

**NOTE:** Supporting Documents Follow Agenda

# CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

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## AGENDA

COUNCIL CHAMBERS

March 23, 2009

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ruegamer

ROLL CALL

MINUTES – March 9, 2009

COURTESIES – Par 3 Golf Course Annual Distribution

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, and 3 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

### **CONSENT AGENDA:**

**1. A. Bid Awards:**

**(1) W.O. 08-12 – Waste Water Treatment Plant Digester Condensate Drain Vault Entrance.** (Opened 3/10/09) Recommend delay of bid award until April 13, 2009.

**(2) MET Transit Engine Overhauls.** (Opened 3/10/09) Recommend Interstate PowerSystems; Schedule 1- \$35,855; Schedule 2 - \$33,460; Schedule 3 - \$22,545.

**(3) Airport Improvement Program (AIP) Project for Taxiway A Straightening.** (Opened 3/10/09) Recommend Knife River-Billings; \$1,757,323.68.

**(4) Fire/Technical Rescue Unit.** (Bid award delayed from 3/9/09). Recommend Base Bid #2 to Unruh Fire, Inc.; \$127,686.

**B. Professional Services Contract** to provide design, construction documents, and construction administration for the Park 1 Parking Garage Elevator Upgrade. Recommend Collaborative Design Architects, Inc.; \$22,500 (10% of total estimated construction costs).

**C. Professional Services Contract (W.O. 08-25)** to provide hydraulic modeling and site selection, design, and bidding and construction services for the expansion of the Zone 3 water distribution system. Recommend Brown & Caldwell; \$822,102.

**D. Assignment and Transfer** of two west end hangar ground leases from Pacific Tank and Pipeline to Backscratch Aviation, LLC, located on Lots 1 and 2 – Taxilane D.

**E. Amendment #7, Engineering Services for Airport Improvement Program (AIP) 36 Project,** Morrison-Maierle, Inc., \$833,008.

**F. Downtown Revolving Loan Fund Recommendation** for Randy and Janna Hafer approving loan subordination to Yellowstone Bank, \$240,000.

**G. Declaring Surplus Property** on miscellaneous parts for two 1992 Oshkosh TA-1500 model fire trucks no longer owned by Aviation and Transit and authorizing the disposal of the parts through salvage.

**H. Declaring Surplus Property** and authorizing the Police Department to release 30 ballistic vests and 40 Streamlight Maglite rechargeable flashlights with chargers to the Yellowstone County Sheriff's Office Reserve Unit.

**I. Approval of Donation** from BikeNet for a portion of the CTEP required matching funds for the Lampman Strip Park Trail, \$25,000.

**J. Approval of Donation** from ConocoPhillips to send School Resource Officers to the National Conference in Baltimore, MD (6/29/09 – 7/3/09), \$6,000.

**K. Approval of Anonymous Donation** to the Police Department for trauma kits for police vehicles and training for the officers, \$2,613.

**L. Preliminary Subsequent Minor Plat** of Amended Lot 5, Flanagan Subdivision, approximately 4.55 acres for commercial development located on the southeast corner of the intersection of Central Avenue and Moore Lane; conditional

approval of the preliminary plat, approval of a sidewalk variance, and adoption of the Findings of Fact.

**M. Corrected Final Plat** of Amended Lot 5E, Block 1, Shiloh Crossing Subdivision, correcting the owner's name on the previously recorded final plat.

**N. Final Plat** of Amended Lots 1-8, Block 2; Lots 1-8, Block 3; Lots 1-9, Block 4, Reflections at Copper Ridge Subdivision.

**O. Bills and Payroll**

(1) February 20, 2009

(2) February 27, 2009

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

**REGULAR AGENDA:**

2. **RESOLUTION TO ADOPT SAHARA PARK MASTER PLAN.** (Delayed from 3/9/09) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
3. **RESOLUTION AWARDING THE SALE OF SPECIAL IMPROVEMENT DISTRICT 1384 BONDS TOTALING \$495,000.** Recommendation to be made at council meeting. (**Action:** approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING AND RESOLUTION ADOPTING SECOND QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2008/2009.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
5. **PUBLIC HEARING AND RESOLUTION APPROVING BUDGET AMENDMENT FOR CHARGE FOR SERVICES FROM GENERAL FUND CODE ENFORCEMENT TO PLANNING FUND.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. (a) **PUBLIC HEARING AND FIRST READING ORDINANCE FOR REVISIONS TO THE ANIMAL ORDINANCE.** (Delayed from 3/9/09) Changes to the existing ordinance by the Animal Control Board due to the contract entered into between the City of Billings and Yellowstone Valley Animal Shelter. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

**(b) RESOLUTION ADJUSTING FEES CHARGED AT ANIMAL SHELTER.** Staff recommends approval. (Delayed from 3/9/09) (**Action:** approval or disapproval of staff recommendation.)

7. **PUBLIC HEARING FOR SPECIAL REVIEW #875:** A special review to locate a beer & wine license with gaming within an existing building in a Planned Development zone with underlying zoning of Community Commercial, legally described as Block 1, Lot 2, Wal-Mart Subdivision, located at 1667 Main Street, and within 600 feet of East Gate Wesleyan Church, 625 Mattson Lane. Rimrock II, LLC, owner; Shelby Waldron, agent. Zoning Commission recommends waiving the 600-foot separation requirement from a church and conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)
8. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

### **Council Initiatives**

### **ADJOURN**

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

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

# AGENDA ITEM: A1



## CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 23, 2009

TITLE: WO 08-12 Waste Water Treatment Plant Digester Gas Condensate Drain Vault Entrance

DEPARTMENT: Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for Work Order 08-12 WWTP Digester Gas Condensate Drain Vault Entrance on March 10, 2009. This project consists of eliminating a confined manhole entrance to digester gas condensate drain by providing stairs for the access at the Waste Water Treatment Plant.

**FINANCIAL IMPACT:** Funding for this project will be out of the 2009 Wastewater Revenues. We received three bids for this project as follows:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 130,000.00
Cop Construction	\$ 314,735.00
Western Municipal Construction	\$ 249,000.00
DPS Company, LLC	\$ 220,000.00

A breakdown of the project funds per the CIP is listed below:

<u>Work Order 08-12 WWTP Digester Gas Condensate Drain Vault Entrance</u>	
2009 Wastewater Revenue	\$ 135,003.70
Contract Amount (This Memo)	<u>\$(220,000.00)</u>
<b>Remaining Funds</b>	<b>\$ -84,996.30</b>

### RECOMMENDATION

Staff recommends that Council delay action for the award of Work Order 08-12 WWTP Digester Gas Condensate Drain Vault Entrance until the April 13, 2009, Council Meeting.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Award of MET Transit Engine Overhauls Bid  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** To accomplish engine overhauls in a timely manner, MET Transit annually solicits bids from engine repair vendors to perform mechanical and electronic engine overhauls on three (3) different types of Transit bus engines, an ISM Cummins Diesel Engine (Schedule 1), a Series 50 Detroit Diesel Engine (Schedule 2), and a Series 40 Detroit Diesel Engine (Schedule 3). An annual agreement is used due to the vendor's inability to forecast parts and labor cost increases for a period exceeding one year. The annual agreement also enables the MET to make emission standards changes.

Staff advertised for sealed bids on February 26, 2009, and March 5, 2009. Bid specifications were delivered to five (5) vendors: Interstate Detroit Diesel, Rocky Mountain Cummins, Northwest Peterbilt Ford, Motor Power Equipment, and TriState Equipment. Bids were opened on March 10, 2009. Interstate PowerSystems (formerly Interstate Detroit Diesel) submitted the only responsive bid. Staff has reviewed the bid and finds it acceptable.

**FINANCIAL IMPACT:** Interstate PowerSystems submitted a bid of \$35,855 for the ISM Cummins Diesel Engines (Schedule 1), \$33,460 for the Series 50 Detroit Diesel Engines (Schedule 2), and \$22,545 for the Series 40 Detroit Diesel Engines (Schedule 3). The engine overhauls have been included and approved in the FY09 operating budget, and will also be included in the FY10 proposed budget. At this time, staff is not aware of any bus engines in need of an overhaul; however, this bid award will allow MET the ability to immediately schedule an overhaul when the need arises.

**RECOMMENDATION**

Staff recommends that Council approve the bid submitted by Interstate PowerSystems and authorize the Mayor to execute the Agreement.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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TITLE: Award of Airport Improvement Program (AIP) Project for Taxiway A Straightening

DEPARTMENT: Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** One of the Airport's approved Capital Improvement Program projects is the Straightening of Taxiway A. This project will straighten a portion of Taxiway A, north of the Terminal Building. Straightening this Taxiway will provide the following benefits to the runway/taxiway system:

- Increase the Terminal's apron area, which will allow additional space for aircraft to maneuver while entering or exiting the aircraft parking areas.
- Allows for a larger safety zone between the aircraft parked at their gates and aircraft using the taxiway.
- Provides more distance between taxiing aircraft and the vehicle lane, used by luggage tugs, mobile fuelers, and emergency vehicles.

This project was advertised in the *Billings Times* for three weeks, and was on the City's Web site. On March 10, 2009, we received the following bids for this project:

<b><u>CONTRACTOR</u></b>	<b><u>BID</u></b>
Riverside Sand and Gravel, Inc.	\$1,941,749.30
Knife River-Billings	\$1,757,323.68
ESTIMATE	\$2,800,000.00

**FINANCIAL IMPACT:** The total cost of the project is \$1,757,323.68, and will be funded with a 95% Federal Aviation Administration (FAA) AIP entitlement grant and a 5% local match. The FAA portion is \$1,669,457.50, and the City's match is \$87,866.18. Local match funds are budgeted and available in the Airport's Capital account.

**RECOMMENDATION**

Staff recommends that the City Council approve the award of the AIP funded Taxiway A Straightening project to the low bidder Knife River-Billings, for the amount of \$1,757,323.68.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Bid Award – Fire/Technical Rescue Unit  
**DEPARTMENT:** Fire  
**PRESENTED BY:** Paul A. Dextras, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** Specifications were developed by the Fire Chief and the Department's Internal Equipment Committee. The call for sealed bids notice was published on February 5 and 12, 2009. Twelve bid packets were mailed, emailed or picked up by fire apparatus vendors between February 6 and February 20, 2009. Bid opening was February 24, 2009. Three vendors submitted bids: Heiman, Inc. Lyons, SD; Precision Fire Apparatus, Camdenton, MO; and Unruh Fire Inc. Sedgwick, KS.

Base Bid #1 (Delivered). Heiman, Inc. \$149,036.00; Precision Fire Apparatus \$205,123.00; Unruh Fire, Inc. \$131,261.00. Base Bid #2 (Non-Delivered) Heiman, Inc. \$147,036.00; Precision Fire Apparatus \$201,623.00; Unruh Fire, Inc. \$127,686.00. Option #1 (Scene Lighting) Heiman, Inc. \$6,395.00; Precision Fire Apparatus \$6,250.00; Unruh Fire, Inc. \$6,875.00.

**ALTERNATIVES ANALYZED:** To award or not award the bid.

**FINANCIAL IMPACT:** The approved FY2009 Vehicle Replacement Fund contains the funds earmarked for the replacement of the Fire Department's existing rescue truck, unit #4072 also known as 'Rescue2'.

**RECOMMENDATION**

Staff recommendation is to award the Base Bid #2 to the low bidder, Unruh Fire Inc. Sedgwick, KS, for their bid of \$127,686.00.

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





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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, March 23, 2009**

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**SUBJECT:** Architectural and Engineering Services Contract  
**DEPARTMENT:** Administrative Services – Parking Division  
**PRESENTED BY:** Chris Mallow, Parking Supervisor

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**PROBLEM/ISSUE STATEMENT:** The Capital Improvement Plan identifies the Park 1 Elevator Upgrade project, Park 1 parking garage located at 2912 3<sup>rd</sup> Ave North, as a FY 2010 project. This elevator was completed in 1977, along with the Park 1 parking garage. Due to the age of the elevator, increasing equipment failures and costs, and necessary safety systems that exist now, but not required in 1977, The Parking Division identified this elevator for a modernization/upgrade. The Parking Division is seeking a professional service contract to provide the design, construction documents, and construction administration for this project. The Parking Division will then advertise the construction project through the competitive bid process after July 1, 2009. The City advertised a Request for Proposals (RFP) on February 12<sup>th</sup> and 19<sup>th</sup>, 2009. The following proposals were received by Staff on March 6<sup>th</sup>, 2009, and reviewed by an employee committee on March 9, 2009:

1. Collaborative Design Architects, Inc.
2. Spectrum Group Architects, PC.

The proposals were evaluated by a selection committee on March 6, 2009. The committee unanimously selected the proposal from Collaborative Design Architects based on their stated experience with similar elevator projects. Cost proposal was opened after this decision and was not part of committee's evaluation.

**ALTERNATIVES ANALYZED:**

- Approve contract with Collaborative Design Architects, Inc.
- Approve contract with Spectrum Group Architects, PC.
- Reject all proposals and request new proposals.

**FINANCIAL IMPACT:**

- Cost for these services will be paid for with Parking Division reserves.

**RECOMMENDATION**

The selection committee recommends awarding a contract to Collaborative Design Architects, Inc. in the amount of ten percent of total project construction cost, estimated at twenty-two thousand five hundred dollars (\$22,500) for design, bidding and construction administration

for the Park I Elevator Upgrade Project.

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

**ATTACHMENTS**

**A.** Contract with Collaborative Design Architects

## **Contract for Professional Architectural and Engineering Services**

### **Project Park 1 Elevator Modernization and Upgrade**

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In consideration of the mutual promises herein, City of Billings and Collaborative Design Architects, 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 (Basic Services of Contractor);

Appendix B (Methods and Times of Payment);

Appendix C (Additional Services of Contractor and Schedule of Professional Fees);

Appendix D (Project Schedule);

Appendix E (Certificate(s) of Insurance).

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

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

In this Contract:

- A. "Administrator" means Chris Mallow, Parking Supervisor for the City of Billings.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Collaborative Design Architects, Inc.

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

- A. The Contractor 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 Contractor in accordance with the Methods and Times of Payment as outlined in the attached Appendix B and the Schedule of Professional Fees attached as Appendix C 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 Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylars and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor 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 Contractor 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 D.
- C. This Contract shall terminate at \_\_\_\_\_.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than what is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor'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 Contractor 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 Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to 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 Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor'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 Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor 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 Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor 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 Contractor'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 Contractor'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 Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor 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 per claim.

- 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 Contractor 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 Contractor 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 Contractor 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. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor 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 Contractor 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 Contractor's or subcontractor'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: Chris Mallow  
City of Billings  
Parking Division  
210 North 27<sup>th</sup> Street  
Billings, Montana 59101 FAX: (406) 247-8608

Contractor: Collaborative Design Architects, Inc.  
Jeffery Kanning, President  
2080 Grant Road, Suite C  
Billings, Montana 59102 FAX: (406) 248-3765

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 Contractor 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 Contractor 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 Contractor'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 Contractor;
- 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 Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Contractor 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 Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.



**PART II**  
**GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

- A. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor 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 subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor 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 Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor 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:

Contractor: Jeffery Kanning, President of Collaborative Design Architects, Inc.

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 Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses 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 Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor 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 Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor 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 Contractor 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 Contractor 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

Contractor

\_\_\_\_\_  
Mayor or Designee

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

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

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

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

ATTEST:

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

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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

By \_\_\_\_\_

BRENT BROOKS, City Attorney

STATE OF MONTANA            )  
  :ss.  
COUNTY OF YELLOWSTONE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2009, 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 Contractor's signature to be notarized.**

## Appendix A

### Basic Services of Contractor

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#### Section 1. Contractor's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor'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 Contractor 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. Contractor'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 Contractor 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 Contractor. 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 Contractor'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 Contractor. For this project the Task Director designated for the Contractor is \_\_\_\_\_ working under the Principal-in-Charge, \_\_\_\_\_.

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 Contractor and Billings. For this project, the Task Director designated is Chris Mallow, Parking Supervisor.

Section 3. Scope of Work.

The Contractor shall provide all services to include, but not be limited to, schematic design, cost estimate, construction documents, bidding and permitting, and construction administration to complete the projects. Include any additional estimates that would be necessary to meet all applicable regulatory standards and codes.

Areas to be included, but not limited to, in cost estimate:

1. Elevator Replacement
  - Hoist way doors, Jack, Cab and Controller.
2. Electrical Upgrades
  - Heat in Pit and Machine Room
  - Light and Power in Pit and Machine Room.
  - Fire smoke detection and Recall system.
3. Mechanical Upgrades
  - Exhaust and Temperature Controls in Machine Room
4. Miscellaneous
  - Emergency Phone
  - Paint existing hoist way door frames
  - Signage
  - Plan Review/Permit
  - Drilling for collapsed Jack hole (if required)

## Appendix B

### Methods and Times of Payment

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#### Section 1. Payments for Basic Services.

Billings shall authorize payment to the Contractor for services performed under Appendix A of this Agreement. Partial payment shall be due the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Contractor.

Partial payment shall be made to the Contractor upon receipt of the Contractor's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct five percent (5%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services performed, under Appendix A, the Contractor shall be paid ten percent (10%) of Elevator Modernization costs. Estimated fee is twenty-two thousand five hundred dollars (\$22,500). Total fee will be reconciled when final construction costs are known. Progress payments for services performed, under Appendix A, in each phase shall total the following percentages of the total Contractor Fee payable:

1. Schematic Design:	15%
2. Design Development Phase:	10%
3. Construction Documents Phase:	50%
4. Bidding or Negotiation Phase:	5%
5. Construction Phase:	20%

- B. Final payment shall be the above stated basic fee less all previous payments.

#### Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix C.

#### Section 3. Corrections.

Costs of Billings work that is required for corrections to the Contractor's work which requires redoing by Billings shall be deducted from any payments due the Contractor, if the Contractor fails to make the required corrections.

#### Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates as shown in Appendix C have increased for all comparable clients.



## **Appendix C**

### **Additional Services of Contractor**

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Extra Services of the Contractor will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

The compensation for the authorized Extra Services will be computed as follows:

Principal:	\$	110.00/hour
Project Architect:	\$	82.00/hour
Staff:	\$	70.00/hour
Support:	\$	40.00/hour

## **Appendix D**

### **Project Schedule**

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Based on a notice to proceed by Billings date no later than \_\_\_\_\_, the completion date for the Engineer's work through final design shall be:

- A. Public Meetings
  - 1. First Meeting –
  - 2. Second Meeting –
  - 3. Final Meeting –
- B. Submittals and Meetings
  - 1. Preliminary Design Report –
  - 2. Design Report –
  - 3. City Council Meeting –
- C. Final Design –

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

**Appendix E**  
**Certificate(s) of Insurance**

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(Attach Certificate(s) of Insurance)



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Professional Services Contract for W.O. 08-25 – Zone 3 Capacity Expansion

**DEPARTMENT:** Public Works/Engineering

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

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**PROBLEM/ISSUE STATEMENT:** Work Order 08-25 will expand the capacity of the City's Zone 3 water distribution system by 3.5 million gallons by constructing a storage tank on the West End at a location to be determined under this contract. Seven firms submitted proposals for the project; of those seven, Brown and Caldwell, Dowl HKM Engineering, and HDR Engineering were selected for interviews. Through the selection process, the committee chose Brown and Caldwell for the project.

This professional services contract consists of three primary tasks totaling \$822,102.00. Task I is hydraulic modeling and site selection, Task II is design, and Task III is bidding and construction services. After approval of this contract, the consultant will be given a Notice to Proceed for Task I only. The result from Task I will be used to define the scope of the project better. Tasks II and III will be reviewed and modified as necessary based upon the outcome of Task I and a Notice to Proceed given for each individual task.

**FINANCIAL IMPACT:** The professional services contract with Brown and Caldwell will be a maximum not to exceed amount of \$822,102.00 and will be paid for utilizing DWSRF (Drinking Water State Revolving Fund) financing.

**RECOMMENDATION**

**Staff recommends that Council approve the professional services contract for W.O. 08-25 with Brown and Caldwell in the amount of \$822,102.00.**

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

**ATTACHMENTS:**

A) Professional Services Contract (available for viewing in the City Clerk's Office)



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Approval of Assignment and Transfer of Two West End Hangar  
Ground Leases with Pacific Tank and Pipeline, on Lots 1 and 2 –  
Taxilane D

**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 July 28, 2008, the City Council approved two (2) West End Hangar Ground Leases with Landan Cheney of Pacific Tank and Pipeline. Mr. Cheney is consolidating business assets and desires to assign and transfer the Pacific Tank and Pipeline Leases to another one of his companies, Backscratch Aviation, LLC. It is Mr. Cheney's intent to construct a sixty-foot (60') by one hundred twenty-foot (120') duplex-style aircraft hangar on both Lots 1 and 2 in the City's west end general aviation area located at Billings Logan International Airport. This will be the fourth duplex-style hangar constructed in the general aviation area. The proposed hangar will have a steel partition wall that separates the hangar in to two separate units, similar to a duplex. Each hangar unit will have its own hangar door. This will allow Mr. Cheney the flexibility to sell each side of the hangar in the future. This area was specifically developed in the early 1990's to accommodate the general aviation tenants with this type of lease and hangar construction. The twenty (20) year ground Leases are each for 5,525 square foot parcels on the north side of general aviation Taxilane D and expire on July 31, 2028.

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

**RECOMMENDATION**

Staff recommends that Council approve the Assignment and Transfer of two (2) West End Hangar Ground Leases from Pacific Tank and Pipeline to Backscratch Aviation, LLC.

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



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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 23, 2009

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TITLE: Approval of Amendment Seven with Morrison-Maierle, Inc., for Engineering Services for Airport Improvement Program (AIP) 36 Project

DEPARTMENT: Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide the design surveys for the project, development of projects plans, specifications and bidding documents, contract administration, to include coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, construction surveys, and development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment Seven for \$833,008, includes all of the services indicated above for this Summer's AIP 36 projects. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff and have also been approved by the FAA. The projects in AIP 36 include the Construction of Taxiway F, Straightening of Taxiway A, Rehabilitation of Three (3) Taxiways in the Executive and General Aviation Hangar Areas, Advance Planning for the Rehabilitation of our Main Air Carrier Runway 10L/28R, and an FAA Mandated Pavement Condition Index Survey, which is required to be done every three years.. This Amendment Seven will produce approximately \$5,000,000 in Airport improvements.

**FINANCIAL IMPACT:** The total cost of Amendment Seven to the five-year engineering contract with Morrison-Maierle, Inc. is \$833,008, and will be funded 95% with AIP entitlement grant and 5% local funds. The FAA's portion will be \$791,358 and the City's match is \$41,650.00. These projects are included in the current budget and local match funds are budgeted and available in the Airport's Capital account.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment Seven with Morrison-Maierle, Inc. in the amount of \$833,008 for the engineering services required for Airport Improvement Program AIP 36 Project.

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

AGENDA ITEM: **F**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Downtown Revolving Loan Fund Recommendations for Randy and Janna Hafer

**DEPARTMENT:** Administration – Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The Downtown Revolving Loan Committee approved a substitute of subordination parties to Randy and Janna Hafer on March 6, 2009.

Randy and Janna Hafer have requested financing from Yellowstone Bank to pay off the following debts for which all liens will be released:

1. Contract for Deed to S. Craig Whiteley for \$140,000
2. Initial Construction Financing to S. Craig Whiteley for \$70,000
3. Balance of construction costs to Randy and Janna Hafer for \$30,000

The Downtown Revolving Loan was originally subordinated to these loans of approximately \$249,000. Yellowstone Bank and the Hafer's have requested that the Downtown Revolving Loan be released from the subordination to the contract for deed and construction loan and subsequently be subordinated to the Yellowstone Bank loan of \$240,000. The payments of the new loans will require regular monthly principal and interest payments with additional principal reductions as follows:

- i. \$50,000 in December 2009
- ii. \$50,000 in December 2010
- iii. Payoff in March 2012

The current balance of the loan from the City's Downtown Revolving Loan Fund is \$105,173.51.

**FINANCIAL IMPACT:** There is not financial impact to the Downtown Revolving Loan fund.



**RECOMMENDATION**

The Downtown Revolving Loan Committee recommends that council approve the loan subordination to Yellowstone Bank, for the amount of \$240,000.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Disposal of Surplus ARFF Equipment  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** In 2007, the Aviation and Transit Department replaced two of its older model fire trucks used in the Airport's Aircraft Rescue Fire Fighting (ARFF) operations. In October 2007, the 1992 Oshkosh TA-1500 model trucks were sold through the competitive bid process to Crash Rescue Equipment Service, Inc. The Airport has several miscellaneous parts remaining from those trucks that it no longer has a use for, nor does the successful bidder want. These parts include one rebuilt engine transfer case, and two used tires and rims. The Department is seeking Council approval to declare these parts as surplus equipment and the ability to dispose of them.

**ALTERNATIVES ANALYZED:** The City Council has two options to consider:

- Declare these old parts as surplus and provide approval to dispose of the parts through recycling or salvage.
- Declare this equipment as surplus and attempt to sell it at the 2009 City auction. However, there is not a secondary market for this type and vintage of parts.

**FINANCIAL IMPACT:** The estimated value of this equipment is very difficult to calculate, as it is unique and designed for a specific truck model that is now nearing obsolescence. The manufacturer is also unwilling to place a value on the equipment based on its age and condition. The financial impact is expected to be minimal, if any at all.

**RECOMMENDATION**

Staff recommends that Council declare the remaining miscellaneous parts for the 1992 Oshkosh TA-1500 model trucks as surplus, and permit the disposal of these parts through salvage.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Declaring Ballistic Vests and Flashlights as Surplus Property  
**DEPARTMENT:** Billings Police Department  
**PRESENTED BY:** Tim O'Connell, Deputy Chief of Police

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**PROBLEM/ISSUE STATEMENT:** The Billings Police Department has had a request from Mike Olson, Training Coordinator for Yellowstone County Sheriff's Office, for thirty (30) out of warranty ballistic vests and forty (40) Streamlight Maglite rechargeable flashlights with chargers, that have been taken out of the patrol vehicles and replaced. They have released the City of all claims by signing the attached "Release of All Claims" document. It is requested that City Council declare thirty (30) ballistic vest and forty (40) Streamlight Maglite flashlights with chargers as surplus property and authorize the Billings Police Department to release these items to the Yellowstone County Sheriff's Reserve Unit.

**FINANCIAL IMPACT:** There is no financial impact to the City.

**RECOMMENDATION**

Staff recommends that Council declare thirty (30) ballistic vests and forty (40) Streamlight Maglite rechargeable flashlights with chargers as surplus property and authorize the Billings Police Department to release the ballistic vests and flashlights to the Yellowstone County Sheriff's Office for their Reserve Unit.

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

AGENDA ITEM: |



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** BikeNet Matching Funds for Lampman Strip Park Trail  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Darlene Tussing, Alternate Modes Coordinator

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**PROBLEM/ISSUE STATEMENT:** The City of Billings is required to provide a local match of 13.42% for Federal CTEP (Community Transportation Enhancement Program) dollars that are used for trail projects. BikeNet, a local advocacy group for trails, has secured donations through their Ales for Trails fundraising event to help develop trails in the Billings' community. The BikeNet Board of Directors has voted to provide \$25,000 to the City of Billings for a portion of the local match for the Lampman Strip Park Trail Project. The trail project is part of the City approved Capital Improvements Program. Council approval is needed to accept the BikeNet contribution for a portion of the local Federal CTEP match so funding is in place to cover the trail construction costs. The PSA (Project Specific Agreement) from MDT (Montana Department of Transportation) has already been approved and the project has been bid and let and is ready for construction this spring.

**FINANCIAL IMPACT:** The Lampman Strip Park Trail project estimated costs with contingency is \$368,535, and requires a local match of 13.42% or \$49,457. The Recreational Trails Program grant will provide \$20,000 towards the match and BikeNet would like to provide \$25,000 toward the additional required match. If there are any extra BikeNet funds, BikeNet would like them to be used toward signage along the trail for donor recognition.

**RECOMMENDATION**

Staff recommends that Council approve the donation of \$25,000 from BikeNet for a portion of the CTEP required matching funds for the Lampman Strip Park Trail and/or towards donor recognition.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Acceptance and Recognition of \$6,000 Donation from  
ConocoPhillips to Send School Resource Officers to National  
Conference

**DEPARTMENT:** Police Department

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

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**PROBLEM/ISSUE STATEMENT:** On March 3, 2009, the Police Department received a \$6,000 donation from ConocoPhillips to help pay the cost of sending the School Resource Officers (SROs) to the National Conference in Baltimore, Maryland on June 29 through July 3, 2009. Last year, the National Conference was held in Phoenix, Arizona and ConocoPhillips also made a donation to send our SROs to the Conference. The National Conference has been highly recommended as an excellent training conference. This very generous donation from ConocoPhillips will allow the SRO's to attend. The cost per officer is approximately \$2,000 which includes registration, lodging, airfare, shuttle and per diem.

**ALTERNATIVES ANALYZED:**

- Approval and acceptance of the donation.
- Denial and return of the donation.

**FINANCIAL IMPACT:** This donation has been deposited into our Fund 709 donation account and all expenditures for the SRO conference will be taken from that fund. We will send as many SRO's as possible with the donation from ConocoPhillips.

**RECOMMENDATION**

Staff recommends City Council's approval and acceptance of this \$6,000 donation from ConocoPhillips to send the School Resource Officers to the National Conference in Baltimore, Maryland on June 29 through July 3, 2009.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Acceptance and Recognition of Anonymous Donation for Trauma  
First Aid Kits and Training for Police Officers

**DEPARTMENT:** Police Department

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

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**PROBLEM/ISSUE STATEMENT:** On February 24, 2009, the Billings Police Department received an anonymous donation in the amount of \$2,613.00 for trauma kits for police vehicles and training for the officers. This is the second donation that we have received from this donor. Staff now comes before City Council for authorization to accept this generous donation. The anonymous donor has specified that they do not want to be acknowledged for this donation.

**ALTERNATIVES ANALYZED:**

- Approval and acceptance of the donation.
- Denial and return of the donation.

**FINANCIAL IMPACT:** This donation has been deposited into the Police Operations donation fund and designated for trauma kits for the police vehicles and trauma training for the officers. The trauma kits are gunshot wound kits. The major component is a material called "Quik Clot" that has become an integral part of combat medic kits and is now commercially available. The department would use them for any victim, when medical response might be delayed or the situation dictates its use.

**RECOMMENDATION**

Staff recommends City Council's approval and acceptance of this anonymous donation to the Billings Police Operations Fund.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Preliminary Subsequent Minor Plat, Amended Lot 5, Flanagan Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** On February 17, 2009, the Planning Division received an application for a subsequent minor plat approval for Amended Lot 5, Flanagan Subdivision. The plat contains three lots on approximately 198,198 square feet (4.55 acres) of land for commercial development. The proposed subdivision is located on the southeast corner of the intersection of Central Avenue and Moore Lane. The owner is 1030 Central, LLC. The representing agent is Sanderson Stewart.

**ALTERNATIVES ANALYZED:** In accordance with state law, the City Council has 35 working days to act upon this minor plat; the 35 working day review period for the proposed plat ends on April 6, 2009. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 day review period, the City Council is required to:

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

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

**RECOMMENDATION**

Staff recommends conditional approval of the preliminary subsequent minor plat of Amended Lot 5, Flanagan Subdivision, approval of the sidewalk variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

**ATTACHMENTS**

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



## **INTRODUCTION**

On February 17, 2009, the Planning Division received an application for a subsequent minor plat approval for Amended Lot 5, Flanagan Subdivision. The plat contains three lots on approximately 198,198 square feet (4.55 acres) of land for commercial development. The proposed subdivision is located on the southeast corner of the intersection of Central Avenue and Moore Lane. The owner is 1030 Central, LLC. The representing agent is Sanderson Stewart.

## **PROCEDURAL HISTORY**

- The preliminary plat application was submitted to the Planning Division on February 17, 2009.
- The City Council will consider the preliminary plat application on March 23, 2009.

## **BACKGROUND**

General location:	Southeast corner of the intersection of Central Avenue and Moore Lane
Legal Description:	Lot 5, Flanagan Subdivision
Subdivider:	1030 Central, LLC
Owner:	Same
Engineer and Surveyor:	Sanderson Stewart
Existing Zoning:	Controlled Industrial (CI)
Existing land use:	Commercial
Proposed land use:	Commercial
Gross area:	198,198 square feet
Net area:	198,198 square feet
Proposed number of lots:	3
Lot size:	Max: 90,169 square feet (2.07 acres) Min.: 54,014 square feet (1.24 acres)
Parkland requirements:	A parkland dedication is not required, as this is a commercial, subsequent minor subdivision.

### **ALTERNATIVES ANALYSIS**

One of the purposes of the City's subdivision review process is to identify potential negative effects of property being subdivided. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

### **RECOMMENDED CONDITIONS OF APPROVAL**

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. To ensure the provision of easements and to minimize the effects on public health and safety, the subdivision final plat shall show existing utilities on the site in easements where the existing utilities cross from one lot into another lot. *(Recommended by the Engineering Division)*
3. To ensure the construction of street improvements to minimize the effects on public health and safety, curb gutter and sidewalk, and the necessary street improvements, are required to be installed along the property on Moore Lane. Creation of a Special Improvements District (SID) can be attempted to construct these improvements. If an SID is not created within two years, the improvements must be made by the developer within six months of that time. *(Recommended by the Engineering Division)*
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

### **VARIANCES REQUESTED**

A variance from the provisions of Section 23-406(B)(13) of the City of Billings subdivision regulations requiring the installation of boulevard sidewalks. The requested variance is for 5 foot curb walks along both property frontages to fit within the existing right-of-way width of Moore Lane. This curb walks are consistent with the existing curb walk configuration on Central Avenue and Moore Lane. City Engineering is supportive of this variance because the current neighborhood has curb walks and not the boulevard type walks required by the current subdivision regulations.

**STAKEHOLDERS**

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

**CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

**RECOMMENDATION**

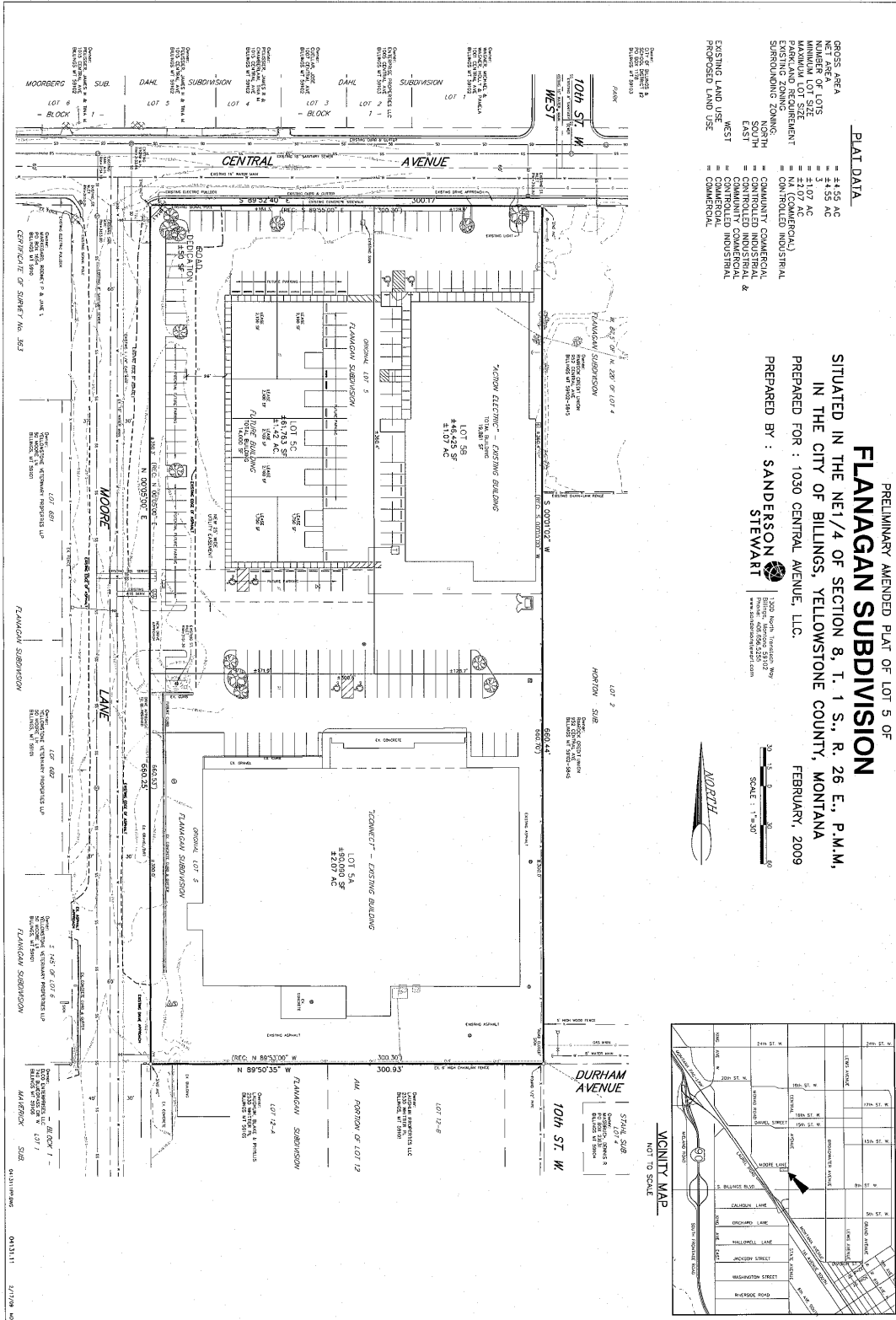
Staff recommends conditional approval of the preliminary plat of Amended Lot 5, Flanagan Subdivision, approval of the sidewalk variance, and adoption of the Findings of Fact as presented in the staff report to the City Council.

**ATTACHMENTS**

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

# ATTACHMENT A

## Preliminary Plat Amended Lot 5, Flanagan Subdivision



## **ATTACHMENT B**

### **Findings of Fact**

Staff is forwarding the recommended Findings of Fact for Amended Lot 5, Flanagan Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

**1. Effect on agriculture and agricultural water user facilities**

The subject property currently has an existing building on it and one under construction. The rest of the site is parking for the two buildings. There are no irrigation facilities on the property. There is no anticipated effect on irrigation facilities in the area.

**2. Effect on local services**

- a. **Utilities** – Water and sanitary sewer for the proposed subdivision shall come from the existing mains located in Moore Lane. The three proposed lots shall be serviced from a 10 inch water main line in Moore Lane. The existing water services are stubbed from the existing 10 inch water main to the existing property line. New lot owners will be responsible for extension of water service to their lots. There is an existing 8 inch sanitary sewer main in Moore lane. There are existing sanitary sewer services from the 8 inch line in Moore Lane stubbed to the existing property line. New lot owners will be responsible for extension of sanitary sewer service to their lots. The property owner will be responsible for all connection fees and improvement cost as stated in the SIA.
- b. **Storm water** – The existing lot has surface and subsurface detention. Further development with the proposed lots may require additional surface and subsurface detention. All drainage improvements shall comply with the provisions of the City of Billings Storm Water Management Manual and Section 23-706, BMCC.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision shall be shared accesses for the entire site. The applicant has provided a Declaration of Reciprocal Easement document for the proposed subdivision. Access to the lots will be from Central Avenue and Moore Lane. The subdivider will be responsible for its share of the costs for improvements on Central Avenue and Moore Lane. The applicant is required to provide street improvements along the boundaries of the proposed subdivision. Engineering is requesting that the applicant participate in an SID for the street improvements. If the SID cannot be created the applicant will be required to do the street improvements, see Condition #3.

- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 476 6<sup>th</sup> Street West (Station #4). The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** –Schools will not be affected by this subdivision as it is proposed to be a commercial development.
- g. **Parks and Recreation** - A parkland dedication is not required, as this is a commercial development.
- h. **Mail Delivery** - The United States Postal Service is requesting that if the applicant is planning on having on-site postal delivery that they provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access. The location of the mail boxes shall be reviewed and approved by the post office.

### **3. Effect on the natural environment**

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. The area also is along an arterial street in a developed area of the City.

### **4. Effect on wildlife and wildlife habitat**

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

### **5. Effect on the public health, safety and welfare**

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

## **B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)**

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA and 23-901, BMCC.

## **C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)**

### **1. Yellowstone County-City of Billings 2003 Growth Policy**

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. **Goal: Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans. (p. 8).**

*The proposed commercial development on the site is consistent with the commercial uses to the north, south and east. The CI zoning of this proposed subdivision has been in place for many years and will remain a part of the existing fabric of the neighborhood.*

- b. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (p. 8)**

*The subject property is zoned CI. The property to the north is zoned Community Commercial (CC), to the east is zoned CC and CI, to the south CI with CI to the west. The proposed subdivision is consistent with surrounding zoning districts and the predominant commercial development in the area.*

- c. **Goal: Contiguous development focused in and around existing population centers separated by open space (p. 8).**

*The subject property has an existing building on it that has had different businesses in it in the past that is now being used as a new business by the current owners. There is currently a new building being built on the site with the possibility of an additional building for a total of three buildings on the site. This is a great example of infill development and will be an improvement to the neighborhood.*

## **2. Urban Area 2005 Transportation Plan Update**

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

## **3. Heritage Trail Plan**

The Heritage Trail Master Plan has no trail identified through this subdivision or in the immediate vicinity.

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

The proposed subdivision, with the proposed conditions, satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

### **E. Does the subdivision conform to sanitary requirements? [(23-408, BMCC)]**

The property is served by City of Billings water, sewer and solid waste services.

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

The subject property is located within CI zoning districts and complies with the standards set forth in Section 27-309, BMCC.

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

The City Engineering Division will work with the utility companies to provide easements in acceptable locations on the plat. The City maintains that utility easements provided on front lot lines creates conflicts with sanitary water and sewer lines and have requested that they be located on the rear and sides of lots for public health and safety. Condition #1 requires the subdivider to work with the City Engineering Division and the private utility companies to provide acceptable utility easements on the plat. The site currently has an existing building and one under construction with utilities in place. The water and sanitary sewer lines shown on the plat cross into portions of the proposed lots on the north end of the subject property. Condition #2 is recommending the existing utility lines on the site have easements shown on the final plat where they cross property lines of the proposed lots on the north end of the subject property.

**H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and (23-406, BMCC)]**

Access to the subdivision shall be from Central Avenue and Moore Lane. The applicant has submitted a Declaration of Reciprocal Easements for this subdivision. The reciprocal access agreement documents will also be provided for final plat approval.

**CONCLUSIONS OF FINDING OF FACT**

- The preliminary plat of Amended Lot 5, Flanagan Subdivision, does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2008 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, March 23, 2009.

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Ron Tussing, Mayor



**ATTACHMENT C**  
Mayor's Approval Letter

March 24, 2009

1030 Central Avenue, LLC  
1010 Central Avenue  
Billings, Montana 59102

Dear Applicant:

On March 23, 2009, the Billings City Council conditionally approved the preliminary plat of Amended Lot 5, Flanagan Subdivision, subject to the following conditions of approval:

1. To ensure the provision of easements and minimize effects on public health and safety, the subdivider shall work with the City Engineering Division and the private utility companies to determine suitable locations for utility easements. These easements shall be depicted on the final plat. *(Recommended by the Engineering Division)*
2. To ensure the provision of easements and to minimize the effects on public health and safety, the subdivision final plat shall show existing utilities on the site in easements where the existing utilities cross from one lot into another lot. *(Recommended by the Engineering Division)*
3. To ensure the construction of street improvements to minimize the effects on public health and safety, curb gutter and sidewalk, and the necessary street improvements, are required to be installed along the property on Moore Lane. Creation of a Special Improvements District (SID) can be attempted to construct these improvements. If an SID is not created within two years, the improvements must be made by the developer within six months of that time. *(Recommended by the Engineering Division)*
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact the Planning Division at 657-8246 or by email at [plancsd@ci.billings.mt.us](mailto:plancsd@ci.billings.mt.us)

Sincerely,

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Ron Tussing, Mayor



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Final Plat of Amended Lots 1-8, Block 2; Lots 1-8, Block 3; Lots 1-9, Block 4, Reflections at Copper Ridge Subdivision

**DEPARTMENT:** Planning and Community Services

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

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**PROBLEM/ISSUE STATEMENT:** The final plat for Amended Lots 1-8, Block 2; Lots 1-8, Block 3; Lots 1-9, Block 4, Reflections at Copper Ridge Subdivision is being presented to Council for approval. On November 24, 2008, the City Council conditionally approved rearranging lot lines for 25 lots within the existing subdivision to create 10 additional lots for a total of 35 lots within Reflections at Copper Ridge Subdivision. The subject property is located approximately a quarter of a mile northwest of the intersection of Molt Road and Rimrock Road, is zoned Residential 7000 (R-70), and is proposed for single-family residences. The owner is Reflections at Copper Ridge, LLC and the agent is Engineering, Inc. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

**FINANCIAL IMPACT:** Should the City Council approve the final plat, the subject property may further develop, resulting in additional tax revenues for the City.

**RECOMMENDATION**

Staff recommends that the City Council approve the final plat of Amended Lots 1-8, Block 2; Lots 1-8, Block 3; Lots 1-9, Block 4, Reflections at Copper Ridge Subdivision.

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

**ATTACHMENT**

A: Plat

# ATTACHMENT A

## Subdivision Plat

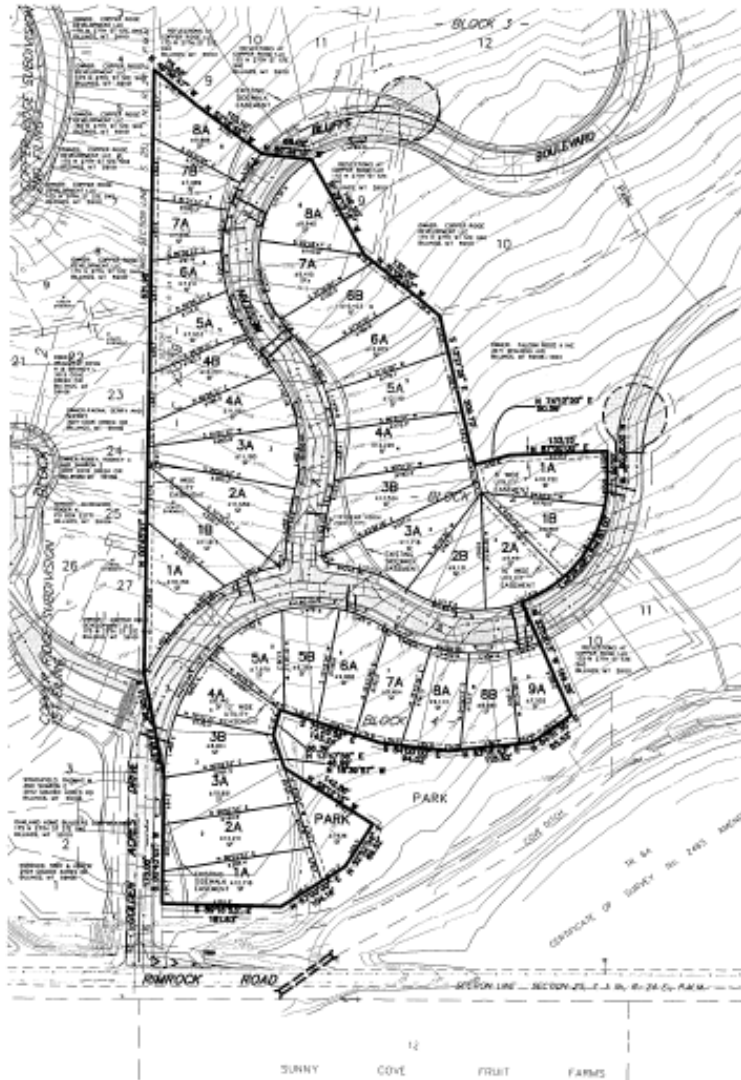
PRELIMINARY PLAT OF AMENDED LOTS 1-8 BK 2, LOTS 1-8 BK 3, LOTS 1-9 BK 4  
**REFLECTIONS at COPPER RIDGE SUBDIVISION**  
 SITUATED IN THE SE 1/4 OF SECTION 25, T. 1 N., R. 24 E., P.M.M.  
 BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : OAKLAND COMPANIES  
 PREPARED BY : ENGINEERING, INC.  
 SCALE : 1"=60'

AUGUST, 2008  
 BILLINGS, MONTANA



VICINITY MAP  
 NOT TO SCALE



### PLAT DATA

ORDER AREA	= 88.038 AC
NET AREA	= 88.034 AC
NUMBER OF LOTS	= 36
MINIMUM LOT SIZE	= 87000 SF
MAXIMUM LOT SIZE	= 873,000 SF
LINEAL FEET OF STREETS	= NA
PARKLAND REQUIREMENT	= 0
PARKLAND DEDICATION	= 87,936 SF
EXISTING ZONING	= R7000
SURROUNDING ZONING	= R7000
NORTH	= R7000
SOUTH	= R7000
EAST	= R7000 & R7000
WEST	= R7000 R
EXISTING LAND USE	= RESIDENTIAL
PROPOSED LAND USE	= RESIDENTIAL



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,355,329.90 audited and are presented for your approval for payment. A complete listing of the claims dated February 20, 2009 in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,426,485.36 audited and are presented for your approval for payment. A complete listing of the claims dated February 27, 2009 in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**SUBJECT:** Resolution to Adopt Sahara Park Master Plan  
**DEPARTMENT:** Department of Parks, Recreation & Public Lands  
**PRESENTED BY:** Mike Whitaker, Director

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**PROBLEM/ISSUE STATEMENT:** In 2007 Athletic Pool was demolished to make way for Dehler Park. Today there are only 2 swimming pools to serve the entire community. Sensing the need for additional swimming facilities, the Better Billings Foundation, a 501 C3 non-profit organization, approached the Parks and Recreation Department in May of 2008 with the desire to build a swimming pool facility in the Billings Heights. A number of public and private sites were evaluated for suitability. The Sahara Park site turned out to be the best of all the sites considered. The Sahara Park is 9.26 acre property that was acquired through parkland dedications of the Sahara Sands Subdivision between 1975 and 1977. The park is bordered on the west by Aronson Avenue and on the north by Caravan Avenue. Currently Sahara Park does not have an approved master plan on file so a master plan was undertaken. The plan was facilitated by PRPL Staff with assistance from the Better Billings Foundation. The plan was developed with the intent that Sahara Park would function as a large urban or special use park (on the scale of Pioneer Park) with facilities that would meet the needs of the entire city. The plan's major elements includes a Family Aquatic facility, a potential site for a Satellite Library, on site parking and furnishings that would be geared to accommodating the needs of larger and diverse groups. This plan has an alternative (known as Alternative Plan B) which is based on the premise that Sahara Park would be developed as a subdivision park. The Alternative B plan includes open areas for multi-use and programmable activities such as sports and practice areas, a picnic shelter, play structures, volleyball and basketball courts and a potential site for a Satellite Library with associated parking and outdoor reading areas. As this plan with its alternative was being developed, public meetings were held November 20, 2008 and January 15 and 27, 2009 at the Billings Community Center to discuss the master plan and alternative B and receive comments from interested citizens. The plan was presented to the Billings Park, Recreation, and Cemetery Board, at the February 11, 2009 meeting, and the Board voted to recommend adoption of Sahara Park Master Plan to the City Council with the stipulation that the original plan have a 5 year time limit and that Alternative Plan B be considered only after all avenues for development of the Family Aquatic Facility are exhausted through formal agreement with the Better Billings Foundation. See Attachment A – Sahara Park Master Plan resolution.

**FINANCIAL IMPACT:** There is no immediate financial impact to the City.

**RECOMMENDATION**

Staff and the Parks Recreation and Cemetery Board recommend that City Council approve and adopt the Sahara Park Master Plan as the governing plan for development of the park as outlined in the attached resolution.

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

**ATTACHMENTS**

A – Sahara Park Master Plan Resolution.

## **INTRODUCTION**

In 2007 Athletic Pool was demolished to make way for Dehler Park. Today there are only 2 swimming pools to serve the entire community. Sensing the need for additional swimming facilities, the Better Billings Foundation, a 501 C3 non-profit organization, approached the Parks and Recreation Department in May of 2008 with the desire to build a swimming pool facility in the Billings Heights. A number of public and private sites were evaluated for suitability. The Sahara Park site turned out to be the best of all the sites considered. The Sahara Park is 9.26 acre property that was acquired through parkland dedications of the Sahara Sands Subdivision between 1975 and 1977. The park is bordered on the west by Aronson Avenue and on the north by Caravan Avenue. Currently Sahara Park does not have an approved master plan on file so a master plan was undertaken. The plan was facilitated by PRPL Staff with assistance from the Better Billings Foundation. The plan was developed with the intent that Sahara Park would function as a large urban or special use park (on the scale of Pioneer Park) with facilities that would meet the needs of the entire city. The plan's major elements includes a Family Aquatic facility, a potential site for a Satellite Library, on site parking and furnishings that would be geared to accommodating the needs of larger and diverse groups. This plan has an alternative (known as Alternative Plan B) which is based on the premise that Sahara Park would be developed as a subdivision park. The Alternative B plan includes open areas for multi-use and programmable activities such as sports and practice areas, a picnic shelter, play structures, volleyball and basketball courts and a potential site for a Satellite Library with associated parking and outdoor reading areas. As this plan with its alternative was being developed, public meetings were held November 20, 2008 and January 15 and 27, 2009 at the Billings Community Center to discuss the master plan and alternative and receive comments from interested citizens. The plan was presented to the Billings Park, Recreation, and Cemetery Board, at the February 11, 2009 meeting, and the Board voted to recommend adoption of Sahara Park Master Plan to the City Council with the stipulation that the original plan have a 5 year time limit and that Alternative Plan B be considered only after all avenues for development of the Family Aquatic Facility are exhausted through formal agreement with the Better Billings Foundation. See Attachment A – Sahara Park Master Plan resolution.

## **PROCEDURAL HISTORY**

The Better Billings Foundation is currently raising funds to construct a Family Aquatic Facility in the Billings Heights. After consideration of several potential sites, Sahara Park was chosen as the most viable location for the Aquatic Project. Because a master plan was not on record, PRPL Staff undertook the task to develop the plan. Staff analyzed the park site, its constraints and opportunities, and city requirements for park development. After public review and comment at public meetings, a master plan was developed with an Alternative Plan B. The plan was reviewed by the Parks, Recreation and Cemetery Board and they voted to recommend approval and adoption of the master plan to City Council at their February 11, 2009 meeting. The final step is presentation to the City Council for consideration and adoption.



## **BACKGROUND**

According to the City of Billings Park Master Plan Policy, a park may not be developed until a park Master Plan has been prepared and adopted by the Billings City Council. All proposed development of parks or facilities within parks must be consistent with an approved Master Plan. It is prepared by a qualified park planning consultant, and considers surrounding zoning and land uses and local and general park and recreation needs as well as specific requests from interested users. This is to assure the highest quality and most beneficial development of parks and recreation facilities, and to assure adequate public input into the development, sale, or use, of Billings' parklands. A proposed modification to a park that is a significant departure from the approved Master Plan requires a revision of the Master Plan following the above process, to determine if the proposed change is acceptable and appropriate for that park. The Sahara Park Master Plan as presented has been reviewed and recommended to the City Council for approval and adoption by PRPL Staff and Billings Park, Recreation, and Cemetery Board.

The master plan:

- Sets forth the guidelines for development of Sahara Park.
- Provides a regional Family Aquatic Facility.
- Provides appropriate active open space and structured play areas for patrons of the Aquatic Facility and the surrounding neighborhood.
- Identifies Sahara Park as a possible location for a future satellite library.
- Provides connection to the Heritage Trail System and to mass transit.
- Has an Alternative Plan B.

## **ALTERNATIVE ANALYSIS**

The staff considered the following:

- Do nothing.
- Seek Council adoption of a park master plan to provide guidelines for the future development of Sahara Park.

## **CONSISTENT WITH ADOPTED POLICIES AND PLANS**

The Sahara Park Master Plan follows recommendations contained in the Parks 20/20 Plan (adopted in 1997) and the Heritage Trail Plan (adopted in 2004).

## **RECOMMENDATION**

Staff and the Parks, Recreation and Cemetery Board recommend that City Council approve and adopt the Sahara Park Master Plan as the governing plan for the development of the park as outlined in the attached resolution.

## **ATTACHMENTS**

A – Sahara Park Master Plan Resolution.

Attachment A

RESOLUTION NUMBER 09-\_\_\_\_\_

**A RESOLUTION ADOPTING A MASTER PLAN FOR THE  
DEVELOPMENT OF SAHARA PARK IN THE SAHARA SANDS  
SUBDIVISION**

WHEREAS, the public interest requires the creation and adoption of a Master Plan for Sahara Park in the Sahara Sands Subdivision, 1<sup>st</sup> and 2<sup>nd</sup> Filings to control and limit development in accordance with the needs of the community and subdivision, the limitations and constraints of the park site, and with improvements suited to and appropriate for the surrounding land uses; and

WHEREAS, it is in the public interest and necessary that the current and future development of the park shall conform to the adopted master plan; and

WHEREAS, it is the intent of the City Council to address the historical need for a family aquatic facility in the Billings Heights; and

WHEREAS, the City Council intends to adopt a master plan containing an approved plan and one alternative, establishing specific timelines for funding of improvements and execution of one or more development agreements;

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

1. *Master Plan.* The master plan for Sahara Park presented for adoption and attached as *Exhibit "A"* is the official Master Plan for the park. The *Alternative Plan "B"*, (pages 3-5) only becomes effective as explained below in paragraph 2.

2. *Master Plan.*

- A. As provided in Exhibit "A":

The City Council and a public or private organization(s), shall enter into a Development Agreement on or before March 31, 2010. This Development Agreement shall provide specific timelines, terms and conditions to fund, construct and maintain an aquatic facility in Sahara Park.

- B. As provided in Alternative Plan "B":

If the City Council and a Public or private organization(s), are unable to enter into a Development Agreement by March 31, 2010, then the City Council shall

proceed to make the attached Alternative Plan “B” the governing master plan for Sahara Park as provided in the Master Plan.

3. *Changes.* Proposed park improvements not part of the adopted plan shall not be installed unless adopted through the normal park planning process as part of an “amended” park master plan to be presented for adoption at that time.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Billings, Montana, this 23<sup>rd</sup> day of March, 2009.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

Exhibit A

# **SAHARA PARK MASTER PLAN**

**Prepared For:**

**City of Billings  
Parks, Recreation and Public Land  
390 North 23<sup>rd</sup> Street  
Billings, MT 59101**

**March 23, 2009**



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### **Appendix**

A:	Benefit Matrix
B:	Sahara Park Master Plan
C:	Sahara Park Master Plan Alternative B

## **ACKNOWLEDGEMENTS**

City of Billings Parks, Recreation and Public Lands  
Mike Whitaker, Director  
Mark Jarvis, ASLA, Park Planner  
390 North 23<sup>rd</sup> Street  
Billings, Montana 59101

Better Billings Foundation  
Chuck Barthuly, Executive Director  
P.O. Box 50489  
Billings, MT 59105

AT Architecture, Inc  
Alex Tommerup, AIA  
848 Main Street Suite 7  
Billings, MT 59105  
Donation of Analysis and Graphic Services

## **History**

Sahara Park is a 9.26 acre property that was acquired through parkland dedications of the Sahara Sands Subdivision between 1975 and 1977. The Park is bounded on the west by Aronson Avenue and to the north by Caravan Avenue. Sahara Park has had no development, and there is no current approved master plan on record.

The need for a master plan was determined when the Better Billings Foundation, a 501 C3 non-profit organization, approached the Parks and Recreation Department in May of 2008 with the desire to build a family aquatic facility in the Heights. Several public and private properties were analyzed through a benefit matrix to determine the best overall location for an aquatic facility and Sahara Park was determined to be the best location of all the sites considered.

According to the City of Billings Master Plan Policy, parkland can not be developed until a park master plan has been prepared and adopted by the Billings City Council. All proposed park development must be consistent with an approved master plan. This plan considers surrounding zoning, land uses, local and general parks and recreation needs and requests from interested users. This is to assure adequate public input into the development, sale or use of public parklands. A proposed modification to a park that significantly departs from the approved master plan requires a revision of the master plan in the same process to determine if the proposed change is acceptable and appropriate for that park.

## **Introduction**

The master plan for Sahara Park is unique in that it also has an alternative B component. The original master plan viewed Sahara Park as a Special Use or Multiple Use Park designation as outlined in the Parks 20/20 Plan. These designations are geared toward meeting the park and recreational needs of the larger community. This type of park tends to be intensively developed often serving unique and often singular activities or uses that are enjoyed by the entire community. Upon request of the City Council an Alternative Plan B was also developed to see what Sahara Park could look like without a family aquatic facility. This plan reflects the Neighborhood Park concept described in the Parks 20/20 Plan.

## **Sahara Park Master Plan Process**

Sahara Park was one of a number of potential sites that were evaluated through a benefit matrix to determine suitability for construction of an aquatic facility (see Appendix A). After evaluating a number of criteria including location, accessibility to the site, access to utilities, environmental factors and build-ability of the site, Sahara Park came out as the most favorable site to locate an aquatic facility. Parks and Recreation Staff facilitated the plan with the assistance of the Better Billings Foundation and evaluated the site for opportunities and constraints consistent with a Special Use or Multiple Use Park. At the same time the Library Department approached the Parks and Recreation Department to request that as part of the master plan, a portion of the site be identified for future

consideration as a possible location for a Satellite Library. When funding becomes available the Library would like to have a place holder in the master plan to consider Sahara Park along with a number of other potential sites in the Billings Heights for a Satellite Library. The preliminary master plan was developed which contained the following elements:

- Family Aquatic Park.
- Satellite Library/Community Center site for future evaluation by the Library Department.
- On site parking requirements.
- Structured Play areas including picnic shelters, tennis courts
- Large open active play areas that could be programmed for a wide variety of sports and activities.
- Access to the Heritage Trail along Aronson Avenue.
- Access to public transportation.
- Inter-park walking/exercise path.

On November 20, 2008, a public meeting was held at the Billings Community Center to present the preliminary master plan and to receive public comment. The following are the comments received:

Comments from the Public:

1. Do not want more traffic on Caravan. Eliminate the parking ingress/egress there.
2. Do not want a huge tall Library building which will block the view shed or be ugly.
3. Want the Library building to visually fit into the neighborhood.
4. Our buildings are ugly in Billings-need more trees and landscaping.
5. Do not want other amenities in the park. (No pool or library)
6. Want basketball courts in the park.
7. Want tennis courts in the park.
8. Want sand volleyball in the park.
9. Want a nature learning center in the park.
10. Keep as much of the park natural as possible.
11. Purchase the adjacent property and keep that as natural open space.
12. Concerned about drinking parties in the park.
13. Want the playground to be open to the public year round.
14. Make sure there is adequate parking.
15. Consider the view shed of the neighborhood when placing the park features.
16. Screen the pool area and other areas with plantings in the park.

From these comments, a buffer area between the property owners and the park was added to the plan (see Appendix B).



## **Sahara Park Master Plan Alternative B Process**

After presenting the preliminary Sahara Park Master Plan to the City Council on December 1, 2008 at a regularly scheduled work session, Council asked Staff to develop an Alternative B plan that would explore what the Sahara Park Master Plan could look like without the family aquatic facility.

Staff took the approach that without an aquatic facility, the park would function as a Neighborhood Park. As part of the analysis process in determining the elements to include in a neighborhood park model, public input from the neighborhood would be important. Therefore two public meetings were scheduled.

### **Public Meeting #1**

The first meeting was held on January 15, 2009 at the Billings Community Center. In the meeting the attendees were divided into 3 groups and asked a series of questions. Their responses were recorded on flip charts. At the end of the meeting each group made a brief presentation of their responses. The questions and their responses are as follows:

#### **Sahara Park Master Plan Alt. B Comments to Questions at Public Meeting #1 January 15, 2009**

Total Number Signed In: 22 (approximately 25 in attendance)

#### **Park Usage**

- For what purpose/activities would you use the park?
  - Walking
  - Gathering area
  - Sports
  - Active play on structures
  - Water activities
  - Picnics (open and shelter)
- How often?
  - Range from daily to never

#### **Your Vision**

- What elements are important?
  - Trails (multi-use)
  - Natural landscape
  - Wildlife area
  - Safety (pedestrian,
  - Parking
  - Ball field (boys and girls)
  - General sports – practice
  - Picnic tables

- Picnic shelter
- Restrooms
- Open area (sports, games)
- Water play area
- Trees
- Preserve rims
- Volleyball
- Library (smaller footprint)
- Are there any concerns you would have?
  - Environmental impacts
  - Wildlife
  - Traffic volume and high speeds on Aronson
  - Pedestrian safety
  - Bus stop (safe location)
  - Adequate parking
  - Preserving natural landscape, topography
  - Bring back girls softball in the area
  - Ball control (from leaving park)
  - Development and maintenance costs
  - Pool and library located on site
  - Overhead power lines, gas line
  - Impacts with crime (illicit activity)
- What would you not want to see in the park?
  - Pool facility
  - Library
  - Commercial
  - Concessions
  - Curbside parking

#### Character

- Are there any unique features you would like to see or preserve in the park?
  - Natural vegetation
  - Wildlife
  - Existing game trails
  - Preserve rims (rock outcrops?)
- What would make this park unique?
  - No response given

These comments along with other factors and constraints that need to be considered for public health, safety and welfare of the general public were analyzed to develop a preliminary Sahara Park Master Plan Alternative B (see Appendix C). The elements contained in the plan are as follows:

- Proposed Library/Community Center

- This element was retained as a placeholder for future consideration by the Library Department.
- Parking would be part of the Library consideration.
- Formal Structured Play Area
  - Picnic Shelter
  - Play Structure
  - Water Play area
  - Volleyball
  - Basketball Courts
  - Outdoor Reading/Gathering Area
- Active Programmable Space
  - Open area for sports and sport practices.
  - Large gatherings including reunions, company picnics, neighborhood Parties, school activities.
- Other Features
  - Low development and maintenance costs.
  - Trails (connections to the Heritage Trail system and exercise).
  - Safety for pedestrians and bus access.
  - Trees
  - Natural Landscape

## **Public Meeting #2**

The second meeting was held on January 27, 2009 in conjunction with the Billings Heights Task Force monthly meeting at Castle Rock Middle School. Parks and Recreation Staff presented the Sahara Park Master Plan Alternative B. Attendees at the meeting were generally in favor of the plan. Questions of implementation and funding were asked and it was explained that the original Sahara Park Master Plan would go forward as the plan for the park. If the original plan does not get developed and there is interest in the neighborhood to develop Alternative Plan B then the property owners in the benefit district would have to approve (through a simple majority vote) the development of the park through creation of a Special Improvement District (SID) and Park Maintenance District (PMD). These assessments would fund the construction and ongoing maintenance of the park.

## **Master Plan Implementation**

The Sahara Park Master Plan is unique because of its two part nature. It is recommended that The City Council and a public or private organization(s) enter into a Development Agreement within one year's time to provide specific timelines, terms and conditions to fund, construct and maintain an aquatic facility at Sahara Park. If an agreement can not be reached within a year, then the Alternative Plan B should become the governing master plan for Sahara Park.

## Appendix A

<i>Location options</i>	<i>Weight of Importance</i>	<i>Harvest</i>	<i>Castlerock</i>	<i>Sahaha</i>	<i>High Sierra</i>
Environment					
Soils	3	2	4	4	2
Wind	4	1	2	3	2
Dust	3	1	3	3	2
Adequate land	5	5	3	4	5
Expansion Potential	3	3	2	3	5
Road Circulation					
Vehicle accessible	5	2	3	4	1
Bike trail accessible	2	2	3	4	1
Road improvements	3	3	5	5	2
Traffic impact	3	2	3	3	2
Overall location	3	2	3	4	1
Restaurant/Shoppin g	3	2	3	4	2
Lodging	3	1	3	4	1
Visibility	4	2	3	4	1
Demographics/User groups	4	2	3	4	2
Infrastructure					
Utilities	3	3	4	4	1
Improvements	4	3	5	5	2
Other					
Fund raising opportunities	4	2	3	3	3
Masterplanned	2	5	1	4	2
<b>Totals</b>		146	192	234	130

NOTE: Weight value 1-5 with 5 being most important.

Weight considered  
both constructability  
and operational  
concerns

## Appendix B



## Appendix C





AGENDA ITEM:

**3**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Resolution Relating to Special Improvement District Bonds 1384  
Awarding the Sale

**DEPARTMENT:** Administration-Finance Division

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

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**PROBLEM/ISSUE STATEMENT:** The City Council has previously approved the authorization for the sale of bonds relating to SID 1384. This resolution recommends award of the sale of bonds totaling \$495,000 for the financing of following project:  
**SID 1384-Yellowstone Club Estates**

**BACKGROUND INFORMATION:** Bids on \$495,000 for bonds will be received March 23, 2009, and a report will be made at the Council meeting.

**RECOMMENDATION**

**Staff recommends that City Council approve the attached resolution.**

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

**ATTACHMENT**

A - Resolution

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 \$495,000 SPECIAL IMPROVEMENT DISTRICT NO. 1384 BONDS; AWARDING THE SALE THEREOF AND APPROVING CERTAIN MATTERS WITH RESPECT THERETO" (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 March 23, 2009, 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 March, 2009.

(SEAL)

\_\_\_\_\_  
City Clerk



RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO \$495,000 SPECIAL IMPROVEMENT  
DISTRICT NO. 1384 BONDS; AWARDING THE SALE THEREOF AND  
APPROVING CERTAIN MATTERS WITH RESPECT THERETO

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

1. This Council on February 23, 2009 adopted Resolution No. 09-18793 providing for the public sale of \$495,000 Special Improvement District No. 1384 Bonds (the "Bonds") to finance the costs of certain local improvements to be undertaken in or for the benefit of Special Improvement District No. 1384. Notice of the sale has been duly published in accordance with Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106. Pursuant to the notice of sale, \_\_\_\_\_ (\_\_\_\_) bids for the purchase of the Bonds were received at or before the time specified for receipt of bids. The bids have been opened or accessed and publicly read and considered, and the purchase price, interest rates and net interest cost under the terms of each bid have been determined.

2. The bid of \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the "Purchaser"), attached as Exhibit A, to purchase the Bonds of the City, is hereby determined to comply with the notice of sale, and to be the lowest, most reasonable bid for the purchase of the Bonds. The bid of the Purchaser is hereby accepted by the Council and the sale of the Bonds is hereby awarded to the Purchaser. The bid security of the Purchaser shall be retained pending delivery of the payment for the Bonds and the bid security of all other bidders shall be promptly returned.

3. The Mayor and City Clerk are hereby authorized and directed to execute a purchase contract with the Purchaser with respect to the Bonds.

4. This Council shall prescribe the form and security for the Bonds in a subsequent resolution.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this 23<sup>rd</sup> day of March, 2009.

\_\_\_\_\_  
Mayor

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

Clerk

**EXHIBIT A**  
**[Copy of Signed Winning Bid]**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, MARCH 23, 2009**

---

**SUBJECT:** Public Hearing and Approval of Resolution Approving and Adopting  
Second Quarter Budget Amendments for Fiscal Year 2008/2009

**DEPARTMENT:** Administration-Finance Division

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

---

**PROBLEM/ISSUE STATEMENT:** Second Quarter Budget amendments are requested  
for the following:

1. The Development Services Grants-Grant Writing Fund expenditure budget will increase \$2,500. There is \$2,500 cash from FY 08 to pay for these expenditures.
2. The Public Safety Fund expenditure budget will increase to fund the 20% local match for the FEMA Grant for the Trench/Confined Space Rescue for the Fire Department.
3. The Police Programs-Downtown Central Beat Officer Fund will require budget amendments for expenditures from January 1, 2009 to June 30, 2009. The City of Billings and the Billings Business Improvement District have a Memorandum of Understanding to reimburse the City for these expenditures.
4. The Municipal Grants-DUI Grant Fund requires budget amendments for testing and participant fee reimbursements for the testing.
5. The Police Programs-Drug Forfeiture Fund requires a budget amendment of \$116,784 for part of the cost of a Crime Scene Investigation Vehicle. The total cost of the vehicle is \$294,491, with the 2008 Technology Grant funding \$177,707.
6. The Parks Program-Cottonwood Park Fund requires a budget amendment for the title insurance paid from the sale of the parkland.

7. The General Fund-Nondepartmental requires a budget amendment for a transfer from the General Fund to the Development Services Grant Fund-Home Program. This will reimburse the Home Program for expenditures not reimbursed by the grants. There will be sufficient budget savings in the nondepartmental budget to cover this transfer in the FY 09 budget year. Granting agencies would most likely view the \$125,000 deficit inconsistent with normal reporting procedures. This was also an FY 06 CAFR audit finding that the City responded to. The response was that the problem would be corrected.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2008/2009.

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

**ATTACHMENT**

A-Resolution to Make Fiscal Year 2007/2008 Adjustment Appropriations (with Exhibit A)

**RESOLUTION 08-**

A RESOLUTION TO MAKE **FISCAL YEAR 2009**  
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 a **Quarterly** Budget Review (**FY 2008/2009**), 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 A)

PASSED AND APPROVED by the City Council, this 23<sup>rd</sup> day of March, 2009.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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

## EXHIBIT A

<u>Revenue</u>	<u>Expenditure</u>
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The cash from grant writing revenue of \$2,500 from FY08 has been carried over to FY09. These budget amendments will allow Development Services to spend the cash on various office expenditures.

278-6761-465	2190		1,250 Office Supplies
278-6761-465	3824		1,250 Training
278-6762-465	2190		2,500 Office Supplies

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The FEMA Grant for the Trench/Confined Space Rescue for the Fire Department has a 20% local match of \$27,507 from the Public Safety Fund.

150-2221-422-	8225		27,507 Transfer to other funds
221-2238-383	7553	27,507	Transfer from Public Safety

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The City of Billings and Billings Business Improvement District had a Memorandum of Understanding for a dedicated Central Beat Officer. This request is for January 1 through June 30, 2009, for the purchase of a patrol vehicle and equipment, salary and benefits, initial uniforms, and equipment for the officer.

256-2161-342-	2417	76,203	Public Safety-Charge for Services
256-2161-421-	1120		19,626 Salary and benefits
256-2161-421-	2120		15,545 Small items of equipment
256-2161-421-	2260		6,374 Uniforms
256-2161-421-	9440		23,658 Vehicle
256-2161-421-	9490		11,000 Other equipment

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The DUI grant for Municipal Court from the Montana Department of Transportation has testing that is funded by participant fees.

248-1261-341-	2325	30,000	Charge for services-program fees
248-1261-412-	3990		30,000 Other contract services-testing

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**EXHIBIT A**

<b><u>Revenue</u></b>	<b><u>Expenditure</u></b>
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The total cost of the Crime Scene Investigation Van is \$294,491. The 2008 Technology Grant is funding \$177,707. The balance of \$116,784 will be funded from the cash reserves of the Drug Forfeiture Fund.

718-2160-421	9440	116,784	Vehicle-Crime Scene Van
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The title insurance for the sale of land in Cottonwood Park is \$989. The proceeds from the sale of land will be used to fund this expenditure.

773-5167-452-	3590	989	Other professional services
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The professional services needed to complete the expansion of the Billings Historic District of \$15,000 will be funded by existing cash balances.

203-1513-437-	3547	15,000	Other professional services
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A transfer from the General Fund to the Home Program is needed to reimburse it for expenditures that were not paid by federal grants.

010-1412-414	8225	125,000	Transfer to other Funds
280-6581-383	7515	125,000	Transfer from General Fund

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, MARCH 23, 2009

**SUBJECT:** Public Hearing & Resolution Approving  
Budget Amendment for Charge for Services from General Fund  
Code Enforcement to Planning Fund

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** Tina Volek, City Administrator

**PROBLEM/ISSUE STATEMENT:** The Code Enforcement Division of the Planning Department is part of the General Fund, but the salaries of two Planning officials who supervise the division traditionally have been paid for from Planning's revenues. A recent, sharp downturn in building activity and resulting revenues have led to the layoff of 3.1 fulltime equivalent (FTE) positions and other reductions in the Planning Department budget, which has no remaining reserves. In order to accurately align funding for Code Enforcement supervision with the appropriate revenue source, 35% of the Planner II/Code Enforcement Supervisor's position and 25% of the Planning Director's salary should be paid from the General Fund. These percentages reflect the amount of time the two officials estimate they spend on Code Enforcement, which has high public contact and the commensurate need for follow-up and explanation. Combined with a promise from the Board of County Commissioners to halve Geographical Information Services (GIS) fees to Planning, a \$54,975 allocation to Code Enforcement supervision from the General Fund should allow retention of one additional FTE, who would otherwise have joined the 3.1 FTEs already laid off.

### ALTERNATIVES ANALYZED:

- Approve the allocation of \$54,975 from the General Fund to offset Code Enforcement supervision by the Planner II/Code Enforcement Supervisor and Planning Director, retroactive to the July 1, 2008, the beginning of the 2008-09 budget year. This allocation would continue in future budget years.
- Do not approve the allocation, resulting in the loss of an additional FTE in Planning.

**FINANCIAL IMPACT:** Costs for the proposed General Fund allocation to Code Enforcement were calculated as shown below.

	Planner II/Code Enf. Supervisor	Planning Director
--	---------------------------------	-------------------



Salary	\$62,774.40	\$ 83,158.40
Benefits	\$18,806.42	\$ 22,527.20
Subtotal	\$81,580.82	\$105,685.60
% in Code Enf.	.35	.25
Total	\$28,553.29	\$ 26,421.40

### **RECOMMENDATION**

Staff recommends that Council Approve the allocation of \$54,975 from the General Fund to offset Code Enforcement supervision by the Planner II/Code Enforcement Supervisor and Planning Director, retroactive to the July 1, 2008, the beginning of the 2008-09 budget year. This allocation would continue in future budget years.

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

### **ATTACHMENT:**

A. Resolution

***Attachment A***

**RESOLUTION 09-**

A RESOLUTION TO MAKE **FISCAL YEAR 2009**  
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 Planning revenue shortfalls, it is necessary to alter and change said appropriations.

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

Planning Fund - \$54,975  
240-4301-341-9021 Charge for Service – Revenue

General Fund/Code Enforcement - \$54,975  
010-4321-419-3954 Charge for Service - Expenditure

PASSED AND APPROVED by the City Council, this 23<sup>rd</sup> day of March, 2009.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing, MAYOR

ATTEST:

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

---

**TITLE:** Public Hearing and First Reading of Animal Control Ordinance Changes

**DEPARTMENT:** Billings Police Department

**PRESENTED BY:** Tim O'Connell, Deputy Chief of Police

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**PROBLEM/ISSUE STATEMENT:** A review of the existing Animal Ordinance by the Animal Control Board due to the contact entered into between the City of Billings and Yellowstone Valley Animal Shelter has resulted in the submittal of these recommended changes to the Animal Ordinance of the City of Billings, Montana. The last changes made to the Animal Ordinance were approved by City Council on October 27, 2003. We now bring to you for first reading and approval, suggested changes needed to the Animal Ordinance.

**ALTERNATIVES ANALYZED:**

- Approve the Ordinance;
- Do not approve the Ordinance.

**FINANCIAL IMPACT:** The financial impact would be minimal with a slight revenue increase to Municipal Court from fines to violators for violations of a Ban on Roadside Animal Sales. As the City of Billings will no longer be providing care for the animals at the Animal Shelter revenues for such services will no longer be received.

**RECOMMENDATION**

The Animal Control Board and staff recommend City Council approval of the changes to the Animal Ordinance as presented.

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

**ATTACHMENT**

**A – Proposed Animal Control Ordinance**

## **INTRODUCTION**

Increasingly each year, the Billings Animal Shelter receives complaints from citizens about irresponsible pet breeders selling puppies from the trunks of their vehicles in parking lots or out of boxes or crates along side the city streets. Many of these animals are brought into town from other areas of the State and leave customers who purchase these animals no recourse should something be wrong with the animal after purchase. Most often when these animals are placed into these situations for sale they are exposed to extreme weather conditions, are brought into town from puppy mill situations, and have health issues that are not addressed with the purchaser and the time of sale. Additional changes to the Ordinance are required as the service of animal care at the Billings Animal Shelter will be performed by Yellowstone Valley Animal Shelter according to contract signed and approved by Council on September 22, 2008.

## **BACKGROUND**

Current Animal Control Ordinance does not address sales of pets by private citizens on city streets, private or public parking lots. Animal care at the Billings Animal Shelter has been the responsibility of the City of Billings. A contract entered into and approved by City Council on September 22, 2008, will place this responsibility on the Yellowstone Valley Animal Shelter. Portions of the current Ordinance requiring and directing how this care will be given at the Billings Animal Shelter will no longer apply.

We now come before Council for approval of these Ordinance changes, banning the sales of pets on any roadside, public right-of-way, commercial parking lots, or at an outdoor special sale, swap meet, flea market, parking lot sale, or similar event. Changes will also remove responsibility and restrictions on the placement and care of any animal by the Billings Animal Shelter. These responsibilities will be with Yellowstone Valley Animal Shelter according to contract.

## **RECOMMENDATION**

The Animal Control Board and staff recommend City Council approval of the changes to the Animal Ordinance as presented.

## **ATTACHMENT:**

- A. Proposed Animal Control Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA MUNICIPAL CODE BE AMENDED BY REVISING SECTIONS 2-513, 4-301, 4-401, 4-404, 4-405.1, 4-405.5, 4-407, 4-433, 4-446, 4-447, 4-448, 4-450, 4-451, 4-453, 4-502, 4-503, 4-504, 4-505 AND ADDING A SECTION TO BE NUMBERED 4-309, AND REPEALING SECTIONS 4-449, 4-452.

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

Section 1. That the Billings, Montana, City Code be amended by adding a new section, amending other sections, repealing some sections, and revising content of ordinances relating to animal control, the animal shelter, and the animal control board, as follows:

**Sec. 2-513. Powers and duties.**

The animal control board shall serve in an advisory capacity to the city council and shall be for the purpose of providing citizen input to the policy decisions of the city council. The primary responsibilities of the board are to review existing and proposed city policies and to review city department activities to ensure that city policies are being implemented and carried out and further, to report any shortcomings and to make recommendations to the city council in the formulation of programs and policies to improve among others the following areas of concern:

(1) Reserved ~~Operation of the city animal shelter and pound, including sanitation and financial efficiency;~~

(2) Reserved ~~The humane disposition of all of the animals held in the animal shelter or pound;~~

(3) The formulation of policies, regulations, implementation and control of animals within the city;

(4) Solving the serious problem created by the uncontrolled reproduction of pet animals;

(5) Cooperation with other municipal, county and state governments.

**Sec. 4-301. Keeping of wild animals.**

(a) The terms and words used in this section are defined as follows:

*Wild animal* means any live monkey (nonhuman primate), raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx, bobcat, coyote, wolf, warm-blooded animal taken from the wild state or bred in captivity, or any wild animal hybrid.

*Wild animal hybrid* or *hybrid* means an animal which is the product of the breeding of:

(1) A wild animal with an animal that is not wild, including, but not limited to wolf/dog hybrids;

(2) A wild animal with an animal of a different species, variety or breed;

(3) An animal that is expressly or impliedly represented to be a wild animal hybrid; or

(4) An animal, the appearance of which (including but not limited to the color, shape, size and markings) causes a representative of the Montana Fish, Wildlife and Parks or the Billings Animal ~~Shelter~~ Control to reasonably believe that the animal is a wild animal hybrid.

*Wolf/dog hybrid* means an animal which is part wolf and part domestic dog.

(b) No person shall keep or permit to be kept on his or her premises within the city limits any wild or vicious animal or wild animal hybrid for display for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions, or circuses.

(c) No person shall bring into, offer for sale or barter, or release anywhere in the city limits any wild animal or wild animal hybrid.

(d) No person shall possess, keep or permit to be kept on or off his/her premises within the city limits a wild animal or wild animal hybrid. If the following conditions are met, wolf/dog hybrids which were in private possession prior to February 1, 1993, may be retained by the same owner as a domestic pet, but may not be transferred to another person:

(1) The owner must comply with all rules, regulations and requirements of the Montana Department of Fish, Wildlife and Parks.

(2) By May 1, 1993, the owner must register the wolf/dog hybrid with the city, must purchase a small animal license and must comply with all requirements for a small animal license as set forth in sections 4-432 through 4-438.

(3) The owner must keep the wolf/dog hybrid in a securely enclosed structure to which all entrances remain locked. The structure must be designed so that a person cannot place an extremity in any part of it and so that the wolf/dog hybrid cannot escape. The structure must be kept in good repair at all times. No person shall allow or permit the wolf/dog hybrid to be removed from its structure unless the animal is muzzled and on a leash held by a person able to control the animal.

(4) At the time of licensing the wolf/dog hybrid or by May 1, 1993, if the wolf/dog hybrid is currently licensed, the owner of the wolf/dog hybrid must schedule a time with the animal shelter for an animal control officer to inspect and approve the structure in which the animal will be kept. The animal control officer shall also take a photo of the wolf/dog hybrid to be retained by the animal shelter for identification purposes.

(5) The owner/keeper of the wolf/dog hybrid shall allow an animal control officer at any reasonable time with 24-hour notice to inspect the premises upon which the wolf/dog hybrid is kept.

(6) No person shall possess, keep or harbor a wolf/dog hybrid unless all of the above conditions have been met.

(7) A wolf/dog hybrid which has not been licensed in accordance with subsection (d)(2) shall be seized and impounded by an animal control officer or a police officer. In the alternative, the animal control officer or police officer may order the person owning, keeping, or harboring the wolf/dog hybrid to deliver the animal to the animal shelter within twenty-four (24) hours. The person owning, keeping or harboring such animal shall then be ordered to appear in city court to show cause why the animal should not be destroyed. The city court judge, after making a determination that the animal is a wolf/dog hybrid and that it was not licensed, shall order that the animal be destroyed or that it immediately be removed from the city.

(8) A wolf/dog hybrid which is running at large in the city shall immediately be impounded by an animal control officer or police officer. The person owning, keeping or harboring such animal shall be ordered to appear in city court to show cause why the animal should not be destroyed. The city court judge, after making a determination that the animal is a wolf/dog

hybrid and that it was running at large, shall order that the animal be destroyed or that it immediately be removed from the city.

(e) The animal control officers shall have the power to release or order the release of any young wild animal kept under temporary permit, issued by the State of Montana, which is deemed capable of survival.

#### **Sec. 4-309. Roadside and flea market sales**

(a) It shall be unlawful for any person to sell, trade, or barter a live animal on a roadside, public right-of-way, commercial parking lot, or at an outdoor special sale, swap meet, flea market, parking lot sale, or similar event.

(b) This section does not apply to:

(1) An agent of a business that has a certificate of occupancy from the building inspection division authorizing the occupancy of the premises for purposes of operating a business selling pets;

(2) An event primarily for the sale of agricultural livestock such as hoofed animals or animals or fowl commonly raised for food, dairy, or fiber products;  
or

(3) A tax-exempt non-profit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals.

Any person/organization found in violation is guilty of a misdemeanor.

### **ARTICLE 4-400. DOGS, CATS AND SMALL ANIMALS**

#### **DIVISION 1. GENERALLY**

##### **Sec. 4-401. Definitions.**

Terms and words, as used in this article, shall have the following meanings unless the context otherwise indicates:

*Adult animal* means any animal over six (6) months of age.

*Animal* means to include all livestock and any domestic pet, both male and female.

*Animal control officer* means any one or more of the employees of the city designated by the city administrator or his designee as animal control officer.

*Animal shelter* means the place provided ~~by the city~~ for the impounding of dogs, cats or other small animals, or livestock.

*At large* means off the premises of the owner and not under the control of the owner or any other person either by leash, cord, chain, or other physical means of control; obedience trained dogs under complete verbal control of the owner or trainer shall not be allowed to separate from their owner by more than six (6) feet except on private property with owner permission or on public property as referenced in section 4-407.

*Bite* means any abrasion, scratch, puncture, laceration, bruise, tear, or piercing of the skin inflicted by the teeth of an animal.

*Bodily injury* means physical pain, illness, or any impairment of physical condition.

*City administrator* means the city of billings city administrator or his/her designee.

*Dangerous animal* means any animal that in the absence of intentional provocation:

- (1) Inflicts serious bodily injury to a person on public or private property; or
- (2) Is involved in a continuous sustained attack upon a person, not allowing the victim any means of escape, regardless of the extent of injury or defensive action required; or
- (3) Is previously found to be potentially dangerous and while on or off the owner's property chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal;
- (4) Inflicts injury to a person on public or private property, which injury results in the death of the person.
- (5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

*Foster home* means a tax exempt facility or organization where animals may be placed for the purpose of finding a new home.

*Neutered/Spayed* means rendered permanently incapable of reproduction.

*Owner* means any person owning, keeping, feeding or harboring an animal over thirty (30) days.

*Persons* means two (2) or more people.

*Potentially dangerous animal* means any animal that in the absence of intentional provocation:

- (1) While off the owner's property, chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal; or
- (2) While on the owner's property causes bodily injury to a person; or
- (3) While off the owner's property kills a domestic animal, excluding birds, rodents and reptiles.
- (4) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

*Registration authority* means the agency or department of the city or any designated representative thereof charged with administering the issuance and/or revocation of permits and registrations under the provisions of this chapter.

*Serious bodily injury* means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

*Service animal* means in addition to a guide dog, police dog, as defined in MCA 45-8-209, law enforcement or military canine all other animals that are "individually trained to provide assistance to an individual with a disability" in a public setting.

*Small animal* includes any dog, cat, rabbit or domesticated small animal, both male and female.

*Small animal permit* means a permit that allows the premises to be inspected and approved by the animal control officer, or by the health department, at a prearranged appointment established with the owner.

*Vaccination* means the inoculation of a dog or cat with anti-rabies vaccine administered by a licensed veterinarian in compliance with regulations established by the state.

(Code 1967, § 8.08.010; Ord. No. 85-4616, 1-7-85; Ord. No. 85-4676, § 1, 12-23-85; Ord. No. 90-4829, § 3, 5-7-90; Ord. No. 90-4848, § 1, 11-19-90; Ord. No. 03-5259, § 3, 10-27-03; Ord. No. 05-5351, § 1, 12-12-05)

#### **Sec. 4-404. Noisy animals.**

Every person who keeps, feeds, harbors or allows to stay about any premises occupied or controlled by such person, any animal which unreasonably annoys or disturbs



any person by continuous and habitual barking, howling, yelping, whining or other noise is guilty of maintaining a public nuisance and is therefore guilty of a misdemeanor. This section does not apply to an animal that is owned, kept, or harbored as part of the business of a licensed veterinarian, animal boarding facility, or agricultural or livestock operation.

The complainant must identify himself or herself by name, address and telephone number.

To constitute a violation for prosecution under this section, a written complaint must be received by the animal ~~shelter~~ control officer which shall include but not be limited to a summary of the nature and duration of the animal noise and any other information as may be required by the animal ~~shelter~~ control officer to establish a violation of this section.

Upon conviction in municipal court of a noisy animal, the penalty shall be in accordance with section 4-411.

(Code 1967, § 8.08.040; Ord. No. 90-4829, § 4, 5-7-90; Ord. No. 03-5259, § 5, 10-27-03; Ord. No. 05-5351, § 3, 12-12-05)

#### **Sec. 4-405.1. Quarantine--Rabies.**

(a) Any animal not currently vaccinated for rabies which bites a person shall be isolated in strict confinement at the animal shelter or a licensed veterinarian clinic to be observed for at least ten (10) days from the day of infliction of the bite. The owner will be responsible and must pay the confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.

(b) Upon the discretion and advice of the animal control or law enforcement officer any animal currently vaccinated for rabies which bites a person may be isolated in strict confinement at the owner's home provided the following conditions are available and met:

(1) Animal must be kept away from all animals and people except the immediate household.

(2) Animal must be kept inside an enclosed structure such as a house, garage or if outside, the animal must be in a covered pen from which it cannot escape or come into contact with another animal or person. If confinement is authorized under this condition, the person responsible for the animal shall further assure that the animal shall only be allowed outside the above-described pen or other suitable place approved by the animal control or law enforcement officer if the animal is on a leash which is held by a person that is capable of and is in fact controlling the animal in question.

(3) Animal cannot be sold, given away, destroyed or moved from the premises until notified by an animal control or law enforcement officer that the quarantine period is over.

(4) Animal under quarantine is not to receive any vaccinations without the authorization of a veterinarian and the animal control officer.

(5) If the animal becomes lost, sick, acts strangely in any way, or dies during quarantine it must be reported immediately to the ~~Billings~~ animal control office ~~shelter~~.

(6) Animal control and/or law enforcement officers must be allowed reasonable access to the place of quarantine between the hours of 7:00 a.m.--10:00 p.m. for inspections.

(7) The owner will be responsible and must pay all confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.

(c) Any animal owner who fails to cooperate with the animal control officer in satisfactory quarantine of his dog or cat (or any other warm-blooded animal, if pertinent) who has bitten a person is guilty of a misdemeanor.

(d) A dog or cat (or other warm-blooded animal) manifesting characteristics of rabies (hydrophobia) may be put to death at the discretion of the animal control or law enforcement officer so that the head may be examined to make a confirmatory search for Negri bodies. All animals definitely known to have been bitten by the infected animal

should be destroyed. If, however, the animal is only suspected of having the disease he should not be put to death but quarantined for observation, for a negative laboratory examination at this time would only leave the diagnosis in doubt.

(e) Quarantine procedures do not apply to animals used in military or law enforcement work and service animals for the disabled. These animals will be required to be under current veterinarian care and subject to inspections by an animal control or law enforcement officer.

(Ord. No. 05-5351, § 5, 12-12-05)

#### **Sec. 4-405.5. Dangerous behavior.**

(a) Any person who keeps, feeds, harbors or allows to stay about the premises occupied or controlled by him within the city any animal exhibiting dangerous behavior is guilty of maintaining a public nuisance and is guilty of a misdemeanor. An animal is presumed to have exhibited dangerous behavior if it demonstrated any of the behavior set forth in section 4-401. Such presumption is rebuttable. Upon conviction of maintaining a public nuisance with a particular dangerous animal, said animal may be ordered by the court to be destroyed by the animal control officer. An animal involved in a fatal attack on a person will be impounded and destroyed by the animal control officer.

(b) The owner or keeper convicted of having a dangerous animal shall forthwith register the animal as such with the animal control division. The owner of the dangerous animal must comply with and must show the animal control division sufficient evidence that the following requirements are met within thirty (30) days following registration:

(1) A securely enclosed structure is provided by the owner suitable to prevent unauthorized entry and designed to prevent the animal from escaping. The enclosure must also provide protection from the elements for the animal.

(2) The owner or keeper shall display signs on his or her premises warning that there is a dangerous animal on the property. These signs shall be visible and capable of being read from the public roadway and from any normal means of entry to the premises. In addition, the owner or keeper shall conspicuously display a sign with a warning symbol that will inform children of the presence of a dangerous animal.

(3) The owner or keeper of a dangerous animal shall present proof of procurement of liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00), covering the 12-month period during which registration is sought. This policy shall contain a provision requiring the city to be named as an additional insured and requiring that the city be notified by the insurance company at least ten (10) days in advance of any cancellation, termination or expiration of the policy.

(4) The owner or keeper shall, at his or her own expense, have the dangerous animal registration number provided by the animal control division tattooed upon the inner side of the right ear by a licensed veterinarian, or micro-chipped, and the chip number provided to the animal control division.

(c) The owner or keeper of an animal convicted of having a dangerous animal shall notify the animal control division within twenty-four (24) hours of a change of address or death of the animal, immediate notification will be required if the animal is loose.

(d) The owner or keeper of an animal convicted of having a dangerous animal shall not sell, transfer or give away the animal, other than to the animal control officer ~~shelter~~ for disposal.

(e) The animal control officer is empowered to make whatever inquiry is deemed necessary to ensure compliance with the above provisions. Should it be found that the owner or keeper is in noncompliance with the provisions, the animal shall be immediately confiscated, impounded, and destroyed.

(Ord. No. 90-4829, § 6, 5-7-90; Ord. No. 03-5259, § 7, 10-27-03)

**Sec. 4-407. Small animals in city parks.**

No small animals, whether restrained or unrestrained, shall be permitted in the city parks except for service animals when being used for that purpose and service animals being used in police work. This prohibition does not prohibit small animals in posted areas of parks or public lands that are specifically designated by council resolution for use by small animals in accordance with posted regulations. Small animal in the city parks are deemed a nuisance and may be impounded; provided, that a permit for organized obedience training or shows may be granted for use in designated areas of designated parks on designated days. The permit shall be obtained from the animal ~~shelter~~ control division at the discretion of the animal control supervisor for that particular event. The permit shall be in writing and shall designate the park, area within the park, the dates and duration. A fee as prescribed by council resolution shall be collected for each permit for each event.

**Sec. 4-433. Proof of vaccination prerequisite.**

No dog/cat registration shall be issued unless the applicant therefor produces satisfactory proof that the dog/cat has been vaccinated with a rabies vaccine currently effective. Such proof may be made by presenting the vaccination receipt referred to in section 4-409; provided that when a dog/cat has been reclaimed from the animal shelter, registration fees ~~and all impound fees~~ shall be paid ~~and all bonds shall be posted~~ prior to release of the dog/cat. If satisfactory proof of rabies vaccination cannot be produced, the registration tag shall be retained by the city until the dog/cat has been vaccinated or proof of vaccination is produced. Proof of vaccination must be provided to the animal ~~shelter~~ control officer within thirty (30) days after the dog/cat becomes three (3) months old, or within thirty (30) days in the case of a dog/cat three (3) months or older. Failure to provide proof of vaccination will result in the registration being void.

**Sec. 4-446. ~~Animal shelter and a~~ Animal control officer.**

~~There is hereby established a city animal shelter.~~ The animal control officers shall be employees of the city, designated by the city administrator to act as such animal control officers, and they shall receive no pay other than their regular pay as city employees.

**Sec. 4-447. Impoundment of small animals at large.**

Every small animal, licensed or unlicensed, found running at large in the streets, avenues, alleys or other public places within the city, or on private property, except as provided in section 4-406, is a public nuisance and may be taken and impounded in the ~~city~~ animal shelter by an animal control officer, police officer or other employee designated by the city administrator or persons with whom the city has contracted. Such persons are specifically authorized to pursue small animals running at large onto private property and apprehend such small animals. Small animals are running at large unless they are restrained pursuant to section 4-406.

**Sec. 4-448. Records of impounded animals.**

Immediately upon impounding any animal, the animal control officer shall record, ~~in a book to be provided by the city and kept by him for that purpose,~~ a description of such animal. Such record shall state the sex, color, breed, estimated age, distinguishing marks,

if any, and the date and hour of impounding, and upon final disposition of such animal, the record shall show such disposition.

**Sec. 4-449. Reserved —Additional fee for adopted dogs or cats.**

~~(a) In addition to all impound and registration fees, the animal shelter control officer shall collect a deposit for spaying or neutering any animal adopted prior to sterilization surgery. The amount collected shall be equal to the amount set by the city administrator or his designee after consultation with the local veterinarian association.~~

~~(b) It is unlawful for any person to adopt a dog or cat from the animal shelter and fail to have the animal spayed or neutered within the prescribed time limit as set by the spay/neuter certificate. Such failure is a misdemeanor and can result in forfeiture of the animal.~~

**Sec. 4-450. Disposition of unclaimed animals.**

Every dog or cat impounded shall be held for a period of not less than forty-eight (48) hours nor more than seventy-two (72) hours after such impounding and if not claimed by the owner the animal shall become the property of the Yellowstone Valley Animal Shelter, and if not claimed by the owner or by some person acting in the owner's behalf who pay the license and impounding fees as provided in section 4-451, may be put to death by the animal control officer; provided, that instead of putting such dog or cat to death, the animal control officer, in his discretion, may turn any such dog or cat over to some person who agrees to find a home for the dog or cat. Such person must pay the fees referred to in section 4-451, except that no license fee need be paid for a dog to be removed from the city. The refusal or failure of the owner of any such dog or cat to pay the pound fees and charges after due notification shall be held to be an abandonment of the dog or cat by the owner.

**Sec. 4-451. Collection of fees for impounded animals.**

Before any dog, cat or other animal is released from the animal shelter, the animal control officer shall collect from the person claiming/adopting such dog, cat or other animal ~~all fees and the~~ usual registration fee for such dog/cat if it is not already registered, subject to the conditions outlined in section 4-450. ~~Tax exempt organizations shall be allowed to participate as a foster home for up to (3) three adult animals provided they have complied with requirements of the animal shelter. Fees for such animals shall be paid within (10) ten days after finding the animal a new home or within (10) days after the animal has been in the foster home for (60) days. The small animal control officer shall remit immediately all sums of money collected to the city finance department.~~

**Sec. 4-452. Reserved —Disposal of animal upon request.**

~~The animal shelter shall dispose of dogs, cats or other small animals, upon request of the person bringing the animal to the animal shelter pursuant to the procedure established at the animal shelter and upon payment of the proper fee.~~

**Sec. 4-453. Animal control shelter fees.**

The city council by resolution shall establish from time to time the fees to be charged by the animal control division shelter.

**Sec. 4-502. Impoundment authorized.**

The animal control officer ~~shelter~~ is authorized to take possession of any livestock animal found to be at large within the city limits, and to impound the same.

**Sec. 4-503. Notice to owner.**

Immediately upon impounding any livestock animal, the animal control officer ~~warden~~ shall use reasonable means to ascertain the owner of such livestock animal, and to give notice to such owner of the impoundment.

**Sec. 4-504. Release to owner; fee.**

Before any livestock animal is released from the animal control officer ~~shelter~~ to an owner, the animal control officer ~~warden~~ shall collect from the person claiming such animal a// fee costs incurred as a result of feeding, care, and impounded of the livestock. ~~as established by council resolution.~~

**Sec. 4-505. Auction of unclaimed animals.**

Every livestock animal not claimed within ~~fifteen (15)~~ thirty (30) days of impoundment shall be sold at public auction.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF BILLINGS

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

ATTEST:

By \_\_\_\_\_  
City Clerk



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Adoption of Resolution Adjusting Fees Charged at Animal Shelter

**DEPARTMENT:** Billings Police Department

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

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**PROBLEM/ISSUE STATEMENT:** As of March 22, 2009, the City no longer is expected to be providing for the care of animals as covered by the contract that City Council approved with Yellowstone Valley Animal Shelter, Inc. (YVAS). A review of the existing fees charged for services at the Billings Animal Shelter by the Animal Control Board, has resulted in the submittal of these recommendations and changes. The last changes made to the fees charged were approved by City Council in 2005. We now bring to you this resolution for fees to better reflect costs and services to the City. As the Billings Animal Shelter will no longer exist when Yellowstone Valley Animal Shelter begins caring for the animals at the Animal Shelter, these service fees will no longer apply.

**ALTERNATIVES ANALYZED:**

- Approve fee adjustment
- Do not approve fee adjustment

**FINANCIAL IMPACT:** Contract approved by City Council on September 22, 2008, places the responsibility of care for the animals at the Animal Shelter with Yellowstone Valley Animal Shelter. As the City of Billings will no longer be providing these services the fees for these services will no longer be collected and will be regulated by the contract.

**RECOMMENDATION**

The Animal Control Board and staff recommend City Council approve this resolution as presented on this date.

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

**Attachment**  
A - Resolution

## **INTRODUCTION**

On September 22, 2008, City Council authorized and accepted a contract with Yellowstone Valley Animal Shelter, Inc. (YVAS) for the care of the animals at the Animal Shelter. As the City of Billings will no longer be providing the services, and care of the animals is covered by contract with YVAS, the proposed changes delete fees for services that will no longer be collected or provided by the Billings Animal Shelter.

## **BACKGROUND**

- Historically the City of Billings has provided for the care and housing of unwanted, stray, or abandoned animals at the Billings Animal Shelter.

- On December 12, 2005, City Council approved an initiative to investigate privatizing animal control.

- On April 16, 2006, Animal Shelter Report proposes an animal care co-op to provide a low-kill facility.

- On February 6, 2008, animals being considered for euthanasia were made available to private organizations through the “Save – A – Life Program.

- On January 29, 2008, Animal Shelter Operations Request for Proposals was issued.

- On February 29, 2008, a response to RFP of 150 pages received from Yellowstone Valley Animal Shelter, Inc.

- September 22, 2008, negotiated contract present and approved by Council.

We now come before Council for approval of this Resolution changing fees charged by the Billings Animal Shelter. Changing the fees charged to reflect the services that will no longer be provided by the Billings Animal Control.

## **ALTERNATIVES ANALYSIS**

No change to fees currently charged. Failure to delete fees for services no longer provided, will not properly reflect fees for non-existent services.

## **RECOMMENDATION**

The Animal Control Board and staff recommend that City Council approve the Resolution as presented.

## **ATTACHMENTS**

A – Resolution

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

A RESOLUTION AMENDING RESOLUTION NO. 05-18248;  
ESTABLISHING FEES TO BE CHARGED BY THE CITY ANIMAL  
~~SHELTER~~ CONTROL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 4-453 of the Billings, Montana City Code provides that the City Council shall establish from time to time the fees to be charged by ~~the Animal Shelter~~ Control; and

Whereas, the Animal ~~Shelter~~ Control fees need to be changed to more accurately reflect the cost of services to be provided; and

Whereas, the City Council has duly considered the matter.

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

1. ANIMAL ~~SHELTER~~ CONTROL FEES: The fees to be charged by ~~the Animal Shelter~~ Control are hereby established as follows:

Licenses Registrations:

Duplicates \$ 2.50

Unaltered\* Dog/Cat registration for 1 year \$ 30.00

Spayed/neutered license registration for 1 year \$ 7.50

Unaltered\* Dog/Cat registration for 3 years \$ 80.00

Spayed/neutered registration for 3 years \$ 15.00

Senior Citizen 65 or older shall receive 1/2 off license registration fees.

Late fee \$ 5.00

\*Unaltered = unsprayed/unneutered.

Dangerous Dog Registration \$ 50.00

Small Animal Permit \$ 30.00 plus license



registration fee for each animal

~~Personal Request Euthanasia \$ 35.00~~

~~Disposal fee \$ 30.00~~

Veterinarian Clinic Monthly Disposal Fee \$ 150.00

Drug & Paraphernalia Disposal Fee \$ 25.00 per pound  
maximum 250.00 per burn

~~Trap Rental \$ 10.00 per week~~

~~Release of animal to Animal Shelter by owner \$ 5.00 per animal  
with a ceiling of \$15.00 per day~~

~~Impound Fees: (dog/cat) \$ 25.00~~

~~Boarding Fees: (dog/cat)~~

~~First day \$ 10.00~~

~~Each additional day \$ 10.00~~

~~Quarantine Fees: (dog/cat)~~

~~Shelter Quarantine \$ 100.00~~

~~Rabies Submission Fee \$ 40.00~~

~~Adoption & Spay/Neuter Fees:~~

~~\$50.00 fee. Animal Shelter provides:  
health vaccination  
microchip implantation/record keeping  
feline leukemia testing  
canine parvo-virus testing~~

~~Spay/Neuter Dog/Cat: \$50.00 fee. Animal Shelter provides:  
neutering/spaying certificate or  
neutering/spaying to be done at the Animal  
Shelter by a participating local Veterinarian,  
if available and the animal is unaltered. Fee  
shall be waived if animal altered previously.~~

2. TERM OF FEES: Said fees shall continue in full force and effect until changed by the City Council by subsequent resolution.

3. EFFECTIVE DATE: The above resolution shall be effective March 22, 2009.

PASSED by the City Council and APPROVED this 23rd day of March, 2009.

CITY OF BILLINGS

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

ATTEST:

By \_\_\_\_\_  
City Clerk



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 23, 2009**

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**TITLE:** Public Hearing for Special Review #875 – 1667 Main Street  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

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**PROBLEM/ISSUE STATEMENT:** This is a special review request to locate a Beer & Wine License with gaming within an existing building (Thrifty Car Sales) at 1667 Main Street. The parcel is approximately 1 acre and known as Block 1, Lot 2, Wal-Mart Subdivision in a Planned Development (PD) zone with underlying zoning of Community Commercial (CC). The parcel is within 600 feet of a church – East Gate Wesleyan Church – at 625 Mattson Lane. The property owner is Rimrock II, LLC and Shelby Waldron is the agent. The Zoning Commission held a public hearing on this request on March 3, 2009, and is forwarding a recommendation to waive the 600 foot separation and conditional approval to the City Council on a 3-0 vote.

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

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

**FINANCIAL IMPACT:** The special review should have no impact on the City's tax base.

**RECOMMENDATION**

The Zoning Commission is forwarding a recommendation to waive the 600 foot separation and conditional approval of Special Review #875 on a 3-0 vote.

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

**ATTACHMENTS**

A. Zoning Map

## B. Site Photographs

### **INTRODUCTION**

This is a request for a special review to allow the location of a beer & wine license with gaming in an existing building at 1667 Main Street. The building has been used by Thrifty Auto Sales and will need interior remodeling if the special review is approved. Adequate parking and landscaping exist on the site and will not need to be upgraded. The property is located just south of the main entrance to Wal-Mart on Main Street, a principal arterial street.

### **PROCEDURAL HISTORY**

- A special review application to allow a beer & wine license with gaming was received on February 2, 2009.
- The City Zoning Commission held a public hearing on March 3, 2009, and is forwarding a recommendation to waive the 600 foot separation and conditional approval on a 3-0 vote.
- The City Council will conduct a public hearing and consider this application on March 23, 2009.

### **BACKGROUND**

The lot is currently developed for Thrifty Car Sales but would be sold and converted to a casino use if the special review is approved. The lot is approximately one acre in area and is the first lot south of the Wal-Mart entrance from Main Street. Surrounding development is commercial in nature with a mix of retail sales, eating establishments and other businesses.

There is a church within the required 600 foot separation area and a waiver of that separation distance is required. The church is located on the north east corner of Mattson Lane and the Main Street intersection. There is approximately 505 feet between the two property lines. The required separation may be waived if it is determined that a physical barrier exists between the proposed use and the use requiring the 600-foot separation. These barriers include, but are not limited to, the following:

- An arterial street with no existing or proposed signalized pedestrian crossing;
- A building or buildings that entirely obstruct the view between the separated uses; and/or
- No direct physical access exists between the separated uses.

In this case, the proposed location is entirely obstructed from view by intervening buildings and is at a lower elevation. (See Attachment B: Site photographs) The Zoning Commission considered this request and is recommending a waiver of the required separation based on the fact there are buildings that completely obstruct the view between the separated uses.

Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria; 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy,

and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within the CC zoning district where a beer and wine license with gaming may be allowed by special review approval.

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

The proposed use is in a zoning district that allows this use with a special review. The City Council has granted 11 of the previous 14 requests for alcoholic beverage licenses within a few blocks of this location. The proposal is consistent with goals of the 2003 Growth Policy as updated, specifically the goal of encouraging uses that are compatible with the character of the adjacent land use patterns. This site is surrounded by a mix of commercial businesses and will re-use an existing commercial building to allow a proposed Dotty’s Casino. The Planning Division recommended a waiver of the 600 foot separation and conditional approval to the Zoning Commission.

#### **ALTERNATIVES ANALYSIS**

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

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

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

1. Street and road capacity;

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

Based on the above criteria, the Zoning Commission is forwarding a recommendation waive the 600 foot separation and conditional approval of Special Review #875 on a 3-0 vote.

### **CONDITIONS OF APPROVAL**

1. The special review approval shall be limited to Lot 2, Block 1, Wal-Mart Subdivision generally located at 1667 Main Street.
2. Development of the site shall consist of the existing building, landscaping and parking area. Modifications to the existing building or site that show additional square footage greater than 10% of the existing floor area, increase parking spaces greater than 10% or the addition of an outdoor patio will require additional special review approval.
3. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
4. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings, regulations and ordinances that apply.

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

### **STAKEHOLDERS**

A public hearing before the City Zoning Commission was held on March 3, 2009. Staff forwarded a recommendation of conditional approval. Shelby Waldron of Metro Realtors, agent for Rimrock II, LLC, appeared before the Zoning Commission and explained the proposed development. No other persons testified in favor or in opposition to the application.

The Zoning Commission considered the testimony and the staff recommendation to waive the 600 foot separation and conditional approval. The Zoning Commission moved to recommend a waiver of the 600 foot separation and conditional approval of the special review request and voted 3-0 to forward this recommendation to the City Council.

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

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

### **RECOMMENDATION**

The Zoning Commission is forwarding a recommendation to waive the 600 foot separation and conditional approval of Special Review #875 on a 3-0 vote.

### **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs

**ATTACHMENT A**  
Zoning Map – Special Review #875





**ATTACHMENT B**

Site photos –Special Review #875



Subject Property – 1667 Main Street

