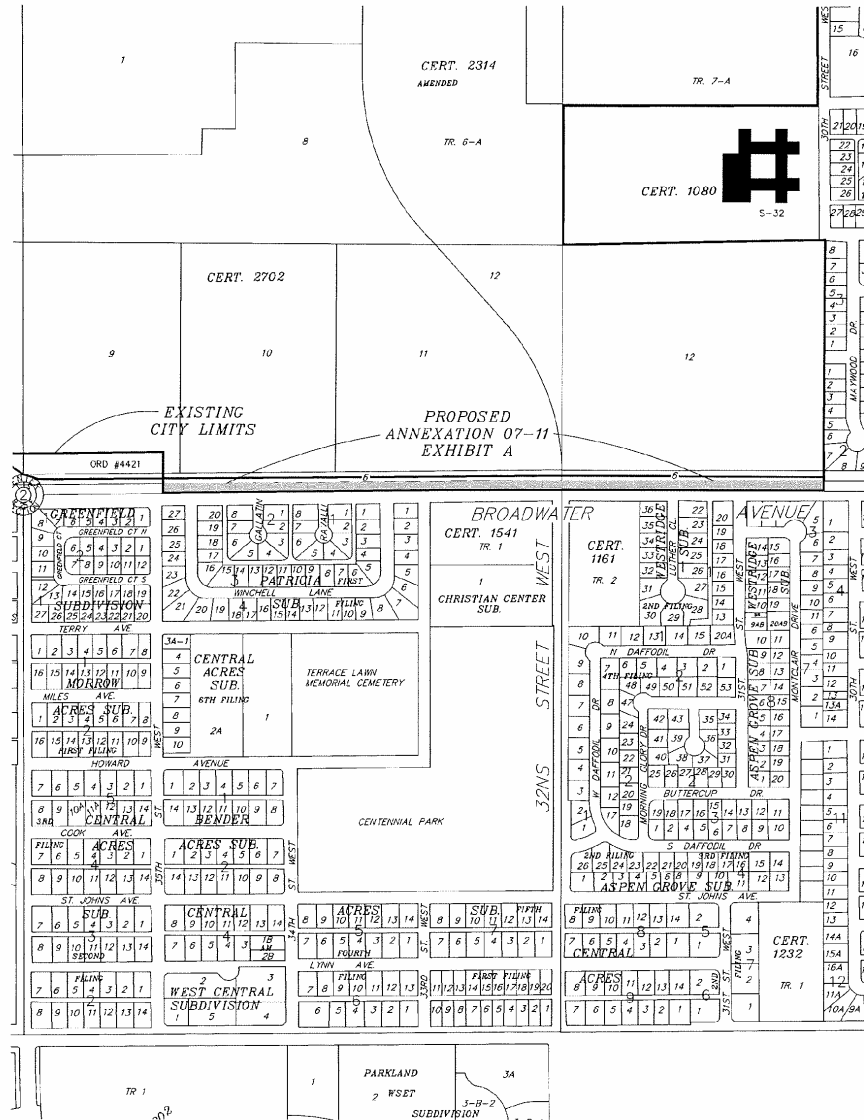
Cari Martin, CITY CLERK

(AN #07-11)

# ATTACHMENT B

## Annexation Map – Annexation #07-11

### EXHIBIT A





## ATTACHMENT C



### CITY OF BILLINGS OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



#### Memorandum

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Road Right-Of-Way Annexation Request #07-12, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex this 1.69 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. This particular property is scheduled to be quit claimed by the County to the City on November 20, 2007, and the City Council is expected to accept this quit claim deed when it considers annexation of this property at its meeting on December 10. Property to the north of this right-of-way property on Bell Avenue was annexed previously and all of the Bell Avenue right-of-way was not included in that annexation. The City is now ready to annex these rights-of-way as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. City Annexation Request Letter

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NE1/4 of Section 10, T.1S., R.25E., P.M.M., Yellowstone County, Montana, being a portion of Tract 5 (a road Tract) adjacent to the south line of Tract 1 of Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648, Recorded July 20, 1994, Under Document No. 1749237, Records of Yellowstone County, Montana, also adjacent to the south line of Legends West Subdivision, Recorded February 7, 2003, Under Document No. 3214081, Records of Yellowstone County, Montana, and Bell Avenue as shown in Bell Estates Subdivision, Recorded March 27, 2000, Under Document No. 3085059, Records of Yellowstone County, Montana, more particularly described as:

Basis of bearings: Corrected Amendment of Tracts 1 and 3, and Remainder Tract 2 to be Amendment of Tracts 1, 2 And 3 Certificate of Survey No 1648,

Beginning at the northeast corner of Tract 5, of said Corrected Amendment Of Tracts 1 And 3 and Remainder Tract 2 To Be Amendment Of Tracts 1, 2 And 3 Certificate Of Survey No 1648; thence N 89°52'00" W a distance of 1248.02 feet; thence S 00°08'00" W a distance of 30.00; thence S 89°52'00" E a distance of 32.67 feet; thence S 00°08'00" W a distance of 30.00 feet to the south Right-Of-Way line of Bell Avenue as shown in said Bell Estates Subdivision; thence S 89°52'00" E a distance of 1215.78 feet to a point on the west line of the Shiloh Drain; thence N 00°16'30" W a distance of 60.00 feet to the Point of Beginning.

Containing 1.697 gross acres.  
(# 07-12) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

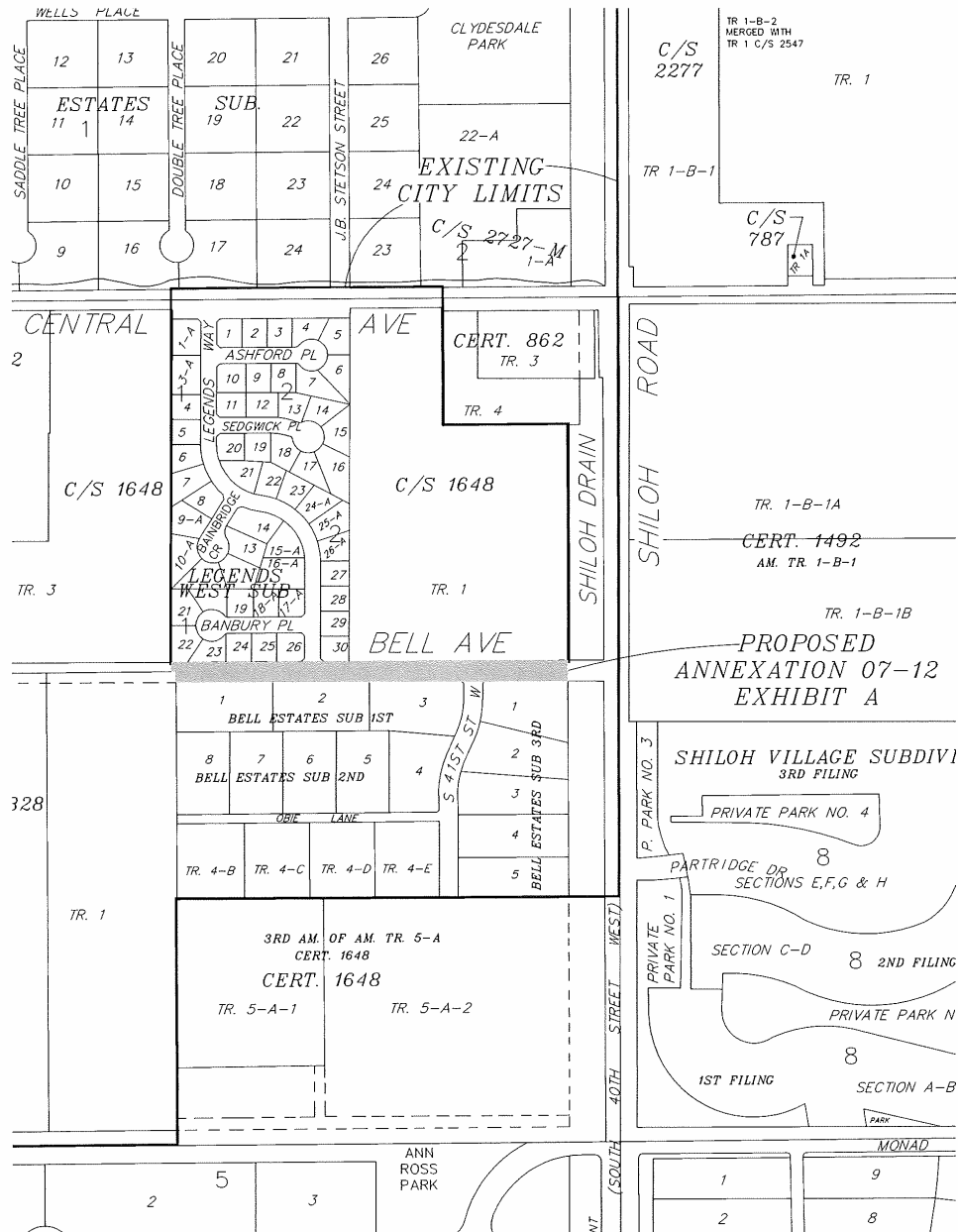
BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-12)

**ATTACHMENT B**  
**Annexation Map – Annexation #07-12**

*EXHIBIT A*



## ATTACHMENT D



### **CITY OF BILLINGS** **OFFICE OF CITY ADMINISTRATOR**

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



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#### **Memorandum**

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

---

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

<b>Annexation Number</b>	<b>Description</b>
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Road Right-Of-Way Annexation Request #07-13, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex this 0.92 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. This property was quit claimed by the County to the City in 2005. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property east of this right-of-way property on Zimmerman Trail was annexed previously, and all of the Zimmerman Trail right-of-way was not included in that annexation. The City is now ready to annex this right-of-way as per 7-2-4401, et seq. MCA.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.



**FINANCIAL IMPACT:** Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. City Annexation Request Letter

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

Tracts of land situated in the SW1/4 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1990, Recorded October 26, 2005, Under Document No. 3354258, Records of Yellowstone County, Montana;

Tract 1-B, Amended Tract 1 of Certificate of Survey No. 2974, Recorded October 26, 2005, Under Document No. 3354257, Records of Yellowstone County, Montana. Less that portion of Tract 1-B of said Amended Tract 1 of Certificate of Survey No. 2974 designated for road for Grand Avenue; and less that portion of Tract 1-B previously annexed under City Resolution No. 06-18449, Recorded October 05, 2006, Under Document No. 3395866, Records of Yellowstone County, Montana.

Containing 0.912 gross acres.  
(# 07-13) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

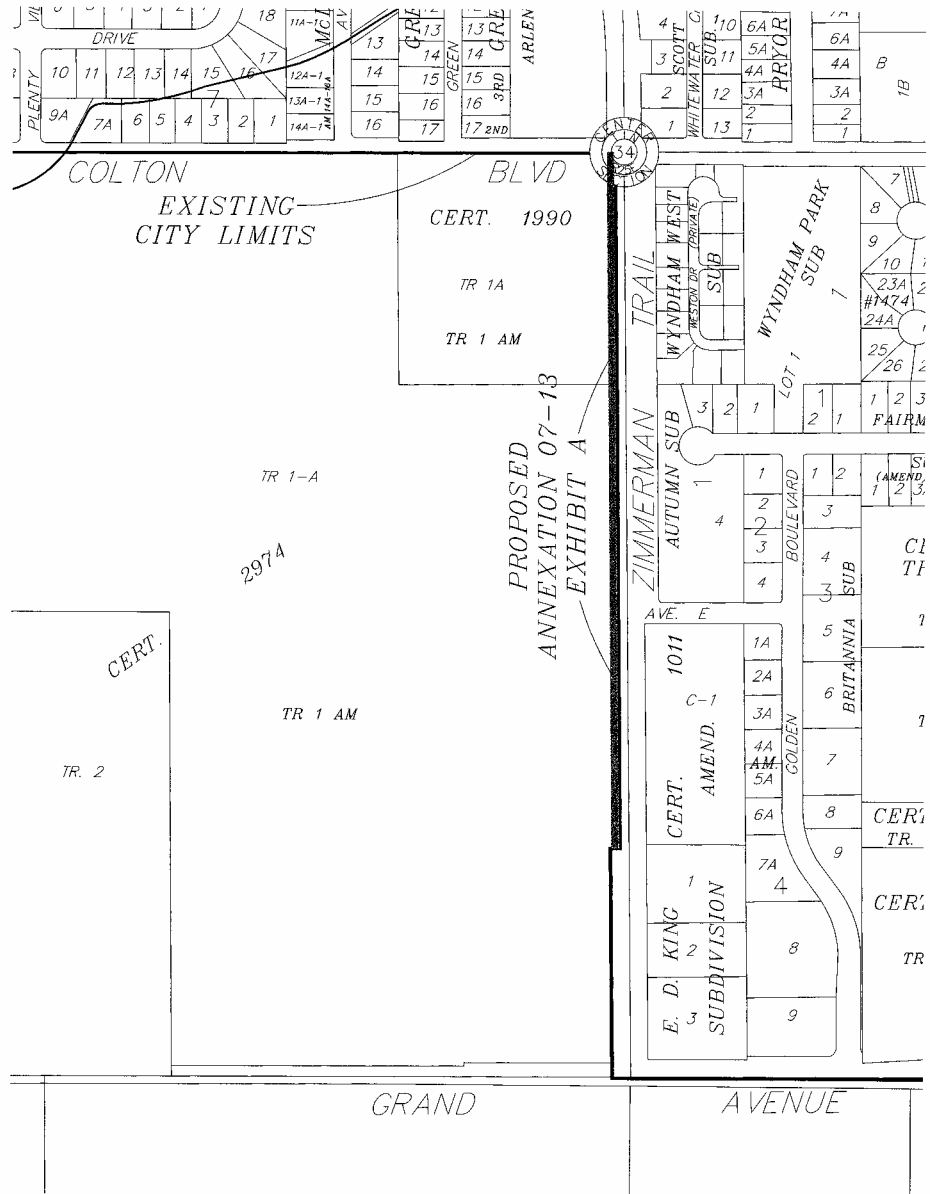
BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-13)

**ATTACHMENT B**  
Annexation Map – Annexation #07-13

*EXHIBIT A*



## ATTACHMENT C



### **CITY OF BILLINGS** **OFFICE OF CITY ADMINISTRATOR**

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



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#### **Memorandum**

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

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City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

<b>Annexation Number</b>	<b>Description</b>
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

*Billings Pride:  
City-wide*

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

T

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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**TITLE:** Road Right-Of-Way Annexation Request #07-14, Acknowledge Request, Approve Resolution of Intent to Annex, Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City of Billings, property owner, submitted a letter of request to annex this 4.86 acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq. MCA. The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits. Many of these rights-of-way have been owned by the City for some time or were recently quit claimed to the City by the County. The City also has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The property south of this property on Cove Avenue was annexed in two separate annexations in 2002 and 2003. All of the Cove Avenue right-of-way was not included in those annexations.

Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex approximately the western two thirds of the right-of-way for Cove Avenue in this area since it is adjacent to property on the south that was annexed after 2003. The City also is ready to annex the eastern one third of the Cove Avenue right-of-way in this area as per 7-2-4401, et seq. MCA. The property to the south of this portion of the right-of-way was annexed in 2002.

The City Council’s policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government officials under 7-2-4403, MCA are allowed to request annexation of city-owned property on behalf of the city. The City is required under 7-2-4211, MCA, to annex road right-of-way adjacent to property annexed after the change in the 2003 legislation. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City owns the subject property, and the City does not tax itself, a financial impact analysis will not be completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. City Annexation Request Letter

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

WHEREAS, the City of Billings is the owner of the territory; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NE1/4 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Street right-of-way of Cove Avenue, between east right-of-way line of 50<sup>th</sup> Street West running easterly to Leroy Lane as recorded with Zimmerman Subdivision 4<sup>th</sup> Filing, Recorded March 19, 1965, Under Document No. 751012, Records of Yellowstone County, Montana; also that portion of Leroy Lane right-of-way as dedicated with Zimmerman Acreage Tracts Subdivision 3<sup>rd</sup> Filing, Recorded May 1, 1963, Under Document No. 705939, Records of Yellowstone County, Montana beginning at the northeast corner of Lot 4, Block 3 of said Zimmerman Subdivision 4<sup>th</sup> Filing and extending easterly to the west right-of-way line of 46<sup>th</sup> Street West being on the existing City of Billings city limits.

Containing 4.864 gross acres.  
(# 07-14) See Exhibit “A” Attached



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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

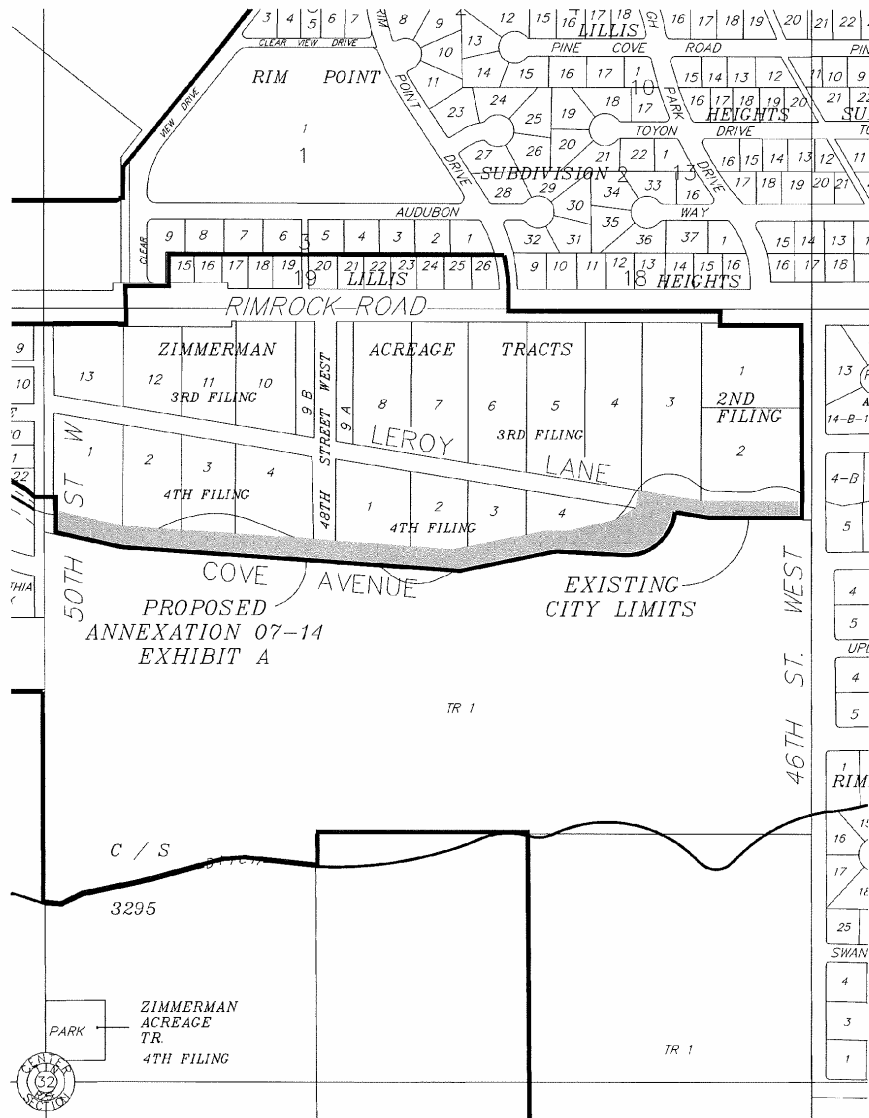
BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-14)

**ATTACHMENT B**  
Annexation Map – Annexation #07-14

*EXHIBIT A*



## ATTACHMENT C



### **CITY OF BILLINGS** **OFFICE OF CITY ADMINISTRATOR**

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



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#### **Memorandum**

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

---

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

<b>Annexation Number</b>	<b>Description</b>
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.



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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Road Right-Of-Way Annexation Request #07-16 - Acknowledge Request, Approve a Resolution of Intent and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The City of Billings submitted a letter of request to annex a 0.359-acre portion of road right-of-way to the City of Billings under 7-2-4401, et seq, Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. These rights-of-way should have been annexed into the city when adjacent properties were annexed. In this case, property along Grand Avenue to the north was previously annexed and the entire portion of Grand Avenue right-of-way fronting the property was not included in that annexation. MCA, 7-2-4211 specifies that annexations of property into the city “shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex the entire right-of-way for Grand Avenue adjacent to annexed properties.

The portion of the right-of-way that will be annexed is a 30-foot wide County Road Petition #5 that contains approximately 0.359 acres. The property requested to be annexed is the southern 30-feet of the Grand Avenue right-of-way extending from the northwest corner of Vintage Estates Subdivision west to the southwest corner of Lot 65A-4, Sunny Cove Fruit Farms (see Exhibit A). Bell Real Estate Holdings, LLC, is the legal owner of a 0.131-acre portion of the right of way property and Durand M. Ward, is the legal owner of a 0.228-acre portion of the right-of-way. However, the ownership interest is subject to the public’s right to use it as a roadway based on County Road Petition #5. Planning staff has contacted the property owners and provided them with the option of either deeding the property to the City and removing it from the property’s taxes, or taking no action and upon annexation of the 30-foot wide road easement, paying City taxes on the annexed portion of the right of way (see Attachment B). In this case, one of the property owners has decided to quit claim this portion of the property to the

City (See Attachment C). The City will annex the easement for the remaining portion of Grand Avenue.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. The Council should also accept the Quit Claim Deed as approved by the Board of County Commissioners on October 2, 2007, for the portion of right-of-way formerly "owned" by the County at this first meeting. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government Officials under 7-2-4401, et seq. MCA, are permitted to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City would own the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

### **RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, accept the quit claim deed from the County, and schedule a public hearing for December 10, 2007.

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

### **ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Letter to Property Owners
- C. Quitclaim Deed for Belle Real Estate Holdings, LLC
- D. City Annexation Request Letter
- E. County Quit Claim Deed to City

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, being those portions of the E1/2E1/2NW1/4NW1/4 and the W1/2E1/2NW1/4NW1/4 of said Section 4 adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.359 acres.

(# 07-16) See Exhibit “A” Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

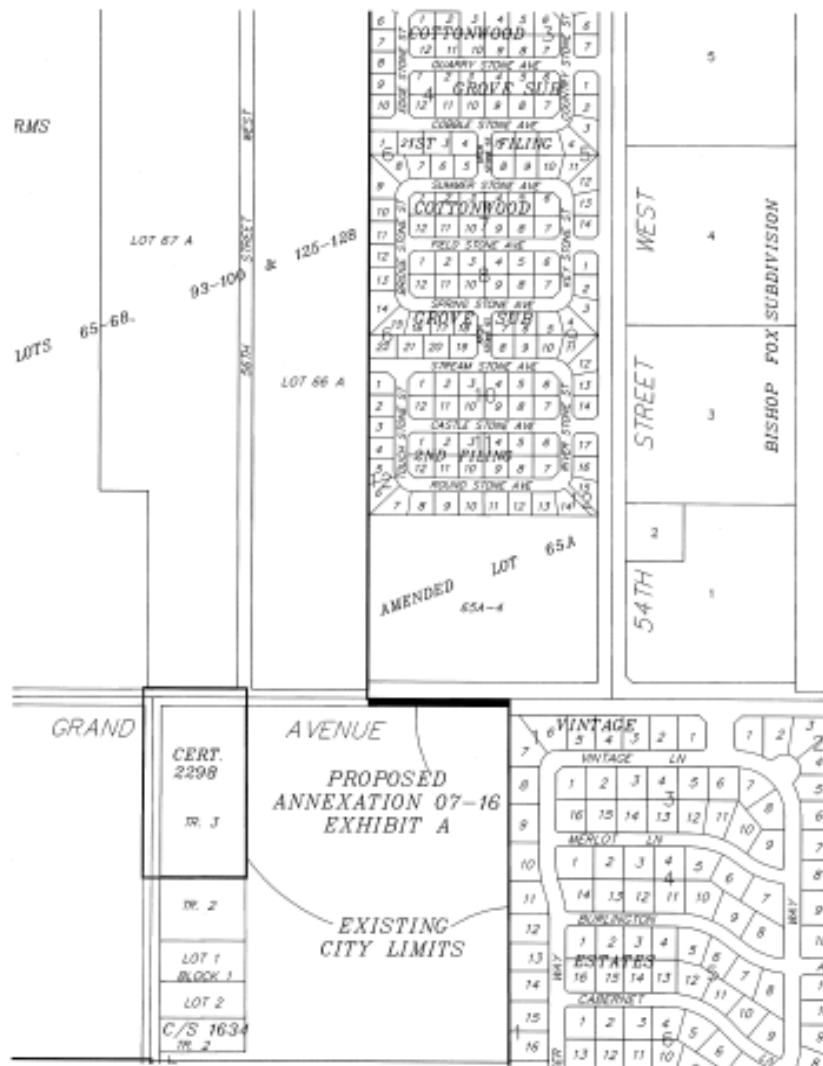
ATTEST:

BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-16)

## EXHIBIT A







## Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

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



October 25, 2007

Mr. Durand M Ward  
5416 Grand Avenue  
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Ward:

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 22, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,931.68 square feet of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

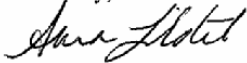
The original schedule was delayed due to some questions about the annexation process being proposed, however after further consideration by City legal staff, we have been directed to proceed with the annexation of 5416 Grand Avenue, including the 30-foot wide road easement on your property.

A new City Council review schedule is as follows:

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aura Lindstrand".

Aura Lindstrand  
Planner II

Enclosure

RETURN TO:  
CITY CLERK  
CITY OF BILLINGS  
P O BOX 1178  
BILLINGS, MT 59103

### QUITCLAIM DEED

For valuable consideration, Shauna Stule, as member, of **BELL REAL ESTATE HOLDINGS L.L.C.**, as GRANTOR, does hereby release and forever quitclaim their interest unto the **CITY OF BILLINGS, MONTANA**, a Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103, as GRANTEE, the following described real property situated in Yellowstone County, Montana:

A portion of Yellowstone County road easement for Grand Avenue also described as a portion of County Road Petition Number 5, filed December 26, 1883, Declared a County Road March 6, 1884, more particularly described as:

Being the north 30.00 feet of the W1/2 E1/2 NW1/4 NW1/4 Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, adjacent to Lot 65A-4 of Amended Plat Of Lot 65A Of The Plat Of Amended Lots 65-68, 93-100, And 125-128 Of Sunny Cove Fruit Farms, Recorded December 29, 2004, Under Document No. 3317043, Records of Yellowstone County.

Said Tract containing 0.131 acres, more or less.

AS SHOWN BY EXHIBIT "A", consisting of one sheet, attached hereto and made a part of.

**THE PURPOSE OF THIS QUITCLAIM DEED** is to create a right-of way parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

Dated this 24 day of Sept., 2007.

By:

Shauna Stule

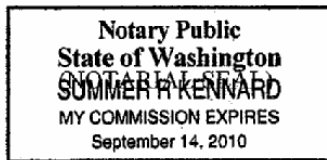
member

As:

STATE OF Washington )  
 : ss.  
County of Snohomish )

On this 24<sup>th</sup> day of September, 2007, before me, a Notary Public for the State of  
Washington, personally appeared Shawna Steele, as  
member, of BELL REAL ESTATE HOLDINGS L.L.C., known to  
me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the  
same.

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



Summer R. Kennard (Signature)

Summer R. Kennard (Printed Name)

Notary Public for the State of Washington

Residing in Lynnwood, WA

My Commission Expires: Sept. 14, 2010

**ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE**

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

\_\_\_\_\_  
RON TUSSING, Mayor  
CITY OF BILLINGS

ATTEST:

By: \_\_\_\_\_  
CARI MARTIN, City Clerk

STATE OF MONTANA)  
: ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, 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.

(NOTARIAL SEAL)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: \_\_\_\_\_

## ATTACHMENT D



### **CITY OF BILLINGS** **OFFICE OF CITY ADMINISTRATOR**

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



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#### **Memorandum**

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

---

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

<b>Annexation Number</b>	<b>Description</b>
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

*Billings Pride:  
City-wide*

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

## **QUITCLAIM DEED**

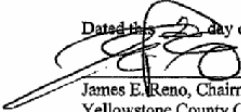
For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

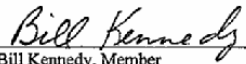
Tract 8, of Certificate of Survey 1261, Recorded August 8, 1972, under Document No. 913447, Records of Yellowstone County.

Said Tract containing 0.995 acres.

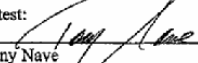
The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its October 2, 2007 meeting.

Dated this 2 day of October, 2007.

  
James E. Reno, Chairman  
Yellowstone County Commissioner

  
Bill Kennedy, Member  
Yellowstone County Commissioner

  
John Ostlund, Member  
Yellowstone County Commissioner

Attest:  
  
Tony Nave  
Yellowstone County Clerk and Recorder

State of Montana }  
ss.  
County of Yellowstone }

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tone Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Beitz  
Teri Beitz

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires 2-27-2010

**ACKNOWLEDGEMENT 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.

Ron Tussing, Mayor, City of Billings

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, 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 Ron Tussing and \_\_\_\_\_ known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

\_\_\_\_\_  
\_\_\_\_\_

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires \_\_\_\_\_



113

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Road Right-Of-Way Annexation Request #07-18, Acknowledge Request, Approve Resolution of Intent to Annex, accept Quit Claim Deeds from Yellowstone County, Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The City of Billings submitted a letter of request to annex road right-of-way land into the City of Billings under 7-2-4401, et. seq. Montana Code Annotated (MCA). The City of Billings is in the process of annexing portions of a series of road rights-of-way into the City Limits based on requirements of the State of Montana Code. Montana Code Annotated 7-2-4211 enacted by the 2003 session of the Montana Legislature states; “In all instances of annexation the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed”. This law requires the City to annex the entire right-of-way for Broadwater Avenue and 56<sup>th</sup> Street West since it is adjacent to properties annexed after 2003 on the north side of Broadwater Avenue and the west side of 56<sup>th</sup> Street West. These rights-of-way should have been annexed at the time properties adjacent to the roads were annexed into the City.

The portion of the right-of-way that will be annexed is from the intersection of Broadwater and 56<sup>th</sup> Street West on the south side of Broadwater, from the centerline of Broadwater south 30 feet, for 1,304.6 feet to the west. From the intersection of Broadwater and 56<sup>th</sup> Street West on the east side of 56<sup>th</sup> Street West, from the centerline of 56<sup>th</sup> Street West east 30 feet, for 1,347.3 feet to the north, (See Attachment B). City staff contacted the property owners, provided them with the option of either deeding the property to the City and having it removed from their property taxes, or taking no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way (See Attachment C). The property owners are the legal owners of these road easement rights-of-way, but the ownership interest is subject to the public’s right to use it as a roadway. The portion of Broadwater Avenue that is proposed to be annexed is a dedicated Yellowstone County road tract and so is the portion on the west edge of Certificate of Survey 2178, (See Attachment B). Yellowstone County has Quit Claimed those two road tracts to the City of Billings, (See Attachment E). Two of the four

property owners have contacted the Planning Division office with questions about the annexation, the remaining property owners have not yet responded to the information staff has provided and so annexation of the easement by the City is the expected outcome.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Montana Code Annotated 7-2-4401, et. seq. allows government officials to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City would own the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

### **RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, accept the Quit Claim Deeds from Yellowstone County, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

### **ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Map
- C. Letters to Property Owners
- D. City Administrator Letter
- E. Quit Claim Deeds from Yellowstone County

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No. 1322 Beginning at the east ¼ corner of Section 5, T.1S., R.25E., P.M.M.; thence 89°48'30" W along the E-W mid section line of said Section 5 for a distance of 1304.6 feet; thence S 00°05'30" for a distance of 30.00 feet; thence 89°48'30" E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence 00°04' E for a distance of 30.00 feet to the Point of Beginning. Said Tract containing 0.898 acres.

56<sup>th</sup> Street West Tract:

A portion of Yellowstone County road easement for 56<sup>th</sup> Street West also described as a portion of County Road Petition Number 19, Filed January 2, 1886, Road Established June 9, 1886, more particularly described as:

Beginning at the west  $\frac{1}{4}$  corner of Section 4, T.1S., R.25E., P.M.M.; thence southerly along the west section line of said Section 4 for a distance of 30.00 feet; thence easterly for a distance of 30.00 feet on a line that is perpendicular to the west section line of said Section 4 to a point; thence northerly and 30.00 feet parallel to the west section line of said Section 4 for an approximate distance of 1347.3 feet to a point, said point being on a line that is perpendicular to the N1/16 corner of said Section 4; thence westerly for a distance of 30.00 feet to the N1/16 corner of said Section 4; thence southerly along the west section line of said Section 4 for an approximate distance of 1317.3 feet to the Point of Beginning. Said Tract containing 0.927 acres more or less.

(# 07-18) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.

4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

ATTEST:

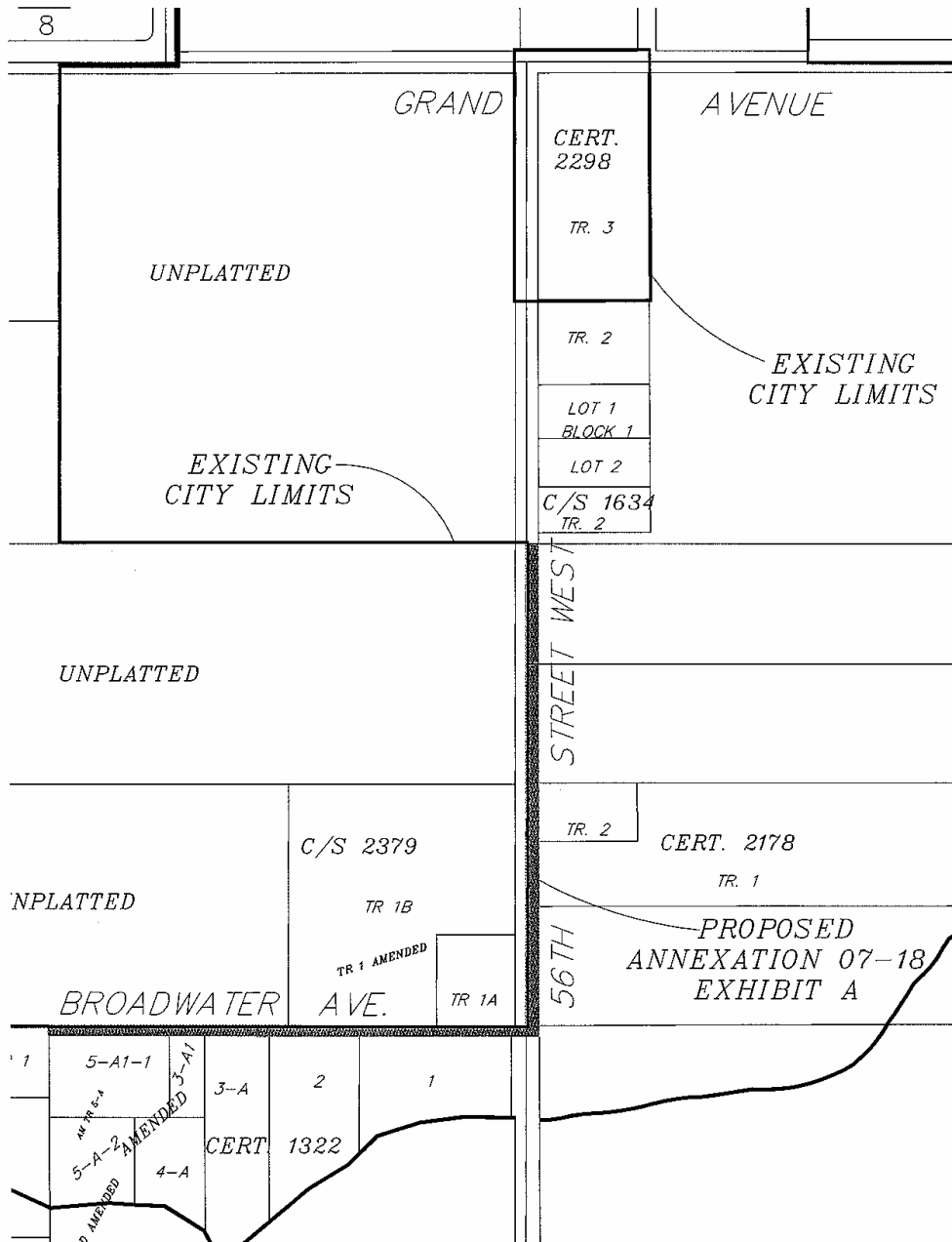
BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-18)

**ATTACHMENT B**

Map  
EXHIBIT A



**ATTACHMENT C**  
Letters to Property Owners



**Planning & Community Services  
Department**

“Serving Billings, Broadview and Yellowstone County”

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



October 24, 2007

Mr. William C. Lackman  
637 56<sup>th</sup> Street West  
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Lackman,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 900 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56<sup>th</sup> Street West and Broadwater Avenue, including the 30-foot wide road easement that is in the northwest corner of your property.

A new City Council review schedule has been derived.



- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13<sup>th</sup> or December 10<sup>th</sup>, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,  
Planner I  
(406) 247-8654



## Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

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



October 24, 2007

Mr. Bret T. Murray  
1011 56<sup>th</sup> Street West  
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Murray,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56<sup>th</sup> Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13<sup>th</sup> or December 10<sup>th</sup>, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,  
Planner I  
(406) 247-8654



## Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

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



October 24, 2007

Mr. Robert A. Olsen  
715 56<sup>th</sup> Street West  
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Olsen,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property. You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56<sup>th</sup> Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.

- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13<sup>th</sup> or December 10<sup>th</sup>, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,  
Planner I  
(406) 247-8654



## Planning & Community Services Department

"Serving Billings, Broadview and Yellowstone County"

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



October 24, 2007

Mr. Gregory J. Smith  
909 56<sup>th</sup> Street West  
Billings, MT 59106

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Smith,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, the portion of right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately 9,888 square feet of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

The original schedule was delayed due to some questions about the annexation process being proposed but after further consideration by City legal staff, we have been directed to proceed with the annexation of 56<sup>th</sup> Street West, including the 30-foot wide road easement that is on the west edge of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13<sup>th</sup> or December 10<sup>th</sup>, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

David Green,  
Planner I  
(406) 247-8654



# CITY OF BILLINGS

## OFFICE OF CITY ADMINISTRATOR

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



### Memorandum

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CPV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

Annexation Number	Description
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

*Billings Pride*  
City-wide



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

## QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

Broadwater Avenue Tract:

Basis of bearings Certificate of Survey No. 1322, Recorded June 27, 1973, Under Document No. 937794, Records of Yellowstone County, Montana,

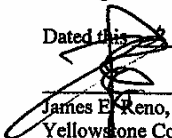
A portion of Tract 7, AKA Broadwater Avenue, of said Certificate of Survey No 1322 Beginning at the east 1/4 corner of Section 5, T.1S., R.25E., P.M.M.; thence N 89°48'30" W along the E-W mid section line of said Section 5, for a distance of 1304.6 feet; thence S 00°05'30" W for a distance of 30.0 feet; thence S 89°48'30" E for a distance of 1304.6 feet to a point on the east section line of said Section 5; thence N 00°04' E for a distance of 30.00 feet to the Point of Beginning.


Said Tract containing 0.898 acres.

**THE PURPOSE OF THIS QUITCLAIM DEED** is to create a right-of way parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its October 2, 2007 meeting.

Dated this 2 day of October, 2007.

  
James E. Reno, Chairman  
Yellowstone County Commissioner

  
Bill Kennedy, Member  
Yellowstone County Commissioner

  
John Ostlund, Member  
Yellowstone County Commissioner

Attest:

  
Tony Nave  
Yellowstone County Clerk and Recorder

State of Montana                    }  
  ss.  
County of Yellowstone            }

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Beitz

Teri Beitz

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires 2-27-2010

**ACKNOWLEDGEMENT 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.

\_\_\_\_\_  
Ron Tussing, Mayor, City of Billings

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

State of Montana                    }  
  ss.  
County of Yellowstone            }

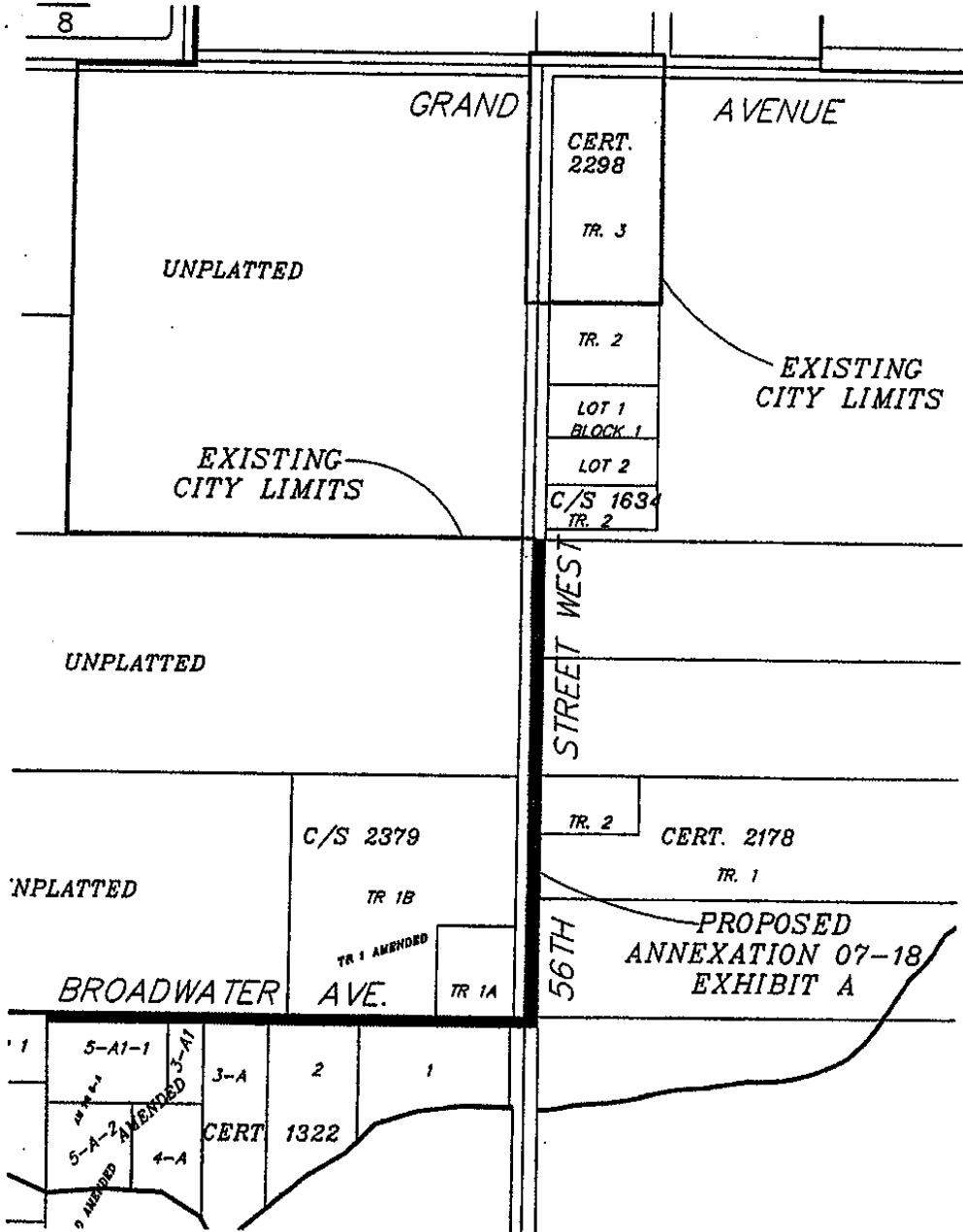
On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and \_\_\_\_\_ known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

\_\_\_\_\_

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires \_\_\_\_\_

*EXHIBIT C*



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

## QUITCLAIM DEED

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

Tract 3, Certificate of Survey 2178, Recorded April 6, 1983, Under Document No. 1260295,  
Records of Yellowstone County, Montana,

Said Tract containing 0.227 acres.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its October 2, 2007 meeting.

Dated this 2 day of October, 2007.

  
James E. Reno, Chairman  
Yellowstone County Commissioner

  
Bill Kennedy, Member  
Yellowstone County Commissioner

  
John Ostlund, Member  
Yellowstone County Commissioner

Attest:

  
Tony Nave  
Yellowstone County Clerk and Recorder

State of Montana }  
County of Yellowstone } ss.

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz  
Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires 2-27-2010

**ACKNOWLEDGEMENT 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.

Ron Tussing, Mayor, City of Billings

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

State of Montana }  
County of Yellowstone } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and \_\_\_\_\_ known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

\_\_\_\_\_  
\_\_\_\_\_

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires \_\_\_\_\_

(Back to Consent Agenda)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


---

**TITLE:** Road Right-Of-Way Annexation #07-19, Acknowledge Request, Approve Resolution of Intent to Annex, Accept Quit Claim deed, and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Juliet Spalding, AICP, Planner II

---

**PROBLEM/ISSUE STATEMENT:** The City of Billings submitted a letter of request to annex a 6.832 acre portion of Rimrock Road right-of-way under 7-2-4401, et seq. MCA. The City is in the process of annexing portions of road rights-of-way into the City limits where they are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services.

In this particular case, the proposed annexation is a 60-foot wide County Road Petition Number 167 that covers the entire Rimrock Road right-of-way from 62<sup>nd</sup> Street West, west to the existing city limits (see Attachment B). Yellowstone County previously owned approximately 6.2 acres of the subject property, and quit claimed its interest to the City of Billings on October 2, 2007. Hageman Farms, Rodger Hageman, is the legal owner of the remaining .633-acre portion of the road right of way property, but the ownership interest is subject to the public's right to use it as a roadway. City staff contacted the property owner, provided him with the option of either deeding the property to the City and having it removed from the property's taxes, or taking no action and having the 30-foot-wide road easement annexed by the City and paying City taxes on the annexed portion of the right of way (See Attachment C). Mr. Hageman has contacted staff a number of times for additional information on the annexation but has not yet decided whether to quit claim this portion of his property to the City, so annexation of the easement by the City is the expected outcome.

The City Council's policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. The Council also should accept the Quit Claim Deed as approved by

the Board of County Commissioners for the portion of right-of-way formerly “owned” by the County at this first meeting. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** MCA, 7-2-4403 allows government officials to request annexation of city-owned property or property in which the City holds a beneficial interest. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City owns most of the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

### **RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, accept the quit claim deed from the County, and schedule a public hearing for December 10, 2007.

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

### **ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. Letter to Property Owner
- C. City Annexation Request Letter
- D. County Quit Claim Deed to City

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the S1/2 of Section 25, T.1N., R.24E., the N1/2 of Section 36, T.1N., R.24E., the SW1/4 of Section 30 T.1N., R.25E., and the NW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana,

A portion of Yellowstone County road easement for Rimrock Road also described as a portion of County Road Petition Number 167, filed November 10, 1908, Declared a County Road December 29, 1908, more particularly described as:

Basis of bearings: Certificate of Survey No. 2465, Recorded October 1, 1987, Under Document No. 1458714, Records of Yellowstone County, Montana,

Commencing at the southeast corner of said Section 25; thence N 00°00'04" W a distance of 30.00 feet to the True Point of Beginning; thence S 89°29'28" W being 30.0 feet parallel to the south section line of said Section 25 for a distance of 2673.17 feet; thence S 89°44'27" W and continuing parallel to the south section line of said Section 25 for a distance of 2256.22 feet to the southeast corner of Tract 2A, Amended Tracts 2 and 3, Certificate of Survey No. 2465, Recorded September 16, 1996, Under Document No. 1845641, Records of Yellowstone County Montana; thence south for a distance of 60.00 feet to a point on a line perpendicular to the south section line of said Section 25, said south section line being also the north section line of said Section 36; thence easterly and 30.0 feet parallel to the north section line of said Section 36 for an approximate distance of 944.7 feet to the northwest corner of Lot 14, Sunny Cove Fruit Farms, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County,



Montana; thence easterly and continuing parallel to the north section line of said Section 36 for an approximate distance of 3985.4 feet to a point on the west section line of said Section 31; thence easterly and 30.0 feet parallel to the north section line of said Section 31 for a distance of 30.0 feet to the northwest corner of Lot 8 of said Sunny Cove Fruit Farms; thence north for a distance of 60.00 feet to a point on a line perpendicular to the north section line of said Section 31, said north section line being also the south section line of said Section 30; thence westerly and parallel to the south section line of said Section 30 for a distance of 30.0 feet to the Point of Beginning.

Containing 6.832 gross acres, more or less.

(# 07-19) See Exhibit "A" Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

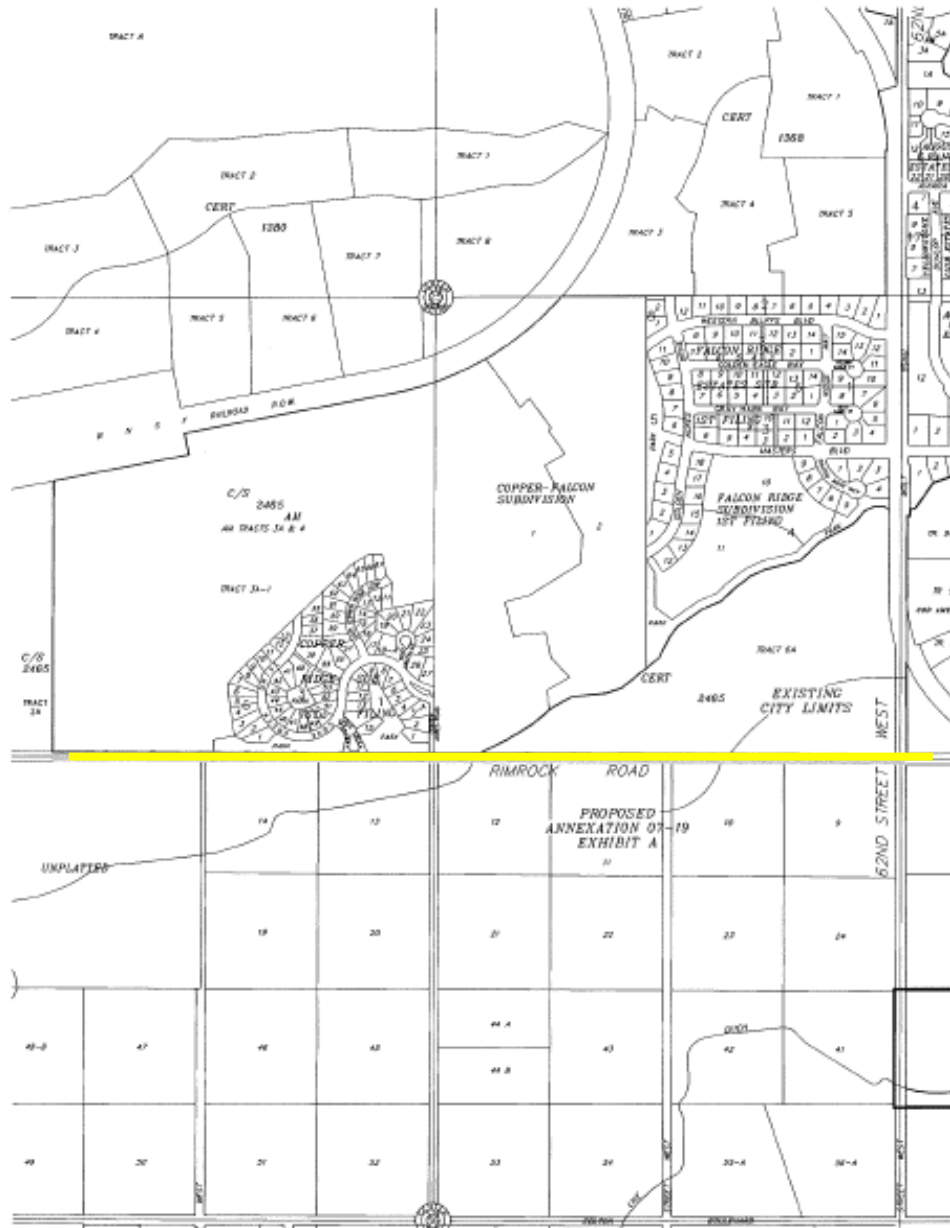
ATTEST:

BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-19)

# EXHIBIT A



**ATTACHMENT B**

Letter sent to Affected Property Owner

**Planning & Community Services Department**

**"Serving Billings, Broadview and Yellowstone County"**

**510 North Broadway, 4<sup>th</sup> Floor**

**Billings, Montana 59101**

**Fax: (406) 657-8327**

**Phone: (406) 657-8246**

October 22, 2007

Rodger E. Hageman  
PO Box 2251  
Newport Beach, CA 92659

Re: Annexation of right-of-way by the City of Billings

Dear Mr. Hageman,

As noted in previous correspondence, the City of Billings is processing a series of annexations of street rights-of-way where portions of County streets are adjacent to the City limits. The City has a beneficial interest in these rights-of-way in order to maintain adequate levels of service in terms of street maintenance, maintenance of sewer and water lines within the streets, and adequate provisions of emergency services. The City will therefore be processing the annexations under the provisions of Sections 7-2-4401 through 7-2-4412, Montana Code Annotated.

As noted in my letter to you dated August 20, 2007, a portion of the right-of-way that will be annexed is the 30-foot wide Petitioned County Road easement that covers approximately .633 acres of your property (see attached Exhibit A). You are presently the legal owner of this property, but your ownership interest is subject to the public's right to use it as a roadway.

After receipt of your letter dated September 13, 2007, and further consideration by City legal staff, we have been directed to proceed with the annexation of Rimrock Road, including the 30-foot wide road easement that crosses the northern portion of your property.

A new City Council review schedule has been derived.

- On November 13, 2007, the City Council will accept the annexation requests, approve a resolution of intent to annex the properties, and set a public hearing date for December 10, 2007.
- On December 10, 2007, the City Council will hold the public hearing and may choose to approve a resolution annexing the subject property.

Two options still remain regarding your interests in this road easement. You may retain ownership of the 30-wide property or quit claim deed it to the City. If you would like to deed your right-of-way to the City, it could also be best accomplished at either City Council meeting – November 13<sup>th</sup> or December 10<sup>th</sup>, or at a later date. Please contact us or have your attorney contact us if you have any further questions.

Thank you.

Sincerely,

Juliet Spalding, AICP  
Planner II  
(406) 247-8684

**ATTACHMENT C**  
**Annexation Request Letter**



**CITY OF BILLINGS**  
**OFFICE OF CITY ADMINISTRATOR**

P.O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 657-8433  
FAX (406) 657-8390



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**Memorandum**

**To:** Cari Martin, Billings City Clerk  
**From:** Christina Volek, Billings City Administrator *CV*  
**Cc:** Wyeth Friday, AICP, Planning Division Manager  
**Date:** 8/16/07  
**Re:** Annexation of City Owned Right-Of-Way Located Throughout the City

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City staff has identified 10 portions of road right-of-way that are owned by the City of Billings or are being quitclaim deeded to the City of Billings from Yellowstone County. Several of these rights-of-way should have been annexed into the City at the time that adjacent property was annexed, while some of the rights-of-way have been more recently deeded to the City by Yellowstone County. All of these rights-of-way should be annexed into the City.

In accordance with the requirements of Montana Code Annotated 7-2-4403 as City Administrator, I request that the rights-of-way described below be annexed into the corporate limits of the City of Billings.

<b>Annexation Number</b>	<b>Description</b>
#07-05	Zimmerman Trail between Hwy. 3 and Rimrock Road
#07-11	Portion of Broadwater Avenue west of 30 <sup>th</sup> Street West
#07-12	Bell Avenue west of Shiloh Road
#07-13	Portions of Grand Avenue and Zimmerman Trail
#07-14	Cove Avenue between 46 <sup>th</sup> Street and 50 <sup>th</sup> Street West
#07-15	Portion of Grand Avenue west of Shiloh Road
#07-16	Portion of Grand Avenue east of 56 <sup>th</sup> Street West
#07-17	Portion of 62 <sup>nd</sup> Street West south of Ironwood Subdivision
#07-18	Portions of 56 <sup>th</sup> Street West and Broadwater Avenue
#07-19	Rimrock Road from 62 <sup>nd</sup> Street West to City Limits

The Planning Division is preparing the documents for the annexation process and has provided the following project numbers and descriptions. Full legal descriptions and maps of the properties are attached to this memo. These annexations are expected to be completed by the end of 2007.

*Billings Pride:*  
*City-wide*

## ATTACHMENT D

State of Montana                    }  
  ss.  
County of Yellowstone            }

On October 2, 2007, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, The Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

Teri Reitz  
\_\_\_\_\_  
Teri Reitz

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires 3-27-2010

### ACKNOWLEDGEMENT 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.

\_\_\_\_\_  
Ron Tussing, Mayor, City of Billings

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, 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 Ron Tussing and Cari Martin known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires \_\_\_\_\_

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

X

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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**TITLE:** Road Right-Of-Way Annexation Request #07-25 - Acknowledge Request, Approve a Resolution of Intent and Set a Public Hearing Date

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Aura Lindstrand, Planner II

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**PROBLEM/ISSUE STATEMENT:** The City of Billings is requesting to annex a 2.457-acre county road tract to the City of Billings under 7-2-4401, et seq, Montana Code Annotated (MCA). This right-of-way should have been annexed into the city when adjacent properties were annexed. In this case, property adjacent to the west of 44<sup>th</sup> Street West was previously annexed and the entire portion of the 44<sup>th</sup> Street West right-of-way fronting the property was not included in that annexation, as it is a county road tract. MCA, 7-2-4211 specifies that annexations of property into the city “shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed.” This law, enacted by the 2003 session of the Montana Legislature, requires the City to annex the entire right-of-way for 44<sup>th</sup> Street West adjacent to annexed properties.

The portion of the right-of-way that will be annexed is a 40-foot wide county road tract legally described as Block 5, Lot 1, Long Subdivision and contains approximately 2.457 acres (see Attachment A). Yellowstone County owns the 44<sup>th</sup> Street West road tract and is prepared to quitclaim it to the City prior to the December 10, 2007, public hearing for this annexation (see Attachment B).

The City Council’s policy and the state regulations for this type of annexation require consideration of the annexations at two separate meetings. At the first meeting, the City Council acknowledges the annexation request, approves a resolution of intent to annex the property, and sets a public hearing date. At the second meeting, the Council conducts the hearing and decides if it will annex the property.

**ALTERNATIVES ANALYZED:** Government Officials under 7-2-4401, et seq. MCA, are permitted to request annexation of city-owned property on behalf of the city. The only alternative that is consistent with City Council policy and State Law is to acknowledge receipt of the



annexation request, approve a resolution of intent to annex the property, and set a public hearing date to review the request.

**FINANCIAL IMPACT:** Since the City would own the subject property, and the City does not tax itself, there is not expected to be a financial impact analysis completed when staff prepares its review and recommendation to present at the public hearing.

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of the road right-of-way annexation request, approve a resolution of intent to annex the property, and schedule a public hearing for December 10, 2007, to consider annexing this property.

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

**ATTACHMENTS**

- A. Resolution of Intent to Annex and Set Public Hearing
- B. County Quitclaim Deed

**ATTACHMENT A**  
**RESOLUTION NO. 07-**

A RESOLUTION OF THE CITY OF BILLINGS  
TO CONSIDER ANNEXING TERRITORY  
UNDER TITLE 7, CHAPTER 2, PART 44 OF THE  
MONTANA CODE ANNOTATED, AND FIXING  
A DATE FOR A PUBLIC HEARING ON THE  
QUESTION OF ANNEXATION

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described; and

WHEREAS, Montana Code Annotated 7-2-4211 provides that in all cases of annexations of property, the city “shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed;” and

WHEREAS, the City Council intends to consider annexing said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the City Council intends to consider annexing is particularly described as follows:

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana, including all adjacent right-of-way of King Avenue West.

Said Tract containing 2.457 gross and net acres.

(# 07-25) See Exhibit “B” Attached

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

1. The Billings City Council intends to consider annexation of the above-described property.
2. Notice of the City Council's intent to annex said territory shall be published as provided in M.C.A, Title 7, Chapter 2, Part 4405, with notice that for a period of 20 days after first publication of the notice, the Billings City Clerk will receive written comments approving or disapproving of the proposed extension of the boundaries of the City of Billings.
3. The City Clerk shall forward all written communication received by the Clerk to the City Council for consideration.
4. A public hearing for the question of annexation of said territory shall be held on December 10, 2007.
5. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 13th day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_

Ron Tussing, MAYOR

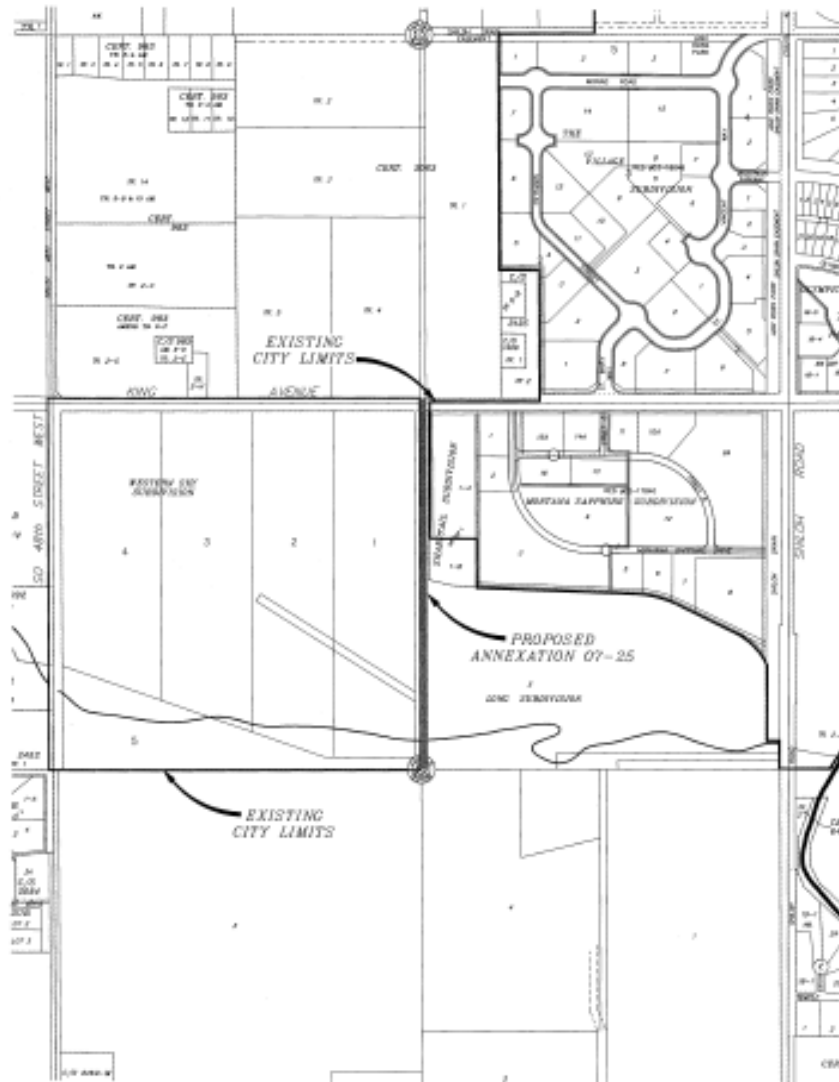
ATTEST:

BY: \_\_\_\_\_

Cari Martin, CITY CLERK

(AN #07-25)

# EXHIBIT B



**ATTACHMENT B**

**QUITCLAIM DEED**

For valuable consideration, **YELLOWSTONE COUNTY**, a political subdivision of the State of Montana, whose address is Post Office Box 35000, Billings, Montana 59103, through its Board of County Commissioners, conveys and quitclaims to the **CITY OF BILLINGS, MONTANA**, a municipal corporation, whose address is Post Office Box 1178, Billings Montana 59103, all its interest in the property described below that is located in Yellowstone County, Montana:

A portion of Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994, Under Document No. 1755400, Records of Yellowstone County, Montana, more particularly described as:

The west 40.0 feet of said Lot 5, Block 1, Long Subdivision, adjacent to Western Sky Subdivision, Recorded April 19, 2006, Under Document No. 3374355, Records of Yellowstone County, Montana.

Said Tract containing 2.374 acres.

AS SHOWN BY EXHIBIT "A", consisting of one sheet, attached hereto and made a part of.

**THE PURPOSE OF THIS QUITCLAIM DEED** is to create a right-of way parcel for construction and use for a public road, utilities, and related appurtenant structures, which is exempt from the provisions of the Montana Subdivision and Platting Act pursuant to §76-3-201(1)(h), M.C.A. as a division of land that creates rights-of-way or utility sites and 24.183.1104 A.R.M.

The Board of County Commissioners authorized the conveyance of the property pursuant to Section 7-8-101(1) of the Montana Code Annotated (2005) at its \_\_\_\_\_, 2007 meeting.

Dated this \_\_\_\_\_, day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
James E. Reno, Chairman  
Yellowstone County Commissioner

\_\_\_\_\_  
Bill Kennedy, Member  
Yellowstone County Commissioner

Attest:

\_\_\_\_\_  
John Ostlund, Member  
Yellowstone County Commissioner

\_\_\_\_\_  
Tony Nave  
Yellowstone County Clerk and Recorded

State of Montana )  
 ) ss.  
County of Yellowstone )

On \_\_\_\_\_, 200\_\_\_\_, before me, personally appeared James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners of Yellowstone County, and Tony Nave, the Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached quitclaim deed on behalf of Yellowstone County in their official capacities as Board members and the Clerk and Recorder.

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(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires \_\_\_\_\_

**ACKNOWLEDGEMENT 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.

\_\_\_\_\_  
Ron Tussing, Mayor, City of Billings

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, 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 Ron Tussing and Cari Martin known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

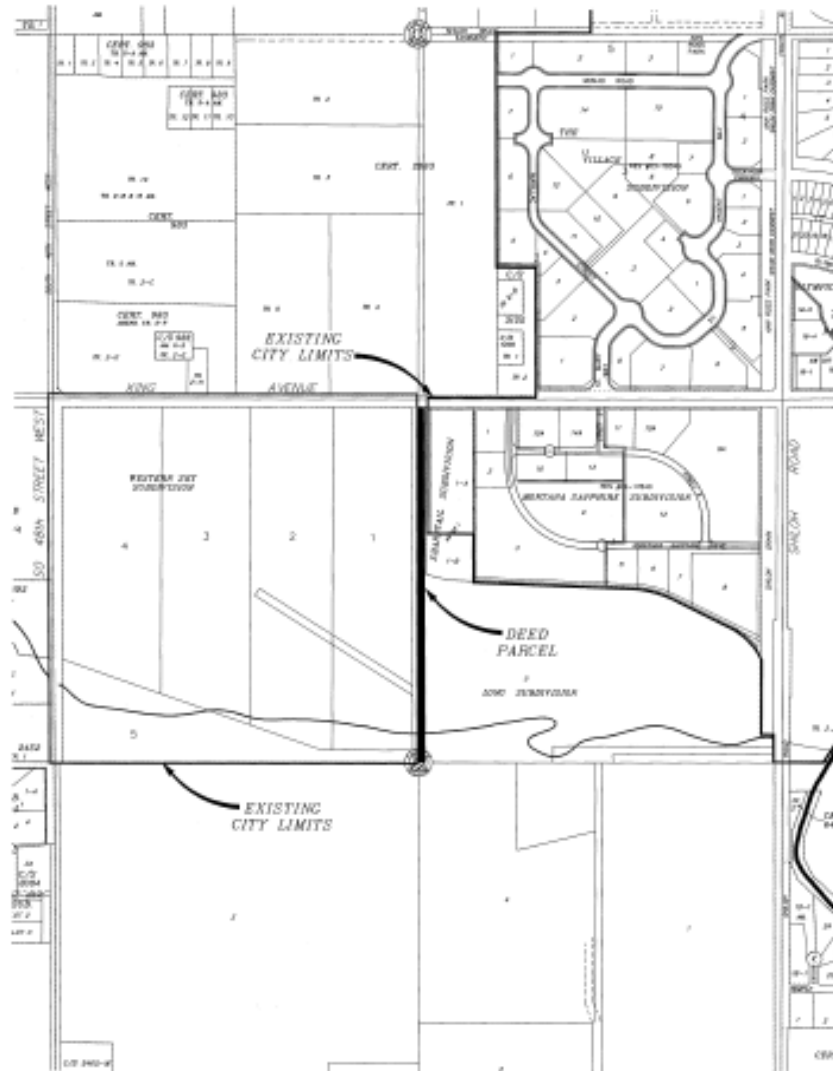
\_\_\_\_\_

\_\_\_\_\_

(Notarial Seal)

Notary Public for the State of Montana  
Residing in Billings, Montana  
My commission expires \_\_\_\_\_

## EXHIBIT A



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



Y

AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

**TITLE:** Acknowledge Receipt of Petition to Vacate a portion of Henry Road and Set a Public Hearing Date

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** John Glenn, property owner at 1125 Henry Road, has petitioned to vacate a portion of Henry Road fronting his property. Henry Road currently has 60 feet of right of way fronting this property, but only the southern 30 feet of the road is constructed. The northern 30 feet of right of way has steep terrain and sandrock. The past property owner of 1125 Henry Road applied for and was approved to have the required building front setback of 20 feet reduced to 1 foot due to the steep terrain of his parcel. Mr. Glenn is petitioning to vacate the northern 30 feet of right of way which will be utilized for his driveway. The southern 30 feet of right of way will continue to benefit the one property owner to the east of this property.

**ALTERNATIVES ANALYZED:**

1. Acknowledge receipt of petition to vacate the above-mentioned right-of-way and set a public hearing for December 10, 2007.
2. Do not acknowledge receipt of petition to vacate the above-mentioned right-of-way.

**FINANCIAL IMPACT:** Mr. Glenn purchased his lot in 2004 for \$3.13 per square foot and is willing to pay the same price for the Henry Road right of way. The total value of the proposed vacated property (4,122.90 square feet) to be paid to the city from Mr. Glenn is \$12,904.68 at the \$3.13 per square foot price.

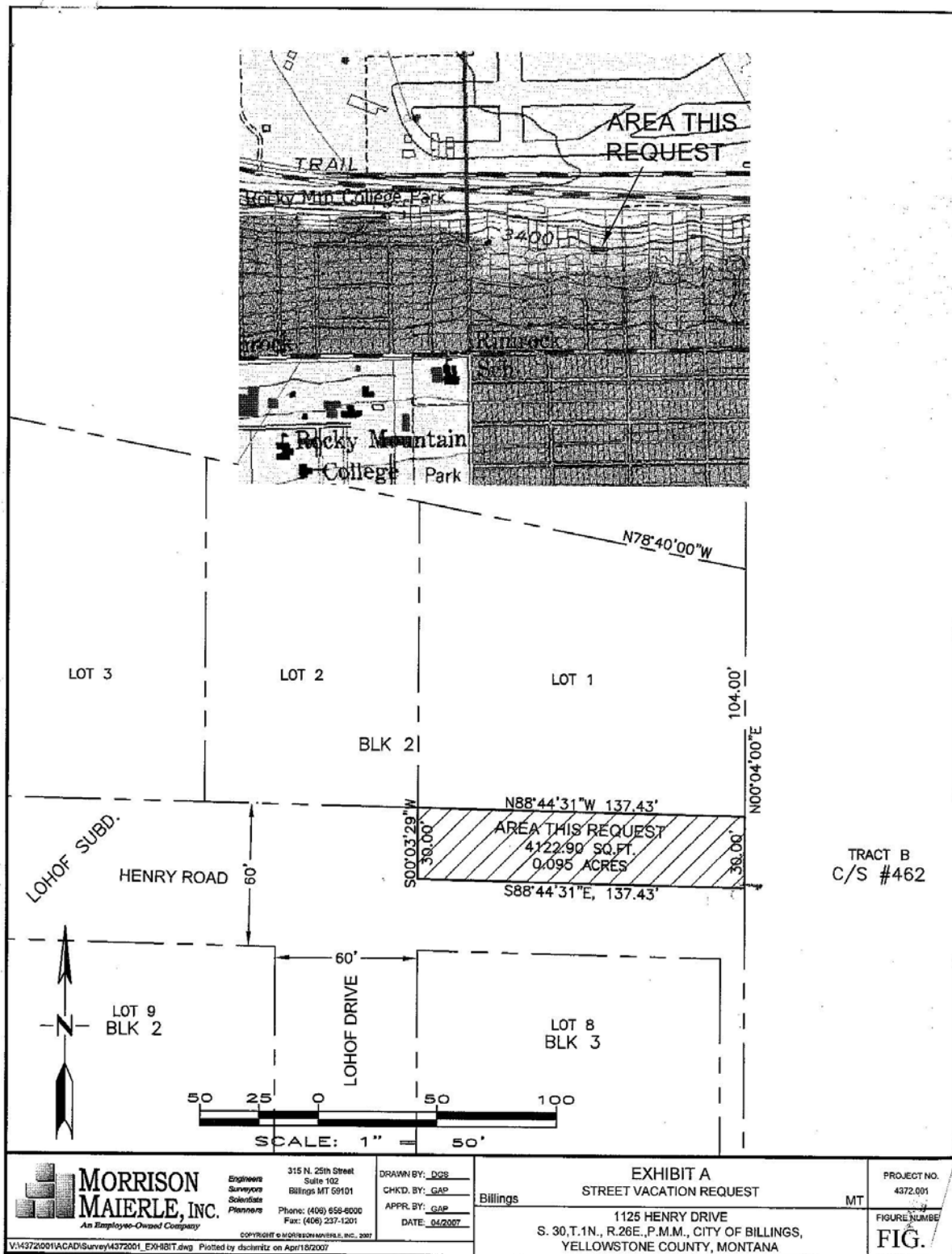
**RECOMMENDATION**

**Staff recommends that Council acknowledge the receipt of petition to vacate a portion of Henry Road and set a public hearing date for December 10, 2007.**

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

**ATTACHMENTS**

- A. Map Depicting Area to be Vacated
- B. Letter from Property Owner
- C. Approval Letter for Setback Variance



May 27, 2007

Honorable City Council  
City of Billings

REQUEST TO VACATE  
PUBLIC R-O-W

Dear Council Members:

Our application plus \$200 fee to acquire public right-of-way from the City in order for us to have access to the residence we are building for our permanent home at 1125 Henry Road is enclosed for your consideration.

Also enclosed is a copy of a letter dated May 29, 1985 to the former owner of the property granting a one-foot setback for construction on the lot. We are building in accord with that setback.

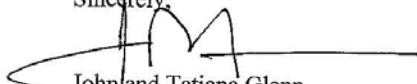
We paid \$50,000 for the lot in 2004 making a square footage value of \$3.13. The area we are requesting to purchase, as depicted on a sketch in the application, constitutes 4122.9 square feet giving thus an extended value at \$3.13/SF of \$12,904.68.

Photographs are also enclosed to show the physical conditions necessitating our request.

Please allow us to purchase the property as requested for the amount of \$12,904.68 to be paid forthwith upon notice of your approval.

Thank you for your kind consideration.

Sincerely,



John and Tatiana Glenn  
7717 Blue Creek Road  
Billings, MT 59101

May 29, 1925

#454 Variance

J. P. Evans  
3115 Lohof Drive  
Billings, Montana 59102

Dear Mr. Evans:

This is to inform you of the action taken by the City Board of Adjustment on your request for a variance from the front yard setback of 20' to 1' in a Residential 9600 (R-96) zone to allow construction of a residence on Lot 1, Block 2, Lohof Subdivision. The Board of Adjustment granted the variance.

Sincerely,

Lee Tuott  
Zoning Coordinator

xc: R. H. and Marcia Spalding  
Steve Baker, Building Official

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

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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TITLE: Donation from Northwestern Energy to the Cobb Field Fundraising Project

DEPARTMENT: Administration

PRESENTED BY: Cari Martin, City Clerk

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**PROBLEM/ISSUE STATEMENT:** The City of Billings has received a \$2,000 donation to the Cobb Field Fundraising Project from the Northwestern Energy Employee Contribution Committee.

**ALTERNATIVES ANALYZED:**

1. Accept the donation.
2. Do not accept the donation.

**FINANCIAL IMPACT:** The donation will be put towards the building expense of the new baseball stadium.

**RECOMMENDATION**

Staff recommends that Council accept the \$2,000 donation from Northwestern Energy.

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

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

# AA

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

**TITLE:** Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Create the District, and Setting a Public Hearing

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Lora Mattox, AICP, Neighborhood Planner

**PROBLEM/ISSUE STATEMENT:** The Council will consider adopting a resolution that is the first step toward creating a South Billings Boulevard Urban Renewal District. The resolution declares the Council's intention to create the district, including tax increment authority, describes the property involved and the blighted conditions, sets a public hearing for November 26, 2007, and directs staff to make the necessary public notifications.

**ALTERNATIVES ANALYZED:** Creating this district is discretionary. The City Council may:

- not approve the resolution
- modify the proposed boundary
- adopt the resolution as the first step toward creating the proposed district

**FINANCIAL IMPACT:** The financial impact is unknown. However, the current taxable market value in the proposed TIFD is approximately \$251,730,757 and is stagnant. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

### **RECOMMENDATION**

Staff recommends that Council adopt the resolution that declares the Council's intention to create a South Billings Boulevard Urban Renewal District, including tax increment authority,

describes the property involved and the blighted conditions, sets a public hearing for November 26, 2007, and directs staff to make the necessary public notifications.

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

**ATTACHMENTS:**

A:     Resolution



## **INTRODUCTION**

The City Council will consider adopting a resolution that is the first step toward creating a South Billings Boulevard Urban Renewal District.

## **PROCEDURAL HISTORY**

- On April 26, 2007, Planning Division staff attended the Southwest Corridor Task Force to discuss and answer questions on urban renewal districts and tax increment financing.
- May through August, 2007, Planning Division staff attended monthly Southwest Corridor Task Force meetings to continue discussions on the urban renewal district and to gather input from residents on potential public improvement projects.
- On August 30, 2007, Planning Division staff mailed 2,032 letters of invitation to property owners to two public meetings on the urban renewal district.
- On September 13, 2007, the first public meeting was held to discuss the urban renewal district and tax increment financing to property owners. In addition, property owners identified potential public improvement projects within the district.
- On October 11, 2007, the second public meeting was held to review the draft urban renewal plan for the district.
- On October 23, 2007, Yellowstone Planning Board voted on a 6-0 vote to recommend approval of the South Billings Urban Renewal Plan with corrections to the Billings City Council.
- On November 5, 2007, City Council at its work session will hear a presentation and discussion of the South Billings Boulevard Urban Renewal Plan and District.
- On November 13, 2007, City Council will consider a Resolution on South Billings Boulevard Urban Renewal District, Declaring Blight, Intent to Create the District and Setting a Public Hearing
- On November 26, 2007, City Council will conduct a public hearing and first reading of an ordinance to create the district.
- On December 10, 2007, City Council will consider the ordinance on second and final reading. The ordinance becomes effective 30 days later unless appealed.

## **BACKGROUND**

Efforts began the spring of 2007 to create a tax increment finance district and an urban renewal plan for the South Billings Boulevard Urban Renewal District (SBBURD). Through public meetings and participation with the City of Billings, the Southwest Corridor Neighborhood Task Force, residents and property owners, Downtown Billings Partnership, and Big Sky Economic Development Authority the boundaries of the tax increment finance district were settled upon.

Working with area property owners, the Planning Division developed a plan that identifies conditions that create blight, opportunities for growth and development and the infrastructure improvements that need to occur to support private development. In order to create an urban renewal district and use tax increment financing for some or all of the public improvements, the city must adopt a resolution that describes the area, identify the conditions that create blight, state its intention to create a new district and set a public hearing on the plan. The attached resolution satisfies that requirement. If the resolution is approved, staff will publish the notice of

public hearing and send it to all property owners in the proposed district. On November 26, 2007, the Council will consider the ordinance that adopts the plan and allows the City to use tax increment financing for public improvements.

### **ALTERNATIVES ANALYSIS**

The City Council may approve or disapprove the resolution and it may alter the boundaries. Approving the resolution is the first step toward creating the district. The district will be created only after a public hearing and the Council's approval of the urban renewal plan by ordinance.

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

Consistency with the Growth Policy is one requirement for adopting an urban renewal plan. Growth Policy compliance is outlined in the body of the urban renewal plan.

### **STAKEHOLDERS**

- BSEDA has been involved with creating the district from the outset. It supports the districts creation because it is an area of the community that is underdeveloped and presents business investment opportunities.
- Downtown Billings Partnership has been involved with creating the district due to its expertise in the creation and administration of Tax Increment Finance Districts.
- Southwest Corridor Neighborhood Task Force has been involved from the beginning. Meetings with the task force prior to the two public meetings helped guide the formation of the Urban Renewal District.

### **RECOMMENDATION**

Staff recommends that Council adopt the resolution that declares the Council's intention to create a South Billings Boulevard Urban Renewal District, including tax increment authority, describes the property involved and the blighted conditions, sets a public hearing for November 26, 2007 and directs staff to make the necessary public notifications.

### **ATTACHMENTS:**

A: Resolution

## **ATTACHMENT A**

### RESOLUTION NO: 07-

A RESOLUTION DECLARING THE CITY COUNCIL INTENT TO CREATE A SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT WITH TAX INCREMENT AUTHORITY; DECLARING THE EXISTENCE OF BLIGHT WITHIN THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL AREA; SETTING A PUBLIC HEARING DATE; AND REQUIRING PUBLICATION AND MAILING OF THE NOTICE OF HEARING

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), the City of Billings, Montana (the "City") is authorized, among other things, to identify and declare an area as containing blight with the intention of eliminating it through urban renewal; and

WHEREAS, the City is authorized by the Act to create urban renewal areas with tax increment provisions by adopting an urban renewal plan by ordinance; and

WHEREAS, an urban renewal plan has been prepared for the proposed South Billings Boulevard Urban Renewal District; and

WHEREAS, the City Council desires to conduct a public hearing on the draft urban renewal plan for the proposed South Billings Boulevard Urban Renewal District to determine if it is desirable to create the district.

NOW, THEREFORE, the City Council of the City of Billings, Montana, declares and resolves as follows:

1. Description of Proposed District The area being considered for inclusion in the proposed urban renewal area is described as:

***Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to Orrel Drive, extending south along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street to South Frontage Road (including Interstate***

**90 corridor), extending west along the south edge of South Frontage Road to the intersection of South Frontage and Orchard Lane, extending south along the centerline of Orchard Lane to the existing city limit boundary, extending west along the existing city limit boundary to the intersection of South 12<sup>th</sup> Street West and Nova Lane, extending south along the centerline of South 12<sup>th</sup> Street West to intersection of South 12<sup>th</sup> Street West and the southern boundary of Tract 1, Certificate of Survey 2834, then continuing west along the southern boundaries of Lot 6, Block 4 of Weil Subdivision and Lot 5C of Block 4 of Weil Subdivision amended and Lot 4 of Block 4 of Weil Subdivision and Lot 3 of Block 4 of Weil Subdivision and Lot 2 of Block 4 of Weil Subdivision and Lot 1 of Block 4 of Weil Subdivision and its intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane to the intersection of Mullowney Lane and Underpass Avenue, extending northeast along the centerline of Underpass Avenue to the intersection of Underpass Avenue and State Avenue, extending east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all nonincorporated land within the boundary.**

2. Determination of blight. A requirement of Montana Annotated Code 2005 is to justify an urban renewal plan through the determination of *blight*. Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

- the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
- inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- inappropriate or mixed uses of land or buildings;
- defective or inadequate street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- unsanitary or unsafe conditions;
- deterioration of site;
- improper subdivision or obsolete platting;
- the existence of conditions that endanger life or property by fire or other causes;

The area in the proposed district contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, and significant infrastructure needs. Several of the commercial buildings in the district are vacant or deteriorated and need demolition. Many of the sidewalks are cracked or nonexistent, alleys are deteriorated, and, in general, much of the area is below city standards. In contrast to the above, there are certain

properties within the district in good repair but included in the district to allow for a contiguous block of land within the district; and because pockets of revitalization cannot be sustained if areas of neglect and blight surround them. Over time, without continued managed urban renewal, even these success stories will once again decline in taxable value. Portions of the district fall into the blighted, neglected and under-utilized categories. Maps 4 and 5 in the urban renewal plan show the current infrastructure conditions within the district.

3. Intent to Create an Urban Renewal Area with Tax Increment Authority. Pursuant to the Act and considering the blighted conditions cited above, the City Council declares its intention to create a South Billings Boulevard Urban Renewal Area and that public improvements that will stimulate private investment in the area may be financed in part through tax increment generated from the District, subject to a public hearing and adoption of the draft urban renewal plan by ordinance.

4. Public Hearing. A public hearing is hereby called and shall be held on November 26, 2007 at 6:30 p.m. in the Council Chambers at 220 N. 27th Street, on whether to adopt the draft urban renewal plan for the proposed South Billings Boulevard Urban Renewal Area.

5. Publication and Mailing of Notice. The City Clerk is hereby authorized and directed to cause notice of the public hearing to be published in the *Billings Times* at least once a week for two consecutive weeks prior to the date set for the hearing and to mail notice of such hearing not less than 10 days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contract for the deed of the Property, at the addresses shown on the tax roll.

APPROVED AND PASSED by the City Council of the City of Billings this 13th day of November, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, City Clerk

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

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 13, 2007

**TITLE:** Resolution Relating to Financing of the South Billings Boulevard Tax Increment Financing District; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

**DEPARTMENT:** Administration – Finance Division

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

**PROBLEM/ISSUE STATEMENT:** The City anticipates selling bonds for the South Billings Boulevard tax increment financing district during the first quarter of 2008. The proposed project costs and bond sale are related to the planned Foursquare Development on King Avenue East, between South Billings Boulevard and Orchard Lane. The City needs to expend monies related to the project before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse expenses from the bond sale proceeds.

**ALTERNATIVES ANALYZED:** The City Council may:

- Approve the resolution that will allow the City to reimburse itself and Foursquare Development for design and project development costs that are incurred prior to the anticipated bond sale.
- Disapprove the resolution and do not reimburse costs that are incurred prior to the bond sale.

**FINANCIAL IMPACT:** The proposed bond sale will finance the construction of multiple off-site public improvements on King Avenue East and in the vicinity of the proposed Foursquare Development project. The estimated improvement cost is \$4.2 million. Costs that will be incurred before the bond sale include design and possibly some public improvement construction. If the resolution is not approved, those costs will not be eligible for reimbursement from the bond proceeds when they become available in early 2008. The costs will then be borne by the City and the developer. The proposed public improvements will benefit the Foursquare Development project, the surrounding neighborhoods and the City of Billings. If the Tax Increment District is not approved and/or bonds not sold, the City is obligated by a Development Agreement that it approved in September to create a Special Improvement District to construct the improvements. Because the City owns land in the proposed SID area, it would be assessed for approximately half the total cost. Therefore, a TID benefits the City and Foursquare. If the

Foursquare project develops as anticipated and other vacant or underdeveloped property redevelops, that private investment will generate more increment than is needed to support the Foursquare public improvements and that increment can be used to complete other public improvements in the surrounding neighborhoods.

**RECOMMENDATION**

Staff recommends City Council approve the attached resolution.

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

**ATTACHMENT**

A – Resolution

**ATTACHMENT A**

**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 a resolution entitled: "RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on November 13, 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 Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_  
\_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of November, 2007

\_\_\_\_\_  
City Clerk



RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO FINANCING OF CERTAIN  
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE  
WITH REIMBURSEMENT BOND REGULATIONS UNDER  
THE INTERNAL REVENUE CODE

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

**Recitals.**

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.

The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

**Official Intent Declaration.**

The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the “Projects”).

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (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 Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$4,200,000.00 (the “Bonds”) after the date of payment of all or a portion of the costs of the Projects. 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.

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 Projects, 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.

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

Adopted this 13th day of November , 2007.

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Mayor

Attest:

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City Clerk

#### EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
Construction of multiple off- site public improvements on King Avenue East and in the vicinity of the proposed Foursquare Development project.	\$4,200,000.00

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, November 13, 2007**

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**TITLE:** Resolution of Intention to Create Special Improvement District 1380, Terra West Subdivision 3<sup>rd</sup> & 4<sup>th</sup> Filings, for Monad Road Street Frontage Improvements

**DEPARTMENT:** Department Of Parks, Recreation, & Public Lands

**PRESENTED BY:** Mike Whitaker, Director

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**PROBLEM/ISSUE STATEMENT:** The residents of the 3<sup>rd</sup> and 4<sup>th</sup> Filings of Terra West Subdivision, containing 76 lots, have requested that immediate steps be taken to develop the unimproved boulevard strip on Monad Road that borders Terra West Subdivision. The Subdivision Improvements Agreement for Terra West 3<sup>rd</sup> Filing, and Terra West 4<sup>th</sup> Filing, provides for an extended Special Improvement District to be formed to fund the improvements of public areas for the subdivision. The proposed Special Improvement District No. 1380 is for \$77,000 to finance the engineering and design service to grade and level the street frontage, install a water service and irrigation system, and plant grass and trees along the 657 foot long strip (0.74 acres). The Resolution of Intent to Create Special Improvement District 1380 is the first step in the process to include all lots of Terra West Subdivision 3<sup>rd</sup> and 4<sup>th</sup> Filings in S. I. D. 1380 to fund the construction of the Monad Road street frontage improvements.

**ALTERNATIVES ANALYZED:**

- Create the S. I. District now to enable development of the street frontage in the spring of 2008. This is a requirement approved in the Subdivision Improvement Agreements for the Terra West 3<sup>rd</sup> Filing and 4<sup>th</sup> Filing, and Waivers of Protest for the formation of the S. I. D. and a S. I. Maintenance District were filed with the Subdivision Improvements Agreement. This is the staff recommendation and the request of the Terra West Property owners.
- Do not create the Special Improvement District at this time.

**FINANCIAL IMPACT:** The development costs of the Monad Road improvements is estimated to be \$82,000 spread on the 76 lots in Terra West 3<sup>rd</sup> and 4<sup>th</sup> Filings, or \$1,013.17 per lot, payable with interest over an assessment period of 15 years. The assessment for the lots is shown in "Exhibit D" of the attached SID documents.

**RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to create Special Improvement District 1380 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the December 10, 2007, City Council meeting.

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

**ATTACHMENTS:**

- A. Resolution of Intent to Create Special Improvement District No. 1380
- B. Exhibit "A" Plan for the Proposed Special Improvement District 1380
- C. Exhibit "B" Metes and Bounds Description of the Proposed Special Improvement District 1380
- D. Exhibit "C" Property Owner list for Proposed S. I. D. 1380
- E. Exhibit "D" Estimated Special Improvement District No. 1380 Costs for Proposed Improvements

## **INTRODUCTION**

Approval of the Resolution of Intent to Create Special Improvement District No. 1380 for the construction of street frontage improvements on the north side of Monad Road adjacent to Terra West Subdivision is the first step in creating the Special Improvement District. The Resolution of Intent sets December 10, 2007, as the date for the Public Hearing and consideration of the Resolution to Create the district, and notifies the property owners included within the district of the intended action.

## **PROCEDURAL HISTORY**

- July, 1993, Terra West Subdivision, 3<sup>rd</sup> Filing final plat approved and filed, including Waivers of Protest for park and public area improvements and maintenance. The Master Plan for the construction of the park area improvements was developed with the PRPL Department and adopted by the City Council as part of the Terra West 3<sup>rd</sup> Filing plat and approved at the same time
- August, 2001, Terra West, 4<sup>th</sup> Filing final plat was approved and filed, including Waivers of Protest for the construction and maintenance of improvements to public areas of the subdivision. Provision for the construction of street frontage improvements was not made in the 4<sup>th</sup> Filing plat approval other than as provided for in the Waivers of Protest that were filed.
- February 14, 2006, Petition to Amend Covenants filed by property owners within the Terra West 4<sup>th</sup> Filing to have the Monad Road street frontage improvements installed.
- May 1, 2006, meeting of the Terra West Subdivision residents at West End Baptist Church to discuss the improvement of the Monad Road Street frontage, estimated costs and funding alternatives.
- Determination that the Terra West Subdivision Park Maintenance District could not be used to fund the street frontage improvements. The only other alternative available is to form a Special Improvement District for this purpose.
- Approval of the Resolution of Intent To Create Special Improvement District No. 1380 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create Special Improvement District No. 1380 at the December 10<sup>th</sup>, 2007, regular City Council meeting.

## **BACKGROUND**

The development of the streetfront on Monad Road adjacent to Terra West Subdivision is a requirement of the subdivision and is provided for with the Waivers of Protest that were filed

when the Terra West 3<sup>rd</sup> and 4<sup>th</sup> Filing plats were approved. The Waivers of Protest to the creation of improvement and maintenance districts for public areas within the subdivision are the mechanism that was put in place to enable these improvements to be completed.

- When the Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings were approved, the street front improvements along 32<sup>nd</sup> Street West were required to be completed as the Filings were built out. The 32<sup>nd</sup> Street West streetfront adjacent to Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings are maintained by the residents in that portion of Terra West Subdivision.
- The park in the center of Terra West Subdivision was completed by the developed as required in the Subdivision Improvements Agreement as part of the development of Terra West 3<sup>rd</sup> Filing. It is maintained by a subdivision-wide maintenance district, PMD 4008, created for that purpose, assessed to all properties within the entire Terra West Subdivision. The existing maintenance district is only for the purpose of maintaining that internal park area.
- The Monad Road streetfront improvement and maintenance districts will include the Terra West 3<sup>rd</sup> and 4<sup>th</sup> Filing properties. The Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings are excluded because those properties improved and are maintaining the 32<sup>nd</sup> Street West streetfront landscape.

Approval of the Resolution of Intent to Create Special Improvement District No. 1380 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create Special Improvement District No. 1389 will take place at the December City Council Meeting.

### **ALTERNATIVES ANALYSIS**

- Create the Special Improvement District now to enable the construction of the improvements to the Terra West Subdivision Monad Road improvements in the Spring of 2008. The approved Subdivision Improvements Agreements call for development of public areas in the subdivision through Special Improvement District and also provides that a Special Improvement Maintenance District be created for maintaining it. This is the staff recommendation.
- Do not create Special Improvement District No. 1380 and the S.I. Maintenance District to improve and maintain the Terra West Monad Road street frontage at this.

### **STAKEHOLDERS**

- The developers of Terra West Subdivision have agreed to the development and maintenance of the public areas in the Subdivision.
- All properties in Terra West Subdivision have Waivers of Protest on file for the improvement and maintenance of public areas. However, Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings are being excluded from SID1380 and SIMD 4038 because they were required to install landscape improvements on the 32<sup>nd</sup> Street West street frontage and have been required to maintain it since the 1<sup>st</sup> and 2<sup>nd</sup> Filings were developed. They will continue to maintain the 32<sup>nd</sup> Street W. landscaping separate from the 3<sup>rd</sup> and 4<sup>th</sup> Filings.

- All properties in Terra West Subdivision are included in PMD 4008 that was created specifically for the maintenance of the 2 park areas in the northeast part of the subdivision.
- The 76 lots included in the S. I. D. and S. I.M. D. in Terra West Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> Filings, consist of single-family residential lots and Waivers of Protest for the creation of the SID and the SIMD are on file. The landscaping along Monad Road will provide an attractive street frontage for the subdivision, similar to the 32<sup>nd</sup> Street West frontage, and increase property values for the homes and lots within it, especially for the 3<sup>rd</sup> and 4<sup>th</sup> Filing properties.
- The adjacent subdivisions on the north side of Monad Road are landscaping their street frontage from the Billings Bench Water Association canal west to 32<sup>nd</sup> Street West and failure to develop the Terra West Monad Road frontage will make it the only section that will be unimproved. The neighborhood and the City of Billings residents would continue to have new subdivisions with arterial street frontage unimproved to become an eyesore if not for the requirement that new subdivisions provide for the development and maintenance of street frontage that is part of the subdivision as part of the Subdivision Improvement Agreements.

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

The use of Special Improvement and Maintenance Districts for street frontage and public areas in subdivisions is consistent with long-term development practices in place throughout the City of Billings.

### **RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to create Special Improvement District 1380 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the December 10, 2007, City Council meeting.

### **ATTACHMENTS:**

- A. Resolution of Intent to Create Special Improvement District No. 1380
- B. Exhibit "A" Plan for the Proposed Special Improvement District 1380
- C. Exhibit "B" Metes and Bounds Description of the Proposed Special Improvement District 1380
- D. Exhibit "C" Property Owner list for Proposed S. I. D. 1380
- E. Exhibit "D" Estimated Special Improvement District No. 1380 Costs for Proposed Improvements

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# DD

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

**TITLE:** Resolution of Intent to Create Special Improvement Maintenance District No. 4038, Terra West Subdivision 3<sup>rd</sup> & 4<sup>th</sup> Filings, Monad Road Street Frontage Improvements

**DEPARTMENT:** Department Of Parks, Recreation, & Public Lands

**PRESENTED BY:** Mike Whitaker, Director

**PROBLEM/ISSUE STATEMENT:** The residents of the 3<sup>rd</sup> and 4<sup>th</sup> Filings of Terra West Subdivision, containing 76 lots, have requested that immediate steps be taken to develop the unimproved boulevard strip on Monad Road that borders Terra West Subdivision. The Subdivision Improvements Agreement provides for an extended Special Improvement District to be formed to fund the improvements of public areas for the subdivision. The Subdivision Improvements Agreements for Terra West 3<sup>rd</sup> and 4<sup>th</sup> Filings also provide that Special Improvement Maintenance District can be created to maintain public area improvements. The Monad Road Street frontage is a 55 foot by 657 foot long strip (0.74 acres) that will include automatic irrigation, turf grass and 16 trees. The Special Improvement Maintenance District is proposed to provide for the maintenance of the street front improvements once installed. As a condition of the Terra West Subdivision 3<sup>rd</sup> and 4<sup>th</sup> Filings final plat approval, Waivers of Protest for the creation of development or maintenance districts were filed to provide for of all public areas within the subdivision. The Resolution of Intent to Create Special Improvement Maintenance District 4038 is the first step in the process to create the Monad Road street frontage improvements maintenance district.

#### ALTERNATIVES ANALYZED:

- Create S. I. Maintenance District No. 4038 with Special Improvement District No. 1380 to enable maintenance of the street frontage once the improvements are completed. This is the staff recommendation and the request of the Terra West Property owners.
- Do not create Special Improvement Maintenance District No. 4038 at this time.

**FINANCIAL IMPACT:** The maintenance costs for the Landscaping improvements are estimated to be \$5,710.00 for the first year. The assessment rate for this amount is \$75.10 per lot



in S.I.M.District 4038. The assessment for the lots is shown in “Exhibit D” of the attached SIMD documents for the coming year.

**RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to create Special Improvement Maintenance District No. 4038 to provide a date for the Public Hearing and consideration of the Resolution to Create Special Improvement Maintenance District No. 4038 at the December 10, 2007, City Council meeting, contingent on the approval of the Resolution of Intent to Create Special Improvement District No. 1380.

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

**ATTACHMENTS: (available in the City Clerk’s Office)**

- A. Resolution of Intent to Create Special Improvement Maintenance District No. 4038
- B. Exhibit “A” Plan for the Proposed Special Improvement Maintenance District 4038
- C. Exhibit “B” Metes and Bounds Description of the Proposed Special Improvement Maintenance District 4038
- D. Exhibit “C” Property Owner list for Proposed S. I. M. District 4038
- E. Exhibit “D” Estimated Special Improvement Maintenance District No. 4038 First Year Costs

## **INTRODUCTION**

Approval of the Resolution of Intent to Create S. I. Park Maintenance District No. 4038 for the maintenance of the Terra West Subdivision Monad Road street frontage that is proposed for development in SID 1380, is the first step in creating the S.I. Maintenance District by setting a date for the Public Hearing and consideration of the Resolution to Create the district, and by notifying the property owners included within the district of the intended action.

## **PROCEDURAL HISTORY**

- July, 1993, Terra West Subdivision, 3<sup>rd</sup> Filing final plat approved and filed, including Waivers of Protest for park and public area improvements and maintenance. The Master Plan for the construction of the park area improvements was developed with the PRPL Department and adopted by the City Council as part of the Terra West 3<sup>rd</sup> Filing plat and approved at the same time
- August, 2001, Terra West, 4<sup>th</sup> Filing final plat was approved and filed, including Waivers of Protest for the construction and maintenance of improvements to public areas of the subdivision. Provision for the construction of street frontage improvements was not made in the 4<sup>th</sup> Filing plat approval other than as provided for in the Waivers of Protest that were filed.
- February 14, 2006, Petition to Amend Covenants filed by property owners within the Terra West 4<sup>th</sup> Filing to have the Monad Road street frontage improvements installed and maintained as provided for in the Subdivision Improvements Agreements.
- May 1, 2006, meeting of the Terra West Subdivision residents at West End Baptist Church to discuss the improvement of the Monad Road Street frontage, estimated costs and funding alternatives.
- Determination that Terra West Subdivision Park Maintenance District No. 4008 could not be used to fund street frontage improvements or to provide the maintenance for the improvements after they are installed. The alternative available is to form a Special Improvement District and a S.I.M. District for this purpose.
- Approval of the Resolution of Intent To Create Special Improvement Maintenance District No. 4038 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create Special Improvement Maintenance District No. 4038 at the December 10<sup>th</sup>, 2007, regular City Council meeting, contingent on approval of Special Improvement District No. 1380 to install the improvements to be maintained.

## **BACKGROUND**

The development of the street frontage on Monad Road adjacent to Terra West Subdivision is a requirement of the subdivision and is provided for with the Waivers of Protest that were filed when the Terra West 3<sup>rd</sup> and 4<sup>th</sup> Filing plats were approved. The Waivers of Protest to the creation of improvement and maintenance districts for public areas within the subdivision are the mechanism that was put in place to enable these improvements to be completed and then maintained.

- When the Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings were approved, the street front improvements along 32<sup>nd</sup> Street West were required to be completed as the Filings were built out. The 32<sup>nd</sup> Street West street frontage adjacent to Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings are maintained by the residents in that portion of Terra West Subdivision.
- The park in the center of Terra West Subdivision was completed by the developed as required in the Subdivision Improvements Agreement as part of the development of Terra West 3<sup>rd</sup> Filing. It is maintained by a subdivision-wide maintenance district, PMD 4008, created for that purpose, assessed to all properties within the entire Terra West Subdivision. The existing maintenance district is only for the purpose of maintaining that internal park area.
- The Monad Road street frontage improvement and maintenance districts will include only the Terra West 3<sup>rd</sup> and 4<sup>th</sup> Filing properties. The Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings are excluded because those properties improved and are maintaining the 32<sup>nd</sup> Street West street frontage landscape.

Approval of the Resolution of Intent to Create Special Improvement Maintenance District No. 4038 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment period and procedures. The Public Hearing and consideration of the Resolution to Create Special Improvement Maintenance District No. 4038 will take place at the December 10<sup>th</sup>, 2007, City Council Meeting, along with consideration of the Resolution to Create the Special Improvement District, No. 1380, to fund the improvements.

## **ALTERNATIVES ANALYSIS**

- Create Special Improvement Maintenance District No. 4038 now to enable the maintenance of the improvements to the Terra West Subdivision Monad Road frontage, if the SID No.1380 is approved. The approved Subdivision Improvements Agreements call for development of public areas in the subdivision through Special Improvement District and also provides that a Special Improvement Maintenance District be created for maintaining it. This is the staff recommendation.
- Do not create Special Improvement Maintenance District No. 4038 to maintain the Terra West Monad Road street frontage at this time.

## **STAKEHOLDERS**

- The developers of Terra West Subdivision have agreed to the development and maintenance of the public areas in the Subdivision.
- All properties in Terra West Subdivision have Waivers of Protest on file for the improvement and maintenance of public areas. However, Terra West 1<sup>st</sup> and 2<sup>nd</sup> Filings are being excluded from SID1380 and SIMD 4038 because they were required to install landscape improvements on the 32<sup>nd</sup> Street West street frontage and have been required to maintain it since the 1<sup>st</sup> and 2<sup>nd</sup> Filings were developed. They will continue to maintain the 32<sup>nd</sup> Street W. landscaping separate from the 3<sup>rd</sup> and 4<sup>th</sup> Filings.
- All properties in Terra West Subdivision are included in PMD 4008 that was created specifically for the maintenance of the 2 park areas in the northeast part of the subdivision.
- The 76 lots included in the S. I. D. and S. I.M. D. in Terra West Subdivision, 3<sup>rd</sup> and 4<sup>th</sup> Filings, consist of single-family residential lots and Waivers of Protest for the creation of the SID and the SIMD are on file. The landscaping along Monad Road will provide an attractive street frontage for the subdivision, similar to the 32<sup>nd</sup> Street West frontage, and increase property values for the homes and lots within it, especially for the 3<sup>rd</sup> and 4<sup>th</sup> Filing properties.
- The adjacent subdivisions are improving the Monad Road street frontage on the north side from the Billing Bench Water Association canal west to 32<sup>nd</sup> Street West and failure to develop the Terra West Monad Road frontage will make it the only portion that will be unimproved along that section of Monad Road. The neighborhood and the City of Billings residents would continue to have new subdivisions with arterial street frontage unimproved to become an eyesore if not for the requirement that new subdivisions provide for the development and maintenance of street frontage that is part of the subdivision as part of the Subdivision Improvement Agreements.

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

The use of Special Improvement and Maintenance Districts for street frontage and public areas in subdivisions is consistent with long-term development practices in place throughout the City of Billings.

### **RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to create Special Improvement Maintenance District No. 4038 to provide a date for the Public Hearing and consideration of the Resolution to Create Special Improvement Maintenance District No. 4038 at the December 10, 2007, City Council meeting, contingent on the approval of the Resolution of Intent to Create Special Improvement District No. 1380.

### **ATTACHMENTS: (available for viewing in the City Clerk's Office)**

- A. Resolution of Intent to Create Special Improvement Maintenance District No. 4038
- B. Exhibit "A" Plan for the Proposed Special Improvement Maintenance District 4038
- C. Exhibit "B" Metes and Bounds Description of the Proposed Special Improvement Maintenance District 4038
- D. Exhibit "C" Property Owner list for Proposed S. I. M. District 4038
- E. Exhibit "D" Estimated Special Improvement Maintenance District No. 4038 First Year Costs

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, November 13, 2007**

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**TITLE:** Resolution of Intent to Create - Park Maint. District No. 4035, Bitterroot Heights Subdivision

**DEPARTMENT:** Department Of Parks, Recreation, & Public Lands

**PRESENTED BY:** Mike Whitaker, Director

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**PROBLEM/ISSUE STATEMENT:** Bitterroot Heights Subdivision, 1<sup>st</sup> Filing contains approximately 11.6 acres of dedicated park and public open space. Park lands include a 10.4 acre park tract for both a natural and developed park, and a 50-foot wide drainage way with soft-surface trails them within the subdivision, which provide connectivity to a large public park area (1.0 acres). Also included are a landscaped median and entry tracts at the subdivision's entrance from Bitterroot Drive totaling 0.2 acres. In total 11.6 acres of park lands are included in Park Maintenance District No. 4035. The development and improvement of the park will be by the developer through private contract. The Park Maintenance District needs to be created at this time to provide for the maintenance of the public area improvements. As a condition of the Bitterroot Heights Subdivision, 1st Filing final plat approval, the lots must establish a park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Bitterroot Heights Subdivision in Park Maintenance District No. 4035.

**ALTERNATIVES ANALYZED:**

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

**FINANCIAL IMPACT:** The maintenance costs for the public area improvements are estimated to be \$12,035.00 for the first year. The assessment rate for this amount is \$0.02812 per square foot of property in District 4035. The assessment for the lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

**RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4035 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the December 10<sup>th</sup>, 2007, City Council meeting.

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

**ATTACHMENTS: (available for viewing in the City Clerk's Office)**

- A. Resolution of Intent to Create Park Maintenance District No. 4035
- B. Exhibit "A" Plat of proposed District 4035
- C. Exhibit "B" Metes and Bounds Description of the proposed District No. 4035
- D. Exhibit "C" Property owner list for the proposed District No. 4035
- E. Exhibit "D" Estimate of Costs for the First Year Assessments.

## **INTRODUCTION**

Approval of the Resolution of Intent to Create Park Maintenance District No. 4035 for the maintenance of Bitterroot Heights Subdivision public areas is the first step in creating the Park Maintenance District by setting a date for the Public Hearing and consideration of the Resolution to Create the district, and by notifying the property owners included within the district of the intended action.

## **PROCEDURAL HISTORY**

- The Bitterroot Heights Subdivision, 1<sup>st</sup> Filing final plat has been approved and filed.
- The Master Plan for the construction of the public area improvements was developed with the PRPL Department and adopted by the City Council as Resolution #05-18254 on April 11<sup>th</sup>, 2005.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the November 13<sup>th</sup>, 2007, regular City Council meeting.

## **BACKGROUND**

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Bitterroot Heights Subdivision Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed maintenance district includes all lots included in Bitterroot Heights Subdivision, 1<sup>st</sup> Filing. Said lots shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Bitterroot Heights Subdivision.

Approval of the Resolution of Intent to Create Park Maintenance District No. 4035 for Bitterroot Heights Subdivision is the first step in the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the December 10, 2007, regular City Council Meeting.

## **ALTERNATIVES ANALYSIS**

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

## **STAKEHOLDERS**

- The developers have agreed to the development and maintenance of the public areas in Bitterroot Heights Subdivision.
- The 49 lots initially included in the PMD in Bitterroot Heights Subdivision consist of single-family residential lots. The developers currently own all platted lots and have agreed to the development.
- Billings' residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

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

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

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city general fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$486,683 to offset maintenance expenses in the upcoming 2008 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division Operations & Maintenance budget this year.



**RECOMMENDATION**

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4035 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the December 10<sup>th</sup>, 2007, City Council meeting.

**ATTACHMENTS: (available for viewing in the City Clerk's Office)**

- A. Resolution of Intent to Create Park Maintenance District No. 4035
- B. Exhibit "A" Plat of proposed District 4035
- C. Exhibit "B" Metes and Bounds Description of the proposed District No. 4035
- D. Exhibit "C" Property owner list for the proposed District No. 4035
- E. Exhibit "D" Estimate of Costs for the First Year Assessments

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# FF

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

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TITLE: Zone Change #822, 2<sup>nd</sup> Reading of Ordinance  
DEPARTMENT: Planning and Community Services  
PRESENTED BY: Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential 7,000 Restricted (R-70R) on a 400-acre property north and west of the High Sierra Subdivision and Lake Hills Subdivision. The owner is the Dover Ranch, the developer is Oakland Companies, and the representing agent is Engineering, Inc. The Zoning Commission conducted a public hearing on October 2, 2007, and forwarded a recommendation of approval, on a 4-0 vote, for the requested rezoning except for land within 100 feet from certain Lake Hills Subdivision properties. The City Council held a public hearing on October 22, 2007, and approved the first reading of this zone change, with exceptions as listed in the recommendation below.

**ALTERNATIVES ANALYZED:** State law, 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 as requested
2. Deny the zone change as requested
3. Approve the zone change as recommended by the Zoning Commission
4. Allow withdrawal of the application
5. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** The proposed zone change would facilitate the development of the property which would increase the City's tax revenue on the parcel.

### RECOMMENDATION

On first reading of the ordinance, Council voted 9-1 to approve Zone Change #822 except for land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills

Subdivision 14<sup>th</sup> Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision 14<sup>th</sup> Filing; Lots 9A, 9B, 10A, 11, 12, and 13, Block 44 of Lake Hills Subdivision 13<sup>th</sup> Filing; and land within 200 feet of the following lots: Lot 14, Block 44 of Lake Hills Subdivision 13<sup>th</sup> Filing, and Lots 1 through 13, Block 64 of Lake Hills Subdivision 25<sup>th</sup> Filing, and adopt the 12 Zoning Commission Determinations.

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

**ATTACHMENT:**

A:        Ordinance

## Attachment A

Zone Change #822

### **ORDINANCE NO. 07-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR the S ½ of the SE ¼ of Section 8, T1N, R26E, the S ½ of the SW ¼ of Section 9, T1N, R26E, and Tract 1, Certificate of Survey 2017, except the land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills Subdivision, 14<sup>th</sup> Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision, 14<sup>th</sup> Filing; Lots 9A, 9B, 10A, 11, 12, and 13, Block 44 of Lake Hills Subdivision, 13<sup>th</sup> Filing; and the land within 200 feet of the following lots: Lot 14, Block 44 of Lake Hills Subdivision, 13<sup>th</sup> Filing, and Lots 1 through 13, Block 64 of Lake Hills Subdivision, 25<sup>th</sup> Filing, containing approximately 391 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 the S ½ of the SE ¼ of Section 8, T1N, R26E, the S ½ of the SW ¼ of Section 9, T1N, R26E, and Tract 1, Certificate of Survey 2017, except the land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills Subdivision 14<sup>th</sup> Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision 14<sup>th</sup> Filing; Lots 9A, 9B, 10A, 11, 12, and 13, Block 44 of Lake Hills Subdivision, 13<sup>th</sup> Filing; and the land within 200 feet of the following lots: Lot 14, Block 44 of Lake Hills Subdivision, 13<sup>th</sup> Filing, and Lots 1 through 13, Block 64 of Lake Hills Subdivision, 25<sup>th</sup> Filing, containing approximately 391 acres and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9,600** to **Residential 7000-Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7000-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 October 22, 2007.

PASSED, ADOPTED AND APPROVED on second reading November 13, 2007.

CITY OF BILLINGS:

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

ATTEST:

BY:  
City Clerk

ZC #822

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# GG

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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**TITLE:** Final Plat of Grand Avenue School Subdivision, Amended Lot 1, Block 1

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Juliet Spalding, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** The final plat of Grand Avenue School Subdivision, Amended Lot 1, Block 1 is being presented to the City Council for approval. The subject property is zoned Community Commercial (Lot 1-B) and Public (Lot 1-A) and is located on the south side of Grand Avenue between 13<sup>th</sup> St. West and 14<sup>th</sup> St. West. On June 25, 2007, the City Council conditionally approved the 2-lot subsequent minor plat which contains the Lewis and Clark Middle School and the Crossroads Transitional School. School District #2 owns the property and intends to sell the proposed Lot 1-B to Walgreen's for development of a new store. Engineering, Inc. is the agent.

The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property will further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Grand Avenue School Subdivision, Lot 1, Block 1.

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

**ATTACHMENT**

A: Final Plat

## AMENDED PLAT OF LOT 1, BLOCK 1 OF GRAND AVENUE SCHOOL SUBDIVISION

SITUATED IN THE NW1/4 OF SECTION 5, T. 1 S., R. 26 E., P.M.M.  
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : SCHOOL DISTRICT #2  
PREPARED BY : ENGINEERING, INC.  
SCALE : 1"=60'

MAY, 2007  
BILLINGS, MONTANA

VICINITY MAP  
NOT TO SCALE

**STATE OF MONTANA**  
COUNTY OF YELLOWSTONE  
CITY OF BILLINGS

**NOTICE TO THE PUBLIC**  
I hereby certify that this is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana.

**NOTICE TO THE PUBLIC**  
I hereby certify that this is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana.

**STATE OF MONTANA**  
COUNTY OF YELLOWSTONE  
CITY OF BILLINGS

**NOTICE TO THE PUBLIC**  
I hereby certify that this is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana.

**NOTICE TO THE PUBLIC**  
I hereby certify that this is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Yellowstone County, Montana.

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# HH1

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$2,887,860.01 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 5, 2007, is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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



# HH2

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Tuesday, November 13, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$3,182,163.06 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 12, 2007, is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

# HH3

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Tuesday, November 13, 2007**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,363,598.16 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 19, 2007, is on file in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

TITLE: Deputy Mayor Election  
DEPARTMENT: Administration  
PRESENTED BY: Bruce McCandless, Asst. City Administrator

**PROBLEM/ISSUE STATEMENT:** City Charter Section 3.05 and City Code Section 2-204 require that the City Council elect a Deputy Mayor at the first meeting following a general election. The Deputy Mayor shall serve during the absence or disability of the Mayor. The municipal general election will be held on November 6, so the Deputy Mayor must be elected from the Council membership at the Council's November 13 meeting.

**FINANCIAL IMPACT:** There are no anticipated financial impacts.

**RECOMMENDATION**

Staff recommends that the City Council elect a Deputy Mayor at the Nov. 13, 2007 meeting.

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

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

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

TITLE: Annexation #07-24: Public Hearing and First Reading of an Ordinance  
Expanding Ward II

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, AICP, Planner II

**PROBLEM/ISSUE STATEMENT:** On October 22, 2007, the City Council approved the annexation of a 5-acre parcel legally described as Tract 1B, Certificate of Survey 1335, Amended, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The request for annexation was submitted by Hanser Capital Holdings, LLC, owner of the 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 II will be conducted at this meeting. The second reading of the ordinance will be conducted on November 26, 2007.

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

**RECOMMENDATION**

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

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

**ATTACHMENT**

A. Ward Ordinance and Exhibit A

**ATTACHMENT A**

**ORDINANCE NO. 07-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD II 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:

A tract of land situated in the NW1/4 of Section 12, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

A tract of land situated in the NE1/4 of Section 23, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1335, Recorded March 1, 1978, Under Document No. 1080869, Records of Yellowstone County, Montana.

Said Tract containing 5.000 acres.

(# 07-24) 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 13th day of November, 2007.

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

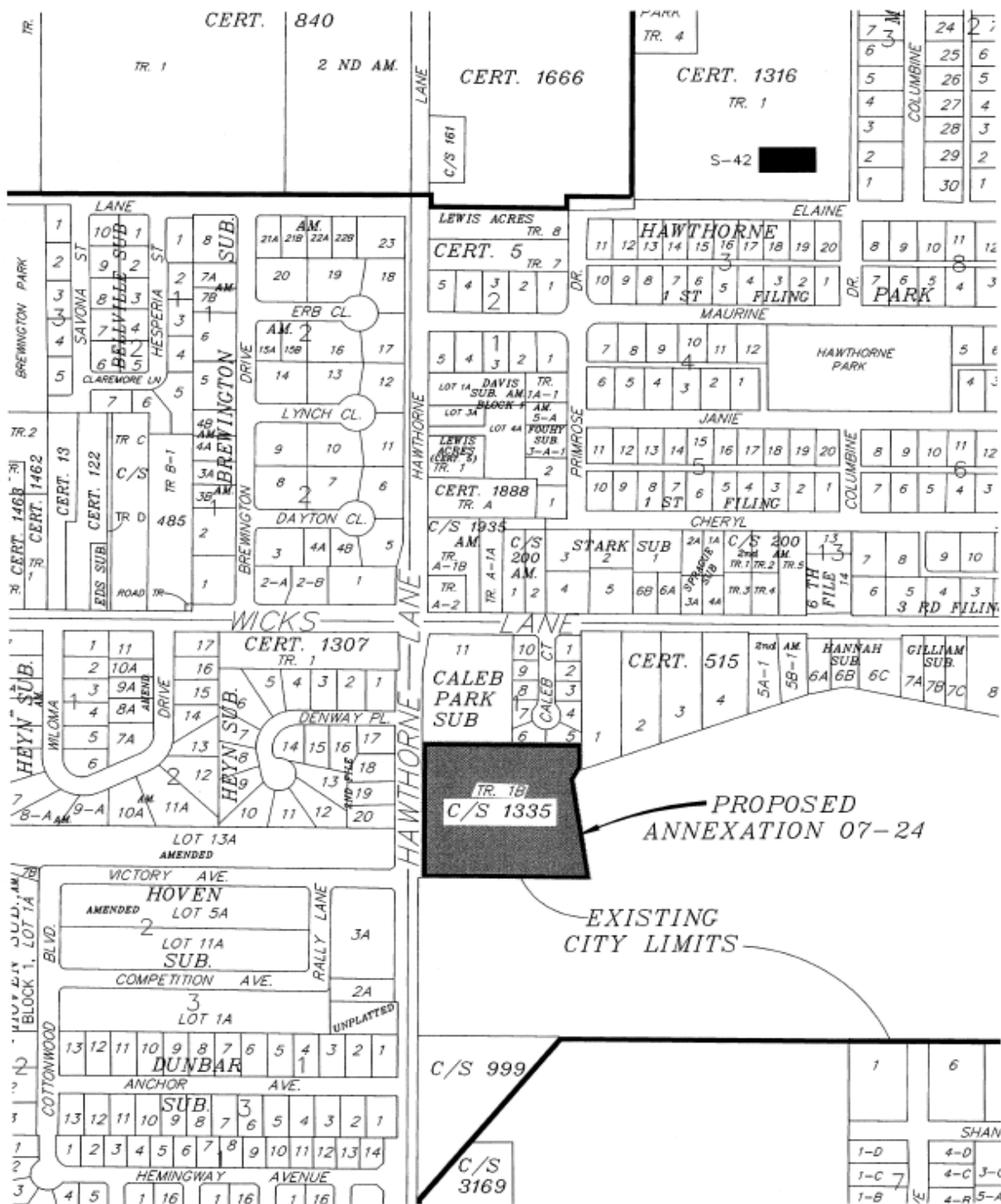
THE CITY OF BILLINGS:

\_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

## EXHIBIT A



(Back to Regular Agenda)

## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**
**CITY OF BILLINGS, MONTANA**
**Tuesday, November 13, 2007**


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**TITLE:** Public Hearing and Resolution Disposing of City-Owned Property

**DEPARTMENT:** City Attorney

**PRESENTED BY:** Brent Brooks, City Attorney

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**PROBLEM/ISSUE STATEMENT:** The attached proposed Resolution disposing of City-owned property under Billings City Code Sections 22-901 and 902 is the last step in the process of accomplishing the City-County land exchange in downtown Billings and completes the preliminary steps necessary to facilitate the future downtown MET Transit Transfer Station. BMCC Section 22-902 requires that the City Council hold a public hearing prior to final disposal of land and then the Council must approve a Resolution approving of the disposal.

**ALTERNATIVES ANALYZED:** If the Council does not approve the Resolution then the City-County land exchange cannot proceed to final transaction closing which is now set for November 14, 2007.

**FINANCIAL IMPACT:** There is no direct financial impact in approving the disposal of this property which facilitates the City-County land exchange. The Mayor and City Council have previously approved the payment of \$58,000 as part of the City-County land exchange agreement.

**RECOMMENDATION**

Staff recommends that the Mayor and City Council approve the attached Resolution pursuant to BMCC 22-902.

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

**ATTACHMENT**

A. Proposed Resolution



RESOLUTION 07-\_\_\_\_\_

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

WHEREAS, the City of Billings owns and desires to dispose of the public property in Original Town of Billings, Block 60, Lots 19-24, and;

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

Public Property in Original Town of Billings, Block 60, Lots 19-24, in Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana; and

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

WHEREAS, the public hearing required by Section 22-902 of the Billings, Montana City Code was duly held on the 22<sup>nd</sup> day of October, 2007;

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

That the City staff is authorized to proceed with the exchange of Lots 19-24, Block 60, Original Town of Billings, under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings, Montana, this 13th day of November, 2007.

CITY OF BILLINGS

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

ATTEST:

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

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

## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

TITLE: Lockwood Sewer District Wastewater Agreement

DEPARTMENT: Public Works

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

**PROBLEM/ISSUE STATEMENT:** The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. At the District's request, the Council reconsidered the agreement at the August 14, 2006, meeting and subsequently disapproved the agreement. In preparation for pursuing a bond election the District again requested that the City enter into a new agreement for wastewater service. The Council conducted a public hearing and considered an agreement at the October 9 council meeting and delayed action to the October 22 council meeting. The Council had further discussion at the October 15 work session with direction to staff to modify the agreement and bring back to the Council no later than November 13.

**ALTERNATIVES ANALYZED:** Staff has identified the following alternatives:

1. Approve.
2. Approve with modifications.
3. Do not approve.

**FINANCIAL IMPACT:** Staff has identified the following financial impacts:

1. **Approve as requested:** The financial impact of this action is that, per the agreement, the City will undertake a rate study to determine the rates to be charged to the District. This study would not be undertaken until it was assured that the District was proceeding with their project. Staff estimates this study will cost \$40,000 to \$50,000. The contract provides that this cost will be paid by the District directly or through the rate structure. The agreement also provides for a minimum 15% rate of return on investment to the City. The 15% would be applied to the rate base, which generally consists of plant in service less accumulated depreciation; plus construction work in progress, materials and supplies, and working capital; and less contributions in aid of construction, and customer advances.

This return will provide revenue over and above the cost to treat the District's wastewater. The agreement includes language clarifying that the District will be subject to the city franchise fee, which is currently 4%. In addition, the agreement also includes a 6% surcharge, which will go to the city General Fund, in addition to the franchise fee and rate-of-return on investment.

2. **Approve with modifications:** The financial impacts related to this action will depend on the modifications the Council may incorporate; however, as a minimum, the cost of a rate study as mentioned in the above alternative would also apply here. This action will also include the minimum 15% rate of return and the 6% surcharge, both going to the general fund.
3. **Do not approve:** There is no financial impact associated with this action.

### **RECOMMENDATION**

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

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

**ATTACHMENTS**    Attachment A – Wastewater Service Agreement

## **INTRODUCTION**

The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. At the District's request, the Council reconsidered the agreement at the August 14, 2006, meeting and subsequently disapproved the agreement. In preparation for pursuing a bond election the District again requested that the City enter into a new agreement for wastewater service. The Council conducted a public hearing and considered an agreement at the October 9 council meeting and delayed action to the October 22 council meeting. The Council had further discussion at the October 15 work session with direction to staff to modify the agreement and bring back to the Council no later than November 13.

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

## **PROCEDURAL HISTORY**

- The Public Utilities Board recommended approval of the original service agreement on August 26, 1999.
- The City Council approved the original agreement on September 13, 1999.
- The District requested a 3 year extension of the agreement and waiver of the reserve plant capacity charge by letter dated March 11, 2004.
- City Administrator Kristoff Bauer responded to the District on November 1, 2004, indicating that, for various reasons, the agreement should be allowed to lapse.
- The Public Utilities Board, at the June 15, 2006, meeting, recommended approval by the City Council of a new agreement, which was requested by the District.
- At the July 10, 2006, meeting the Council delayed action on the agreement for one month to allow further discussion. The Council further discussed the agreement at the July 31, 2006, work session with District board members in attendance.
- The District requested reconsideration of an agreement at the August 27, 2007, council meeting.
- The Council discussed an agreement at the September 17, 2007, work session and directed staff to place the agreement on the October 9 regular agenda.
- The Council conducted a public hearing at the October 9, 2007, council meeting and delayed action to the October 22 meeting.
- The Council further discussed the agreement at the October 15 work session and directed staff to modify the agreement for consideration at either the October 22 or November 13 council meeting.
- At the October 22 meeting, the Council delayed action to the November 13 meeting.
- The action before the Council is to consider the agreement at the November 13 meeting.

## **BACKGROUND**

The District has conducted multiple, unsuccessful bond elections to build a wastewater system for Lockwood. The District wishes to conduct another bond election and have asked the City to enter into a new service agreement. Following the October 9 public hearing and several discussion sessions, the proposed agreement is similar to past versions with the following modifications:

- Reserve Capacity (Section 4) – the base year that is used as a reference for the wastewater plant reserve capacity has been updated to the year 2020. The 1999 agreement and all subsequent versions included a section specifying the amount of wastewater plant capacity the City will set aside for use by the District. The 1999 agreement used the estimated wastewater flows and loadings based on the year 2010 to establish this capacity. This was never updated and due to the long time lapse of this ongoing issue, this did not allow a reasonable time for the District to develop its system, particularly in light of the most recent proposal to use a phased approach with sub-district concept. While the year 2020 is used as a reference, the agreement establishes the reserve capacity at 80% of the 2020 value.
- Franchise Fee & Surcharge (Section 19) – language has been added to clarify that all revenues due from the District will be subject to the city franchise fee, which is currently 4%. In addition, a 6% surcharge provision has been added with both fees designated to go to the general fund.
- System Development Fees (Section 21) – in addition to the normal wastewater rates the District will be subject to system development fees to be assessed on a per-connection basis due and payable at the time of the individual connection to the District system. The rate expert may recommend an alternate method of assessment if deemed appropriate, subject to city approval. The fees will be determined through a study and the rate expert will determine the most appropriate methodology to use in determining the level of the fee. However, if the rate expert does not recommend a particular method, the method to be used will be one most advantageous to the City with the City making the final determination.
- Penalty (Section 29) – a daily tiered penalty provision has been added throughout the agreement. One tier of \$25,000 per day is intended to address those issues that could result in a fine to the City from regulatory agencies. The other tier of \$3,000 per day is intended to be a best estimate of risk for all other situations.
- Performance Bond (Section 30) – a \$1,000,000 performance bond requirement is included in the agreement. The bond is to remain in place throughout the term of the agreement.

## **ALTERNATIVES ANALYSIS**

**Approve:** Council approval of the agreement will provide the District with a continued opportunity to pursue construction of a wastewater system. There is sufficient capacity in the wastewater treatment plant to accommodate Lockwood with current average wastewater flows into the plant of approximately 16 mgd as compared to an average plant design flow capacity of 26 mgd. The City's discharge permit for the wastewater plant was renewed in November 2006 and will expire in 2011. For the most part, the permit carried forward the historic discharge limits. However, indications are that the next permit cycle will include limits requiring a higher degree of treatment, which will necessitate modifications to the treatment process and facilities at a future time. While the detail and extent of these modifications have not been identified, staff believes that the city's service requirements will drive the need for these modifications with or without the Lockwood flow contribution.

**Approve with modifications:** Approval of the agreement with modifications as the Council may determine will, as a minimum, provide the District with the continued opportunity mentioned above. The remaining benefits to the District will, of course, depend upon the nature of the modifications. Such modifications could include a provision for future annexation. This could be addressed by requiring property owners to waive their right to protest annexation at the time of connection to the wastewater system. While the Council has determined that near-term annexation is not desirable, this type of provision could give future councils the ability to rethink the annexation issue. It also addresses the City's current goal of providing for either immediate or future annexation when furnishing municipal services. Staff has concerns with this in that such a system would be difficult to administer since the City would not be directly issuing the connection permits as happens within the city system. Based on the media coverage during past District bond elections staff expects annexation will be a controversial issue.

**Do not approve:** This action will not provide the District with the flexibility and time they need to consider further options.

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

The City's annexation policy anticipates that property receiving municipal services will be annexed as a condition of receiving services. The recent staff report and subsequent council action established that it is not desirable for the City to annex the Lockwood area in the near-term. However, while not allowing for immediate annexation, a provision for waivers of annexation, should the Council choose to include such a provision, will give the City the option for future annexation.

An opposing perspective to the city's normal annexation requirement is to view the new agreement as a business transaction and contract for service. A benefit of such an arrangement is to provide a needed health-related service to an area that is part of the global community.

**RECOMMENDATION**

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

**ATTACHMENTS**    Attachment A – Wastewater Service Agreement

## Wastewater Service Agreement

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Billings, Montana, a municipal corporation, hereinafter referred to as "CITY," and the Lockwood Area/Yellowstone County Water and Sewer District, a county water and sewer district organized and existing under the laws of the State of Montana, hereinafter referred to as "DISTRICT";

### W I T N E S S E T H

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility; and

WHEREAS, the DISTRICT is authorized under state law to construct, purchase, lease, acquire, operate and maintain a wastewater system to benefit the inhabitants of the DISTRICT; and

WHEREAS, the DISTRICT has determined that it would be cost effective at this time for the DISTRICT to transport its wastewater to the municipal wastewater system and to contract with the CITY for the treatment and disposal of said wastewater; and

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the DISTRICT'S wastewater in a manner that meets all the effluent limitations set forth in the CITY'S current Montana Pollutant Discharge Elimination System Permit, MT-0022586.

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the parties hereto, it is hereby agreed as follows, inclusive of the referenced Exhibits and Attachments:

1. **Contractual Relationship:** Approval of this wastewater service agreement (Agreement), including payment by the DISTRICT of system development fees, does not create in behalf of the DISTRICT and/or the DISTRICT'S users any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and the DISTRICT and/or the DISTRICT'S wastewater users created hereby. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual customer (DISTRICT), subject to the conditions set forth herein. Also, approval of this



Agreement does not authorize any infringement of federal, state or local laws by either party.

**2. Service Area:** This Agreement obligates the CITY to accept for treatment domestic wastes that are contributed from the DISTRICT'S users whose properties are situated entirely within the boundaries of the DISTRICT at the time of its creation under County Resolution #96-83, dated August 22, 1996, and as more specifically described and shown on Exhibit "A" and Exhibit "B," respectively subject to the flow and loading limitations in Section 4 herein. Said area will hereinafter be referred to as "Service Area." It is further understood between the parties hereto that the DISTRICT shall not expand its Service Area to include any additional properties without first obtaining the CITY'S written consent to do so and that CITY has sole discretion to withhold such consent. Failure to obtain such consent shall subject the DISTRICT to the penalty outlined in Section 29 herein.

**3. Point of Connection:** The DISTRICT'S force main shall connect to the municipal wastewater system at or near the site of the municipal wastewater treatment plant, with the exact location subject to the written approval of the Public Works Director (Director). A professional engineer licensed to practice in the State of Montana shall design the method of connection. The Director and the Montana Department of Environmental Quality (DEQ) shall approve in writing the detailed plans and specifications for the connection prior to its construction. The DISTRICT shall bear all costs associated with construction, operation, maintenance and replacement of the DISTRICT'S force main and appurtenances, including the connection of its force main with the municipal wastewater system.

**4. Reserve Capacity:** Exhibit "C" is a January 22, 1998 Memo from Bill Enright, Morrison-Maierle, Inc., to Al Towlerton, Public Utilities Department. Therein the District's engineering consultant estimates the per capita contributions for various wastewater constituents. Exhibit "D" is an excerpt from the Lockwood Water and Sewer District Facility Plan Report, which was subsequently supplied to Alan Towlerton, Public Works Department, by Carl Anderson of Morrison-Maierle, the DISTRICT'S engineering consultant. Therein, the projected population for Lockwood is 9,119 for the year 2020, which the DISTRICT represents is the estimated ultimate build out of properties within the Service Area. Applying the per capita contributions to the projected build out population shows that for the Year 2020, the DISTRICT'S average daily wastewater flow will be 0.91 million gallons per day (mgd), its maximum daily flow of wastewater will be 2.74 mgd, utilizing a 3.0 peaking factor, the average Biochemical Oxygen Demand (BOD) Loading will be 1,915 pounds per day and its average Total Suspended Solids (TSS) Loading will be 2,006 pounds per day. Because conditions of development within the Service Area may change resulting in wastewater flows and

loadings ultimately exceeding those estimated above, the amount of capacity that the CITY will reserve in the municipal wastewater system for the sole benefit and use of the DISTRICT shall be 80% of the flows and loadings identified above. The rates and billing methodologies developed for these flows and loadings, as outlined in Sections 19 and 20 shall be complied with by the DISTRICT. If there are flows or loads exceeding the limits specified in this section that have not been previously negotiated the CITY shall notify the DISTRICT of such noncompliance. If the DISTRICT does not restrict the flows or loads exceeding the limits within 5 days, the rates for these flows and loadings shall be tripled. penalty outlined in Section 29 herein shall apply.

**Each time this Agreement is renegotiated, the DISTRICT may, at its sole discretion, decrease the amount of the reserve capacity set forth herein. Any increase in the reserve capacity at that time, however, shall be subject to the approval and acceptance of the CITY. Said renegotiated adjustments in the reserve capacity shall be taken into account the first time the CITY adjusts the rates that it charges the DISTRICT for treatment of the DISTRICT'S wastewater following such renegotiations. In any event, the CITY reserves the right to require the DISTRICT to contribute up-front for the construction cost of any additional reserve capacity that may be renegotiated.**

The DISTRICT shall not sell nor transfer to any other party all or any portion of this reserve capacity. Any reserve capacity not being used by the DISTRICT at the termination of this Agreement (measured by utilizing the last 365 days of flow data as well as BOD and TSS Loading data) shall revert back to the CITY at no cost or charge to the CITY.

The DISTRICT may not at any time exceed the reserve capacity the CITY has set aside for the DISTRICT. In the event that the DISTRICT should exceed such reserve capacity, The DISTRICT shall accept no new customers or service line connections into its system and will immediately commence design and construction of pretreatment and/or I/I storage facilities to reduce flows and loads received by the CITY below the reserve capacity. Such facilities shall be completed within two years of notification by the CITY and if not completed, this contract will be terminated and service will be disconnected within an additional two years. Failure to comply with these provisions will subject the DISTRICT to the penalty outlined in Section 29 herein.

**5. Compliance with Regulations:** The DISTRICT hereby agrees to accept and abide by the following regulations governing wastewater service:

A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing Wastewater Service or any future amendments thereto;

B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto; and

C. Any special conditions set forth in this Agreement.

**If DISTRICT violates any of said codes, regulations and/or special conditions, the indemnification and penalty provisions set forth in Sections 29 and 31 shall apply.**

**6. Flow Measurement:** The DISTRICT, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director. The DISTRICT shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, as a minimum, accurately and continuously indicate and record at the municipal wastewater treatment plant the rate of flow and volume of all wastewater passing through the DISTRICT'S force main and into the municipal wastewater system.

All such flow measuring facilities shall be calibrated at least annually under the direct supervision of a professional engineer who is licensed to practice in the State of Montana. Said professional engineer shall be mutually acceptable to both the DISTRICT and CITY. The professional engineer shall certify in writing to the CITY and DISTRICT within thirty (30) days of performing the calibration that the flow measuring facilities, including the wastewater meter, have been properly calibrated according to the manufacturer's recommendations and are operating within approved accuracy limits. All costs associated with the annual calibration of the flow measuring facilities, including the wastewater meter, shall be borne by the DISTRICT. Reasonable, estimated flow adjustments shall be made for any incorrect meter readings. The DISTRICT agrees to verify the calibration of the flow measuring facilities, at its sole expense and at the request of the CITY, in the event flow information deviates from normal indicating a problem with the facilities.

**Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.**

**7. Testing and Sampling:** The DISTRICT, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director. As a minimum, the DISTRICT shall install sampling and testing facilities at or near the point of

connection of the DISTRICT'S force main with the municipal wastewater system and prior to the mixing of the CITY'S and DISTRICT'S wastewater. Such facilities shall be designed by a professional engineer, licensed to practice in the State of Montana. The facilities shall be located above ground and shall be designed to meet appropriate safety regulations and to satisfactorily operate under all weather conditions. The DISTRICT and the CITY shall have equal access at all times to said facilities.

The Director shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on the DISTRICT'S influent wastewater. Said parameters are subject to change from time to time at the Director's sole discretion. Such changes do not require renegotiations of this agreement. (See Attachment I)

A mutually acceptable DEQ-certified testing laboratory (CTL) shall perform all the sampling and testing of the District's wastewater required under this Agreement. The CTL shall perform said sampling and testing in accordance with 40 Code of Federal Regulations (CFR) Part 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants*. The CTL shall provide the CITY and DISTRICT with a written copy of the results of each test within 30 days of performing the test. The DISTRICT shall bear all costs associated with such testing and sampling. Reasonable, estimated adjustments shall be made for incorrect test results.

Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.

8. **Test Noncompliance:** Test results on samples of the DISTRICT'S wastewater that are in noncompliance with specified limits shall automatically trigger repeat sampling and testing by the CTL. If the follow-up test results remain out of compliance, the DISTRICT shall forthwith begin an in-depth investigation to determine the cause of noncompliance. Upon making such determination, the DISTRICT shall take immediate steps to correct the problem and regain full compliance. The DISTRICT shall, as a result of such noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations. In addition, the DISTRICT shall be subject to the penalty provisions of Section 29 herein.

9. **Sewer Use Regulations:** The DISTRICT shall adopt sewer use regulations to regulate the use of its wastewater system. Said regulations shall be subject to the Director's written approval prior to their adoption by the DISTRICT. The sewer use regulations shall, as a minimum, be equivalent to the CITY'S adopted sewer use regulations and the model sewer use ordinance set forth in WPCF Manual of Practice No.

3, *Regulation of Sewer Use*, 1975. The DISTRICT shall aggressively enforce such regulations at all times, especially as it relates to prohibited pollutants and/or any limited pollutants allowed to enter the DISTRICT'S wastewater system. The DISTRICT agrees to adopt and enforce any sewer use regulations of the CITY as they may change from time to time.

The sewer use regulations shall also specifically prohibit the discharging of septage into the DISTRICT'S wastewater system. The DISTRICT shall assure, both through regulation and practice, that the discharging of any nondomestic and/or nonmetered wastes into the DISTRICT'S wastewater system from vehicular washing facilities, recreational vehicle (RV) dumps, and floor drains located in facilities utilized to maintain, repair or house vehicles and other motorized equipment shall conform with all policies, practices, administrative orders, rules and regulations, resolutions and ordinances of the CITY. The DISTRICT shall also prohibit in its sewer use regulations the discharge of any unpolluted waters into its wastewater system, such as storm water, groundwater, roof runoff, subsurface drainage, cooling water or industrial process waters.

**Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.**

**10. Construction Standards:** The DISTRICT shall adopt the CITY'S construction, testing and inspection standards that govern the installation of its sanitary sewers, the purpose of which shall be to ensure proper installation of said sewers and to ensure compliance with infiltration/inflow (I/I) requirements set forth herein. Plumbing systems and building sewers serving property within the DISTRICT'S Service Area shall comply with the Uniform Plumbing Code prior to connection with the DISTRICT'S wastewater system. I/I in the DISTRICT'S sanitary sewers and building sewers shall not exceed, at any time, 100 gallons per day, per inch-diameter, per mile of sewer pipe.

The DISTRICT shall maintain adequate records (such as inspection reports, test results, as-built drawings, permits, etc.) to document that its facilities have been properly inspected, tested and constructed during installation.

**Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.**

**11. Operation and Maintenance:** Failure by DISTRICT to properly operate and maintain its wastewater system can substantially influence the volume, rate of flow, and characteristics of the wastewater discharged by DISTRICT into the municipal wastewater system. Accordingly, the DISTRICT shall at all times operate and maintain its wastewater system in a manner that is consistent with good utility practice, as set forth in

Water Environment Federation Manual of Practice 7, *Wastewater Collection systems Management*, latest edition. The DISTRICT shall maintain adequate records to document its compliance with this section.

To ensure access to the DISTRICT'S wastewater system for operation and maintenance purposes, the DISTRICT'S sanitary sewer lines shall be located in street right-of-way and easement locations shall be kept to a minimum. In any event, all such easements shall guarantee DISTRICT unrestricted access to its sanitary sewers for such purposes at all times and under any weather conditions.

Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.

12. **Conservation:** The DISTRICT shall actively encourage its users to conserve water and to utilize flow reduction measures, such as reduced-flow shower heads, toilets, and faucets. The DISTRICT shall maintain an ongoing educational program for this purpose. Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.

13. **Pretreatment Program:** The DISTRICT shall not permit any person to discharge industrial wastes into the DISTRICT'S wastewater system without first adopting a Pretreatment Program, which shall be subject to the prior written approval of the Director and the EPA Regional Pretreatment Coordinator. The Director's approval shall be withheld until such time as the DISTRICT legally adopts enforceable pretreatment standards and requirements equal to or exceeding that adopted and enforced by the CITY and those set forth in 40 CFR Part 403. For further information and details regarding this issue as well as information regarding significant industrial users, see BMCC 26.611. Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.

14. **Odor and Corrosion Control:** The DISTRICT recognizes the CITY'S concern of the potential for odor generation and facility corrosion at the point of connection between the DISTRICT'S force main and the municipal wastewater system as well as downstream thereof. Accordingly, the DISTRICT shall construct adequate facilities to control such odors and corrosion using the Best Available Technology prior to beginning discharge of its wastewater into the municipal wastewater system. All odor and corrosion facility plans shall be reviewed and approved by the CITY prior to construction. Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.



**15. Enlargements and Modifications:** The DISTRICT shall obtain the Director's written approval prior to enlarging or modifying any of its wastewater facilities which would change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in this Agreement. Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.

**16. Access, Records and Contact Person:** The DISTRICT shall grant the Director access at all times to DISTRICT'S wastewater system facilities for the purpose of inspecting, sampling, and studying the DISTRICT'S wastewater and permission to contact any individual users. Also, the DISTRICT shall, on request, provide the Director with copies of any flow, sampling and testing records that the Director may deem appropriate for said purposes or for the purpose of checking DISTRICT'S compliance with sewer use, industrial waste and/or pretreatment regulations. Prior to beginning the discharge of wastes into the municipal wastewater system, the DISTRICT shall also advise the Director in writing of the name, telephone number and mailing address of its official representative, who shall be authorized to make decisions on the DISTRICT'S behalf regarding the terms of this Agreement and to receive any notices, service bills, correspondence, etc. required herein. Failure to comply with these provisions shall subject the DISTRICT to the penalty outlined in Section 29 herein.

**17. Notification:** The DISTRICT shall immediately notify the Director and the CITY'S wastewater treatment plant in the event of any accident, negligence, or other occurrence that occasions discharge to the municipal wastewater system of any waters or wastes not covered by this Agreement as well as any accidental slug discharges of authorized pollutants. In addition, the DISTRICT agrees to file with the Director, within five (5) working days of such discharge, a written report explaining why said discharge occurred. The report shall also identify in detail the DISTRICT'S plan of action to prevent reoccurrence of such type discharge. The DISTRICT shall be responsible for all damages, costs, and fines of the CITY due to unauthorized or negligent discharges. In addition, the DISTRICT shall be subject to the penalty provisions of Section 29 herein for failure to comply with these provisions.

**18. Degree of Treatment:** It is understood by the parties hereto that the CITY can only treat the DISTRICT'S wastewater to the extent the CITY is presently capable of treating said wastewater utilizing the existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a greater degree of treatment, the CITY shall comply with such requirements and DISTRICT shall be assessed a higher rate for the disposal as agreed by the parties or as set forth in ~~paragraph 24~~ Sections 22 and 23 herein.

19. **Billing:** The DISTRICT shall pay to the CITY a monthly charge for the treatment and disposal of the DISTRICT'S wastewater. Monthly payments shall begin at the time the DISTRICT commences discharge of wastewater into the municipal wastewater system. Payments are due and payable in full no later than thirty (30) days from the date of billing. Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge. The late-payment interest charge shall be the amount stated in the CITY'S adopted schedule of Rates and Charges. If agreed by the DISTRICT and CITY, system development fees may be included in this billing process and, if so, will be subject to all provisions contained herein. The DISTRICT agrees that all monthly charges due the CITY shall be subject to the City of Billings Franchise Fee as contained in the adopted schedule of Rates and Charges in effect at the time of billing and, in addition to the franchise fee and other rates, fees and charges specified herein, a six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of the DISTRICT'S wastewater. The surcharge shall not apply to system development fees. All revenue generated from this agreement as a result of the franchise fee and surcharge shall be transferred to the city's general fund.

In addition to the remedies outlined in this section, the DISTRICT shall be subject to the penalty provisions in Section 29 herein.

20. **Future Wastewater Rate Making Methodology:** It is the intent of the parties hereto that during the life of this agreement, the DISTRICT shall pay reasonable and just rates for treatment of its wastewater and that the CITY, in turn, shall receive a reasonable and just compensation for the treatment of the DISTRICT'S wastewater. Accordingly, the wastewater rate charged to the DISTRICT in the future for treatment of its wastewater shall be based upon cost-of-service principles as set forth in 40 Code of Federal Regulations (CFR) Part 35, *Guidelines for User Charges*. When calculating the cost-of-service rate to be charged the DISTRICT for treatment of its wastewater, the CITY'S rate expert shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the rate expert shall, among other things, take into consideration the following when calculating the cost-of -service rate to be charged the DISTRICT:

A. The amount and level of service that the CITY is providing the DISTRICT as well as any contributions the DISTRICT has made for the construction of the CITY'S wastewater treatment facilities.

B. The amount of contributions made by inside-city customers towards facilities utilized to serve the DISTRICT.



C. The amount of reserve capacity that the CITY has set aside for the DISTRICT in the municipal wastewater system.

**D. The costs of any construction improvement required for increases in reserve capacity requested by the DISTRICT.**

**E. The cost of performing the rate study, unless arrangements are made between the CITY and DISTRICT for payment otherwise.**

The rate expert shall also take into consideration the fact that the DISTRICT is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. Moreover, the return on investment paid by the DISTRICT shall be based, among other things, upon the depreciated cost of the facilities needed to provide the reserve capacity the CITY has set aside for the DISTRICT'S exclusive use. Finally, the rate of return to be used to calculate the return on investment shall be a minimum of 15% in order to recognize the risks incurred by the CITY in serving the DISTRICT as well as the fact that the replacement cost of the reserve capacity the CITY has set aside herein for the DISTRICT will greatly exceed its original cost as a result of inflation, etc.

The DISTRICT shall pay its proportionate share of any federal, state or local fees assessed the municipal wastewater utility. Such fees shall be due and payable as set forth in Section 19, above.

In the event the strength of the pollutants (BOD, TSS, etc.) contained in the DISTRICT'S wastewater are determined to exceed those normally present in domestic wastes, the CITY ~~may~~ will charge the DISTRICT, in addition to other rates set forth herein, ~~reasonable fees for the treatment of such an extra-strength wastes~~ surcharge as identified in the adopted schedule of Rates and Charges.

The rates the CITY charges the DISTRICT for the treatment of any special wastes and/or permitted industrial wastes shall be determined on a case-by-case basis. Determination of such rates requires separate study and negotiation. (See BMCC 26-106 for additional information regarding special agreements and payments for unusual wastewater treatment.) Any and all costs associated with and incurred by the CITY arising from such special study and negotiation shall be paid by the DISTRICT. In the event the DISTRICT declines to pay for such study and negotiation, the special waste and/or permitted industrial wastes shall not be accepted by the DISTRICT into the wastewater system. Failure by the DISTRICT to comply with these provisions will be subject to the penalty provisions in Section 29 herein. In any event, such rates shall be charged to the DISTRICT in addition to any other rates set forth herein. Nothing in this section shall

relieve the DISTRICT from their obligation to adopt and administer a pretreatment program as specified in Section 13.

The CITY reserves the right to periodically adjust the rates set forth herein in conformance with the provisions of Sections 20, 22 and 23.

**21. System Development Fees:** In addition to the wastewater rates the DISTRICT shall pay to the CITY wastewater system development fees with the amount of the fee to be determined by the CITY'S rate expert. The rate expert shall determine the methodology to be used to calculate the fees that is most fitting for this AGREEMENT; however, lacking such a determination by the rate expert, the methodology used shall be one most advantageous to the CITY as determined by the CITY.

The fees shall be assessed on a per-connection basis and shall be due at the time of connection to the DISTRICT'S sewer system; however, the rate expert may recommend an alternate assessment method if deemed appropriate to this AGREEMENT, provided, however, that any alternate method must be approved by the CITY. The DISTRICT shall maintain sufficient records to document connections to their system and information necessary to determine the system development fees to be paid by the DISTRICT. Such records shall be available to the CITY upon request. Failure to properly maintain records and pay the system development fees due will subject the DISTRICT to the penalty provisions in Section 29 herein and will be grounds for termination of this AGREEMENT. Details of the procedure to accomplish this process shall be cooperatively determined by the DISTRICT and CITY.

**22. Wastewater Rate Study:** With respect to any wastewater rate study that would affect the wastewater rate charged to the DISTRICT, the CITY shall give the DISTRICT advance notice of its intent to have a rate expert undertake such a study. The rate expert's draft report(s), work papers and any underlying data used to generate such report(s) shall be available upon request to the DISTRICT. The CITY'S rate expert shall be available to meet at reasonable times with the DISTRICT and/or its rate experts during this process or the DISTRICT Manager or member of the DISTRICT'S staff, but not to include counsel. The DISTRICT agrees to provide any information relevant to determining the DISTRICT'S customer service characteristics.

Once the CITY'S rate expert has completed its written report, the CITY shall promptly provide a copy of that report to the DISTRICT, and the DISTRICT shall respond to that report within forty-five (45) days after receiving the report by submitting a written response to the Director.

**If the CITY and DISTRICT are unable to agree on a reasonable and just wastewater rate to be charged the DISTRICT, then the CITY and DISTRICT shall have thirty (30) days from the date of submission of the DISTRICT'S response to the CITY'S wastewater rate study within which to informally attempt to reach an agreement through non-binding mediation. The CITY and DISTRICT agree to work together in good faith in attempting to reach an agreement on a reasonable and just rate.**

**23. Wastewater Rate Arbitration Procedure:** If, after the consultation described in Section 22, the DISTRICT and the CITY are still unable to agree on a reasonable and just wastewater rate to be charged to the DISTRICT, then the matter(s) in dispute shall be submitted to binding arbitration. The CITY'S wastewater rate expert, who conducted the study and participated in the negotiation described in Section 22, and a wastewater rate expert retained by the DISTRICT shall mutually agree and appoint a third wastewater rate expert who shall be the sole neutral arbitrator of the dispute. The appointment of the arbitrator shall be made within twenty (20) days of the conclusion of the negotiation period described in Section 22. The arbitrator shall be neutral, shall never have been a resident of Yellowstone County, shall never have worked for either of the parties, and shall be a qualified wastewater rate expert.

A. Within twenty (20) days of the appointment of the arbitrator, the parties shall exchange expert disclosure statements containing the information set forth in Rule 26(b)(4), Mont. R. Civ. P., together with any draft report(s), work papers, and underlying data generated and/or used by any expert, and shall provide a list of all lay witnesses and the substance of their testimony.

B. The arbitration hearing shall be held no later than sixty (60) days following the appointment of the arbitrator, and the arbitrator shall render a decision no later than thirty (30) days after the hearing.

C. Both the CITY and the DISTRICT shall present their respective positions to the arbitrator. Following the arbitration hearing, the arbitrator shall be limited to adopting that party's position which best represents the intent of this agreement, but shall be prohibited from adopting any alternative rates.

D. The arbitration hearing shall be conducted according to such procedure as the arbitrator may choose so as to allow each party to fully present its position and may be formal or informal.

E. The cost of the arbitrator shall be borne equally by both parties.

24. **Annexation and Dissolution of District:** Should fifty-five (55) percent or more of the property within the DISTRICT'S Service Area become annexed either voluntary or by election into the corporate city limits, the DISTRICT shall take, at the CITY'S sole discretion and with the CITY'S written consent, whatever steps are legally necessary to transfer its wastewater assets and liabilities to the CITY, and dissolve the DISTRICT. Failure to timely comply with this section shall subject the DISTRICT to the penalty provisions of Section 29 herein and be sufficient grounds to terminate this Agreement.

25. **Term of Agreement:** The term of this Agreement is fifteen (15) years. This Agreement is renegotiable at any time if both parties so consent in writing. Either party may terminate this agreement by giving the other party eight (8) years written notice. If no notice to terminate is received at least one (1) year prior to the expiration of this Agreement, then this Agreement will automatically renew for an additional ten (10) years. This Agreement may be subsequently renewed three more times for an additional ten (10) years each, subject to the preceding clause.

26. **Milestones:** The DISTRICT shall have two (2) years from the date this agreement is initially signed to successfully approve a financing program that will allow construction of a wastewater system. Construction of the wastewater improvements shall commence within three (3) years from the date this agreement is initially signed and be diligently pursued to the point of establishing wastewater discharge to the CITY. Should the DISTRICT fail to meet either of these milestones, this agreement shall terminate immediately.

27. **Non-Binding Mediation:** As a prerequisite to commencing litigation on any unresolved dispute arising from this Agreement, the parties agree that, with the exception of wastewater rate adjustment matters, all unresolved claims, demands, disputes, controversies and differences that may arise between the parties concerning the content of this Agreement shall first be submitted to non-binding mediation. The parties shall confer and agree upon selection of a mediator for such purposes; however, if they cannot agree, each party shall select a mediator and both mediators shall then agree upon and select a third mediator before whom all disputes shall be presented. Thereafter, either party may pursue litigation and shall have a right to file an action if mediation does not result in a final agreement and release between the parties which resolves all disputes pending at that time. Jurisdiction of all litigation shall be in Montana State District Court and venue shall be in Yellowstone County, Montana. Each party shall bear its own internal costs of mediation including attorney fees and costs, if any. Each party shall pay 50% of any and all fees and costs charged by the selected mediator.

In lieu of the above paragraph, the parties may agree and stipulate to binding arbitration in lieu of mediation. The arbitrator shall be selected, the arbitration conducted and the arbitration ruling shall be pursuant to the Montana Arbitrators' Association. Binding arbitration shall preclude litigation in District Court by either party on any issue decided by the arbitrator. Each party shall bear their own attorney fees and related costs and expenses if binding arbitration is selected as the dispute resolution method.

The Court shall be authorized to award the prevailing party reasonable attorney fees and costs should the parties proceed with litigation as described above in District Court.

**28. Definitions:** Terms/phrases used herein this Agreement (such as but not limited to Biochemical Oxygen Demand (BOD), customer, domestic wastes, industrial wastes, Montana Pollutant Discharge Elimination System (MPDES) Permit, municipal wastewater system, municipal wastewater treatment plant, municipal wastewater utility, pollutant, pretreatment, public works department, public works director, rules and regulations, septage, service agreement, Total Suspended Solids (TSS), infiltration/inflow (I/I), user, wastewater, and wastewater meter ) shall be defined as set forth in the Billings Montana City Code or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

**29. Penalty:** In the event the DISTRICT fails to comply with obligations outlined in this Agreement, in addition to all other remedies available under the law and specified herein, the DISTRICT agrees to pay to the CITY a penalty in the amount of \$25,000.00 per day for each day that the DISTRICT is in noncompliance with any federal, state or local law or regulation or discharges wastewater containing substances that may or does in turn cause the CITY to incur a fine due to such noncompliance or discharge including but not limited to MPDES permit violations or pretreatment violations committed by the DISTRICT.

The DISTRICT also agrees to pay the CITY a penalty in the amount of \$3,000.00 per day for each day that the DISTRICT is in noncompliance with any non-regulatory/non-statutory breach of this Agreement such as but not limited to exceeding the Reserve Capacity limits under Section 4 of this Agreement.

**30. Financial Guarantee Bond:** The DISTRICT shall provide an annually renewable Financial Guarantee Bond in the name of the CITY in the amount of \$1,000,000.00 (One Million) dollars for the faithful performance of all obligations under this Agreement and such shall remain in force at all times throughout the term of this Agreement.

The bond shall be in a form acceptable to the CITY except as provided otherwise by laws or regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety bond Branch, U.S. Department of the Treasury. Any bond signed by an agent must be accompanied by a certified copy of the agent's authority to act.

If the surety on any bond furnished by the DISTRICT is declared bankrupt or becomes insolvent or its right to do business in Montana is terminated or it ceases to meet the requirements in the section above, the DISTRICT shall notify the CITY and shall, within 20 days after the event giving rise to such notification, provide another bond which shall comply with the requirements herein.

Any bond required shall be obtained from surety or insurance companies that are duly licensed or authorized in Montana, with minimum "A.M. Best Rating" of A-, VI, as will protect the CITY for the amount so required.

Failure to comply with the provisions of this Section shall subject the DISTRICT to the penalty provisions of Section 29 herein as well as be grounds for accelerated termination of this Agreement.

**31. Indemnification and Insurance:** The DISTRICT agrees to indemnify, hold harmless, and defend the CITY from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which the CITY may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage is caused by; (1) the DISTRICT breach of this Agreement; or (2) any negligent or willful act or omission of DISTRICT or its employees or agents in the performance of services.

The CITY agrees to indemnify, hold harmless, and defend the DISTRICT from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the DISTRICT may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of this Agreement; or (2) any negligent or willful act or omission of the CITY or it's employees or agents.

The DISTRICT shall provide the CITY with proof of the DISTRICT'S liability insurance for personal injury and property damage in the amount of \$750,000 per claim and \$1,500,000 per occurrence, endorsing the City as primary, non-contributory insured. Such insurance shall be reviewed by and subject to approval by the CITY as a prerequisite to commencing the mutual performance this Agreement by the parties.

**32. Remedies Upon Default and Termination:** Should the DISTRICT violate any term of this agreement the CITY shall provide written notice of such within fourteen (14) calendar days of discovering the violation or being advised in writing by the DISTRICT of such violation. The DISTRICT shall have an additional fourteen (14) calendar days to remedy any violation after receiving written notice from the CITY.

Thereafter, should the DISTRICT fail to remedy any violation, it shall be deemed in breach of and in default under this agreement. The CITY shall be entitled to exercise any or all remedies specifically provided in this agreement as well as all other legal remedies available to it provided by law such as but not limited to submitting a claim upon the DISTRICT'S Financial Guarantee Bond, initiating litigation to compel specific performance or to recover damages from the DISTRICT.

**33. Governing Law:** This agreement shall be governed by and construed in accordance with the laws of the State of Montana, without reference to or application of choice of law rules or principles.

**34. Attorney's Fees and Litigation Venue:** Should either party employ an attorney or attorneys, or utilize the services of in-house attorneys to enforce any of the provisions herein, or to protect its interest in any manner arising under this agreement, the prevailing party shall be entitled to all reasonable costs, damages, expenses and reasonable attorneys fees including fees for in-house attorneys, expended or incurred in enforcing the terms of this agreement.

In the event litigation is commenced by either party to enforce any rights or obligations under this agreement, venue for such litigation shall be in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, Montana.

**35. Severability and Waiver:** In the event any provision of this Agreement is declared void, invalid or contrary to law, the parties hereto agree that the remaining provisions shall continue and remain in full force and effect. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this agreement or by law, shall not constitute a waiver as to any past or future breach or remedies.

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

City of Billings, Montana

Lockwood Area/Yellowstone  
County Water & Sewer District

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

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

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
District Attorney

Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Secretary

## ATTACHMENT I

Pursuant to the Agreement between the City of Billings (City) and the Lockwood Area/Yellowstone County Water and Sewer District (District), this Attachment sets forth the tests to be performed by District on the wastewater it discharges into the municipal wastewater system. This Attachment also sets forth the frequency of sampling, the limits for test compliance and the methods of sampling. The following parameters and other criteria are subject to periodic change by the Director, at his sole discretion:

<b>Test Parameter</b>	<b>Parameter Limit</b>	<b>Sample Frequency</b>	<b>Type of Sample</b>
BOD <sub>5</sub>	300 mg/l	Weekly <sup>1</sup>	Composite
TSS	300 mg/l	Weekly <sup>1</sup>	Composite
pH	5.5 - 9.0	Daily	Grab
Total Oil & Grease <sup>2,5</sup>	100 mg/l	2x/week	Grab
TPH (Total Petroleum Hydrocarbons)	100 mg/l	Bi-monthly	Grab
Total Phosphorus (as P)		1x/Quarter	Composite



Total Ammonia (as N)		1x/Quarter	Composite
Nitrate & Nitrite (as N)		1x/Quarter	Composite
TKN (Total Kjeldahl Nitrogen)		Quarterly	Composite
Temperature		Weekly	Instantaneous
Volatile Organics <sup>3,4</sup>		Annually	Grab
Organic Acids <sup>3,4</sup>		Annually	Composite
Base/Neutral Organics <sup>3,4</sup>		Annually	Composite
Pesticides <sup>3,4</sup>		Annually	Composite
Antimony (Total)		Quarterly	Composite
Arsenic (Total)	2.5 mg/l	Quarterly	Composite
Beryllium (Total)		Quarterly	Composite
Cadmium (Total)	13.9 mg/l	Quarterly	Composite
Chromium (III)		Quarterly	Composite
Chromium (VI)		Quarterly	Grab
Chromium (Total)	35.3 mg/l	Quarterly	Composite

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
Lead (Total)	2.2 mg/l	Quarterly	Composite
Mercury (Total)	0.15 mg/l	Quarterly	Composite
Nickel (Total)	26.8 mg/l	Quarterly	Composite
Selenium (Total)	< Detection Limit	Quarterly	Composite
Silver (Total)	1.1 mg/l	Quarterly	Composite
Thallium (Total)		Quarterly	Composite
Zinc (Total)	1.1 mg/l	Quarterly	Composite
Cyanide (Total)	2.6 mg/l	Quarterly	Grab
BTEX (Benzene, Toulene, Ethelbenzene, Xylene)		Monthly	Grab
Tetrachloroethylene		Quarterly	Grab

**Footnotes:**

- 1     A 24-hour, composite sample to be taken on progressive days each sampling event.
- 2     A visual sheen shall be considered a violation.
- 3     Minimum parameters to be tested for as determined by the Director.
- 4     A minimum of every 5 years, or sooner if determined necessary by the Director; monthly analysis for parameters designated by Director shall be done in support of local limits re-evaluation.
- 5     In addition to the visual sheen criteria set forth in Footnote 2, above, oil and grease shall not cause any interference or obstruction in the municipal wastewater system.

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## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, NOVEMBER 13, 2007

**SUBJECT:** Public Hearing and Approval of Resolution Approving and Adopting a Budget Amendment for Fiscal Year 2007/2008

**DEPARTMENT:** Administration-Finance Division

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

**PROBLEM/ISSUE STATEMENT:** The budget adjustments are requested for Fiscal Year 2007/2008 to allow the City to legally and timely pay the judgment rendered in favor of the firefighters. To comply with state statutes governing general obligations and to timely pay the judgment, the following will occur: repay currently outstanding intercap loans, borrow the maximum allowed from Koch Financial Services, transfer the balances needed to the Public Safety Fund, to pay the judgment, and to make the first principal and interest installment to Koch Financial Services.

Budget adjustments requested to pay off intercap loans affect the General Fund for the Parks irrigation system in the amount of \$579,795.48, the Public Safety Fund for the Terry Park fire station in the amount of \$126,053.27, and the Information Technologies Fund for an AS400 computer system in the amount of \$105,228.95. Budget adjustments for the transfer and the subsequent payment affect the General Fund and the Public Safety Fund. Reserves in the General Fund will be used for the intercap loan payment and for the transfer to the Public Safety Fund. Information Technologies Fund cash reserves will be used to make that loan payoff.

### RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2007/2008 per attached.

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

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriation (with Exhibit A)

RESOLUTION 07

A RESOLUTION TO MAKE **FISCAL YEAR 2008**  
ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-  
6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND  
REVISIONS WITHIN THE GENERAL CLASS OF SALARIES  
AND WAGES, MAINTENANCE AND SUPPORT AND  
CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon construction needs, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 13<sup>th</sup> day of November, 2007.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

## ***ATTACHMENT A***

### ***BUDGET ADJUSTMENTS***

	<b><u>Revenue</u></b>	<b><u>Expenditure</u></b>
010-5110-453 6100		\$284,325 Principal payment – general fund loan- parks irrigation system
150-2221-422 6100		\$100,240 Principal payment – public safety loan – Terry Park fire station
620-1911-482 6100		\$87,075 Principal payment – IT loan – computer system

To increase budget authority to payoff current intercap loan balances. Budget adjustments are less than the total payoff amounts because unused budget authority to make the second semi-annual payment in February 2008.

010-1412-414 8253		\$1,130,000 The general fund transfer to the Public safety fund to help pay for the firefighter lawsuit
150-1510-383 7515	\$1,130,000	Public safety fund receives from the general fund through a transfer
150-2221-381 6950	\$3,720,000	Loan proceeds from Koch Financial Services
150-2221-422 8135		\$4,850,000 Firefighter judgment
150-2221-422 6102		\$146,730 Principal payment to Koch Financial Services
150-2221-422 6202		\$90,210 Interest payment to Koch Financial Services

To provide budget authority in the General Fund to transfer needed funds to the Public Safety Fund and to provide budget authority in the Public Safety Fund to pay the judgment and to make the first principal and interest installment to Koch Financial Services.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, November 13, 2007**

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**TITLE:** Resolution Directing Payment and Budgeting for the Firefighter Lawsuit

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

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**PROBLEM/ISSUE STATEMENT:** The City of Billings was sued by a group of its firefighters for back wages under the case known as Kuhr V City of Billings. The District Court issued a summary judgment for the firefighters and the Montana Supreme Court upheld that decision. The total back wages, penalties, legal fees and costs equal \$4.85 million. The City Council must authorize the expenditure of these funds, determine whether the expenditure will be from reserves, borrowing, current operating budgets or a combination of those options and if debt financing is used, direct how the debt payments will be budgeted and paid. The attached resolution directs staff on all of these matters.

**ALTERNATIVES ANALYZED:** The following alternatives were considered:

- Pay the judgment from General Fund Reserves
- Debt finance the judgment and repay the debt from the Fire Dept. budget
- Pay the judgment from reserves of other City Funds
- Debt finance the judgment and repay the debt from Funds/departments other than the General Fund
- Any combination of the above

**FINANCIAL IMPACT:** The financial impact will depend on the alternative that Council selects. Using entirely General Fund reserves will deplete most of the reserves and require the City to secure short term debt to meet cash flow needs. Using debt financing will require the loan's repayment from the Fire Dept. budget over a period of years or from the budgets of other Funds/departments. Since over ¾ of the total judgment is for firefighters' back wages and benefits, it is logical to repay the debt from the Fire Department budget over a period of up to ten (10) years, with the costs being covered through a hiring freeze and position attrition. Paying the judgment from other Funds/departments, either with reserves or annual debt service, will adversely impact those operations that have no relationship to the lawsuit, including probable employee layoffs in some departments. Up to fourteen (14) equipment operator positions would

have to be eliminated to equal the cost of ten (10) firefighter positions. Eliminating this number of maintenance employees in PRPL would completely eliminate the parks and cemetery maintenance operation. While perhaps legal, it is not recommended that other Funds/departments be financially punished for events that they did not cause.

### **RECOMMENDATION**

Staff recommends that the City Council approve the attached Resolution that directs that the judgment be paid promptly, that a combination of debt financing and reserves be used to pay the judgment, that the FY 2009 Fire Department budget be prepared so that the debt service payment comes from that budget, and that future budgets be prepared in a similar manner.

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

### **ATTACHMENT**

A:     Resolution



Resolution No. 07-\_\_

A RESOLUTION OF THE BILLINGS MONTANA CITY COUNCIL DIRECTING PAYMENT OF A JUDGMENT FOR KUHR, ET. AL. VS. BILLINGS, DESIGNATING THE FUNDING SOURCES FOR THE PAYMENT, DIRECTING STAFF TO SECURE LONG TERM DEBT FOR A MAJORITY OF THE JUDGMENT, DIRECTING PREPARATION OF THE FISCAL YEAR 2009 BUDGET TO ACCOMMODATE THE DEBT SERVICE FOR THE LONG TERM DEBT AND ESTABLISHING GUIDANCE FOR FUTURE FISCAL YEAR BUDGET PREPARATIONS TO ACCOMMODATE THE DEBT SERVICE FOR THE LONG TERM DEBT

WHEREAS, the City of Billings was sued by its firefighters in a class action lawsuit named Kuhr, et. al. v. City of Billings and the District Court ruled in favor of the firefighters, and

WHEREAS, the City of Billings appealed the ruling of the District Court that directed the City to pay back wages, penalties, attorney fees and costs, and

WHEREAS, the Montana Supreme Court upheld the District Court's ruling but remanded the case for further consideration of the amount of penalty, fees and costs, and

WHEREAS, the District Court has accepted the proposed final settlement and payments to the firefighters, and

WHEREAS the Billings City Council wishes to make prompt payment in order to avoid further penalties, and

WHEREAS, the Billings City Council will determine the sources of payments and budgeting necessary to make the payments,

THEREFORE IT IS RESOLVED BY THE BILLINGS, MONTANA CITY COUNCIL AS FOLLOWS:

1. Judgment payment: the City Administrator is directed to promptly pay all back wages, penalties, attorney fees and costs as directed by the District Court, dated November 1, 2007, totaling \$4,850,000.
2. Funding sources: the sources of funding for the judgment shall be as follows:
  - a. Long term debt                      \$3,719,000
  - b. General Fund reserves              \$1,131,000
3. Budget philosophy: The Billings City Council must balance each fiscal year budget. Since the cost of the firefighters' lawsuit will require long term debt service and replenishing the General Fund reserves, other expenses must be reduced. At least three fourths of the lawsuit costs are for past wages and benefits for the firefighters and these costs are legitimately and exclusively Fire Department budget responsibilities. The

Billings City Council directs staff to prepare the FY 2009 and subsequent budgets to reflect these factors and philosophy.

4. Fiscal Year 2009 budget: the Fiscal Year 2009 budget shall be prepared so as to make the annual or semi-annual installment payment(s) on the long term debt from the Fire Department / Public Safety Fund budget. The number of Fire Department Full Time Equivalent Employees (FTE) and the Fire Department personal services budget shall be reduced from the Fiscal Year 2008 budget levels by a number and in an amount sufficient to make the long term debt payment(s) for FY 2009. The City Administrator is directed to make these personnel reductions in a manner that will best ensure public safety while meeting the stated budget objective.
5. Future Fiscal Years budgets: the Fiscal Year 2010 and subsequent fiscal year Fire Department budgets shall reflect the annual long term debt payment(s) for the debt incurred in the above named lawsuit and the FTEs and budgets shall be adjusted to allow this payment to be made from funds that otherwise would pay for personnel. This budgeting practice shall continue until the long term debt has been retired or until this resolution is amended or rescinded by a future Billings City Council.

PASSED BY THE BILLINGS CITY COUNCIL this 13<sup>th</sup> day of November, 2007.

CITY OF BILLINGS

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

ATTEST:

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

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, November 13, 2007

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SUBJECT: Proposal to Finance the Majority of the Firefighter Lawsuit

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The City is approved for \$3.72 million in debt service funding from Koch Financial Corporation to pay for the majority of the firefighter lawsuit.

**ALTERNATIVES ANALYZED:** See previous agenda item A.

**FINANCIAL IMPACT:** The firefighter lawsuit will cost the City \$4.85 million. The City will be able to finance \$3.72 million over 10 years which will be paid from the Fire Department budget. The remaining \$1.13 million will be paid from General Fund Reserves.

### RECOMMENDATION

Staff recommends that City Council accept the proposal from Koch Financial Corporation at a rate of 4.85% over 10 years and authorize the Mayor to execute the required documents.

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

### **ATTACHEMENTS**

- A- Resolution and General Obligation Note
- B- Lease Purchase Agreement
- C- Escrow Agreement

**ATTACHMENT A**

**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 a Resolution entitled: "RESOLUTION RELATING TO \$3,719,000 GENERAL FUND OBLIGATION NOTE, SERIES 2007; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF; DETERMINING THE FORM AND DETAILS AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF AND MAKING CERTAIN COVENANTS RELATED TO THE PAYMENT THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on November 13, 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 Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_; or were absent: \_\_\_\_\_  
\_\_\_\_\_.

WITNESS my hand and seal officially this \_\_\_\_ day of November, 2007.

(SEAL)

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City Clerk

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO \$3,719,000 GENERAL FUND OBLIGATION NOTE, SERIES 2007; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF; DETERMINING THE FORM AND DETAILS AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF AND MAKING CERTAIN COVENANTS RELATED TO THE PAYMENT THEREOF AND SECURITY THEREFOR

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

Section 1. Authorization; Sale; Recitals.

1.01. Authorization. Pursuant to Montana Code Annotated, Section 7-7-4104, a municipality is authorized to issue a general obligation of the municipality not secured by its taxing power without submitting the question of incurring the indebtedness to the electors, upon the satisfaction of certain conditions: (1) the principal amount of the obligation may not exceed 10% of the general fund budget of the municipality in each of the two preceding fiscal years; (2) at the time the obligation is incurred, the debt service in the current or any future fiscal year on the obligation and any other outstanding obligation issued pursuant to this section do not exceed 2% of the revenues deposited in the general fund of the municipality in each of the two immediately preceding years; and (3) the term of the obligation does not exceed 20 years.

1.02. Compliance with Conditions. The City proposes to issue General Fund Obligation Note, Series 2007, in the principal amount of \$3,719,000 (the “Note”) for the purpose of paying a portion of the costs associated with the settlement of a judgment rendered against the City in the case of *Kuhr v. City of Billings* (the “Lawsuit”), payable over a term of 10 years. The City represents that it meets the conditions of Section 7-7-4104 as follows:

A. The principal amount of \$3,719,000 does not exceed 10% of general fund budget of the City for the immediately two preceding fiscal years, i.e., \$37,192,527 for fiscal year ending 2006 and \$42,808,926 for fiscal year ending 2007.

B. Assuming an interest rate of 4.850% and assuming substantially equal amount debt service payments over 10 years, the maximum amount of debt service on the Note does not exceed 2% of the revenue deposited in the general fund of the municipality in each of the two immediately preceding years, i.e., \$750,595 and \$839,259, respectively.

1.03. Sale of Note; Note Purchase Agreement. Pursuant to such authority, this Council authorized the issuance and sale of \$3,719,000 principal amount of general fund obligation notes of the City for the purpose of paying a portion of the costs of the Lawsuit and paying costs associated with the sale and issuance of the Note. Pursuant to the Act, this Council hereby determines that it would be in the best interests of the City to sell the Note at a private negotiated sale to Koch Financial Corporation (the “Purchaser”), in the aggregate principal

amount of \$3,719,000. The Note shall be dated as of the date of original issue, shall be issued as a single amortizing note designated the "Series 2007 Note," payable semiannually over a term not to exceed 10 years. The Financial Services Manager is authorized to execute and deliver on behalf of the City a Note Purchase Agreement.

1.04. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including the Act, in order to make the Note valid and binding general obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

## Section 2. Note Terms, Execution and Delivery.

2.01. Term of Note. The Note shall be designated "General Fund Obligation Note, Series 2007." The Note shall bear interest at the rate of 4.850% per annum from the date of delivery until paid. Equal installments of principal and interest on the Note shall be payable on each May 15 and November 15, commencing May 15, 2008 and continuing through November 15, 2017 in the amount as shown on the schedule attached hereto as Exhibit B. The Note shall be prepayable after one-half of its term in whole or in part on any business day at a price equal to the principal amount thereof to be prepaid plus interest accrued to the redemption date, without premium. If the Note is prepaid prior to one-half its term, the prepayment price shall be 2.0% of the principal amount to be prepaid. Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months.

2.02. Registered Form; Payment. The Note shall be issuable only in fully registered form, and the ownership of the Note shall be transferred only upon the Note Register of the City hereinafter described. Principal of and interest on the Note is payable in lawful money of the United States of America. Principal and premium, if any, shall be payable by check or draft drawn on the Registrar hereinafter described upon presentation and surrender of the Note at maturity or upon redemption at the principal office of the Registrar; provided, however, the Holder shall not be required to surrender the Note upon partial payment or redemption of the Note, but only upon final maturity. Interest on the Note shall be payable on May 15 and November 15 in each year, commencing May 15, 2008, by check or draft of the Registrar mailed to the owners of record thereof as such appear in the Note Register as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

2.03. Dating of Note. Each Note shall be dated, as originally issued, as of the date of its delivery, and upon authentication of any Note the Registrar (as hereinafter defined) shall indicate thereon the date of such authentication.

2.04. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its operations center a bond register in which the Registrar shall provide for the registration of ownership of Note and the registration of transfers and exchanges of Note entitled to be registered, transferred or exchanged.

(b) Transfer of Note. Upon surrender to the Registrar for transfer of any Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Note of a like aggregate principal amount and maturity, as the case may be, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer of any Note within the 15 days that Note are being selected for redemption or of any Note or portion thereof selected for redemption.

(c) Exchange of Note. Whenever any Note is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Note of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney in writing.

(d) Cancellation. All Notes surrendered upon any transfer or exchange shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Note or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Note is at any time registered in the bond register as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Note to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Note (except an exchange upon a partial redemption), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Note. In case any Note shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Note of like amount, number, maturity date and tenor in exchange and substitution for and upon



cancellation of any such mutilated Note or in lieu of and in substitution for any such Note lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Note lost, stolen or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Note was lost, stolen or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Notes so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Note has already matured or such Note has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Note prior to payment.

2.05. Appointment of Initial Registrar. The City hereby appoints U.S. Bank National Association, of Seattle, Washington, to act as registrar, transfer agent and paying agent (the "Registrar"). The City reserves the right to appoint a successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana, Montana Code Annotated, Title 17, Chapter 5, Part 11, as amended (the "Registration Act"), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed.

2.06. Prepayment. The principal of the Note is subject to prepayment at the option of the City, in whole or in part on any Business Day at a price equal to the principal amount thereof to be prepaid plus interest accrued to the redemption date, without premium. Notice of prepayment will be mailed, at least ten days before said redemption date, to the registered owner thereof, by first-class mail postage prepaid. Upon partial prepayment of the Note, the outstanding principal amount thereof will be reamortized at the then-existing interest rate. The Financial Services Manager, at least ten days prior to the designated redemption date, shall give the Purchaser notice of the date and amount of any prepayment portions thereof shall cease to bear interest.

2.07. Form. The Note shall be prepared in substantially the form set forth in Exhibit A hereto, which is hereby incorporated by reference and made a part hereof.

2.08. Execution and Delivery. The Note shall be forthwith prepared for execution under the direction of the City Financial Services Manager, and shall be executed on behalf of the City by the signatures of the Mayor, Financial Services Manager, and City Clerk, and shall be sealed with the official seal of the City; provided that said signatures and the seal may be printed, engraved or lithographed facsimiles thereof. In case any officer whose signature or a facsimile of whose signature shall appear on the Note shall cease to be such officer before the delivery thereof, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the Note has been so executed by said City officers, they shall be registered by the Financial Services Manager in accordance with Montana Code Annotated, Section 7-7-4257. Notwithstanding such execution, no Note shall be valid or obligatory for any purpose or be entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Note has been

duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on different Note need not be signed by the same representative. The executed certificate of authentication on each Note shall be conclusive evidence that it has been authenticated and delivered under this resolution. When the Note have been fully executed and authenticated, they shall be delivered by the Financial Services Manager to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser shall not be obligated to see to the application of the purchase price.

### Section 3. Security Provisions.

3.01. Lawsuit Payment Account; Use of Proceeds. There is hereby created a special account to be designated as the "2007 Lawsuit Payment Account" (the "Lawsuit Payment Account"), to be held and administered by the Financial Services Manager of the City separate and apart from all other funds of the City. The City appropriates to the Lawsuit Payment Account: (a) the proceeds of the sale of the Note in the amount of \$3,719,000.00, and (b) all income derived from the investment of amounts on hand in the Lawsuit Payment Account. The Lawsuit Payment Account shall be used solely to defray expenses of the Lawsuit, including but not limited to the transfer to the Debt Service Account described in Section 3.02 of amounts sufficient for the payment of interest and principal, if any, due upon the Note prior to the completion and payment of all costs of the Lawsuit. Upon completion and payment of all costs of the Lawsuit, any remaining proceeds of Note in the Lawsuit Payment Account shall be credited and paid to the Debt Service Account.

3.02. Debt Service Account. So long the Note is outstanding and any principal thereof or interest thereon unpaid, the Financial Services Manager shall maintain a separate and special 2007 Debt Service Account (the "Debt Service Account") to be used for no purpose other than the payment of the principal of and interest on the Note. The City irrevocably appropriates to the Debt Service Account: (a) any proceeds of the Note in excess of \$3,719,000.00, (b) all funds to be credited and paid thereto in accordance with the provisions of Section 3.01, (c) all amounts appropriated or transferred in accordance with Section 3.03 of this resolution, (d) all income derived from the investment of amounts on hand in the Debt Service Account, and (e) such other money as shall be received and appropriated to the Debt Service Account from time to time.

3.03. General Obligations; Pledge of General Credit; Covenant To Make Appropriations. (a) The Note are general obligations of the City, but are not secured by a pledge of the taxing power of the City. The general credit (but not the taxing power) of the City shall be and is hereby irrevocably pledged to the prompt and full payment of the principal of and interest on the Note when due. The principal of and interest on the Note are payable from any funds of the City legally available for the payment thereof, including funds on hand in the General Fund of the City. If on any date that the payment of principal of or interest on the Note is due and the amount on hand in the Debt Service Account is insufficient for the payment thereof, this Council shall forthwith appropriate to the Debt Service Account sufficient legally available money of the City to make good the deficiency.

(b) As security for the Note, the City hereby covenants and agrees to appropriate each fiscal year during the term of the Note from its General Fund an amount sufficient for the payment of the principal of and interest on the Note due in such fiscal year. Such appropriated funds shall be credited to the Debt Service Account. It is acknowledged and agreed that the City has not granted a lien on any revenues or funds in its General Fund or otherwise provided for the segregation of such revenues or funds as security for the payment of the Note, and that any ad valorem taxes the City may in its discretion levy to pay principal of and interest on the Note are subject to applicable limits now or hereafter imposed by law on the amount of taxes that may be levied by the City.

#### Section 4. Arbitrage and Certification of Proceedings.

4.01. Certification. The Mayor, the Financial Services Manager, and the City Clerk, being among the officers of the City charged with the responsibility for issuing the Note, are authorized and directed to execute and deliver to the Purchaser a certification in accordance with the provisions of Section 148 of the Code and the Treasury Regulations, Section 1.148-2(b), stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Note which make it reasonable to expect that the proceeds of the Note will not be used in a manner that would cause the Note to be “arbitrage bonds” or “private activity bonds” within the meaning of Sections 141 and 148 of the Code and applicable Treasury Regulations. The certification shall further state that to the best of the knowledge and belief of the certifying officers no other facts, estimates or circumstances exist which would materially change this expectation.

4.02. Covenant. The City covenants and agrees with the holders from time to time of the Note that it will not take or permit to be taken by any of its officers, employees or agents any action that would cause the interest on the Note to become includable in gross income for purposes of income taxation under the provisions of the Code and the Treasury Regulations applicable thereunder, and covenants and agrees that it will take or cause its officers, employees or agents to take any action within its or their powers to prevent the interest on the Note from becoming includable in gross income for purposes of federal income taxation under the Code and applicable Treasury Regulations.

4.03. Arbitrage Rebate. The City acknowledges that the Note is subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Note from gross income for federal income tax purposes, unless the Note qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Note (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, City Clerk and Financial Services Manager are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the

covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

4.04. Information Reporting. The City shall file with the Secretary of the Treasury, not later than February 15, 2008, a statement concerning the Note containing the information required by Section 149(e) of the Code.

#### Section 5. Defeasance.

5.01. General. When the liability of the City on all Notes issued under and secured by this Resolution and all interest thereon has been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the holders of such Note shall cease.

5.02. Maturity. The City may discharge its liability with reference to all Note and interest thereon which are due on any date by depositing with the Registrar for such Note on or before the date a sum sufficient for the payment thereof in full; or if any Note or interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

5.03. Redemption. The City may also discharge its liability with reference to any prepayable Note which are called for redemption on any date in accordance with their terms, by depositing with the Registrar on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given as provided in this Resolution.

5.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to any Note subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose (including, if so qualified, the Registrar), cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Note at their stated maturities or, if such Note are prepayable and notice of redemption thereof has been given or irrevocably provided for, to such earlier redemption date.

5.05. Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 6 with the Registrar shall be irrevocable and held for the benefit of the holders of Note in respect of which such deposits have been made.

Passed and adopted by the City Council of the City of Billings, Montana, this \_\_th day of November, 2007.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk  
(SEAL)

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF BILLINGS

**CITY OF BILLINGS**

GENERAL FUND OBLIGATION NOTE, SERIES 2007

**No. 1**

**\$3,719,000.00**

REGISTERED OWNER: KOCH FINANCIAL CORPORATION

FOR VALUE RECEIVED, THE CITY OF BILLINGS, BILLINGS COUNTY, STATE OF MONTANA (the "City"), acknowledges itself to be indebted and hereby promises to pay to the registered owner named above, or registered assigns, the principal amount specified above on the maturity date specified above or, if this Note is prepayable as stated herein, on any date prior thereto on which this Note shall have been duly called for redemption, and to pay interest on said principal amount to the registered owner hereof from its date of delivery or from such later date to which interest has been paid or duly provided for until this Note is paid. Principal of this Note is payable upon presentation and surrender hereof to U.S. Bank National Association, as Note Registrar, Transfer Agent and Paying Agent, at its operations center in St. Paul, Minnesota, or its successor designated under the Resolution described herein (the "Registrar"). Principal and interest on this Note is payable semiannually on each May 15 and November 15, commencing on May 15, 2008, by check or draft mailed by the Registrar to the person in whose name this Note is registered as of the close of business on the 15th day (whether or not a Business Day) of the immediately preceding month, at his address as it appears on the bond register maintained by the Registrar. "Business Day" means any day other than a Saturday, Sunday or legal holiday of the State of Montana. The principal of and interest on this Note are payable in lawful money of the United States of America.

THE PRINCIPAL OF AND INTEREST ON THE NOTE ARE PAYABLE FROM ANY FUNDS OF THE CITY LEGALLY AVAILABLE FOR THE PAYMENT

THEREOF, INCLUDING FUNDS IN ITS GENERAL FUND. THE NOTE IS NOT SECURED BY A PLEDGE OF THE CITY'S TAXING POWER.

This Note comprises this issue of the General Fund Obligation Note, Series 2007 of the City and is issued in the total principal amount of \$3,719,000 (the "Note"), authorized by the City in accordance with Montana Code Annotated, Section 7-7-4104, as amended, for the purpose of paying a portion of the costs associated with the settlement of a judgment rendered against the City in the case of *Kuhr v. City of Billings* and paying costs associated with the sale and issuance of the Note, all pursuant to a resolution duly adopted by the City Council of the City, including a resolution adopted on November 13, 2007 (the "Resolution"), and in full conformity with the Constitution and laws of the State of Montana thereunto enabling. The Note is issuable only as a fully registered note.

Outstanding principal of this Note shall bear interest from its date of delivery until paid at the rate of 4.850% per annum. As used herein, "Business Day" means any day other than (i) a Saturday or Sunday, or (ii) a legal holiday in the State of Montana. If the Note is prepaid prior to one-half its term, the prepayment price shall be 2.0% of the principal amount to be prepaid. Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months. Closing shall mean the day of execution and delivery of the Note and receipt of the purchase price thereof.

The principal of the Note is subject to prepayment at the option of the City, after one-half of its term in whole or in part on any Business Day at a price equal to the principal amount thereof to be prepaid plus interest accrued to the redemption date, without premium. Notice of prepayment will be mailed, at least ten days before said redemption date, to the registered owner thereof, by first-class mail postage prepaid. Upon partial prepayment of the Note, the outstanding principal amount thereof will be reamortized at the then-existing interest rate.

As provided in the Resolution and subject to certain limitations set forth therein, this Note is transferable upon the books of the City at the operations center of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney, and may also be surrendered in exchange for Note of other authorized denominations. Upon any such transfer or exchange, the City will cause a new Bond or Note to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Note is registered as the absolute owner hereof, whether this Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Montana to be done, to exist, to happen and to be performed precedent to and in the issuance of this Note, in order to make it a valid and binding general obligation of the City according to its terms, have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the general credit (but not the taxing power) of the City has been irrevocably pledged to the prompt and full payment of the principal of and interest on the Note when due; that the City has covenanted in the Resolution to appropriate each fiscal year during the term of the Note from its General Fund an amount sufficient for the payment of the principal of and interest on the Note due in such fiscal year; that the principal of and interest on the Note are payable from any funds of the City legally available for the payment thereof, including funds in its General Fund, and that if on any date that the payment of principal of or interest on the Note is due and the amount on hand in the Debt Service Account for the Note is insufficient for the payment thereof, the City Council of the City has agreed in the Resolution forthwith to appropriate to the Debt Service Account sufficient legally available money of the City to make good the deficiency; that the issuance of the Note does not cause the indebtedness of the City to exceed any constitutional or statutory limitation; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Note, dated the date of original issuance and delivery of the Note.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Billings County, State of Montana, by its City Council, has caused this Note to be executed by the facsimile signatures of the Mayor, the City Clerk and the Financial Services Manager.

(Facsimile Signature)  
Mayor

(Facsimile Signature)  
Financial Services Manager

(Facsimile Signature)  
City Clerk

(Facsimile Seal)

Date of Authentication:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes delivered pursuant to the Resolution mentioned within.

U.S. BANK NATIONAL ASSOCIATION,  
as Note Registrar, Transfer Agent,  
and Paying Agent

By \_\_\_\_\_



The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UTMA.....Custodian..... (Cust) (Minor)
TEN ENT --	as tenants by the entireties	under Uniform
Transfers to		
JT TEN --	as joint tenants with right survivorship and not as tenants in	Minors Act..... (State) common

Additional abbreviations may also be used.

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### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

**Dated: \_\_\_\_\_**  
**PLEASE INSERT SOCIAL SECURITY**  
**OR OTHER IDENTIFYING NUMBER**  
**assignment**  
**OF ASSIGNEE**  
**appears**

**every \_\_\_\_\_**  
**enlargement**  
**/ \_\_\_\_\_ /**

Signature Guarantee:

---

**NOTICE: The signature to this**  
**must correspond with the name as it**  
**upon the face of the within Note in**  
**particular, without alteration or**  
**or any change whatsoever.**

---

Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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