

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS

October 22, 2007

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ruegamer

ROLL CALL

MINUTES – October 9, 2007

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Bruce McCandless

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2, & #7 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. Billings Business Improvement District Board Appointment Recommendations of Gene Burgad, Allison O'Donnell, and Michael Gregory to the Montana Avenue Sign Review Committee.

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

B. Change Order No. 5 - W.O. 04-13, Water Treatment Plant Maintenance Building, Schedule II, Williams Brother Construction, \$1,296.00.

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

C. Contract for Professional Services with Engineering, Inc. for engineering design services for W.O. 07-16, Shiloh Road Corridor Water and Sanitary Sewer System Improvements not to exceed \$456,005.25.

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

D. Professional Services Agreement (5-year) with LSC Transportation Consultants, Inc., for transit operations review, \$128,777.00 approximate FY08 expense; subsequent years to be negotiated.

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

E. Approval of License Agreement with Big Sky Floral Supply, LLC, and Big Sky Transition Exchange, LLC, for bike and pedestrian trail.

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

F. Approval and Acceptance of Homeland Security Grant to the Police Department Bomb Squad, \$10,000.00.

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

G. Approval and Acceptance of a supplemental award to the 2007 High Intensity Drug Trafficking Area (HIDTA) award for the Native American Project, \$50,000.00.

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

H. Amendment #1, W.O. 07-19 Yellowstone Country Club Sewer Extension and Services, Professional Services Contract, Engineering, Inc., \$250,913.53.

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

I. Acceptance of Quitclaim Deed from E & S, Inc. for Lot 10B, Holling Ranch Subdivision, at no cost to the City.

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

J. Second/final reading ordinance expanding Ward II (Annexation #07-10) for 400.94 acres generally located northwest of the Lake Hills Golf Course and north of Matador Avenue in Billings Heights, Frank Sindelar, owner.

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

K. Second/final reading ordinance expanding Ward V (Annexation #07-21) for an approximate 8.868-acre parcel legally described as Tract 1C, Certificate of Survey 2991, generally located west of the intersection of Central Avenue and 29th Street West; Raymond and Douglas Kramer, Powers of Attorney for the Lydia Kramer Real Estate Management Trust, owners.

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

L. Second/final reading ordinance expanding Ward V (Annexation #07-22) for an approximate 8.868-acre parcel legally described as Tract 1B, Certificate of Survey 2991, generally located on the southwest corner of the intersection of Central Avenue and 29th Street West; Todd Icopini, Legacy Homes, owner.

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

M. Second/final reading ordinance for Zone Change #820, a text amendment to Section 17-705(C), BMCC, Commercial Sign Regulations.

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

N. Second/final reading ordinance for Zone Change #821, a text amendment to City Sign Code amending Sections 27-703, 27-705(c), 27-706(b), and 27-708.

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

O. Final Plat of High Sierra Subdivision, 2nd Filing, Amended Lot 1, Block 3.

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

P. Bills and Payroll

(1) September 21, 2007

[\(Corresponding Staff Memo P1\)](#)

(2) September 28, 2007

[\(Corresponding Staff Memo P2\)](#)

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

[\(Corresponding Staff Memo P3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. CHERRY CREEK ESTATES DEVELOPMENT AGREEMENT compliance approval of Phase I and conditional approval of Phase II. Staff recommends conditional approval. **(Action:** approval or disapproval of staff recommendation.)

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

3. PUBLIC HEARING AND RESOLUTION approving expansion of Downtown Business Improvement District No. 0001 to include Stockman Bank property located at the corner of 4th Avenue North and North Broadway. Staff recommends approval. **(Action:** approval or disapproval of recommendation.)

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

4. PUBLIC HEARING AND RESOLUTION approving and adopting first quarter budget amendments for Fiscal Year 2007/2008 for Teamster Contract Wage Package, General Fund Departments, and other funds: Building, Street/Traffic, Planning, Library, Community Services (Fair Housing, Home Program, and CDBG), Water, Wastewater, Solid Waste, Airport, Transit, and Motor Pool. Staff recommends approval. **(Action:** approval or disapproval of staff recommendation.)

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

5. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #07-24: Property described as Tract 1B, Certificate of Survey 1335, Amended, located in the NE1/4, Section 23, Township 1N, Range 26E, south of the intersection of Wicks

Lane and Hawthorne Lane. Hanser Capital Holdings, owner and petitioner. Staff recommends conditional approval. (**Action:** approval or disapproval of staff recommendation.)

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

6. **PUBLIC HEARING AND 1ST READING ORDINANCE FOR ZONE CHANGE #822:** A zone change from Residential 9,600 to Residential 7,000 Restricted on a 400-acre property located north and west of the High Sierra Subdivision and Lake Hills Subdivision. Dover Ranch, owner; Oakland Companies, developer; and Engineering, Inc., representing agent. Zoning Commission recommends approval except for a 100-foot strip of land that borders Lake Hills Subdivision and adoption of the determination of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

7. **AGREEMENT** with Lockwood Area/Yellowstone County Water and Sewer District for treatment and disposal of wastewater. (Delayed from 10/9/07 following the public hearing.) Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

[\(Corresponding Staff Memo 7\)](#)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: Montana Avenue Sign Review Committee Appointments

DEPARTMENT: Planning and Community Development

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The Montana Avenue Sign Review Committee is responsible for the review and approval of all sign applications for the Montana Avenue Sign District. The committee is composed of seven members. There are four of the required seven seats filled on the Committee at this time. The Committee is required to have four members that are property owners or merchants of the Montana Avenue Sign District, one architect or design professional with a background in historic preservation, one sign professional, and the city sign administrator. Currently, the Committee includes Mike Schaer, Computers Unlimited owner and property owner in the District; Ron Whitworth, CTA employee and sign professional; Jenna Granada, CTA employee and design professional with historic preservation background; and Nicole Cromwell, City Sign Administrator. The three proposed appointees will fill the three vacant positions for property owners or merchants of the Montana Avenue Sign District.

In accordance with Section 27-734, BMCC, the mayor is required to make appointments to fill vacancies on the Committee after receiving recommendations from the Montana Avenue Property Owners. Since the development of these regulations, the Montana Avenue Property Owners group has been absorbed by the Billings Business Improvement District Board. This board is forwarding three names for appointment to the Montana Avenue Sign Review Committee to fill vacancies and bring the Committee to its full seven members. There is currently one sign application pending for review and approval by the Committee.

ALTERNATIVES ANALYZED: The Mayor may choose to appointment the recommended committee members or decline these appointments. If the appointments are declined, pending sign applications will be delayed until suitable appointments can be made.

FINANCIAL IMPACT: There is no financial impact resulting from these appointments.

RECOMMENDATION

The Business Improvement District Board recommends the appointment of the following individuals:

1. Gene Burgad, Rex Building and Rex Restaurant Owner
2. Allison O'Donnell, Toucan Building and Toucan Gallery Owner
3. Michael Gregory, Oxford Building and Oxford Antiques Owner

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

ATTACHMENT

- A. BID Board Agenda Item and BID recommendation in Meeting Minutes (Action Item 4.3)

Business Improvement District Board Action Item

August Meeting – August 20, 2007

TITLE: Montana Avenue Sign Code

PRESENTED BY: Staff

1. PROBLEM/ISSUE STATEMENT: Planning and Division Manager, City of Billings, Wyeth Friday, recently contacted the BID and Mike Schaer requesting action of our Board to nominate 3 people to the Montana Avenue Sign Code Committee. There are 3 vacancies on the Committee and as per code, a recommendation is necessary from a property owner association related to the district.

SEC. 27-734. MONTANA AVENUE SIGN REVIEW COMMITTEE.

(a) *Organization and duties.* The Montana Avenue sign review committee (committee) will consist of seven (7) committee members. Four (4) of the members shall be property owners or merchants of the Montana Avenue sign district, one (1) architect or design professional with a background in historic preservation, one (1) sign professional, and the city sign administrator. All members shall be voting members except for the city sign administrator. The committee is responsible for the review and approval of all sign permit applications within the Montana Avenue sign district.

The terms for each member, except the sign administrator, will serve two-year terms. Three (3) members of the initial committee will serve three-year terms, in order to stagger the terms of the committee members.

Any person interested in serving on the committee shall make application to the Montana Avenue Property Owners. The property owners will then forward the applications and their recommendation to the mayor of the City of Billings. The mayor will then make the necessary appointments to the committee to fill any vacancies.

FINANCIAL IMPACT: There are no budget implications.

RECOMMENDATION: Staff recommends approval.

MINUTES
BUSINESS IMPROVEMENT DISTRICT BOARD MEETING
MONDAY, AUGUST 20, 2007 – 9:00 A.M.
GW BUILDING, 2ND FLOOR CONFERENCE ROOM
2722 3RD AVENUE NORTH

PRESENT: Norman Miller, Michelle Cormier, Mike Schaer, Steve Wahrlich, Billie Ruff

ABSENT: Michael Gray, Brad Anderson

BID STAFF: Lisa Harmon

DBP STAFF: Greg Krueger

K. AGENDA

1. WELCOME, CALL TO ORDER, INTRODUCTIONS & COURTESIES

Chair Wahrlich called the meeting to order at 9:00 am.

2. REVIEW & APPROVAL OF MINUTES OF PREVIOUS MEETING OF July 16th, 2007

Mike Schaer motioned to approve the minutes, Michelle Cormier seconded the motion. The board unanimously approved the minutes of the July 16th Board meeting.

3. DIRECTOR'S REPORT

- Director Harmon provided a recap of her written report that was included in today's meeting packet starting with the with the 3 month activity calendar. Director Harmon and Chair Wahrlich recently met with Mike Gulledge of the Billings Gazette to discuss their participation in the BID by petitioning to be in the BID footprint. Ms. Harmon sent a thank-you, sent the purple people to service the sidewalks across the street (Stockman Bank), and will follow up with a phone call.
- Director Harmon updated the Board on staff issues re: Purple People. Seasonal employees have left for college and Sherri is currently hiring for two part time staffers.
- Ms. Harmon drafted the job description for the Executive Director Position for the BID-DBA newly formed alliance. She will draft the job description for the Operations Director and the Marketing and Events Coordinator.
- Ms. Harmon updated the Board on the Bike Patrol. Discussion ensued.
- Greg Krueger and Ms. Harmon will speak at the upcoming Economic Development Seminar hosted by Lohrman Educational Services. Ms Harmon provided printed materials about the upcoming seminar that is marketed to real estate professionals, lawyers, etc.
- Director Harmon discussed the activity the BID has been involved in re: the trees downtown having met with 3 different arborists to discuss the shape the trees are in. Sherri will be meeting with the city and implement a plan to hydrate the trees before winter, etc. and will take on this project for next season. The BID will be in possession of the water controller and will be able to regulate the watering schedule. Discussion ensued.

3.2 FINANCIALS:

Director Harmon presented the financials for July. The BID budget is on target. Discussion ensued.

* Financials were approved unanimously by the board.

4. ACTION ITEMS:

1. **BID-DBA Alliance:** Steve Wahrlich explained the steps that the Executive Management Team has taken in merging the Executive Director position of the DBA and the BID. The Executive Management Team has met over the last several weeks to finalize the job description and work on the alliance between the two entities. It was discussed by the EMT that the management contract that was first proposed did not feel equally weighted between the two entities. Therefore the EMT decided on a job description that represented both the interests of the BID and the DBA. Discussion ensued. Norman Miller suggested that the EMT define the scope of their duties down the line. Discussion ensued. Norman Miller motioned to move from a contract to the merged position with the Executive Director job description provided. Mike Schaer seconded the motion. The motion was unanimously approved.
2. **Residential Assessment Review:** Recently two property owners within the BID District have asked for the Board to consider exempting their residential property from being assessed. One is owner-occupied (Gary Temple) and the other property is a property-owner managed rental above a retail establishment (Homeword, Inc). A discussion of the Montana State Code re: BID law ensued. Montana Code specifies that the “boundaries of a district must comply with applicable zoning regulations, and the district may not include areas that are zoned **primarily** as residential areas”. Michelle Cormier commented that the assessment formula decided upon by the BID committee used a small multiplier for all property above the first floor specifically to ease the burden on owner-occupied and rental properties, etc. Director Harmon showed that based on square footage and the assessment formula, Gary Temple’s residential area works out to be approximately \$62 for the year. Homeword, Inc.’s assessment above the first floor works out to be approximately \$280.00. Ms. Harmon provided material from other areas and their stance on the issue. The BID unanimously upheld the assessment formula and made no exemptions.
3. **MT Avenue Sign Code Committee:** Planning and Division Manager, City of Billings, Wyeth Friday recently contacted the BID and Mike Schaer requesting action of our Board to nominate 3 people to the Montana Avenue Sign Code Committee. There are 3 vacancies on the Committee and, as per code, a recommendation is necessary from a property owner association related to the district. The nominees are:
 - Gene Burgad, Owner of the Rex Building and Rex Restaurant
 - Allison O’Donnell, Owner of the Toucan building and Toucan Gallery
 - Michael Gregory, Owner of the Oxford Building and Oxford Antiques

Billie Ruff moved to nominate the above mentioned property owners on Montana Avenue to the Montana Avenue Sign Code Committee. The motion was seconded by Norman Miller. Motion unanimously approved by the board.

5. NEW BUSINESS:

1. **Earth First Aid Recycling:** The DBA Advocacy Committee has been exploring a recycling program in the core of Downtown. Director Harmon attended the meeting with Earth First Aid Recycling, a local business that offers pick up services to residences and businesses. The idea is to add recycling protocols that would be a perk for DBA/BID membership. There are thousands

of pounds of trash that the BID removes from events that could be recycled. The Board was supportive of going forward to see how the BID can implement recycling as part of the BID program.

6. BRIEF PRESENTATION: None

7. OLD BUSINESS:

1. The Fall BID membership meeting will be held on Thursday, September 27th, 5-7pm, location to be announced. Discussion ensued. Michelle Cormier suggested a planning meeting to set the format of the Membership meeting. The Board agreed and it was decided that the September Board meeting would be moved up to accommodate a planning meeting. Additionally, Ms. Harmon will be in New York for the IDA during the regularly scheduled meeting. The next meeting will be September 4th, Tuesday, at 9am at the Downtown Billings Office.

8. ADDITIONAL ITEMS:

1. Norman Miller asked about the status of the discussion and exploration of an American Indian Center in Downtown. Ms. Harmon stated that she discussed the issue with Congressman Denny Rehberg when he came to town and that the Mayor's Committee has not taken it any further. She will continue to explore other cities that have similar programs.
2. Cooperative Security: Director Harmon mentioned the continued work with the cooperative security program. Ms. Harmon has contacted Billings Clinic, St. Vincent Foundation to see if there is broad interest and support in a cooperative security effort. The hope was that the program could be up and running by next July, the new fiscal year. Ms. Harmon expressed that the number one concern that both the property owners and merchants share is the issue of safety and security. Discussion ensued. Billie Ruff made a motion to take an amount to the Downtown Billings Partnership for funding this program for the first 3 years. Mike Schaer seconded the motion. The motion passed unanimously. Ms. Harmon and Chair Wahrlich will work with Partnership Executive Director Greg Krueger to draft the request.

9. ROUNDTABLE DISCUSSION – PUBLIC COMMENT – ADJOURNMENT

There was no public comment.

The next meeting will be October 15th, 9am, at the Downtown Billings Office.

ADJOURNMENT

The board meeting was adjourned at 10:40 a.m.

Respectfully submitted,

Lisa Harmon, Executive Director, BID

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: W.O. 04-13, Schedule II—Water Treatment Plant Maintenance Building Construction, Change Order Number Five

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: HDR Engineering has submitted Change Order Number Five (CO #5) to modify the construction contract with Williams Brother Construction (WBC) for W.O. 04-13, Schedule II—Maintenance Building Construction. CO #5 involves labor and materials related to modifying the operator motors for the overhead doors. The specifications call for motors with a 480-volt rating, but it has been determined to be very expensive to install 480-volt power to these motor locations. 120-volt power is readily accessible, so the motors must be modified to operate with this power. Change Order Number Five creates an increase of \$1,296.00 to the contract amount but no change to the schedule for time of completion.

FINANCIAL IMPACT: W.O. 04-13 is being funded by a State Revolving Fund (SRF) loan and supplemented by the City's Utilities Water Building and Operation Facilities Fund. CO #5 represents an addition to the project's costs. The approved project budget includes a contingency to pay for unforeseen circumstances characteristic with those depicted in CO #5. The total of all change orders is greater than 10 percent of the original contract, so Council approval is required, but there are adequate funds available to cover the additional costs. The table below summarizes the financial impact to the project.

ORIGINAL CONSTRUCTION CONTRACT: \$922,200.00

	Amount	% Of Contract	Cumulative % Of Contract
Change Orders 1 thru 4 (Additions)	\$ 148,365.00	16.09%	
Change Order No. 5 (Addition)	\$ 1,296.00	0.14%	
TOTALs to date:	\$ 149,661.00		16.23%

RECOMMENDATION

Staff recommends that Council approve Change Order Number Five to the construction contract with Williams Brother Construction for W.O. 04-13, Schedule II—Maintenance Building Construction, adding \$1,296.00 to the contract.

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

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

TITLE: Work Order 07-16 – Contract for Professional Engineering Services,
Shiloh Road Corridor Water and Sanitary Sewer System Improvements

DEPARTMENT: Public Works - Engineering Division

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

PROBLEM/ISSUE STATEMENT: Mayor and Council are asked to consider authorizing and executing a Contract for Professional Services with Engineering, Inc. for engineering design services on the Shiloh Road Corridor Water and Sanitary Sewer System Improvements. Water and sewer mains would be extended, installed, and replaced in various locations along the Shiloh Road Corridor between Canyon Creek and Poly Drive as identified by City staff. Engineering, Inc. was selected to perform these services according to the City's Request for Proposals and Consultant Selection policy.

ALTERNATIVES ANALYZED:

1. Authorize a contract with Engineering, Inc. as set forth in this staff memorandum.
2. Request that City staff perform the engineering project design.
3. Delay the project design.

FINANCIAL IMPACT: Funding for this project has been approved in the CIP projects – Water Main Replacement (FY08 \$4 million) and Sanitary Sewer Replacement (FY08 \$4 million). Funding is sufficient for the engineering design which is now under consideration as well as for project construction which is planned for bidding in early 2008.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the design portion of the Shiloh Road Corridor Water and Sanitary Sewer System Improvements project with Engineering, Inc. in the amount not to exceed \$456,005.25.

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

ATTACHMENT

- A. Professional Services Contract (10 pages)
- B. Attachment A--Basic Services of Engineer (5)

INTRODUCTION

This project would extend and replace water and sewer mains in various locations along the Shiloh Road Corridor between Canyon Creek and Poly Drive as identified by City staff. Since the State of Montana Department of Transportation (MDT) is currently designing the Shiloh Road surface improvements and plans to begin construction in 2009, it is in the City's best interest to design the buried public utility improvements ahead of MDT's construction schedule.

PROCEDURAL HISTORY

Completed Items:

- Engineering, Inc. was chosen by a selection committee through the Request for Proposals and Consultant Selection policy. The selection committee included Aura Lindstrand of City/County Planning, and Chris Hertz, Terry Smith, Boris Krizek, and Randy Straus of Public Works.

Items to be Completed:

- Council authorizes the Mayor to sign the Contract with Engineering, Inc.
- Engineering, Inc. completes the design of the project.

BACKGROUND

Design work for the Shiloh Road Corridor Water and Sanitary Sewer System Improvements has approximately 11,800 linear feet of sewer main and 15,500 linear feet of water main; of these totals, approximately 1,100 feet is water main replacement. Designing this project now and coordinating its future construction ahead of MDT's planned road improvements is crucial to present and future planning of the long term water and sewer service needs of property along and to the west of Shiloh Road.

Project design and subsequent construction will define the various locations along the corridor where future water and sewer main extensions and service connections may be made. Finishing the design now and carefully coordinating its construction ahead of MDT's road project will minimize future construction-related disturbances within the Shiloh Road right-of-way and provide direction to property owners on future development projects west of Shiloh Road.

ALTERNATIVES ANALYSIS

If the project is not designed now and not constructed ahead of the MDT road improvements, the City will face serious difficulties in providing water and sewer service to properties along and to the west of Shiloh Road without major and ongoing costly disruption and reconstruction of Shiloh Road.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the Shiloh Road Corridor Water and Sanitary Sewer System Improvements with Engineering, Inc. in the amount not to exceed \$456,005.25.

ATTACHMENT

- A. Professional Services Contract (10 pages)
- B. Attachment A--Basic Services of Engineer (5)

Contract for Professional Engineering Services
Project – City of Billings W.O. 07-16
Shiloh Road Corridor Water and Sewer Improvements Project

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

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 5 pages (Basic Services of Contractor);
- Appendix B consisting of 1 page (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Contractor);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 pages (Project Schedule);
- Appendix F consisting of 1 page (Certificate(s) of Insurance)

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Engineering, 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 Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any

other services that are consistent with this Contract. Additional services may be provided with agreement by both parties as discussed in Appendix C.

- D. The Contractor shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 90 days after the project substantial completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- ~~E. The 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 E.
- C. This Contract shall terminate at midnight on June 30, 2009.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than Four Hundred Fifty Six Thousand Five and 25/100 DOLLARS (\$456,005.25) in accordance with this Section.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the 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. 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.
- 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. 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. Billings should make good faith effort to advise the Contractor of confidential and proprietary information.
- 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: City Engineer (Debi Meling)
City of Billings
Department Public Works
510 North Broadway – 4th Floor
Billings, Montana 59101
FAX: (406) 657-8252 / PHONE: (406) 657-3097

Contractor: Engineering, Inc.
Rick Leuthold, PE, President
1300 North Transtech Way
Billings, Montana 59102
FAX: (406) 656-0967 / PHONE: (406) 656-5255

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: Rick Leuthold, PE, President
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any 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, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

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

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

Section 10. Inspection and Retention of Records.

The 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

City Council or Designee

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST:

IRS Tax ID # _____

Cari Martin
City Clerk

Date: _____

STATE OF MONTANA)
 :SS.
COUNTY OF YELLOWSTONE)

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

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

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

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

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

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

- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- ~~J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.~~
- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Tim R. Pirtz, PE working under the Principal-in-Charge, Rick D. Leuthold, PE.

Section 2. Billings Rights and Duties.

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

Section 3. Scope of Work.

- 1.1. The Engineer shall perform the work outlined within this agreement that includes the completion of design phase services for City of Billings WO 07-16 Shiloh Road Corridor Water and Sanitary Sewer System Improvements; Engineer shall assist the City in identifying areas where water and sanitary sewer installations and alignments best serve the needs of the project area and future developments outside the project area. Engineer will coordinate work efforts with other related or unrelated improvement projects expected to be completed concurrently in the project area. Project design calls for approximately 15,500 linear feet of water main and 11,800 linear feet of sewer main to be installed and/or replaced within the present and/or future Shiloh Road right-of-way from Canyon Creek to Poly Drive.

Completion of said design shall include the following tasks:

A. Preliminary Engineering Services (30% Design)

- 1. Field surveys within the project limits and extending to appropriate match lines. Data collection shall include establishment of

permanent horizontal and vertical control, topographic features and existing property pins. Engineer will provide appropriate temporary traffic control measures for all data collection completed in traffic areas. Field survey data will be utilized by the Engineer to develop preliminary project base mapping.

2. Research will be performed to verify existing right-of-way locations utilizing platted information, ownership records and found property pins. Determine locations where additional right-of-way must be secured and coordinate obtaining necessary construction permits.
3. Apply for all permits, licenses, and approvals necessary to construct the project; this includes, at a minimum, stormwater permits and water/sewer extension approvals from the Montana Department of Environmental Quality will be necessary
4. Geotechnical engineering shall include field sampling, laboratory testing and review of subsurface soils to determine appropriate pavement section design alternatives, subgrade treatment, groundwater conditions, and foundations for utility installations. Recommendations for specific construction materials and groundwater management established in this review will be included in the project plans and specifications.
5. Coordination with City staff and other public and private stakeholders in the development of roadway and utility improvements.
6. Coordination with property owners adjacent to the project.
7. Developing a public involvement plan which shall include an educational outreach component and a minimum of two (2) public informational meetings.
8. Coordination with owners residents in piping or abandonment alternatives within the right-of-way. This may include verification of user(s).
9. Design of new water and sewer utility alignments and cross-section and related improvements within the project limits; design of replacement of existing utilities within the project limits. Model the utility designs using methodologies reviewable by the City to ensure sizing is appropriate for present and projected future demands.
10. Coordinating the identification and potential relocation of private utilities including, but not limited to, overhead and underground

power, cable TV, underground telephone and communications, petroleum oil, and natural gas.

11. Prepare and submit a Preliminary Design Report that summarizes project related design parameters, recommended public utility improvements, right-of-way impacts, stakeholder impacts, traffic operations and traffic control measures, and preliminary construction costs. Conceptual design alternatives for public utility locations and alignments will also be presented. The report will also include a preliminary environmental evaluation which reviews historical data related to the project area, including hazardous waste research and other known environmental issues. Five (5) copies of the Preliminary Design Report and three (3) full-size preliminary water and sewer utility plan and profile plan sets will be provided to the City for review.

B. Preliminary Engineering Services (70% Design)

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

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

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

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

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

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

2. Attend periodic design review meetings with the City.

3. Engineer will provide final (100%) design services upon receiving the City's approval of the 90% plan package submittal. Plans and specifications will be prepared in accordance with the Montana Public Works Standard Specifications, Fifth Edition, March 2003 and City of Billings Standard Modifications, March 1, 2006. This will be completed as follows:
 - a) Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
 - b) Computation of project construction quantities and preparation of an engineer's opinion of probable construction cost.
 - c) Prepare and supply of all project specifications and bidding documents necessary for bidding and construction. Bid advertisement text will be provided to the City for publication. Schedule and hold a pre-bid conference, publish meeting minutes and prepare any necessary addenda. Conduct a pre-bid field review with contractors as necessary. Attend the bid opening, analyze bids, submit a bid tabulation, and make a construction contract award recommendation.
 - d) Preparation of a complete construction traffic control plan. The plan will show required detours, required signing, applicable construction phasing.
 - e) Submittal of ten (10) half-size and two (2) full-sized plan sets.
 - f) Submittal of six (6) copies of project specifications and contract bidding documents.
 - g) Electronic submittal of construction plans and bid documents.
 - h) Submittal of two (2) copies of the project specifications, two (2) half-size plan sets, contract-bidding documents, design report and certified water and sewer checklist to Montana Department of Environmental Quality (MDEQ) for approval. Also to include permit (including fees) for Storm Water Associated with Construction Activity issued by MDEQ.
4. Engineer will provide two (2) paper copies of the "as-built" drawings with:

1. Offset distances measured from the centerline of the right-of-way to all public water mains and sanitary sewers.
2. Invert elevations marked for each manhole, structure, and each connection thereto, as well as at the end of each stubbed sanitary sewer line, stubbed wastewater service line, stubbed water main, stubbed water service line and stubbed fire line.
3. Locations of water and sewer services based on measurements from property lines.
4. Elevations indicating the depth of bury of all public water mains and sanitary sewers. These elevations shall be shown at each street or right-of-way intersection and at such intervals along the public water mains and sanitary sewers as may be deemed appropriate by the City Engineer.
5. Permanent bench marks shown.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: Approval of Professional Services Agreement with LSC Transportation Consultants, Inc.

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Aviation and Transit Department regularly undertakes various local and federally funded planning projects which require professional transit consulting services. A request for proposals was recently advertised for a qualified transit planning firm/team to provide general expertise in a broad range of services in transit planning and development issues and other transit related projects such as:

- Systems Planning
- Economic Analysis
- Special Studies

The term of this professional service agreement is for a five year period. One of the first tasks to be undertaken will be a fresh look at our Routes and Schedules especially with respect to the new Downtown Transfer Center location and the need to better accommodate the driver break requirement.

Two proposals were received, one from LSC Transportation Consultants, Inc. and one from Current Transportation Solutions. An RFP Selection Committee was formed to evaluate and rate the two proposals based on the firm's planning process and qualifications. Councilman Vince Ruegamer and Aviation/Transit Commissioner Mark Kennedy served on this Committee. The group voted unanimously to award the five-year agreement to the LSC Transportation Consultants, Inc. planning team.

FINANCIAL IMPACT: Total hourly involvement would be negotiated and approved by staff for each specific project or scope of work. The first project is to undertake a comprehensive evaluation of our Routes and Schedules and is anticipated to cost \$128,777. Funding to undertake this planning study project is available in the FY 08 budget.

RECOMMENDATION

Staff recommends that Council approve the award of a five-year Transit Planning and Development Services Agreement to LSC Transportation Consulting, Inc. (LSC), and authorize the Mayor to execute the agreement between the City's Aviation and Transit Department and LSC.

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

ATTACHMENT

A. Professional Services Agreement (14 pages)

PROFESSIONAL SERVICES AGREEMENT

GENERAL TRANSIT PLANNING

AND

DEVELOPMENT ADVISORY SERVICES

CITY OF BILLINGS

AND

LSC TRANSPORTATION CONSULTANTS, INC.

This Agreement, made and entered into by and between the City of Billings, through its Aviation and Transit Department, MET Transit Division, Billings, Montana 59101 (Hereinafter referred to as "the CITY"), and LSC Transportation Consultants, Inc. (Hereinafter referred to as "the CONSULTANT").

W I T N E S S E T H

WHEREAS, the CITY desires to engage the CONSULTANT to provide general advisory professional services and other assistance to the CITY in connection with the planning, development, operation, and management systems of the Aviation and Transit Department, MET Transit Division (hereinafter referred to as "the MET"); and

WHEREAS, the CITY recognizes that the studies, advice, assistance, and other services to be provided by the CONSULTANT will be of benefit to the CITY;

NOW THEREFORE, the parties hereto mutually agree that the CONSULTANT will provide services and assistance within the context of Item I hereof, subject to the general conditions of Item II, as set forth below.

ITEM I – SCOPE OF SERVICES

The CONSULTANT will provide to the CITY the following general scope of services.

A. TDCA – Transportation Data Collection and Analysis

Categories under this discipline include, but are not limited to:

- Origin/Destination Studies
- Travel Time Studies
- GIS Applications
- Computer Applications
- Transit Operations Data
- Special Studies

B. TP – Transit Planning

Categories include, but are not limited to:

- Operations Planning
- Strategic Planning
- Capital Replacement Strategies
- Systems Planning
- Intermodal Planning
- Paratransit Planning
- Economic Analysis
- Special Studies

Such services in Item I herein may include the performance of studies, analyses, and research; participation in meetings with the CITY's staff and others; and the provision of other general advisory services and assistance as specifically requested by the CITY.

Specific tasks to be performed for the duration of this Agreement will be approved by the CITY as needed. The CONSULTANT's first project entails the analysis of the MET's Routes and Schedules in conjunction with the opening of the Downtown Transfer Center. The scope and associated costs for this first project is identified in Exhibit B and Table 1 (attached) and by said reference made a part of this Agreement.

ITEM II – GENERAL CONDITIONS

- A. TERM.** The term of this Agreement shall commence upon its execution and shall continue for a period of five (5) years. This Agreement shall terminate at the end of the full term hereof without any notice by either party. A holding over by the CONSULTANT, beyond the expiration of the term shall not be permitted without the written consent of the Director of Aviation and Transit. Provided, however, that:
1. The CITY may, by written notice, terminate this Agreement in whole or in part at any time, either for the CITY's convenience or because of failure of CONSULTANT to fulfill the Agreement obligations. Upon receipt of such notice, CONSULTANT's services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the CITY.
 2. If the termination is for the convenience of the CITY, an equitable adjustment in the Agreement price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
 3. If the termination is due to failure to fulfill the CONSULTANT's obligations, the CITY may take over the work and prosecute the same to completion by contract or otherwise. In such case, the CONSULTANT shall be liable to the CITY for any additional cost occasioned to the CITY thereby.

4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the CONSULTANT had not failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the Agreement price shall be made as provided in Paragraph 2 of this clause.
5. The rights and remedies of the CITY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

- B. WORK AUTHORIZATIONS.** Each assignment performed under Item I shall be initiated only upon the specific request and authorization of the CITY.
- C. COORDINATION.** Continuing coordination shall be maintained with the CITY to ensure the applicability of findings with respect to specific local conditions and the CITY's policies and goals.
- D. CITY AND CONSULTANT REPRESENTATIVES.** To expedite the performance of services under this Agreement and to permit the coordination of materials, commitments, and correspondence, the CITY shall designate a staff member as its representative to whom all correspondence, materials, information, and requests will be directed. The CONSULTANT's representatives shall be Dr. AT Stoddard. Any successor shall require the consent of the CITY.
- E. TIME OF PERFORMANCE.** The services to be provided in connection with each assignment under Item I shall be performed in such manner and sequences to ensure their expeditious completion in the light of the purposes of the assignment.
- F. FEES AND CHARGES.** CONSULTANT will be reimbursed for all consulting services based on the hourly rates set forth in Exhibit A and by said reference made a part of this Agreement. Hourly rates may be adjusted annually based on the Consumer Price Index. The maximum number of hours devoted to any specific project will be decided upon and mutually agreed upon with the Director of Aviation and Transit or his duly appointed representative, in writing, prior to the start of the project. The hourly rates will include

all costs associated with the consulting services except reimbursable travel, printing and other direct costs associated with a specific project and authorized by the Director of Aviation and Transit, which will be reimbursed separately.

The work will be divided into separate projects by the CITY, and these projects will be accounted for separately by the CONSULTANT, who will bill monthly for work performed.

- G. METHOD OF PAYMENT.** Invoices for services performed under this Agreement shall be prepared by the CONSULTANT and may be submitted monthly to the CITY for payment. The CITY shall make payments to the CONSULTANT within thirty (30) days after the date of each invoice. The CONSULTANT may charge interest at a rate of one percent (1%) per month on any unpaid balances past due.
- H. ASSIGNMENT.** Neither party may assign or transfer this Agreement or any part hereof without the express written consent of the party, which consent shall not be unreasonably withheld, except that the CITY may, without the consent of CONSULTANT, assign its rights and obligations under this Agreement to any successor of all or substantially all of its assets whether by merger, asset acquisition, stock purchase or otherwise.
- I. INDEMNIFICATION.** The CITY shall stand indemnified by the CONSULTANT as herein provided. The CONSULTANT is an independent contractor and operator responsible to all parties for its respective acts and the CITY shall in no way be responsible for or to CONSULTANT as to such status. In the performance of this Agreement, the CONSULTANT shall indemnify, defend and hold the CITY, its officers, agents and employees harmless from any and all claims, liabilities, damages, judgments, losses, litigation costs and expenses including reasonable attorneys fees occasioned by, growing out of or in any way arising from any intentional or negligent act or omission by CONSULTANT or its agents, employees or subcontractors.
- J. INSURANCE.** The CONSULTANT shall pay for and maintain Commercial General Liability (occurrence form only) and Property Damage Insurance in an amount of not less

than 750,000 per claim and \$1,500,000 per occurrence naming the CITY as primary, non-contributory insured, for property damage, personal injuries, and for bodily injuries, including accidental death. The CONSULTANT shall also furnish proof of Professional Liability (Errors and Omissions) insurance coverage in the minimum amount of \$1,500,000 per claim. All required types of insurance must be in a form suitable to the CITY and CITY reserves the right to require reasonable increases of other changes in coverage types or amounts during the term of this Agreement should such become necessary.

CONSULTANT shall maintain said insurance with insurance underwriters authorized to do business in the State of Montana satisfactory to the CITY. All policies, except Professional Liability, shall name the CITY, its officers, servants, agents, and employees as primary, non-contributory insured as their interests shall appear.

CONSULTANT shall furnish the CITY with Certificates of Insurance showing such insurance to be in full force and effect during the entire term of this Agreement.

K. ATTORNEY'S FEES AND LITIGATION VENUE. Should either party employ an attorney or attorneys, or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fee for in-house attorney, expended or incurred in connection therewith.

In the event any litigation is commenced by either party to enforce any rights or obligations under this Agreement, venue for such litigation shall be in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, Montana.

L. NONDISCRIMINATION. The CONSULTANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:

1. That, no person, on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of Transit facilities, or the exercise of its rights and privileges under this Agreement
2. That, in the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability.
3. That, CONSULTANT conduct work for CITY in compliance when applicable with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A., Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI Civil Rights Act of 1964, and as said Regulations may be amended.

M. TRANSITIONAL SERVICE OBLIGATIONS OF CONSULTANT UPON EXPIRATION OR TERMINATION. In the event this Agreement is terminated with or without cause, or expires by its terms, and a successor vendor is selected by the CITY or if either party fails to renew this Agreement, the CONSULTANT will continue to provide full and complete services under this Agreement until new services are implemented by its successor, by the CITY or any third party designated by the CITY. CONSULTANT's obligation to provide all services in any such transition shall continue for a maximum of one hundred twenty (120) days after the effective date of termination or expiration of the Agreement, or for a lesser time as determined by the CITY. CONSULTANT will cooperate fully in assuring the CITY maintains uninterrupted service during such a transition.

During such transition, the method of providing service to the CITY will not be modified or personnel relocated or removed on CONSULTANT's own initiative, without the CITY's prior written consent.

CONSULTANT will, upon request, release and transfer all CITY data, without cost or fees to any designated successor vendor selected by the CITY, to the CITY, or any third party the CITY designates, in a format as it appears on CONSULTANT's systems, provided that the CITY has paid all undisputed amounts invoiced by CONSULTANT to the CITY for services rendered per this Agreement.

In the event of transfer of volume to another vendor, to the CITY, or a CITY designated third party, the CONSULTANT will not charge fees or costs to the CITY for equipment de-

installation, un-expired leasehold obligations, employee severance, management time, knowledge transfer, or any other costs incurred due to or during such transfer.

N. SUBORDINATION OF AGREEMENT. This Agreement is subordinate to the provisions of any existing or future agreements between the CITY and the United States relative to the administration, operation or maintenance of the MET, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the MET and its facilities.

O. FORCE MAJEURE. Neither party will be responsible for any failure or delay in performance of this Agreement if the failure or delay is due to an event beyond the reasonable control and without the fault or negligence of the party seeking to excuse performance, including, without limitation, acts of God, war, labor disputes and strikes, fire, flood, riot, unforeseen delays in third-party provided transportation or communications. Any party seeking to excuse or delay performance under this paragraph, will provide detailed written notice to the other party of the nature and anticipated duration of the delay.

P. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Montana, without reference to choice of law, rules or principles.

Q. INDEPENDENT CONTRACTOR. CONSULTANT's relationship with the CITY under this Agreement shall be that of an independent contractor. CONSULTANT is to exercise its own discretion on the method and manner of performing its duties and the CITY will not exercise control over CONSULTANT or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this Agreement. The employees, methods, and equipment used by CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Nothing in this Agreement shall be construed to designate CONSULTANT, or any of its employees, as employees, agents, joint ventures or partners of the CITY. CONSULTANT is wholly responsible for withholding and payment of all Federal, State and Local income and other payroll taxes with respect to its employees, including contributions from them as required by law.

R. SEVERABILITY – WAIVER. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

S. ENTIRETY. This Agreement and its Exhibit(s) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded.

T. PUBLICITY. CONSULTANT agrees that it will not, without the written consent of the CITY in each instance:

1. Use in advertising, publicity, or otherwise the name of the CITY, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the CITY.

2. Represent, directly or indirectly, that any product or any service provided by CONSULTANT has been approved or endorsed by the CITY. CITY and CONSULTANT, upon agreement, may engage in joint marketing efforts including, without limitation, joint publications and presentations regarding the services provided by CONSULTANT. The CITY has the right to submit scientific articles for publication and present papers and lectures regarding the services.

U. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement or the particular paragraphs.

V. NOTICES. Notices to the CITY provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Transit Manager
Aviation and Transit Department – Transit Division
P.O. Box 1178
Billings, MT 59103

And notices to the CONSULTANT, are sent by certified mail, postage prepaid, addressed to:

Dr. AT Stoddard
LSC Transportation Consultants, Inc.
516 North Tejon Street
Colorado Springs, CO 80903

Or to such other addresses as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties have hereunto set their hands this _____ day of _____ 2007.

ATTEST:

BY _____
CITY CLERK

CITY OF BILLINGS

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

BY _____
LSC TRANSPORTATION
CONSULTANTS, INC.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: License Agreement for Bike and Pedestrian Trail access with Big Sky Floral Supply, LLC and Big Sky Transition Exchange, LLC within Lot 12-A-2 of Amended Lot 12-A, Block 3 of Midland Subdivision

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: In order to connect the section of trail that was built along the Veeder/McRae property in the Midland Subdivision south of King Avenue and west of 24th St. West, a corridor is needed for the continuation of that trail link. Home Depot has already granted and the City has accepted a portion of its property for this trail section. The Gainan family, Big Sky Floral and Big Sky Transition Exchange, is willing to grant a License Agreement on their property for the trail which is located west of the Home Depot property, runs to 29th St. West, and connects to the City's Bannister Drain property. The intent of this agreement is to allow the City to begin the survey and design of the bike and pedestrian trail which the owners presently intend to give as a gift or easement to the City.

ALTERNATIVES ANALYZED: If the City Council does not approve this License Agreement, the City of Billings cannot proceed with the survey and design of this trail corridor.

FINANCIAL IMPACT: There is no monetary cost to the City for the License Agreement and it is the intent of the owners to donate an easement or a gift of the land for the trail corridor. At this time, the Gainan family would like the City of Billings to proceed with the survey and design plans, which will give them time to determine what type of donation would give them the best tax advantage. A commercial Park Maintenance District is also being considered to provide funding for the maintenance of the trail and corridor. CTEP funding of \$312,404.88 has already been approved for this project with an approved local match of \$25,000 from BikeNet and the additional local match of \$26,000 from the 1999 GO Bond. If this license agreement is approved, all funding for the implementation of the trail is in place.

RECOMMENDATION

Staff recommends that Council approve and the Mayor signs the License Agreement for the trail, so survey and design work can begin on this trail project.

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

ATTACHMENT

A. License Agreement for Bike and Pedestrian Trail access

**LICENSE AGREEMENT
ACCESS FOR BIKE AND PEDESTRIAN TRAIL**

This Agreement made and entered into this 27TH day of SEPTEMBER 2007, by and between the **BIG SKY TRANSITION EXCHANGE, LLC**, a Montana limited liability company, of P.O. Box 1157, Billings, Montana 59103, and the **BIG SKY FLORAL SUPPLY, LLC**, a Montana limited liability company, of P.O. Box 1157, Billings, Montana 59103, (both of whom are hereinafter referred to as 'Licensor'), and the **CITY OF BILLINGS**, a Montana Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103 (hereinafter referred to as 'Licensee').

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**SECTION ONE
GRANT OF LICENSE AND DESCRIPTION OF PREMISES**

Licensor grants to Licensee a license to occupy and use, subject to all of the terms and conditions of this Agreement, a strip of land, which is fifty (50) feet wide over and through certain real property located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, Township 1 South, Range, 25 East, P.M.M. Yellowstone County, Montana, which strip of land is more particularly described as follows:

The south fifty (50) feet of Lot 12-A-2 in Block 3 of Midland Subdivision, Fifth Filing in Yellowstone County, Montana, according to the plat on file in the Office of the Clerk and Recorder of Yellowstone County, Montana under Document No. 3133168.

**SECTION TWO
LIMITATION TO DESCRIBED PURPOSE**

The above-described property may be occupied and used by Licensee solely for the purpose of surveying and designing a bikeway trail for non-motorized bicycles and pedestrian travel which will become part of the City of Billings' Heritage Trail system.

**SECTION THREE
TERM AND RENEWAL**

This license is granted for a period of two (2) years and may be renewed at the conclusion of the initial two (2) year period for additional two (2) year periods upon such terms and conditions as the parties may then agree, in writing.

**SECTION FOUR
CONSIDERATION**

The parties agree that the consideration given by Licensee to Licensor shall be the surveying and designing of a bikeway and pedestrian trail which the Licensor presently intends to give as a gift to the City of Billings and for which they may qualify for advantageous tax treatment.

**SECTION FIVE
TERMINATION**

If Licensee fails to comply with any condition of this Agreement at the time or in the manner provided for, the Licensor may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within sixty (60) calendar days after written notice is provided to the Licensee. Said notice shall set forth the items to be cured. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**SECTION SIX
GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

**SECTION SEVEN
ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties relating to the subject matter contained herein. No agent or representative of either party has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications or amendments of this agreement, including the appendices, must be in writing and signed by an authorized representative of each of the parties hereto.

**SECTION EIGHT
NOTICES**

Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by United States Mail, First Class postage prepaid, if sent to the respective address of each party as set forth at the beginning of this agreement.

**SECTION NINE
ASSIGNMENTS**

The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior written consent of the other party, which consent shall not be unreasonably denied.

**SECTION TEN
LICENSE RUNS WITH THE LAND**

This license shall run with the land and shall be binding on and shall inure to the benefit of the parties to this Agreement, their respective heirs, successors, or assigns.

IN WITNESS WHEREOF the parties have hereunto affixed their hands and seals the date first hereinabove written.

BIG SKY TRANSITION EXCHANGE, LLC

By: [Signature], Its Authorized Agent

STATE OF MONTANA)

:ss

County of Yellowstone)

On this 27 day of September, 2007, before me, personally appeared

Charles F. Gorman, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same as the Authorized Agent of **BIG SKY TRANSITION EXCHANGE, LLC**.

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



Maryellen Scherer
Notary Public for the State of Montana
Printed Name: MARYELLEN SCHERER
Residing at Billings, Montana
My Commission Expires: March 31, 2011

BIG SKY FLORAL SUPPLY, LLC

By: *[Signature]*, Its Authorized Agent

STATE OF MONTANA)

:SS

County of Yellowstone)

On this 27 day of September, 2007, before me, personally appeared

Charles F. Opiman, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same as the Authorized Agent of **BIG SKY FLORAL SUPPLY, LLC**.

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



Maryellen Scherer
Notary Public for the State of Montana
Printed Name: **MARYELLEN SCHERER**
Residing at Billings, Montana
My Commission Expires: March 31, 2011

LICENSEE:

ACKNOWLEDGMENT AND ACCEPTANCE
OF INTEREST IN PROPERTY

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

**CITY OF BILLINGS, a Montana
Municipal Corporation**

By: RON TUSSING, Mayor

ATTEST:

By: CARI MARTIN, City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____ day of _____, 2006 before me, a Notary Public for the State of Montana, personally appeared **RON TUSSING** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(Signature)

(NOTARIAL SEAL)
Name)

_____. (Printed
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires:

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: Acceptance and Approval of Homeland Security Grant in the amount of \$10,000

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: Sheri Lanz, Homeland Security Coordinator for the State of Montana has notified the Police Department Bomb Squad that it has been granted a \$10,000 grant for attendance at a regional training conference and for equipment acquisition. The grant period is October 1, 2007 through June 1, 2008. Council is being asked to accept this grant award in the amount of \$10,000 and authorize the Mayor to sign.

FINANCIAL IMPACT: All expenditures are on a reimbursement basis.

RECOMMENDATION

Staff recommends that Council accept the \$10,000 Homeland Security Grant and authorize the Mayor to sign the award documents.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: Acceptance and Approval for modification to 2007 HIDTA Award – Increase of \$50,000 for Native American Project.

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: The Office of National Drug Control Policy (ONDCP) made funds available from the FY 2007 appropriation for the High Intensity Drug Trafficking Area (HIDTA) for the Native American Project. The purpose of the Project is to use intelligence driven operations to detect, deter, interdict, disrupt and/or dismantle organizations involved in drug trafficking in general or methamphetamine trafficking specifically on tribal lands. Because of Billings' proximity to Indian Reservations and the overlapping activity between the reservations and the Billings/Yellowstone County area, ONDCP offered these additional monies to augment existing resources and enhance cooperative efforts with other area law enforcement entities. This money is being awarded as a modification to the 2007 HIDTA Award. The amount of the award will increase \$50,000 to \$187,155.

FINANCIAL IMPACT: The ONDCP has increased the 2007 HIDTA award by \$50,000: \$40,000 for overtime and \$10,000 for the purchase of evidence/purchase of information. This money will be supplemental to the 2007 HIDTA Award; bringing the total amount of the 2007 HIDTA Award to \$187,155. There will be no cost to the City. All expenditure reimbursements are wired to the City on a quarterly reimbursement. An increase in City budget authority will be needed for this Award.

RECOMMENDATION

Staff recommends that Council approve the Native American Project supplemental award in the amount of \$50,000; bringing the total 2007 HIDTA Award to \$187,155.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: W.O. 07-19—Yellowstone Country Club Sewer Extension and Services, Services Agreement with Engineering, Inc.—Amendment No. One

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings and Engineering, Inc. (Consultant) agreed to a Professional Services Contract September 24, 2001, that covered the design and construction of a water main in Grand Avenue from just east of 41st St. West to 58th St. West and the design and construction of a sanitary sewer main in Grand Avenue from 43rd St. West to 58th St. West, then north to Rimrock Road. The City is recommending an amendment to this contract to cover the design and construction of extending the sewer main, the demolition and removal of the existing Yellowstone Country Club (YCC) treatment plant, and restoration of the land currently occupied by the YCC treatment plant.

The sewer main will be extended in an existing easement across Rimrock Road in a north and northwesterly direction to connect to a line feeding the YCC treatment plant. The tasks associated with Amendment One include, but are not limited to, preliminary and final design (including geotechnical investigation and report and pre-construction analysis of adjacent home conditions), performing and documenting site surveys, bidding services, construction administration, field staking, construction inspection, and warranty and follow-up services.

A copy of Amendment One is on file in the City Clerk's office.

FINANCIAL IMPACT: The project is being funded by Wastewater Funds. The associated CIP (FY 2007: PWU-WW0801), providing a \$1.5 million budget for professional services and construction, has been approved by the Mayor and City Council. Amendment No. One represents an increase in the amount of the contract by \$250,913.53. There are funds available to cover the increase.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. One to the Professional Services Contract with Engineering, Inc. in the amount of \$250,913.53.

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

ATTACHMENT

A. Amendment No. One.

ATTACHMENT 'A'

AMENDMENT NUMBER ONE TO THE CONTRACT FOR PROFESSIONAL SERVICES BY AND BETWEEN THE CITY OF BILLINGS, MONTANA AND ENGINEERING, INC. PROJECT FOR SANITARY SEWER SERVICE TO THE YELLOWSTONE COUNTRY CLUB TREATMENT PLANT

THIS AMENDMENT NUMBER ONE, made and entered into this ____ day of _____, 2007, modifies the Contract for Professional Services by and between the City of Billings, Montana, and Engineering, Inc., dated September 24, 2001. The Contract is modified as follows:

- Item 1: Section 1.K. Revise the name of the Task Director from Engineering Inc. to Mac Fogelsong.
- Item 2: Section 2.C. Revise the name of the City's Task Director to Will Robbins.
- Item 3: Section 3. Add the following to the Scope of Work.

SCHEDULE I – Sanitary Sewer – YCC Plant Service

Engineering Services for the design and construction of a sanitary sewer from Rimrock Road north through an existing City of Billings easement, thence generally west along Lots 1 through 4, Yellowstone Club Estates Subdivision, Seventh Filing, thence generally north to the Yellowstone Country Club Lift Station "A." Evaluate necessary pipe size and grade to serve this area and future service areas, now that Ironwood Subdivision and the Echo Canyon area are served by another route. Evaluate a lift station and force main alternate along the same route to service the Yellowstone Country Club existing Lift Station "A."

DETAILED SCOPE OF WORK:

- A. Preliminary Design Services
 - 1. Meet with Public Works Department and arrive at limits of project. Schedule regular design review meetings.
 - 2. TV existing sanitary sewer pipes within 200 feet of lift station "A." Transit TV tapes to the City.
 - 3. Determine potential service area for the YCC plant sewer line and calculate pipe sizes, now that certain areas are served off of sewer within Rimrock Road.

4. Review work done to date and determine potential problems with preliminary alignment, slope, and depth.
5. Evaluate lift station alternate to gravity sewer for YCC plant service area. Provide findings to Public Works Department.
6. Update field location of existing utilities and incorporate this information into the construction plans.
7. Provide in the plans and specifications requirements for demolition of the existing YCC treatment plant building and restoration of land adjacent to and occupied by YCC treatment plant.
8. Begin analysis of traffic and related issues to determine if they affect alignment or other design factors (Rimrock Road).
9. Meet with local contractors and suppliers to determine any problems with proposed alignment, slope, depth, or proposed materials.
10. Meet with representatives of the Cove Ditch Company to involve them early-on with the timing and requirements for crossing their ditches.
11. Meet with staff of the Yellowstone County Public Works office, if necessary, to coordinate work.
12. Meet with the City Public Works staff and submit traffic control plans for review to the City engineer's office.
13. Inform Montana Department of Transportation, even though the City of Billings and Yellowstone County have jurisdiction on Rimrock Road.
14. For the YCC plant service area, prepare preliminary plans and specifications using all data gathered and input received, and based on Public Works direction on gravity sewer or lift station alternate.
15. Incorporate geotechnical investigation report(s) into plans and specifications. Geotechnical engineering shall include field sampling, laboratory testing and review of subsurface soils to determine appropriate pavement section design alternatives, subgrade treatment, groundwater conditions, and foundations for utility installations. Recommendations for specific construction materials and groundwater management established in this review will be included in the project plans and specifications.
16. Submit preliminary plans and specifications to all interested parties as determined by City and Engineering, Inc.

B. Right-of-Way Surveys

1. Update all existing available plat, certificate of survey, easement and ownership information along the chosen alignment.
2. Coordinate with Yellowstone Club Estates and Yellowstone Country Club on proposed route through the treatment plant site and across the golf course, getting to the treatment plant site.
3. Finalize alignment of the sewer and determine the extent of construction easements, if necessary.
4. Prepare easement descriptions, parcel exhibits, and area calculations by owner for each parcel as required.
5. Provide field surveys and staking of parcels as necessary.
6. Assist City in obtaining additional easement(s) or right(s) of way if necessary.
7. Obtain written permission or permits to cross the Cove Ditch from the respective ditch companies. (Fees to be paid by the City.)

C. Final Design and Bidding Services

1. Assemble all preliminary plan review comments and redlines for incorporation into final plans.
2. Add right-of-way and/or easement data to final plans and adjust sewer alignment if necessary.
3. Coordinate sewer services, manhole locations, and lateral stubs with proposed and/or existing adjacent developments.
4. Coordinate final design with other public utilities along the route and at Rimrock Road crossing.
5. Match street restoration grades with adjacent properties if possible.
6. Prepare preliminary erosion control plan for State permit, for final contractor submission.
7. Incorporate recommended traffic control plans into final plan set.
8. Determine and apply for necessary State and Federal permits necessary for construction, testing, and occupancy of sanitary sewer and water along the specified sewer route.

9. Complete final plan and specification sets for submittal, review, and approval by the various review agencies and jurisdictions.
10. Receive final redlines and incorporate in final plans and specifications.
11. Calculate bid quantities and prepare bid proposal and contract documents. Update Engineer's Estimate based upon final plan quantities.
12. Assist in preparation of bid advertisement and provide documents to prospective bidders and suppliers.
13. Schedule and conduct pre-bid meeting.
14. Attend bid opening, tabulate bids, and make recommendation for award.
15. Assist in obtaining final contract agreement and bonds and issue notice to proceed.

D. Construction Services

1. Schedule and conduct pre-construction conference.
2. Establish schedules, chain-of-command, and communication priorities for all parties involved in construction.
3. Provide field staking as required.
4. Coordinate and schedule quality control testing during all phases of construction. Provide third party materials testing as required (utility trench backfill, gravel base course, asphalt paving).
5. Provide full-time inspection, inspection reports, and daily diaries for the full term of construction activity.
6. Review and recommend payment and contract requests in accordance with City format.
7. Prepare and submit change order requests.
8. Coordinate necessary traffic control changes and submit media releases as required.
9. Keep track of actual in-place materials, locations, and quantities and transfer to field plans for preparation of as-builts.
10. Coordinate testing of final sewer and water installations by Contractor and recommend approval or adjustments as necessary.

11. Conduct final inspection, issue Certificate of Substantial Completion, and assist in project closeout.
 12. Prepare reproducible construction record drawings for City files.
 13. Submit project certification.
 14. Conduct one-year inspection with City staff.
- E. Extra Services of the CONSULTANT will be paid only with written prior authorization by the CITY.
1. Reset monuments lost or destroyed by construction of this project when restoration of such monuments is not the liability of the Contractor.
- F. DESIGN PHASE COMPLETION - SCHEDULE I: The completion date for the CONSULTANT'S work through final design shall be based on a notice to proceed by the City no later than October 23, 2007.
1. Preliminary route/alternate analysis to City by November 19, 2007.
 2. Preliminary Design by December 14, 2007, based on City alternate approval by November 21, 2007.
 3. Final Design by 20 days after written approval of preliminary design. Once established, the completion dates shall not be extended because of any unwarranted delays attributed to the CONSULTANT, but may be extended by the CITY in the event of a delay attributed to the CITY or because of unavoidable delays due to severe weather, street conditions, or by any natural catastrophe or governmental action or conditions beyond the control of the CONSULTANT, including delays resulting from consideration of changes or additions requested. Delays affecting the completion of the work within the time specified for the completion of more than forty five (45) 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 CONSULTANT is behind on this Contract due to no fault of the CITY, then the CONSULTANT hereby acknowledges the right of the CITY to withhold future Contracts to the CONSULTANT in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Item 4: Section 5. – Payment - Increase the amount of compensation as per the following:

- A. Design payment: The Consultant shall be paid for services as outlined in the Scope of Work under Item 3, utilizing a cost-plus basis (time and materials plus profit), a not-to-exceed price of \$156,816.36, as per the following:
- a. Preliminary Design Services \$126,611.76
 - b. Permits \$ 5,000.00
 - c. Final Design and Bidding Services \$25,204.60
- B. Construction Administration and Inspection Services payment: For services rendered during and following construction as outlined in the Scope of Work under Item 3, the Engineer shall be paid utilizing a cost-plus basis (time and materials plus profit), with a not-to-exceed price of \$94,097.17.

Item 5: Update Table A: Hourly fee schedule as per the following:

Table A
Hourly Fee Schedule

Principal-in-Charge	\$ 120.00 /hour
Professional Engineer (PE)	\$ 96.00 /hour
Staff Engineer	\$ 76.00 /hour
Construction Inspector	\$ 56.00 /hour
Land Surveyor (RLS)	\$ 88.00 /hour
Project Administrator	\$ 64.00 /hour
Computer Aided Design Technician	\$ 58.00 /hour
Administrative/Clerical/Data Processing	\$ 48.00 /hour
Vehicle Charges and Mileage	
Automobile or pickup	\$.55/mile
Survey-equipped 4-wheel drive vehicle	\$.75 /mile
Outside Services	Cost plus 5%
Materials	At cost

Item 6: Modify Section 11. INSURANCE in its entirety to the following:

- 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:
 - 5. Workers' compensation and employer's liability coverage as required by Montana law.
 - 6. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000.00 per occurrence.
 - 7. Commercial automobile liability -- \$500,000.00 per accident.
 - 8. Professional liability in the amount of \$1,500,000.00.
- E. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- F. 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.
- G. Even though the City may be named as an additional insured on certain policies, the parties recognize that the Engineer is not an insurance company, that the Engineer is not guaranteeing and cannot guarantee that the insurers will provide coverage for all potential claims, that the insurance company, not the Engineer, is responsible for all coverage determinations, and that the City will not hold the Engineer responsible for any decisions made by insurance companies.
- H. The City understands that the Engineer's professional liability policy is an "expense within limits" policy and that the applicable policy limit is reduced by attorney's fees and costs incurred in defense of a claim.

Item 7: Modify Section 19. LITIGATION LOCATION in its entirety to the following:

Any civil action rising from this Contract shall be brought in 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.

Item 8: Delete Section 20. ADMINISTRATION MEDIATION in its entirety.

Item 9: Modify Section 22. in its entirety to the following:

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

- C. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- D. 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, lawsuits or liability, 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.

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

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

All other provisions of the original Contract shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number One (1) as of the day and year first above written.

CONSULTANT

ENGINEERING, INC.

By: _____

Title: _____

Date: _____

ATTEST:

CITY

CITY OF BILLINGS

By: _____
Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
City Attorney

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

TITLE: Acceptance of Quitclaim Deed from E & S, Inc.
DEPARTMENT: Public Works
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The amended subdivision of the south half of Lot 10, Holling Ranch Subdivision includes a small parcel, Lot 10B, to be deeded to the City of Billings to be utilized as a street tract for Sharron Lane. The deeding of Lot 10B will make the right of way width of Sharron Lane 60 feet fronting this subdivision.

ALTERNATIVES ANALYZED:

1. Approve Quitclaim Deed to the City of Billings from E & S, Inc.
2. Do not approve the Quitclaim Deed.

FINANCIAL IMPACT: There is no financial impact from the acceptance of the quitclaim deed from E & S, Inc.

RECOMMENDATION

Staff recommends that Council approve the Quitclaim Deed for Holling Ranch Subdivision, Amended Lot 10B.

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

ATTACHMENTS

- A. Quitclaim Deed to City of Billings
- B. Exhibit of Amended Plat of Holling Ranch Subdivision Amended Lot 10

Return to:
City of Billings.
P.O. Box 1178
Billings, MT 59103

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned,

E & S, Inc.
120 Morningside Ln.
Billings, Montana, 59105

Does hereby remise, release, and quitclaims unto

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

All of their right, title, and interest in and to said real property, described as follows, to-wit:

That part of the NE¼ of Section 15, Township 1 North, Range 26 East, of the Principle Montana Meridian, in the City of Billings, Yellowstone County, Montana, more particularly described as Lot 10 B of the Amended Plat South ½ Lot 10 West of Highway, Holling Ranch Subdivision, as recorded in the office of the Clerk and Recorder of said County, under Document No.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 22nd day of August, 2007.

E & S, Inc.

By: [Signature]
Title: PRESIDENT

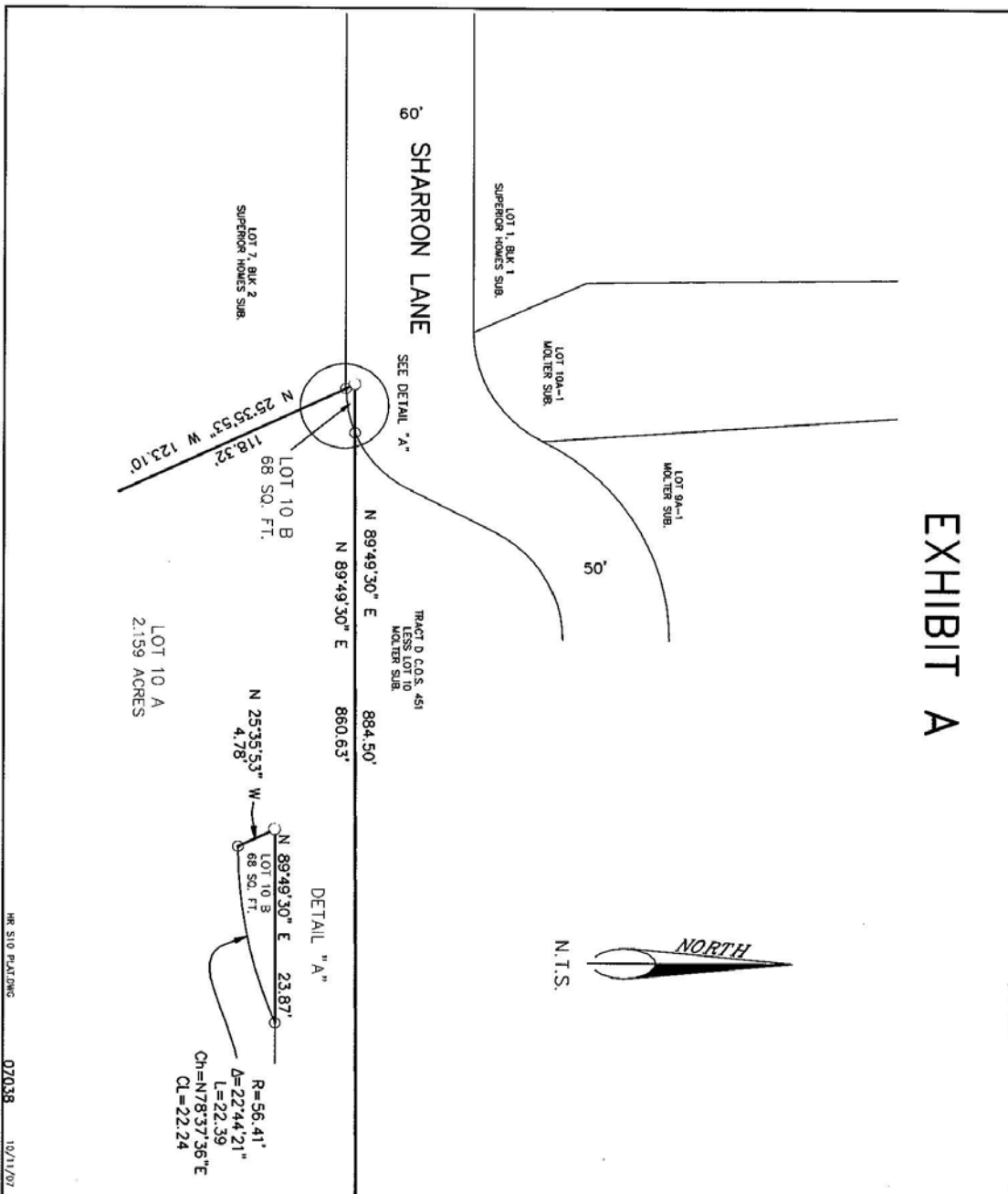
STATE OF MONTANA)
County of Yellowstone)

On this 22nd day of August, 2007, before me the undersigned Notary Public for the State of Montana, personally appeared Jeffrey T. Engel, known to me to be the person that signed the foregoing instrument as President of E & S, Inc., and who acknowledged to me that said corporation executed the same. Witness my hand and seal the day and year herein above written.

Charlotte R. Greenwood
Notary Public in and for the State of Montana
Printed Name Charlotte R. Greenwood
Residing at Billings, Montana
My commission expires 08/24/2009



EXHIBIT A



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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: Second Reading of an Ordinance Expanding Ward II (Annexation #07-10)
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On September 24, 2007, the City Council approved the annexation of Tract 1, Certificate of Survey 2017; S1/2 SE1/4, Section 8, T1N, R26E; S1/2 SW1/4, Section 9, T1N, R26E, (Annexation #07-10) containing 400.94 acres. The property is located northwest of the Lake Hills Golf Course and north of Matador Avenue in the Billings Heights. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward II was held on October 9, 2007. The second reading of the ordinance is scheduled for Council action at its meeting on October 22, 2007.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 07-_____

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

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

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

Tracts of land situated in the SE1/4 of Section 8, the SW1/4 of Section 9 and the N1/2 of Section 17, T.1N, R.26E, P.M.M., Yellowstone County, Montana, described as follows:

Being the S1/2 of the SE1/4 of Section 8, T.1N., R.26E., P.M.M., Yellowstone County, Montana; the S1/2 of the SW1/4 of Section 9, T.1N., R.26E., P.M.M., Yellowstone County, Montana; Tract 1 of Certificate of Survey 2017, Recorded September 30, 1980, Under Document No. 1178050, Records of Yellowstone County. Containing 400.944 gross and net acres, more or less. (# 07-10) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 9th day of October, 2007.

PASSED by the City Council on the second reading this 22nd day of October, 2007.

THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

(Back to Consent Agenda)

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: Second Reading of an Ordinance Expanding Ward V:

Annexation #07-21

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On September 24, 2007, the City Council approved the annexation of an approximate 8.868-acre parcel legally described as Tract 1C, Certificate of Survey 2991. The request for annexation was submitted by Raymond and Douglas Kramer (Power of Attorney for the Lydia Kramer Real Estate Management Trust), the owners of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V was conducted on October 9, 2007. The second reading of the ordinance will be conducted at this meeting.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

B. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 06-_____

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

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

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

A tract of land situated in the NW1/4 of Section 12, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1-C, Certificate of Survey No. 2991, Recorded December 29, 1998, Under Document No. 3033373, Records of Yellowstone County, Montana.

Including all adjacent right-of-way of Central Avenue.

Said Tract containing 8.869 acres.

(# 07-21) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 9th day of October, 2007.

PASSED by the City Council on the second reading this 22nd day of October, 2007.

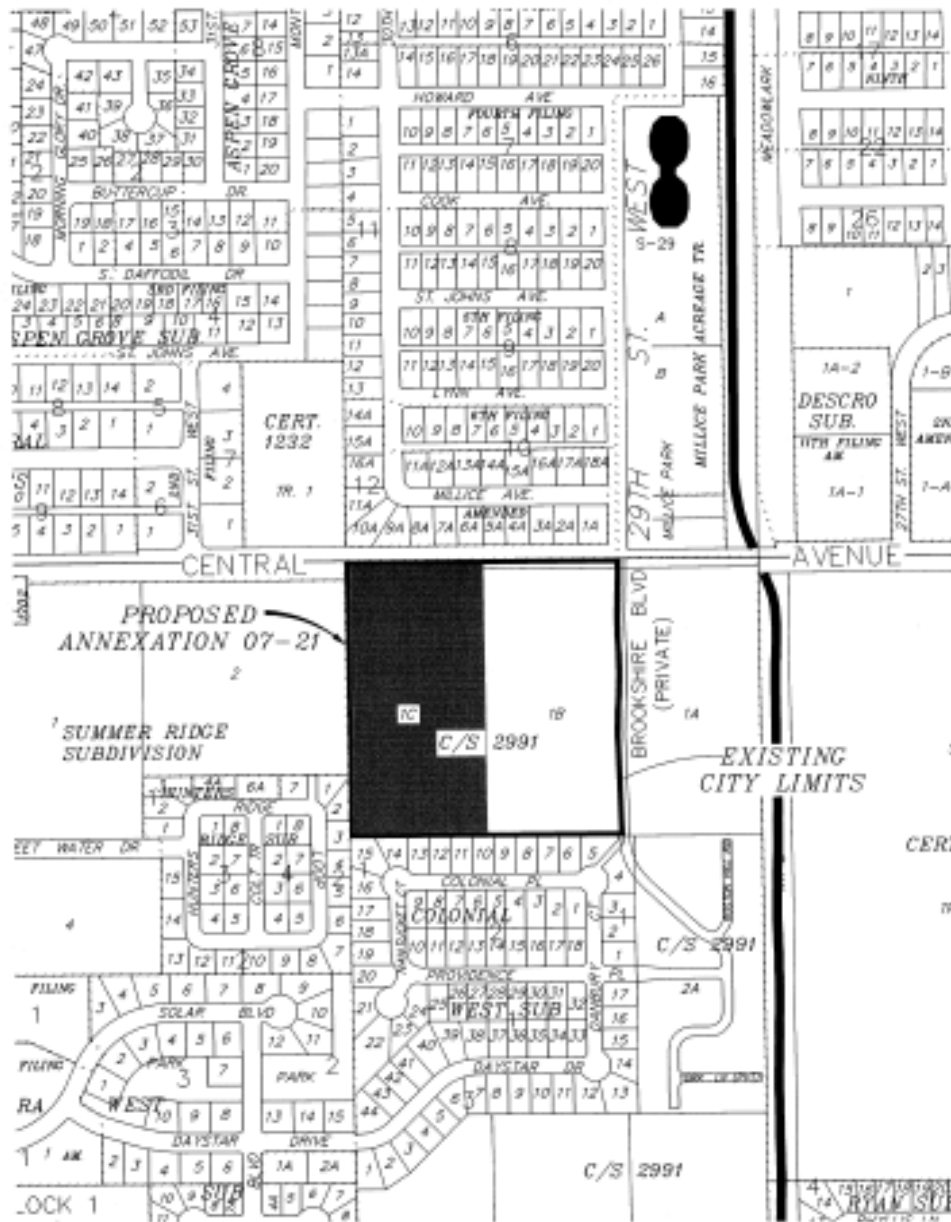
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

EXHIBIT A



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L

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: Second Reading of an Ordinance Expanding Ward V:

Annexation #07-22

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On September 24, 2007, the City Council approved the annexation of an approximate 8.868-acre parcel legally described as Tract 1B, Certificate of Survey 2991. The request for annexation was submitted by Todd Icopini, Legacy Homes, the owner of property. Upon annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V was conducted on October 9, 2007. The second reading of the ordinance will be conducted at this meeting.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

C. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 06-_____

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

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

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

A tract of land situated in the NW1/4 of Section 12, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1-B, Certificate of Survey No. 2991, Recorded December 29, 1998, Under Document No. 3033373, Records of Yellowstone County, Montana.

Including all adjacent right-of-way of Central Avenue.

Said Tract containing 8.869 acres.

(# 07-22) See Exhibit "A" Attached

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

PASSED by the City Council on the first reading this 9th day of October, 2007.

PASSED by the City Council on the second reading this 22nd day of October, 2007.

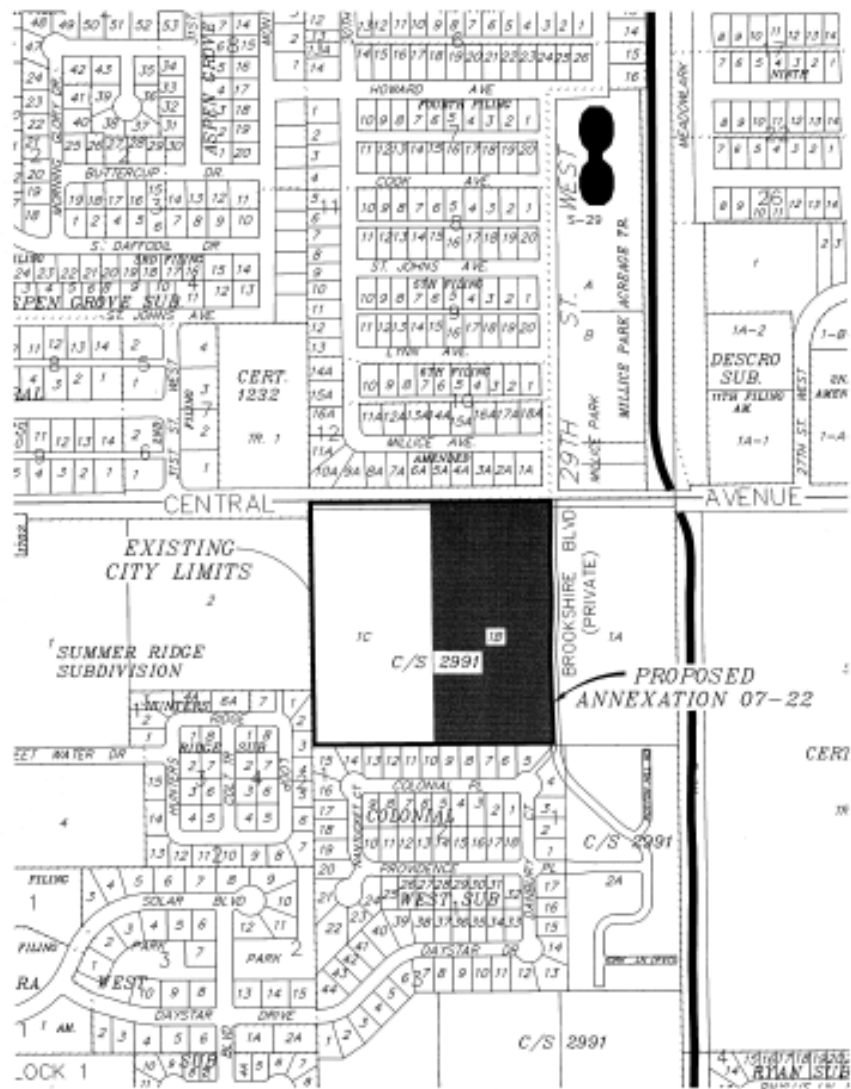
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

EXHIBIT A



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M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: Zone Change #820, 2nd Reading of Ordinance–Text Amendment to Section 27-705(C), BMCC, Commercial Sign Regulations

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On July 16, 2007, the City Council approved an initiative directing staff to revise Section 27-705(C), BMCC, Commercial Sign Regulations. Since the commercial zoning districts are all contained within the same section of the regulations, the entire commercial sign portion of the code has been revised to reflect a more simplified version including specific regulations that apply only to the Central Business District (CBD). The City Zoning Commission conducted a public hearing on the amendment to the zoning regulations on September 4, 2007, and voted 5-0 to recommend approval to the City Council of the amendment. The City Council opened the public hearing on September 24, 2007, and voted to delay testimony and discussion to the October 9, 2007, meeting. The City Council held a public hearing on October 9, 2007, and approved the zone change on first reading.

ALTERNATIVES ANALYZED: The City Council approved the proposed zone change on first reading. There was no public comment received on this item at the October 9, 2007, public hearing.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the new zoning regulation.

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve, on second reading, Zone Change #820, amending Section 27-705(C) of Billings, Montana City Code.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENT:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 07-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 27-705(C); CLARIFYING THE EXISTING COMMERCIAL SIGN REGULATIONS WITH REVISIONS TO THE CENTRAL BUSINESS DISTRICT SIGN REGULATIONS

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

Section 1. That Section 27-705(c) of the Billings, Montana City Code be amended so that such section shall read as follows:

~~(c) Community commercial, neighborhood commercial, neighborhood commercial limited, controlled industrial, heavy industrial, highway commercial, and Central Business District. Within these zones, signs are permitted as follows:~~

~~(1) One (1) free-standing sign indicating only the name and nature of the occupancy for each developed parcel not to exceed three (3) square feet of sign area for each lineal foot of street frontage abutting the developed portion of the parcel, provided that:~~

~~a. Where a developed parcel has in excess of three hundred (300) feet of street frontage, one (1) additional free-standing sign may be erected for each additional three hundred (300) feet of street frontage in excess of the first three hundred (300) feet of street frontage abutting the developed portion of the parcel; Signs will be permitted as follows:~~

TABLE INSET:

<i>Frontage Feet-</i>	<i>Signs</i>
0-600-	1 free-standing sign-
601-900-	2 free-standing signs-
901-1200-	3 free-standing signs-
Over 1200-	3 free-standing signs plus, 1 additional sign for each 300 lineal street frontage feet over 1200 frontage feet-

~~b. Where a developed parcel is permitted to have more than one (1) free-standing sign under this article, the distance between the free-~~

~~standing signs on each parcel shall be not less than one hundred fifty (150) frontage feet;~~

~~c. The sign must be located five (5) feet behind all property lines except:~~

~~(i) If the bottom of the structure is twelve (12) feet or higher above the establish grade, then the sign structure may be located up to one (1) foot behind the property line; or~~

~~(ii) If the sign is in the Central Business District, then the sign structure can be located up to the property line.~~

~~d. No free-standing sign shall exceed the height of thirty (30) feet except free-standing signs in the highway commercial zone and within the interstate corridor which shall not exceed the height of fifty (50) feet. No sign shall exceed one hundred seventy-five (175) square feet in sign area except for a parcel's first free-standing sign located within the interstate corridor which shall not exceed four hundred forty (440) square feet in sign area. Any additional free-standing sign authorized on a parcel shall not exceed one hundred seventy-five (175) square feet in sign area. One (1) measured side of the display shall compose the square footage;~~

~~e. If a free-standing sign projects over a private vehicular driveway or parking lot aisle, the minimum clearance between the bottom of the sign and the ground shall be seventeen (17) feet;~~

~~f. No rotating free-standing sign shall rotate at a rate faster than six (6) revolutions per minute or have a minimum clearance lower than nine (9) feet between the bottom of the sign and the ground;~~

~~g. When a developed parcel fronts on more than one (1) public right-of-way or street, excluding alleys and serviceways, the above provisions of subsection (c) shall apply to each frontage.~~

~~(2) One (1) wall or one (1) canopy sign and four (4) architectural blade signs indicating only the name and nature of the occupancy for each occupancy within the developed parcel as follows:~~

~~a. No sign shall exceed a total area of three (3) square feet of copy sign area for each lineal foot of building frontage of each occupancy except buildings over two (2) stories shall be allowed an additional one (1) square foot of copy for each lineal foot of building frontage of each occupancy. The allowable sign area shall be reduced by the~~

~~sign area for each wall sign installed over any primary public entrances pursuant to subsection (3) below;~~

- ~~b. If such occupancy is on a corner, one (1) wall sign or one (1) canopy sign will be permitted for each frontage face;~~
 - ~~c. A permitted wall sign(s) can be transferred from one wall to another wall provided the number of signs remain within the permitted number of signs and within allowable sign area;~~
 - ~~d. No wall or canopy signs shall project into the public right-of-way, except
 - ~~(i) In the Central Business District, wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk; and~~
 - ~~(ii) In the Central Business District, canopy signs may project up to two (2) feet to a vertical line from the curb face over the right-of-way.~~~~
 - ~~e. If the building includes a canopy, each tenant will be permitted one (1) under canopy sign per public entrance in lieu of the wall or canopy sign. Any signs attached to the underside of a canopy shall be perpendicular to the wall face of the building and shall not have a copy area greater than four (4) square feet or have a clearance lower than of eight (8) feet from the sidewalk.~~
- ~~(3) One (1) roof sign, in lieu of the wall or canopy sign authorized in section 27-705(c)(2) above, indicating only the name and nature of the occupancy for each developed parcel as follows:~~
- ~~a. The sign shall not extend above the highest plane of the roof;~~
 - ~~b. The supports, anchors, or braces for the roof sign shall be enclosed so that they are not visible from the street or other public or private property; and~~
 - ~~c. The sign is designed similar to a wall sign or projecting sign, and designed to look like part of the building or roof structure, rather than something suspended from or standing on the building.~~
- ~~(4) One (1) wall sign for each "primary public entrance" of the business indicating only name of the occupancy within the developed parcel provided:~~

- ~~a. The combined sign area of all signs over all primary public entrances does not exceed the sign area of one allowable wall sign; and~~
- ~~b. No wall or canopy signs shall project into the public right-of-way, except in the Central Business District wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk.~~

C. Permitted Signs: Community Commercial, Neighborhood Commercial, Highway Commercial, Controlled Industrial, Heavy Industrial, Central Business District

1. Freestanding Signs:

	<u>Number of Signs Permitted</u>	<u>Sign Area Permitted</u>	<u>Maximum Square Footage Per Sign</u>	<u>Maximum Height</u>	<u>Minimum Setbacks from all Property Lines</u>
<u>Freestanding Signs</u>	<u>One (1) per street frontage</u> <u>**</u>	<u>3 square feet per lineal foot of street frontage</u>	<u>175 square feet per side</u>	<u>30 feet</u>	<u>5 feet*</u>
<u>Freestanding Signs</u> <u>Central Business District Only</u>	<u>One (1) per street frontage</u> <u>**</u>	<u>3 square feet per lineal foot of street frontage</u>	<u>175 square feet per side</u>	<u>30 feet</u>	<u>0 feet for sign face</u>

* If the bottom of the sign face is twelve (12) feet or higher above the established grade, then the sign support structure may be located up to one (1) foot behind the property line.

** Where a developed property abuts more than 300 lineal feet of street frontage, one (1) additional free-standing may be erected for each additional 300 feet of street frontage. Where a developed parcel has frontage on more than one (1) public right-of-way or street, excluding alleys, driveways, and service ways the provisions of this subsection shall apply to each street frontage, as follows:

<u>Street Frontage</u>	<u>Number of Signs Permitted</u>
<u>0—599 feet</u>	<u>1 free-standing sign</u>
<u>600—900 feet</u>	<u>2 free-standing signs</u>
<u>901—1200 feet</u>	<u>3 free-standing signs</u>

<u>Over 1200 feet</u>	<u>3 free-standing signs, plus 1 additional sign for each 300 lineal street frontage feet over 1200 frontage feet</u>
-----------------------	---

- (a) Distance between signs. For properties where more than one (1) freestanding sign is permitted, the distance between freestanding signs shall be a minimum of 150 feet;
- (b) Sign height. No free-standing sign shall exceed the height of thirty (30) feet except free-standing signs in the highway commercial zone and within the interstate right-of-way which shall not exceed the height of fifty (50) feet.
- (i) If a free-standing sign projects over a private vehicular driveway or parking lot aisle, the minimum clearance of 17 feet shall be maintained between the bottom of the sign edge and the established grade of the site;
- (ii) Rotating freestanding signs shall have a minimum clearance of nine (9) feet between the bottom of the sign edge and established grade of the site. Rotating, free-standing signs shall maintain no more than six (6) revolutions per minute.
- (c) Sign location For any off-premises signs located within 660 feet of an interstate or state controlled highway, street, or road right-of-way, a copy of the Montana Department of Transportation (MDT) permit shall be required and submitted with the City of Billings permit application in accordance with Section 18.6.211, Administrative Rules of Montana (ARM).

2. Wall, Canopy, or Projecting Signs:

Wall, canopy, projecting signs, roof signs or any combination thereof, indicating the name and nature of the occupancy for each occupancy located on a property is permitted, provided that they do not exceed the maximum square footage permitted.

	<u>Sign Area Permitted</u>	<u>Minimum Height</u>	<u>Minimum Setbacks from all Property Lines</u>
<u>Wall Sign</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>N/A</u>	<u>0 feet</u>
<u>Canopy or Projecting Signs</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>9 feet from approved grade</u>	<u>0 feet</u>
<u>Canopy or Projecting Signs</u> <u>Central Business District Only</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>9 feet from approved grade</u>	<u>Maximum projection of 2/3 of the sidewalk*</u>

<u>Under Awning or Canopy Signs for Buildings with Awnings or Canopies over the Right-of-Way Central Business District Only</u>	<u>3 square feet per lineal foot of building frontage</u>	<u>8 feet from approved grade</u>	<u>Maximum Projection of 2/3 of the sidewalk*</u>
<u>Roof Sign One permitted in lieu of a wall sign</u>	<u>3 square feet per lineal foot of building frontage*</u>	<u>N/A</u>	<u>N/A</u>

*An encroachment permit shall be obtained from the City Engineering Department for any projecting or canopy sign that encroaches into the public right-of-way

** Primary entrance signs shall indicate only the name of the occupancy. The allowable sign area shall be reduced for each wall sign installed over any primary public entrance.

(b) Roof signs shall not extend above the highest plane of the roof.

(i) The supports, anchors, or braces for the roof sign shall be enclosed so that they are not visible from the street or other public or private property.

(ii) Signs shall be similar to a wall sign or projecting sign, and designed to look like part of the building or roof structure, rather than something suspended from or standing on the building.

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 9th day of October, 2007.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of October, 2007.

CITY OF BILLINGS

By _____
Ron Tussing, Mayor

ATTEST:

By _____
Cari Martin, City Clerk

ZC#820 Amending Section 27-705(C)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

TITLE: Zone Change #821, 2nd Reading of Ordinance – Text Amendment to City Sign Code Amending Sections 27-703, 27-705(c), 27-706(b) and 27-708

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: Section 27-701 of the Unified Zoning Regulations (City Sign Code) defines and regulates many types of commercial signs. The current code inadequately regulates signs that use newer technology. In January 2006, at a City Council Work Session, the City Sign Code was reviewed due to concerns about the regulation of electronic message displays. As a result, the City Council created the Electronic Sign Ad Hoc Committee in June, 2006. The committee was charged with specifically reviewing Section 27-708 (Prohibited Signs) to create sufficient criteria to regulate e-signs and to make a recommendation to the City Council on or before June 26, 2007. On July 30, 2007, the City Council accepted the recommendation of the Electronic Sign Ad Hoc Committee and initiated this amendment to the City Sign Code. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on September 4, 2007, and voted 5-0 to recommend approval to the City Council of the amendment and that the City Council further consider amending the ordinance to include a minimum separation of e-signs from residential uses, minimum landscaping requirements for new e-signs and whether operational standards should be applied to existing e-signs. The City Council opened the public hearing on September 24, 2007 and voted to delay testimony and discussion to October 9, 2007. The City Council held a public hearing on October 9, 2007, and approved the zone change on first reading. The motion included an allowance that existing Electronic Message Display signs can continue to use video after the effective date of the ordinance.

ALTERNATIVES ANALYZED: The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments. The City Council may also indefinitely postpone action on the text amendment and direct the Planning Division or the City Attorney to make specific changes to the ordinance. The City Council adopted the ordinance on first reading and has directed Planning staff to review five specific issues for potential future

amendments. These issues include: 1) minimum separation distances to residential zones; 2) landscaping requirements for new signs; 3) nonconforming operations of existing signs; 4) sign size, and 5) safety issues. The Planning staff has been directed to report on these five issues at the December 3, 2007, Council Work Session.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the new zoning regulation.

RECOMMENDATION

The Zoning Commission on a 5-0 vote recommends that the City Council approve Zone Change #821 and that the City Council further consider amending the ordinance to include a minimum separation of e-signs from residential uses, minimum landscaping requirements for new e-signs and whether operational standards should be applied to existing e-signs.

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

ATTACHMENT:

A: Ordinance

ATTACHMENT A

Zone Change #821

ORDINANCE NO. 07-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 27-703, 27-705(c) AND 27-706, 27-708; PROVIDING THAT ELECTRONIC MESSAGE DISPLAY SIGNS BE DEFINED AND REGULATED.

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

Section 1. That Section 27-703 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 27-703. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Ambient Light Monitor: A device that is attached to an Electronic Message Display that measures on a continuous basis the brightness of light surrounding the sign. The monitor is connected to the system that controls the brightness of the Electronic Message Display. The brightness is then automatically adjusted based on the measured ambient light.

Animated Sign: Any sign that uses movement or change or lighting to depict action or create a special effect or scene.

Architectural blade sign: A wall sign or projecting sign with no legs or braces, on a structure or building larger than three (3) stories and designed to look as a part of the building structure, rather than something suspended from or standing on the building.
Awning, canopy or marquee: A roof-like shelter detached or extending from part or all of a [structure].

Balloon sign: Means any sign that is a balloon, inflatable figure, or inflatable structure. For purposes of this article, balloon signs do not include passenger hot air balloons used for air travel.

Building frontage: The linear length of a building facing the public access or right-of-way.

Canopy or marquee sign: Any sign attached to, constructed in or on a canopy or marquee or across a series of canopies or marquees located on the same building face.
Copy: The wording or message on a sign surface either in permanent or removable letter or panel form.

Electronic Message Display: A sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

Flashing: The repetitive display of a single image (full or partial) interrupted by any other color, image or lack thereof at an interval of less than five (5) seconds. Motion borders fitting this definition are specifically included. (See Section 27-708(1) Prohibited Signs and Sign Structures)

Free-standing signs: Any sign supported by uprights or braces permanently placed upon the ground, and not attached to any building.

Frontage: The length of the property line of any one (1) premises along each public right-of-way it borders excluding alleys and serviceways.

Ground level means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the sign and property line or, when the property line is more than five (5) feet from the sign, between the sign and a line five (5) feet from the sign.

Height of sign: The vertical distance measured from the finish ground level grade to the highest point of the sign. Exaggerated or artificial berming to increase height of sign shall not be permitted.

Identification sign: A sign which is limited to the name, address and number of a building, institution or person and to the activity/service carried on in the building or institution, or the occupancy of the person.

Interstate corridor: means the area of the city which is within six hundred sixty (660) feet of the nearest edge of the right-of-way of a designated interstate highway and which area is not in a residential zone or used for residential purposes.

Maintain: To permit a sign, structure or any part of each to continue or to repair or refurbish a sign, structure or any part of either.

Medical campus: means a definable area owned, developed, occupied, and used by the owner for medical and medical related services, even though the area consists of two (2) or more city blocks, provided however, the blocks are contiguous.

Nameplates:

(1) Commercial nameplate: A nonelectric sign identifying only the name and occupation or profession of the occupant of premises on which the sign is located.

(2) Residential nameplate: A nonelectric sign identifying only the name and address of the occupant.

Neighborhood watch sign: Neighborhood watch is a national program based upon the idea that community members can prevent or help deter crimes in their neighborhoods. The neighborhood watch program is administered by local law enforcement. A neighborhood watch sign is a sign obtained through the local law enforcement agency that is posted on property within a residential or public zoning district.

Nonconforming sign (legal): Any advertising structure or sign which was lawfully erected and maintained prior to such time as it came within the purview of this article and any amendments thereto, and which fails to conform to all applicable regulations and restrictions of this article, or a nonconforming sign for which a special permit has been authorized.

Off-premise/Billboard Electronic Displays: An Off-premise/Billboard Electronic Display is a sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means and which directs attention to a business, activity, products, commodity, service, entertainment or communication which is not conducted, sold, or offered at the premises on which the sign is located, or which does not pertain to the premises upon which the sign is located. An Electronic Off-premise/Billboard Display shall not include any other visual effects including but not limited to animation, motion pictures, video, holograms, moving parts or the illusion of movement and shall not include any audible sound.

Off-premise/billboard sign: A sign which directs attention to a business, activity, products, commodity, service, entertainment or communication which is not conducted, sold, or offered at the premises on which this sign is located, or which does not pertain to the premises upon which the sign is located.

On-premise sign: means any sign identifying or advertising a business, activity, goods, products or services located on the premise where the sign is installed and maintained.

Owner: A person recorded as such on official records and including duly authorized agent.

Parcel: A single tract or parcel of land, no matter how legally described whether by metes and bounds, certificate of survey, and/or by lot or lots and block designation as in a recorded plat, which at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the building permit is

being secured and having frontage on or access to a public street over an easement approved by the city engineer.

Penthouse: A structure on top of a building roof such as houses, an elevator shaft, or similar form.

Premises: An area of land with its appurtenances and buildings which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

Primary public entrance: means an entrance to a business which is open to the public during its normal and customary hours of operations and the entrance is used as the primary ingress and egress to the business by the public.

Projecting signs: means a sign other than wall sign which is suspended from or supported by a building or wall and which projects more than twelve (12) inches.

Public right-of-way width: The perpendicular distance across a public street measured from property line to property line. When property lines on opposite sides of the public street are not parallel, the public right-of-way width shall be determined by the city engineer.

Roof sign: Means a sign erected, constructed and maintained upon, or connected to any roof of any building with the principal support on the roof structure. This definition excludes architectural blade signs.

Shopping center or mall: A shopping center is a mix of retailing land and service uses offering both essential and nonessential goods and services, with at least five (5) stores or one hundred thousand (100,000) square feet, and that attracts consumers from a region-wide market area.

Sign: Any identification, description, illustration or device illuminated or nonilluminated which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise; or any emblem, painting, banner, pennant, placard or temporary sign designed to advertise, identify or convey information, with the exception of window displays and national flags. For the purpose of removal, signs shall also include all sign structures.

Sign administrator: The city administrator or his or her designated representative. *Sign area* means the entire area within any type of perimeter or border which may enclose the outer limits of any writing, representation, emblem, figure or character. The area of the sign having no such perimeter or border shall be computed by enclosing the entire area with parallelograms, triangles or circles of the smallest size sufficient to cover the entire area of the sign and computing the area of these parallelograms, triangles or circles. The area computed shall be the maximum portion or portions which may be viewed from any one direction.

Street: A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, land, place, or however otherwise designated which has been dedicated to or acquired for public use and extends the full width between right-of-way lines.

Temporary/portable sign: A sign advertising on an interim basis special business sales, new business openings, special events, goods, products, services, or facilities located on premise. A temporary sign is differentiated from a permanent sign in that a permanent sign is attached to a building or structure or affixed in the ground. A temporary/portable sign is mobile and free-standing. Any electrical temporary sign shall comply with all city electrical codes.

Under canopy sign: A sign suspended below the ceiling or roof of a canopy.

Unlawful sign: A sign which contravenes this article or which the administrator may declare as unlawful if it becomes dangerous to public safety by reason of dilapidation or abandonment or a nonconforming sign for which a permit required under a previous sign code was not obtained.

Use: The purpose for which a building, lot, sign or other structure is arranged, intended, designed, occupied or maintained.

Video: Means the display of a succession of single images at a rate of twenty (20) frames per second or higher.

Wall sign means any sign painted on, mounted on, attached to or erected against the wall of a building and approximately paralleled to the face of a principal building wall and projecting not more than twelve (12) inches from the plane of the wall. Street graphic on the outside of a window is considered a wall sign."

Section 2. That Section 27-705(c) of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 27-705. Signs permitted in zoning districts of city.

(c) Community commercial, neighborhood commercial, neighborhood commercial limited, controlled industrial, heavy industrial, highway commercial, and Central Business District. Within these zones, signs are permitted as follows:

(1) One (1) free-standing sign indicating only the name and nature of the occupancy for each developed parcel not to exceed three (3) square feet of sign area for each lineal foot of street frontage abutting the developed portion of the parcel, provided that:

- c. Where a developed parcel has in excess of three hundred (300) feet of street frontage, one (1) additional free-standing sign may be erected for each additional three hundred (300) feet of street frontage in excess of the first three hundred (300) feet of street frontage abutting the developed portion of the parcel; Signs will be permitted as follows:

TABLE INSET:

<i>Frontage Feet</i>	<i>Signs</i>
0-- 600	1 free-standing sign
601-- 900	2 free-standing signs
901--1200	3 free-standing signs
Over 1200	3 free-standing signs plus, 1 additional sign for each 300 lineal street frontage feet over 1200 frontage feet

- b. Where a developed parcel is permitted to have more than one (1) free-standing sign under this article, the distance between the free-standing signs on each parcel shall be not less than one hundred fifty (150) frontage feet;
- c. The sign must be located five (5) feet behind all property lines except:
 - (ii) If the bottom of the structure is twelve (12) feet or higher above the establish grade, then the sign structure may be located up to one (1) foot behind the property line; or
 - (ii) If the sign is in the Central Business District, then the sign structure can be located up to the property line.
- d. No free-standing sign shall exceed the height of thirty (30) feet except free-standing signs in the highway commercial zone and within the interstate corridor which shall not exceed the height of fifty (50) feet. No sign shall exceed one hundred seventy-five (175) square feet in sign area except for a parcel's first free-standing sign located within the interstate corridor which shall not exceed four hundred forty (440) square feet in sign area. Any additional free-standing sign authorized on a parcel shall not exceed one hundred seventy-five (175) square feet in sign area. One (1) measured side of the display shall compose the square footage;

- e. If a free-standing sign projects over a private vehicular driveway or parking lot aisle, the minimum clearance between the bottom of the sign and the ground shall be seventeen (17) feet;
- f. No rotating free-standing sign shall rotate at a rate faster than six (6) revolutions per minute or have a minimum clearance lower than nine (9) feet between the bottom of the sign and the ground;
- g. When a developed parcel fronts on more than one (1) public right-of-way or street, excluding alleys and serviceways, the above provisions of subsection (c) shall apply to each frontage.

(2) One (1) wall or one (1) canopy sign and four (4) architectural blade signs indicating only the name and nature of the occupancy for each occupancy within the developed parcel as follows:

- a. No sign shall exceed a total area of three (3) square feet of ~~copy~~ sign area for each lineal foot of building frontage of each occupancy except buildings over two (2) stories shall be allowed an additional one (1) square foot of copy for each lineal foot of building frontage of each occupancy. The allowable sign area shall be reduced by the sign area for each wall sign installed over any primary public entrances pursuant to subsection (3) below;
- b. If such occupancy is on a corner, one (1) wall sign or one (1) canopy sign will be permitted for each frontage face;
- c. A permitted wall sign(s) can be transferred from one wall to another wall provided the number of signs remain within the permitted number of signs and within allowable sign area;
- d. No wall or canopy signs shall project into the public right-of-way, except
 - (ii) In the Central Business District, wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk; and
 - (ii) In the Central Business District, canopy signs may project up to two (2) feet to a vertical line from the curb face over the right-of-way.
- e. If the building includes a canopy, each tenant will be permitted one (1) under canopy sign per public entrance in lieu of the wall or canopy sign. Any signs attached to the underside of a canopy shall be perpendicular to the wall face of the building

and shall not have a copy area greater than four (4) square feet or have a clearance lower than of eight (8) feet from the sidewalk.

(3) One (1) roof sign, in lieu of the wall or canopy sign authorized in section 27-705(c)(2) above, indicating only the name and nature of the occupancy for each developed parcel as follows:

- a. The sign shall not extend above the highest plane of the roof;
- b. The supports, anchors, or braces for the roof sign shall be enclosed so that they are not visible from the street or other public or private property; and
- c. The sign is designed similar to a wall sign or projecting sign, and designed to look like part of the building or roof structure, rather than something suspended from or standing on the building.

(4) One (1) wall sign for each "primary public entrance" of the business indicating only name of the occupancy within the developed parcel provided:

- a. The combined sign area of all signs over all primary public entrances does not exceed the sign area of one allowable wall sign; and
- b. No wall or canopy signs shall project into the public right-of-way, except in the Central Business District wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk.

(5) Electronic Message Display Signs

a. Limitations on electronic message displays

i. An Electronic Message Display (EMD) may only be used in conjunction with an immediately adjacent wall sign or as part of a free standing sign and shall not be displayed on its own. The EMD shall not be larger than 40% of the total square footage of the permanent graphic portion of the sign when compared as separate components. For purposes of determining the allowable total sign area, the permanent graphic portion of the sign and the EMD shall be included in the same perimeter inclusive of any physical separation between the two components.

ii. Only one (1) Electronic Message Display (EMD) freestanding sign per developed parcel or one (1) EMD wall sign per street frontage may be allowed. Sign(s) must be included in the total number of signs allowed not in addition to the number of signs allowed.

iii. An Electronic Message Display (EMD) wall sign may only be used in conjunction with an immediately adjacent permanent graphic sign and not alone. EMD signs that are not enclosed within the primary wall sign will be required to have a frame to visually diminish the black box effect of the EMD. The frame shall be no less than eight (8) inches in width and no greater than 80% of the EMD cabinet depth or exceed 50% of the EMD area. The required frame area for EMD wall signs shall not count towards the maximum allowable sign area. The maximum height of an EMD wall sign shall be 40 feet from the building wall grade. EMD wall signs shall not be placed less than two feet from the top of the wall it is installed on.

iv. An Electronic Message Display (EMD) may be allowed provided it does not flash, scintillate, blink, show motion borders or traveling lights or display video (unless specifically permitted in special sign districts).

b. Size of free standing electronic message displays:

<u>Street Type</u>	<u>Maximum Portion of Allowable Sign Area*</u>	<u>Maximum Total EMD Sign Size*</u>
<u>Principal Arterial</u>	<u>40%</u>	<u>100 square feet</u>
<u>Minor Arterial</u>	<u>40%</u>	<u>40 square feet</u>
<u>Collector</u>	<u>40%</u>	<u>40 square feet</u>
<u>Commercial Local Access</u>	<u>40%</u>	<u>40 square feet</u>

* - Maximum Portion of Allowable Sign Area or Maximum Total EMD sign size whichever is less

c. Size of electronic message display wall signs

<u>Street Type</u>	<u>Maximum Total EMD Sign Area*</u>
<u>Principal Arterial</u>	<u>80 square feet</u>
<u>Minor Arterial</u>	<u>50 square feet</u>
<u>Collector</u>	<u>50 square feet</u>
<u>Commercial Local Access</u>	<u>50 square feet</u>

* - Maximum Portion of Allowable Sign Area or Maximum Total EMD sign size whichever is less

d. Electronic Message Displays (EMDs) must be equipped with an automatic image dimming capability (ambient light monitors). This feature must be enabled at all times, allowing the display to automatically adjust brightness based on ambient light conditions. The sign must be operated at a brightness level no greater than the manufacturer's recommended levels.

e. The following conditions apply to all EMD sign permits. Failure to comply shall result in the sign ceasing operation until compliance occurs.

i. that the sign shall at all times be operated in accordance with City codes and that the owner or operator shall provide proof of such conformance within 24-hours of a request by the City;

ii. that a city inspector may access the property upon 24-hours notice to the owner, operator or permittee so that the City may verify that the EMD has the automatic image dimming capability engaged. In the event of a citizen complaint regarding the EMD brightness, the owner, operator or permittee may be required by the city inspector to manually reduce the brightness to a lower setting;

iii. that whether the sign is programmed from the site or from a remote location, the computer interface that programs the sign and the sign's operation manual shall be available to City staff upon 24-hours notice to the owner, operator or permittee.

f. Sign permit applications to install an EMD must include a certification from the owner or operator that the sign shall at all times be operated in compliance with the conditions set out in City code. The Owner, Operator or Permittee shall immediately provide proof of such conformance upon request of the City.

(d) Historic District zone.

(1) Statement of special purpose. This special code acknowledges the unique visual concerns associated with the Billings Townsite Historic District as defined in section 6-1103, and recognizes the benefits of restoring the district's visual appearance of prosperity, cohesiveness, and historic integrity, while continuing to promote business advertising variety, individuality, and growth.

(2) Signs permitted in historic district. Within the Billings Townsite Historic District, signs are permitted as follows:

- a. Signs and sign lettering within the Billings Townsite Historic District shall be designed and installed to compliment the architectural style.
- b. No sign will be permitted to obscure or cover any significant architectural detail or decorative element of the existing building.

- c. Only signs that advertise an activity, business, product or service conducted or available on the premises on which the sign is located, shall be allowed within the Billings Townsite Historic District.
- d. No new roof signs shall be permitted.
- e. Excluding window signs, one additional sign type per business is allowed, except for business with entrances on more than one street, in which case one sign type per street entrance is allowed.
- f. No off-premise signs are permitted.
- g. The size of signs in the historic district is limited to fifty (50) percent of that allowed in this article.
- h. Once the copy of an existing sign is changed it must come into compliance with the special provisions of the historic sign district and the existing sign code.

Section 3. That Section 27-706 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 27-706. Special circumstance signs.

- (a) Service station or convenience (gasoline) store signs. Regardless of which zoning district a service station or convenience (gasoline) store is located within, such uses shall be permitted the following signs:

(1) One (1) free-standing sign indicating only the name and nature of the occupancy for each developed parcel not to exceed three (3) square feet of sign area for each lineal foot of street frontage abutting the developed portion of the parcel, provided that:

- a. Signs will be permitted as follows:

TABLE INSET:

<i>Frontage Feet</i>	<i>Signs</i>
0--600	1 free-standing sign
601--900	2 free-standing signs
901--1200	3 free-standing signs
Over 1200	3 free-standing signs plus, 1 additional sign for each 300 lineal

street frontage feet over 1200 frontage feet

- b. Where a developed parcel is permitted to have more than one (1) free-standing sign under this article, the distance between the free-standing signs on each parcel shall be not less than one hundred fifty (150) frontage feet;
- c. The sign must be located five (5) feet behind all property lines except:
 - (i) If the bottom of the structure is twelve (12) feet or higher above the establish grade, then the sign structure may be located up to one (1) foot behind the property line; or
 - (ii) If the sign is in the Central Business District, then the sign structure can be located up to the property line.
- d. No free-standing sign shall exceed the height of thirty (30) feet except free standing signs in the highway commercial zone which shall not exceed the height of fifty (50) feet. No signs shall exceed one hundred seventy-five (175) square feet in sign area. One (1) measured side of the display shall compose the square footage;
- e. No rotating free-standing sign shall rotate at a rate faster than six (6) revolutions per minute or have a minimum clearance lower than nine (9) feet between the bottom of the sign and the ground;
- f. When a developed parcel fronts on more than one (1) public right-of-way or street, excluding alleys and serviceways, the above provisions of subsection a. shall apply to each frontage.

(2) One (1) wall or one (1) canopy sign and four (4) architectural blade signs indicating only the name and nature of the occupancy for each occupancy within the developed parcel as follows:

- a. No sign shall exceed a total area of three (3) square feet of ~~copy~~ sign area for each lineal foot of building frontage of each occupancy except buildings over two (2) stories shall be allowed an additional one (1) square foot of copy for each lineal foot of building frontage of each occupancy;
- b. If such occupancy is on a corner, one (1) wall sign or one (1) canopy sign will be permitted for each frontage face;

- c. A permitted wall sign(s) can be transferred from one wall to another wall provided the number of signs remain within the permitted number of signs and within allowable sign area;
- d. No wall or canopy signs shall project into the public right-of-way, except:
 - (i) In the Central Business District, wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk; and
 - (ii) In the Central Business District, canopy signs may project up to two (2) feet to a vertical line from the curb face over the right-of-way.
- e. If the building includes a canopy, each tenant will be permitted one (1) under canopy sign. Any signs attached to the underside of a canopy shall be perpendicular to the wall face of building and shall not have a copy area greater than four (4) square feet or have a clearance lower than of eight (8) feet from the sidewalk.

(3) A maximum of four (4) wall signs may be located on or incorporated within the pump island canopy structure, whether attached or detached from the main structure/building. Such signs shall not project above the top of the canopy structure, shall not exceed a maximum area of twenty (20) square feet for each sign face, and each sign shall be limited in length to a maximum of fifty (50) percent of the long dimension of the canopy on which the sign is located. This section shall not prohibit the placement of trademark symbols on individual gasoline pumps.

(4) One (1) poster/price sign structure shall be permitted and shall not exceed four (4) feet in width and six (6) feet in height from the ground level. Such poster type signs shall be located at an approved site. Such signs may be used for price or special message advertising.

(5) Temporary signs shall be permitted pursuant to section 27-706(e).

(6) Electronic Message Display signs may be permitted pursuant to Section 27-705(c) 5.

(b) Off-premise/billboard signs.

(1) Purpose and intent: The purpose of this section is to regulate the impact of billboards on the community; to improve the appearance of I-90, Main Street, Highway 3, 27th Street and entryways; to enhance the urban design of the greater downtown area and the west end; to insure compatibility between billboards and adjacent land uses; and to

limit the impact that billboards have on sign clutter in the community. The city recognizes that billboards are a necessary and appropriate advertising medium, and that there are acceptable and viable locations for billboards within the community.

It is the intent of this subsection to address the following specific concerns regarding the impact of billboards upon the community:

- a. The citizens of Billings, and others visiting or traveling through the city are very concerned about the urban design and visual integrity of the city.
- b. Billboards may be often incongruous with the city's natural setting and features due to their large-scale figures, numbers, letters, and colors.
- c. A billboard may dominate the view from vehicles and interfere with the occupants' enjoyment of the city's natural setting and features.
- d. A high concentration of billboards may create traffic safety problems and distract attention away from public safety signs.
- e. Billboards of excessive size or height should be downsized within a reasonable period of time.
- f. Billboards are incompatible with residential uses.
- g. The I-90, Highway 3, Main Street, 27th Street, other entryways, and Shiloh Road are major entryways to the city which are of particular importance in terms of urban design and public perception to citizens, visitors, and tourists.
- h. The downtown area defined in the Downtown Framework Plan is an area in which urban design significantly influences the health and vitality of the total community.

(2) No off-premise/billboard sign shall be constructed or erected in any district after the date of the enactment of this subsection 27-706(b) [Ord. No. 99-5107, enacted Nov. 22, 1999]. For each non-conforming off-premise/billboard sign face removed a conforming off-premise/billboard sign face may be erected. Therefore, if a proposed conforming off-premise/billboard sign face will replace an existing non-conforming off-premise/billboard sign face within the city limits, then such proposed off-premise/billboard sign face shall comply with all of the applicable regulations contained herein. When all non-conforming off-premise/billboard signs within the city have been removed pursuant to this section, then additional off-premise/billboard signs may be constructed in accordance with the regulations contained herein.

(3) Location standards: All billboards shall be located in accordance with the following standards:

a. Zoning districts:

1. Billboards shall be permitted as an allowed use in Highway Commercial (HC), Controlled Industrial (CI), and Heavy Industrial (HI) zoning districts.

2. Billboards shall be permitted as an allowed use in Community Commercial (CC) zoning district provided that the structure is two hundred (200) feet or more from a residential zoning district.

3. A special review shall be required for all billboards to be located in a CC zone if the structure is less than two hundred (200) feet but greater than one hundred-fifty (150) feet from a residential zoning district.

4. Billboards shall be permitted in Central Business District (CBD) upon approval of a special review.

5. No new billboards shall be permitted on, directed to, or within two hundred (200) feet of the following corridors:

- i. 27th Street from I-90 to Airport Road (excluding 27th Street North from Montana Avenue to 6th Avenue North).
- ii. Highway 3 (Airport Road) from Alkali Creek Road west to the city limits.
- iii. Shiloh Road from I-90 to Rimrock Road.
- iv. Yellowstone River.
- v. Any historic district registered on the National Register of Historic Places.

b. Locations standards:

1. Billboards shall be set back 20 feet from the front property line.

2. No billboard shall be placed on the roof of any building or structure.

c. Spacing standards:

1. Billboards shall be required to have the following spacing requirements:

- i. Billboards located in CC shall have a minimum spacing of a 1,000-foot radius from any other off-premise structure.
- ii. Billboards located in HC shall have a minimum spacing of a 600-foot radius from any other off-premise structure.
- iii. Billboards located in CI and HI shall have a minimum spacing of six hundred (600) linear feet from any other off-premise structure.

2. No billboard shall be placed within one hundred fifty (150) feet of any residential zone.

(4) Area, height, face, and pole standards: All billboards shall conform to the following standards:

a. Sign area: New billboards faces and supporting framework shall not exceed the following sign areas:

- 1. New billboards shall be a maximum of two hundred fifty (250) square feet.
- 2. New billboards located within the Interstate Corridor shall not exceed four hundred eighty (480) square feet.

b. Height:

- 1. The maximum overall height shall be thirty-five (35) feet above the road grade to which the billboard reads.
- 2. The minimum distance between grade and the bottom of the billboard shall be fifteen (15) feet.

c. Faces:

- 1. There shall be no more than a total of two (2) faces per supporting structure.

2. All structures must be single face, back-to-back, or "v" type of construction.

d. Pole construction: All structures must be of single pole construction.

(5) Lighting: Lighting will not cause hazardous or unsafe driving conditions for motorists and will not glare, reflect, or spill onto adjacent business or residential areas.

(6) Maintenance and discontinuance:

a. Maintenance:

1. All sign supports, braces, guys and anchors, shall be kept in good repair. Faces of all signs shall be kept neatly painted or posted at all times. The city shall notify the sign owner or its agent, in writing, of any sign that is not in proper state of repair. If corrective action is not taken within (30) days of written notice, the city official may order the removal of the sign.

2. Off-premise/billboards signs that are damaged or destroyed by more than fifty (50) percent of the value of the sign structure shall not be reconstructed and shall be removed.

3. All areas around the sign structure shall be kept litter and weed free.

b. Discontinuance: The city may order the removal of any billboard, without compensation, upon which the advertising or other message has been discontinued for more than sixty (60) days continuous days. The owner shall either advertise upon or remove said billboard within thirty (30) days of written notification by the city.

(7) Special review requirements for off-premise/billboard signs in CC and CBD. The following criteria will be used in reviewing the proposed structure:

- a. That the location and placement of the sign will not endanger motorists or pedestrians and does not interfere with the clear vision triangle at street, railroad, or street driveway intersections.
- b. That the signs in the CBD will not cover or blanket any prominent view of a structure or facade of historical or architectural significance.
- c. That the sign will not obstruct views of users of adjacent buildings to side yards. This requirement does not include views of distant vistas.

- d. That the sign cannot be seen from churches, schools, the Yellowstone River or any city, county, or state park or if it can be seen it must be located at two hundred fifty (250) feet from the boundaries of such places.
- e. That the height of signs located in undeveloped areas (no buildings within 300-foot radius) shall not exceed twenty-six (26) feet above grade. The minimum clearance of a sign shall never be less than fifteen (15) feet.
- f. That the sign's lighting will not cause hazardous or unsafe driving conditions for motorists and will not glare, reflect, or spill onto adjacent business or residential areas.

8) Off-premise/Billboard Electronic Displays may be allowed on any off-premise/billboard sign face provided it conforms to all of the standards and requirements of the City Sign Code including the limitation on replacement of nonconforming off-premise billboard signs in Section 27-706(b)(2) and the maintenance and repair of nonconforming off-premise/billboard signs in Section 27-706(b)(6). An Off-premise/Billboard Electronic Display may be used as the only sign area on an off-premise/billboard sign face. An Off-premise/Billboard Electronic Display shall not change from one still image to another still image more than once every six (6) seconds. An Off-premise/Billboard Electronic Display shall not include any other visual effects including but not limited to animation, motion pictures, video, holograms, moving parts or the illusion of movement and shall not include any audible sound.

(c) Shopping center or mall signs.

(1) One (1) free-standing sign indicating only the name and nature of the occupancy for each developed parcel not to exceed three (3) square feet of sign area for each lineal foot of street frontage abutting the developed portion of the parcel, provided that:

- a. Signs will be permitted as follows:

TABLE INSET:

<i>Frontage Feet</i>	<i>Signs</i>
0-- 600	1 free-standing sign
601-- 900	2 free-standing signs
901--1200	3 free-standing signs
Over 1200	3 free-standing signs plus, 1 additional sign for each 300 lineal street frontage feet over 1200 frontage feet

- b. Where a developed parcel is permitted to have more than one (1) free-standing sign under this article, the distance between the free-standing signs on each parcel shall be not less than one hundred fifty (150) frontage feet;
- c. The sign must be located five (5) feet behind all property lines except:
 - (i) If the bottom of the structure is twelve (12) feet or higher above the establish grade, then the sign structure may be located up to one (1) foot behind the property line; or
 - (ii) If the sign is in the Central Business District, then the sign structure can be located up to the property line.
- d. No free-standing sign shall exceed the height of thirty (30) feet except freestanding signs in the highway commercial zone which shall not exceed the height of fifty (50) feet. No signs shall exceed four hundred (400) square feet in sign area. One (1) measured side of the display shall compose the square footage;
- e. If a free-standing sign projects over a private vehicular driveway or parking lot aisle, the minimum clearance between the bottom of the sign and the ground shall be seventeen (17) feet;
- f. No rotating free-standing sign shall rotate at a rate faster than six (6) revolutions per minute or have a minimum clearance lower than nine (9) feet between the bottom of the sign and the ground;
- g. When a developed parcel fronts on more than one (1) public right-of-way or street, excluding alleys and serviceways, the above provisions of subsection (c) shall apply to each frontage.

(2) One (1) wall or one (1) canopy sign and four (4) architectural blade signs indicating only the name and nature of the occupancy for each occupancy within the developed parcel as follows:

- a. No sign shall exceed a total area of three (3) square feet of copy for each lineal foot of building frontage of each occupancy except buildings over two (2) stories shall be allowed an additional one (1) square foot of copy for each lineal foot of building frontage of each occupancy;
- b. If such occupancy is on a corner, one (1) wall sign or one (1) canopy sign will be permitted for each frontage face;

- c. A permitted wall sign(s) can be transferred from one wall to another wall provided the number of signs remain within the permitted number of signs and within allowable sign area;
- d. No wall or canopy signs shall project into the public right-of-way, except:
 - (i) In the Central Business District, wall signs may project eighteen (18) inches over the right-of-way, subject to a minimum height limit of nine (9) feet from the sidewalk; and
 - (ii) In the Central Business District, canopy signs may project up to two (2) feet to a vertical line from the curb face over the right-of-way.
- e. If the building includes a canopy, each tenant will be permitted one (1) under canopy sign. Any signs attached to the underside of a canopy shall be perpendicular to the wall face of building and shall not have a copy area greater than four (4) square feet or have a clearance lower than eight (8) feet from the sidewalk.

(3) Interior mall signs shall be regulated by the mall association or owner.

(4) Electronic Message Display signs may be permitted pursuant to Section 27-705(c) 5. A shopping center that has frontage on more than one (1) public right-of-way may have one (1) Electronic Message Display (EMD) free standing sign on each public right-of-way frontage.

(d) Medical corridor and South 27th Street corridor signs.

(1) Statement of special purpose.

- a. Medical corridor. The Billings Medical Corridor Permit Zoning District as set forth in article 27-900 (the "medical corridor") is a unique, distinct and separately identifiable area of the city. Over time, a majority of the medical corridor has developed a campus environment that is separate and distinct from the surrounding area. The large scale buildings, the complexities of the medical campuses, the needs and abilities of those seeking medical and emergency services, and the diversification of services offered within the medical corridor create a need for flexibility in establishing clear way-finding and informational signage. Accordingly, this special medical corridor sign code is adopted to facilitate, enhance, encourage and promote the following purposes:

1. To facilitate and foster complementary uses servicing the healthcare community, including hospitals, clinics, medical office buildings, laboratories, and related or supporting uses;
2. To promote a unique, attractive and distinctive healthcare campus environment with limited retail uses;
3. To encourage creativity and continuity in design, quality, and the character of new signage;
4. To anticipate and recognize the needs of patients and visitors in the medical corridor;
5. To safeguard and enhance property values, and to protect public and private investment in the medical corridor;
6. To promote those qualities in the visual environment which bring economic value to the community;
7. To encourage the design of signs that are in harmony with the principal activities and structures that they serve and that are compatible with the overall healthcare campus environment;
8. To alleviate the burdens of complex compliance and enforcement responsibilities; and
9. To promote the public safety, welfare, convenience and enjoyment of travel and the free flow of traffic within the medical corridor.

The medical corridor is primarily occupied by regional healthcare providers that draw patients and visitors from a multi-state region. The medical corridor sign code recognizes that patients and visitors to the medical corridor need to be able to easily and conveniently locate, identify, and find their way to hospitals, medical groups, clinics, medical departments, laboratories, physicians, and other healthcare points of interest. The primary purpose of the medical corridor is healthcare, with very limited retail uses. Accordingly, the medical corridor sign code recognizes that the primary purpose of signs in the medical corridor is not for retail purposes, yet retains historical restrictions for retail establishments within the medical corridor.

The caliber of the development of the medical campuses within the medical corridor over time has demonstrated a commitment to maintaining architecturally sound and aesthetically pleasing signage, as well as uniform appearance of signage within parcels under common ownership. Healthcare and healthcare providers are constantly evolving and changing. One of the express purposes of the medical corridor sign code is to provide

healthcare providers with flexibility with respect to both way-finding and informational signage.

- b. South 27th Street corridor. This section acknowledges the architectural visual concerns associated with the South 27th Street corridor zoning district as set forth in article 27-800. This section further recognizes the needs and benefits of limited sign standards that will adequately serve the uses in this zoning district and those who utilize their services, and at the same time, recognizes the need to protect the remaining residential areas within, adjacent and surrounding these zoning districts from the intrusion of unsightly, excessive and confusing sign usage.

(2) Healthcare purposes sign definition. As used within this section, the term healthcare purposes sign shall mean any sign located in the medical corridor (excluding prohibited signs) that:

- a. Identifies a hospital, clinic, medical building, healthcare facility, emergency room, trauma center, healthcare provider or ancillary healthcare service (as defined herein below), and/or associated parking areas located in the medical corridor; or
- b. Provides direction to a hospital, clinic, medical building, healthcare facility, emergency room, trauma center, healthcare provider or ancillary healthcare service, and/or associated parking areas located in the medical corridor.

For the purposes of this definition, the phrase "ancillary healthcare service" shall not include restaurants, hotels, motels, churches, and gas stations.

(3) Except as provided in subsection (4), within the medical corridor and the South 27th Street corridor, signs are permitted per developed parcel as follows:

- a. Two (2) monument type signs, provided the two (2) monument signs are located on separate public street frontages and located at least one hundred (100) lineal frontage feet apart, measured along property line, as follows:
 - 1. One (1) main identification free-standing sign not exceeding forty (40) square feet in sign area nor be over twelve (12) feet in height;
 - 2. One (1) secondary identification free-standing sign not exceeding thirty-two (32) square feet in sign area nor be over eight (8) feet in height.

- b. One (1) identification wall sign placed flat against a building or designed as part of an architectural feature for each public street frontage for each developed parcel not to exceed fifty (50) square feet in sign area.
- c. Free-standing directory signs shall not exceed eight (8) square feet in sign area nor be over five (5) feet in height. Wall directory signs shall not exceed eight (8) square feet in sign area.

(4) Healthcare purposes signs permitted.

- a. Except for those signs specifically prohibited by subsection (5), all healthcare purposes signs shall be permitted in all portions of the medical corridor except for the area west of North 30th Street.
- b. Emergency room and trauma center signs. All emergency room and trauma center signs shall be permitted in the medical corridor as healthcare purposes signs.

(5) Prohibited signs and lighting. The following signs and lighting shall be prohibited in the medical corridor:

- a. Strobe lights;
- b. Searchlights;
- c. Balloon signs;
- d. Portable signs;
- e. Flashing neon signs;
- f. Third party signs;
- g. Billboards;
- h. Flashing incandescent lamps;
- i. Vehicles used as signs (provided that this provision shall not be construed as prohibiting the identification of a healthcare services entity or provider);
- j. Signs projecting into rights-of-way;

- k. Window signs;
- l. Signs exceeding twenty (20) feet in height;
- m. Signs exceeding one hundred seventy-five (175) square feet of area;
- n. Signs which by coloring, shape, wording or location resemble or conflict with traffic control signs or devices;
- o. Signs that create a safety hazard for pedestrian or vehicular traffic;
- p. Signs attached to or placed on a motor vehicle or trailer parked on public or private property, provided that this provision shall not be construed as prohibiting the identification of a firm or its product on a vehicle operating during the normal course of business;
- q. Any electronic reader board sign or animated sign that is otherwise prohibited by the city sign code.
- r. Wall signs which, individually or collectively, cover more than twenty-five (25) percent of the surface area of any wall. The surface area of a wall shall be determined by measuring the building height and multiplying it by the length of the wall, without deduction for doors and windows.

(6) Electronic Message Display signs may be permitted pursuant to Section 27-705(c) 5.

(e) Church, school and other institutional use signs. Regardless of which zoning district a church, school or other institutional use, including fraternal organizations, are located within, such uses shall be permitted the following signs:

(1) One (1) free-standing monument announcement sign or bulletin board not to exceed five (5) feet in height, or eight (8) feet in length, inclusive of supporting structure; and

(2) Two (2) wall signs placed flat against a building or designed as a part of an architectural feature not to exceed thirty-two (32) square feet per sign. Additional signs may be authorized by special review of the city council.

(3) Electronic Message Displays may be allowed provided they do not flash, scintillate, blink, show motion borders or traveling lights or display video. One (1) Electronic Message Display (EMD) as part of a free-standing monument sign or a wall sign may be permitted provided the EMD does not exceed 50% of the sign area for a

free-standing sign or 10 square feet for a wall sign. An EMD may only be used in conjunction with an immediately adjacent wall sign or as part of a free standing sign and shall not be displayed on its own. An EMD wall sign must be placed near the primary public entrance. The maximum height of an EMD wall sign shall be 12 feet from the building wall grade. EMD wall signs shall not be placed less than two feet from the top of the wall it is installed on.

Section 4. That Section 27-708 of the Billings, Montana City Code be amended so that such section shall read as follows:

SEC. 27-708. Prohibited Signs and Sign Structures.

The following types of signs and sign structures are expressly prohibited in all districts, except as otherwise provided by this article.

- (1) *Animated and intensely lighted signs:* No signs shall be permitted which are animated by means of flashing, scintillating, blinking, ~~or~~ traveling lights or displaying video or any other means not providing constant illumination (unless specifically permitted in special sign districts). ~~Public service information signs and other electronic message centers classified as "changing signs" are permitted. Electronic Message Displays may be allowed provided they do not flash, scintillate, blink, show motion borders or traveling lights or display video.~~
- (2) *Abandoned signs:* Such business signs that advertise an activity, business, product or service no longer conducted or available on the premises on which the sign is located.
- (3) *Parking of advertising vehicles prohibited:* No person shall park any vehicle or trailer on a public right-of-way or public property or on private property so that it is visible from the public right-of-way and which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same or nearby property or any other premises. This section is not intended to prohibit any form of vehicular signage such as a sign attached to a bus or lettered on a motor vehicle, or company vehicle signs.
- (4) *Swinging signs:* Signs installed on an arm or spar, that is not, in addition, permanently fastened to an adjacent wall or upright pole. See section 27-709(i).
- (5) *Unclassified signs:* The following signs are also prohibited, which:
 - a. Bear or contain statements, words or pictures of an obscene, pornographic, immoral character, or which contain advertising matter which is untruthful;

- b. Are painted on or attached to any fence or any wall which is not structurally a part of a building, except to identify a residence or residence structure by means of posting the name of the occupant or structure, and the street address;
- c. Operate or employ ~~any stereopticon or motion picture projection or media in conjunction with any advertisements, or have~~ visible moving parts or any portion of which moves, or give the illusion of motion except as permitted in this article;
- d. Emit audible sound, odor or visible matter; or
- e. Signs which, by reason of their size, location, movement, content, coloring or manner of illumination, may be confused with or construed as a traffic control sign, signal or device, or the light of an emergency or road equipment vehicle, or which hide from view any traffic or street sign or signal or device.

Section 5. COMPLIANCE FOR EXISTING ELECTRONIC MESSAGE DISPLAY SIGNS. Electronic Message Display Signs shall comply with the limitations and prohibitions in this ordinance that affect the operation and manner of display except for the prohibition of video on existing Electronic Message Display Signs. All other prohibitions and requirements in Sections 27-705(c)5.a.iv; 27-705(c)5.d and 27-708(1) shall apply. All existing Electronic Message Display Signs will comply with these specific sections on the effective date. All other adopted revisions may make existing Electronic Message Display Signs a legal nonconforming sign as specified in Section 27-711 of the City Sign Code.

Section 6. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 7. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 8. 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 9th day of October, 2007

PASSED, ADOPTED and APPROVED on second reading this 22nd day of October, 2007.

CITY OF BILLINGS

By _____
Ron Tussing, Mayor

ATTEST:

By _____

Cari Martin, City Clerk
Zone Change #821 – Electronic Signs, Section 27-700, City Sign Code

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

TITLE: Final Plat of High Sierra Subdivision, 2nd Filing, Amended Lot 1, Block 3

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of High Sierra Subdivision, 2nd Filing, Amended Lot 1, Block 3 is being presented to the City Council for approval. On January 8, 2006, the City Council conditionally approved the 5-lot preliminary minor plat on 21 acres of land located at the southeast corner of Wicks Lane and Sierra Granda Blvd. in the Heights. The subject property is zoned Residential-9600 (R-96) and previously received special review approval for a church and a senior retirement complex. The owner and subdivider is Atonement Lutheran Church and the representing agents are Engineering, Inc., and David Trost. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of High Sierra Subdivision, 2nd Filing, Amended Lot 1, Block 3

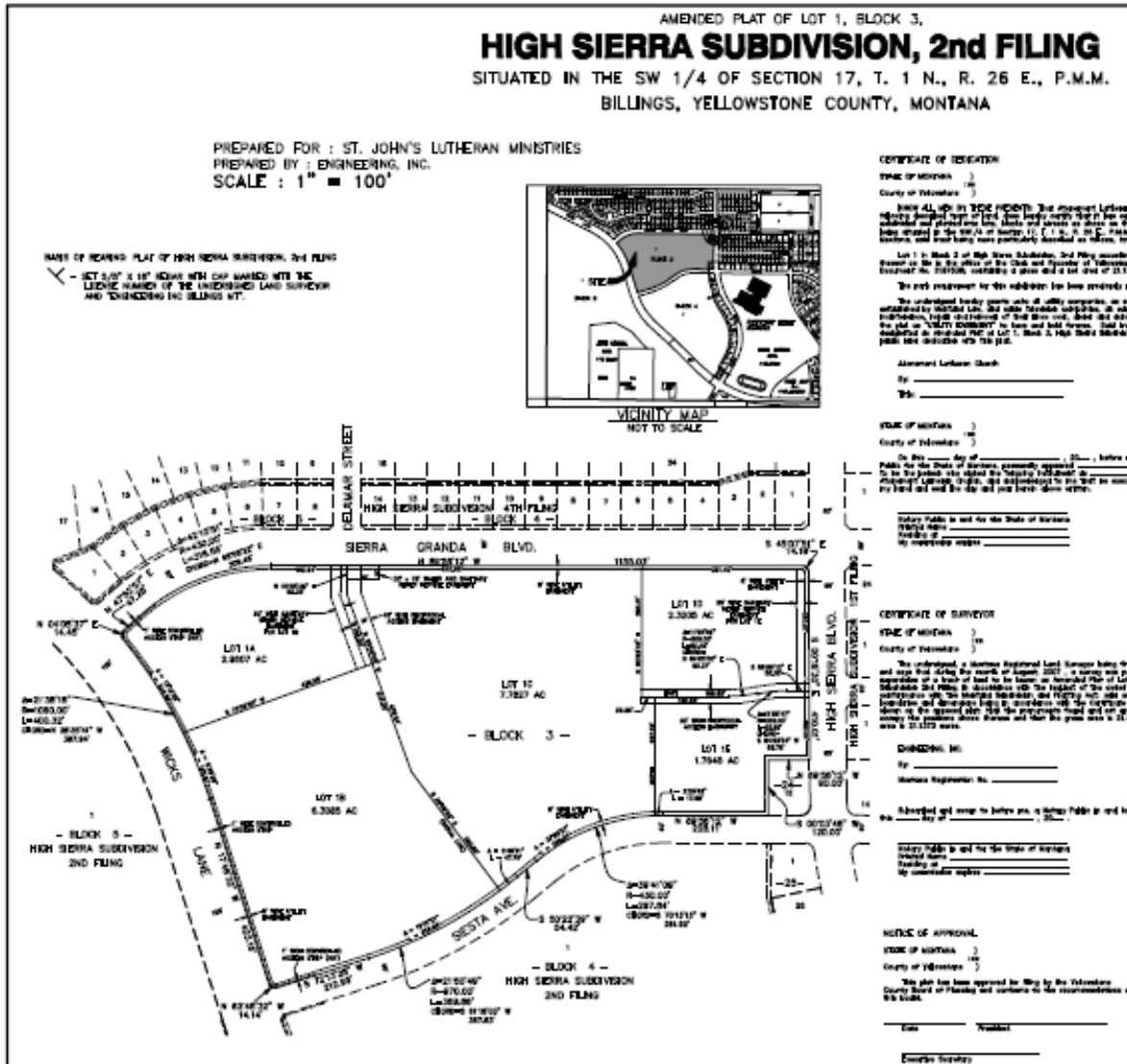
Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Final Plat

ATTACHMENT A

Final Plat



(Back to Consent Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,339,208.84 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 21, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, October 22, 2007

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

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,041,241.74 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 28, 2007, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

SUBJECT: Payment of Claims
DEPARTMENT: Municipal Court
PRESENTED BY: Julie R. Green, Acting Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$178,174.56 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 1, 2007, to September 30, 2007, is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues, and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve the Payment of Claims.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

TITLE: Cherry Creek Estates Manufactured Home Park, Phase I Compliance Report and Recommendation for Phase II

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of Cherry Creek Estates Subdivision was approved by the City Council in April of 2003. It contains 5 lots (see Attachment A) and is located east of Bitterroot Drive, and south of Wicks Lane in the Heights. Lots 1, 2, and 5 were subsequently redeveloped for single-family residential lots, while Lots 3 and 4 were Master Planned as a manufactured home park known as Cherry Creek Estates Manufactured Home Development. The manufactured home park was planned in two phases, and specific requirements were placed on its development through a Development Agreement signed by the developers, Roy and Jock Clause, and the City of Billings (see Attachment A). The Development Agreement stipulated that in order for Phase II of the manufactured home park to be developed, a review of Phase I would need to be done to ensure its compliance with the provisions of the agreement. The developers have now requested this review of Phase I, so that they may move forward with development of Phase II.

ALTERNATIVES ANALYZED: In accordance with the provisions of the recorded Development Agreement, when Phase I is developed in compliance with the Development Agreement, the City Council shall give approval to the 174 proposed units of Phase II. If compliance criteria are not followed in Phase I, the City Council may restrict the total number of the units in the development to no less than 300 units (which equates to no less than 111 units in Phase II). At this time, the City Council shall determine whether Phase I has been developed in compliance and may allow development of Phase II accordingly.

FINANCIAL IMPACT: Should the City Council approve the full development of Phase II of Cherry Creek Manufactured Home Park, the subject property will further develop, and may result in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council consider the provided information regarding compliance in Phase I, and conditionally approve the development of Phase II of Cherry Creek Manufactured Home Park.

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

ATTACHMENTS

- A: Development Agreement
- B: Memo from Terry Smith, PE, PTOE, City Traffic Engineer regarding Traffic
 Accessibility Study Update

INTRODUCTION

Cherry Creek Estates Subdivision is a 5 lot subdivision that was approved by the City Council in April of 2003. Lots 1, 2, and 5 were planned for subsequent redevelopment for single-family residential lots, while Lots 3 and 4 were master planned as a manufactured home park known as Cherry Creek Estates Manufactured Home Development. The manufactured home park was planned in two phases; Phase 1 has 189 home sites and Phase II could have up to 174 additional home sites. Specific requirements were placed on the manufactured home park development through a Development Agreement signed by the developers, Roy and Jock Clause, and the City of Billings (see Attachment A). The Development Agreement stipulated that prior to the initiation of Phase II development, a review of Phase I would need to be done to ensure its compliance with the provisions of the agreement.

PROCEDURAL HISTORY

- June 5, 2003, Development Agreement for Cherry Creek Manufactured Home Park recorded with Clerk and Recorder.
- February 1, 2007, request from Cherry Creek Development to review Phase I for compliance received.
- February 15, 2007, City staff met to discuss Phase I compliance.
- May 21, 2007, developer submitted updated TAS and other information for review.
- The City Council will consider the Phase I compliance and initiation of Phase II on October 22, 2007.

BACKGROUND

In 2003 when the Cherry Creek Estates Subdivision and manufactured home park were approved, there was a good bit of neighborhood concern over how the new development might impact the existing neighborhood. Various measures were required by Council to mitigate possible impacts, including fencing, landscaping, permitting, and also the establishment of development and improvement standards. These requirements were outlined in the Subdivision Improvements Agreement for the subdivision plat, as well as a Development Agreement for the manufactured home park. In order to ensure compliance with these agreements, the City Council withheld final approval of the second phase of the manufactured home park development until after a compliance review of Phase I was completed. The developers have requested the review of Phase I, and City staff has completed it. Staff recommends Council take action at this time.

Section VII.6. of the Development Agreement states that the criteria for the Phase I compliance review are as follows:

A: Whether or not the developer has complied with the provisions of plat approval and with the provisions of this Development Agreement in terms of required site review, building permit review, the installation, maintenance and/or financial guarantee of landscaping and the installation of and/or financial guarantee of any infrastructure or improvements required under the recorded SIA and Traffic Accessibility Study (TAS).

B: Whether or not the actual traffic generation is not more than ten percent greater than estimated by the TAS.

In regard to Subsection A., City staff met to discuss the Phase I required improvements and permitting on February 15, 2007 and reported the following:

City Engineering: Street improvements for Phase I have been successfully completed with curb, gutter, sidewalk, street lighting, and the appropriate street widths. Storm water management was brought into question, due to some off-site flooding attributed to this development. Staff follow-up and site investigations with the developer have resulted in a dike being constructed to ensure that no storm water flows off site at the area of concern. Staff is satisfied with the solution.

City Public Works—Collection & Distribution: Required sanitary sewer lines for Phase I have been satisfactorily completed.

Heights Water District: Required water line improvements for Phase I have been satisfactorily completed.

City Fire: The required hydrants, emergency access, and necessary apparatus turnarounds have been satisfactorily completed for Phase I.

City Police: Though no improvements were necessary in regard to police service, the police department reported that they have not received many calls to the neighborhood.

Building Division: Permitting is required for electrical services, and any accessory buildings. The division reports that the permitting process has gone relatively smoothly.

Planning Division: Permitting is required for home placement on each site and setbacks for accessory structures. The developer has facilitated the permitting process for new home owners, and their system seems to be effective at enforcing the required home placement setbacks required by the development agreement. Landscaping requirements for Phase I included the installation of one deciduous tree per manufactured home site to reduce the amount of radiant heat from the streets. Additionally, a 6-foot high solid sight-obscuring fence was to be constructed around the exterior boundaries of Lots 3 and 4, and both easements running through Lot 2 to their intersections with Bitterroot Drive. Upon inspection in late February, there were a number of home sites that did not have the required deciduous tree. Additionally in anticipation for the necessary construction movement for Phase II, the fence around Lot 4 was not completed. Since that time, the developers have provided a letter of credit from Stockman Bank for the fence, and a subsequent site inspection verified that they have installed **most** of the required trees. However, home sites that remain vacant were found to not have the required trees, and some of the trees on the other sites were dead.

Code Enforcement Division: As of February, there were 32 violations on sites within the manufactured home park. Most of these violations are for junk vehicles (unlicensed, inoperable) parked on site. The park owners were notified of the violations as well as the individuals who owned the vehicles in violation. Many of these original cases have been resolved, however, new violations were found upon re-inspection of the property. There are currently 4 open cases and

19 new cases pending (notification is pending) in the manufactured home park of inoperable, unlicensed vehicles stored on the premise.

In regard to Subsection B., an updated Traffic Accessibility Study (TAS) was prepared by HKM, Engineering, and submitted for review on May 21, 2007. The City Traffic Engineer has reviewed the update and provided a report on it (see Attachment B). In general, the Traffic Engineer states that the measured and reported PM peak hour trip generation rates provided in the updated TAS are the best available information for predicting the future trip generation for the next phase of the Cherry Creek development. The study found an actual PM peak hour trip generation rate of .71 trip ends per dwelling unit. With full build out of the mobile home portion of the development at 363 units (per the approved development agreement) it is expected a total of 258 trip ends (0.71×363) would result. The 2002 TAS that the final plat and SIA were based on, predicted a total of 203 trip ends for the mobile home portion of the development. This is a 27% increase in predicted PM peak hour trip generation. In his professional opinion, the City Traffic Engineer states “based on the level of service predictions in the original TAS, I would not expect adverse impacts from the additional 55 PM peak hour trips at any locations other than those identified in the original TAS as requiring mitigation.” The mitigation measures identified in the original TAS were pro-rata financial contributions for a traffic signal at Hilltop and Bench, and a left-hand turn bay at Yellowstone River Road and Hawthorne Lane.

The approved development agreement establishes “traffic generation . . . not more than **ten percent** greater than estimated by the TAS” (emphasis added) as one of the criteria for review prior to Phase II development. Because the predicted PM peak hour trip generation rate exceeds the originally predicted rate by more than 10%, the City Traffic Engineer recommends one of two courses of action:

- A. Recalculate the off-site cash contributions associated with the development of Lots 3 & 4 based on the higher trip generation rate using the same methodology as used at the time of the original subdivision approval.
- B. Per section VII. 5. of the approved Development Agreement, cap the mobile home portion of the subdivision (lots 3 & 4) at 300 units.

One potential side effect of capping development at 300 units would be the significant disparity in density between Lots 3 and 4. It is assumed that Lot 3 is laid out to accommodate the 189 units originally anticipated (at the time of the HKM study, 140 units were already occupied). This would allow only 111 units to be developed on Lot 4.

ALTERNATIVES ANALYSIS

In accordance with the provisions of the recorded Development Agreement, when Phase I is developed in compliance with the agreement, the City Council will give approval to the 174 proposed units of Phase II. If compliance criteria are not followed in Phase I, the City Council may restrict the total number of the units in the development to no less than 300 units (which equates to no less than 111 units in Phase II). At this time, the City Council shall determine whether Phase I has been developed in compliance and allow development of Phase II accordingly.

City staff has for the most part been satisfied with the Phase I development. There are a few outstanding issues that staff feels can be mitigated with conditions, so that the developers may move forward with Phase II development in its entirety. Staff recommends that the conditions are met prior to issuance of any building or home placement permits through the City Building and Planning Divisions.

Recommended Conditions of Approval are:

1. All required sewer, water, storm water, street, sidewalk, park, landscaping, and fencing improvements, and any other improvements stipulated in the recorded SIA for Phase II shall be installed or financially guaranteed prior to issuance of any home placement or building permits for Phase II.
2. Open Code Enforcement cases shall be resolved prior to issuance of any home placement or building permits for Phase II.
3. Missing street trees for Phase I shall be installed and any required street trees that are dead shall be replaced prior to issuance of any home placement or building permits for Phase II.
4. An updated cost estimate for off-site intersection contributions for both Phase I and II shall be submitted by the developer, and reviewed and approved by City Engineering based on the updated TAS provided on May 21, 2007. The outstanding contribution amounts shall be made to the City prior to issuance of any home placement or building permits for Phase II.

RECOMMENDATION

Staff recommends that the City Council consider the provided information regarding compliance in Phase I, and conditionally approve the development of Phase II of Cherry Creek Manufactured Home Park.

ATTACHMENTS

- A: Development Agreement
- B: Memo from Terry Smith, PE, PTOE, City Traffic Engineer regarding Traffic Accessibility Study Update

ATTACHMENT A

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



3233908
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06/05/2003 01:41P

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of May, 2003, by and between the City of Billings, a municipal corporation of the State of Montana, hereinafter called "City", and Cherry Creek Development, hereinafter collectively called "Developer".

WITNESSETH

WHEREAS, City has an interest in providing for the appropriate adequate and safe locations for the placement of manufactured homes within the city; and

WHEREAS, the real property owned by the Developer would like to provide a site suitable for the placement of manufactured homes; and

WHEREAS, the City does not require a building permit for placement of manufactured homes; however a manufactured home permit is required for the placement of manufactured home and the Planning Department shall perform this review at no charge, for so long as charges are not assessed against any other person or entity for such review; and

WHEREAS, the City-County Planning Department is willing to perform the review for placement manufactured homes and all accessory structures on Lots 3 and 4 of Cherry Creek Subdivision to be consistent with the terms, conditions, and provisions contained herein; and

WHEREAS, this Agreement contains and incorporates the total and entire agreement and understanding between the parties hereto.

NOW, THEREFORE, in consideration of the mutual agreement herein contained, the parties agree as follows:

I.

The above recitals are incorporated into the Agreement as set forth in full.

The Developer has received preliminary plat approval for Cherry Creek Estates Subdivision and Cherry Creek Estates Manufactured Home Development, herein described on Exhibit A.

The Developer agrees to submit site plans of each manufactured home site prior to the installation of any manufactured home or the construction of any accessory structure that is to be placed on the site, whether or not a building permit is required. Such site plan shall show the site size and dimensions, structure size and dimensions, accessory structure location, size, and dimensions, separation between all homes and the subdivision boundaries, and all other information that may be required by the City-County Planning Department or Building Division (if a building permit is required). Developer has agreed that the only zoning setback pertaining

to Lots 3 and 4 is a twenty foot (20') setback on the outline perimeter of the said lots (this setback does not apply to the common boundary between Lots 3 and 4). There is no individual setback between spaces. This will be dealt with on the separation of units.

There will be a sixteen foot (16') separation between manufactured homes. *This 16' separation does not apply to the separation between attached or detached accessory structures and the manufactured home on the next space.*

There will be a fifteen-foot (15') separation between attached structures, such as carports, awnings, decks and stairs, and the manufactured home on the next space. *Definition of Attached: Any structure that is closer than 6 feet to the manufactured home.*

There will be at least a six-foot (6') separation between detached structures and the manufactured home on the next space. *Definition of Detached: Any structure that is more than six feet away from the manufactured home.*

II.

The City expressly reserves the right to perform onsite inspections prior to or after the issuance of site plan approval to ensure compliance with the City of Billings Zoning and Fire Regulations.

III.

This agreement shall remain in effect until such time as determined obsolete by changes in zoning regulations or by the Billings City Council.

IV.

The Planning Department at this time does not charge for the review of manufactured home permits and shall not charge for either the review or the issuance of the manufactured home permits as long as other persons or entities are not charged for such permits or review. The review fees for any required building permit required by law, if any, are subject to adjustment in accordance with Billings City Code Section at the time such building permit is issued.

V.

The parties hereto agree that a copy of this Agreement shall be recorded in the office of the County Recorder of Yellowstone County, Montana, to give notice to all persons purchasing or acquiring or dealing with the property in the Cherry Creek Manufactured Home Park, of the terms and provisions hereof and all title companies doing business in the Billings area shall reflect this Agreement as a matter of record on all title reports affecting property in the reimbursement area.

VI.

If this agreement is not executed prior to final plat approval, the preliminary plat approval shall become invalid.

VII.

The Developer acknowledges that as a condition of plat approval that;

1. Phase I on Lot 3 of the development will be limited to 189 units.
2. Phase II on Lot 4 of the development will be limited to 174 units.
3. The City Council will review Phase II prior to development.
4. When Phase I is developed in compliance with this Development Agreement the City Council will give approval to the 174 units of Phase II.
5. If compliance criteria are not followed in Phase I, the City Council may restrict the total number of the units in the development to no less than 300 units.
6. The criteria for review are as follows;

A: Whether or not the Developer has complied with the provision of plat approval and with the provisions of this Development Agreement in terms of required site review, building permit review, the installation, maintenance and /or financial guarantee of landscaping and the installation and /or financial guarantee of any infrastructure or improvements required under the recorded SIA and Traffic Accessibility Study (TAS).

B: Whether or not the actual traffic generation is not more than ten percent greater than estimated by the TAS.

VIII.

The Developer agrees to install one deciduous street tree per manufactured home site to reduce the amount of radiant heat from the streets.

The Developer will construct a fence around the exterior boundaries of Lots 3 and 4 and both access easements running through Lot 2 to their intersections with Bitterroot Drive, along the boundaries marked in red on the attached Exhibit B. This fence shall be six (6) feet in height and shall be constructed as a solid sight-obstructing fence, which will constitute a visual barrier between the subdivision and surrounding properties.

VIII.

This Development Agreement, its covenants and conditions, which together with the Annexation Agreement and Subdivision Improvements Agreement shall control the development of Cherry Creek Manufactured Home Park and the regulation of Cherry Creek Manufactured Home Park shall extend to and be binding upon the City, the Developer, their successors and



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assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

CITY:



CITY OF BILLINGS, a Montana
Municipal Corporation

By:

Charles F. Tooley
CHARLES F. TOOLEY, Mayor

ATTEST:

By:

Marita Herold
MARITA HEROLD, City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this 2th day of May, 2003 before me a Notary Public for the State of Montana, personally appeared **CHARLES F. TOOLEY** and **MARITA HEROLD**, known to me to be the Mayor and City Clerk, respectively, of the City of **Billings, Montana**, and acknowledged to me that they executed the foregoing instrument.

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



CHERRY CREEK:

Jock Clause
Jock Clause

Susan A. Shuhler (Signature)
Susan A. Shuhler (Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: 3/28/2005

Roy Clause
Roy Clause



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

On this 29 day of May, 2003 before me a Notary Public for the State of Montana, personally appeared **JOCK CLAUSE** and **ROY CLAUSE**, and acknowledged to me that they executed the foregoing instrument on behalf of **Cherry Creek Development**.

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



Lisa A. Spence (Signature)

Lisa A. Spence (Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: 11/05/2006



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PLAT OF
CHERRY CREEK ESTATES SUBDIVISION
BEING A PORTION OF TRACT 2-B, AM. TRACT 2, CERTIFICATE OF SURVEY No. 3011 AND
A PORTION OF TRACT 3, CERTIFICATE OF SURVEY No. 3011
SITUATED IN THE NW1/4 AND THE SW1/4 OF SECTION 24, T. 1 N., R. 26 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : CHERRY CREEK DEVELOPMENT, INC.
PREPARED BY : ENGINEERING, INC.

DECEMBER, 2002
BILLINGS, MONTANA

SCALE : 1" = 200'

200 100 0 100 200

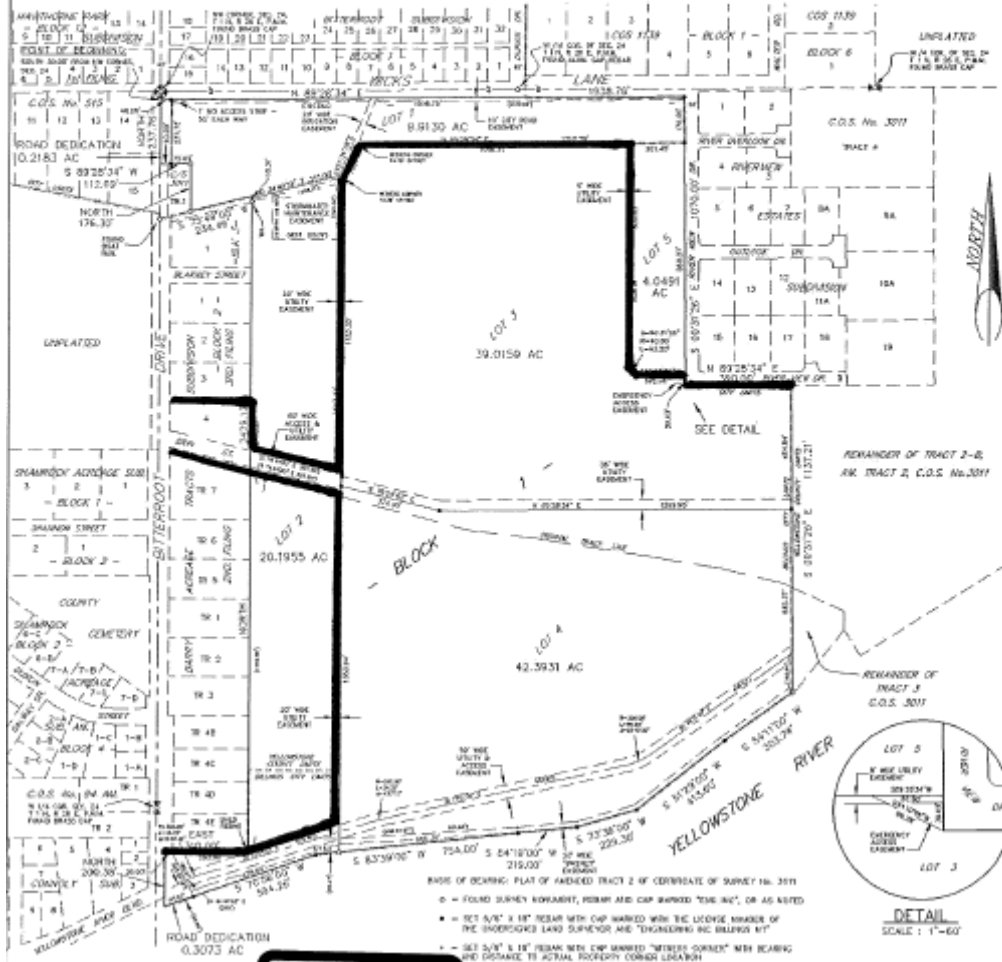
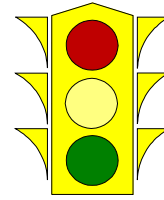


EXHIBIT
B

ATTACHMENT B

interoffice

MEMORANDUM



to: Juliet Spalding, Planner II

from: H. Terry Smith, P.E., PTOE, City Traffic Engineer

re: TAS Compliance Review—Cherry Creek Estates

date: October 11, 2007

I have reviewed the report prepared by HKM Engineering concerning trip generation characteristics for the completed portion of the Cherry Creek Estates manufactured home development. Unfortunately this report was written around a comparison to the 1999 Traffic Study that was performed for Cherry Creek Estates, not the 2002 Study that was the ultimate basis for determining traffic impacts for the subdivision plat that was recorded in 2003. Therefore the discussions of reduced trip generation because a golf course is not being completed as part of the development are moot. The proposed golf course had been dropped by the time the 2002-03 plat review was in process, and was NOT part of the predicted traffic impacts for the plat as recorded.

That being said, I think the HKM report still provides information required to complete the Phase I review required by the approved development agreement. The HKM report provides measured trip generation rates that reflect this specific development. Although the HKM report highlights cautions from ITE that establishing local trip generation rates should be based on more than a single study, I believe that the field measured trip generation rates represent the best available information for predicting trip generation from this development. We are not proposing to measure all future mobile home courts in Billings based on the results of this development---we are using the data to predict the traffic that will occur when the next phase of this specific development occurs. To that extent, it predicts the trip generation for a mobile home park development at this location relative to existing retail, school, and employment centers, the age, income & family size demographics, and other variables, better than using a nationally published average rate would do—regardless of how many studies the national rate is based on. Would I use the measured values from Phase I of Cherry Creek as absolutes in predicting trip generation for a mobile home court located elsewhere in Billings? No. But I believe it is the best predictor we have of trip generation for the next phase of the Cherry Creek development.

from the desk of...
H. Terry Smith, P.E.
City Traffic Engineer
City Engineers' Office
510 N. Broadway, 4th Floor
Billings, MT 59101

406-657-8234
Fax: 406-657-8252

I recommend that we focus on the PM peak hour traffic impacts for the compliance review. First, traffic “problems” encountered by drivers are more directly related to peak period traffic, than they are the total amount of traffic on a roadway or thru an intersection in a 24-hour period. Intersections break down because of the intensity of peaking experienced over a short time period. Traffic is not distributed uniformly throughout the day. We typically find that traffic loadings are higher in the evening peak hour than at other times of the day. Secondly, cash contributions in the original SIA were based on PM peak hour traffic impacts.

The HKM study found an average weekday PM Peak Hour trip generation rate of 0.71 trip ends per dwelling unit. With full build out of the mobile home portion of the development at 363 units (per the approved development agreement) we would therefore expect a total of 258 trip ends (0.71×363). The 2002 TAS that the final plat and SIA were based on predicted a total of 203 trip ends for the mobile home portion of the development. This is a 27% increase in predicted PM peak hour trip generation. Based on the level of service predictions in the original TAS, I would not expect adverse impacts from the additional 55 PM peak hour trips at any locations other than those identified in the original TAS as requiring mitigation.

The approved development agreement establishes “traffic generation . . . not more than **ten percent** greater than estimated by the TAS” (emphasis added) as one of the criteria for review prior to phase II development. Because the predicted PM peak hour trip generation rate exceeds the originally predicted rate by more than 10%, I recommend one of two courses of action:

- C. Recalculate the cash contributions associated with the development of lots 3 & 4 based on the higher trip generation rate. I would propose that we use the same methodology as used at the time of the original subdivision approval.
- D. Per section VII. 5. of the approved Development Agreement, cap the mobile home portion of the subdivision (lots 3 & 4) at 300 units.

One potential side effect of capping development at 300 units would be the significant disparity in density between lots 3 and 4. It is assumed that Lot 3 is laid out to accommodate the 189 units originally anticipated (at the time of the HKM study, 140 units were already occupied). This would allow only 111 units to be developed on Lot 4.

This memo addresses only the trip generation aspects of the Phase I “compliance review.” It does not address the site review, landscape compliance, or financial guarantee aspects discussed in the recorded development agreement.

Please feel free to contact me if you have questions or need additional information.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, OCTOBER 22, 2007

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting First Quarter Budget Amendments for Fiscal Year 2007/2008

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: First quarter budget amendments are requested across several funds to implement the Teamsters contract negotiated after the FY 2007/08 budget that was approved by the City Council, and for adjustments due to changing conditions in separate funds.

FINANCIAL IMPACT: Cost of living, signing bonus and other benefits totaling \$676,690 that were negotiated in the Teamsters contract need to be spread across the following accounts:

- General Fund: Municipal Court, Finance; Engineering, Code Enforcement and Parks, Recreation and Public Lands;
- Public Safety Fund: Police Animal Shelter and Fire; and
- Enterprise or Other Funds: Building, Street Traffic, Planning, Library, Community Services, Water, Wastewater, Solid Waste, Airport, Transit and Motor Pool.

Budget amendments are also requested for Fiscal Year 2007/2008 for the General Fund, the Golf Course Fund, the Public Safety Fund, the SID Construction Fund, the Storm Drain Fund, the Arterial Fund, and the Solid Waste Fund.

The Golf Course Fund was established to account for the assets held in reserve to secure the Golf Course's debt. The debt has been paid off and the remaining \$873 of assets will be transferred to the General Fund. Therefore, the adjustments for these two funds are requested to gain budgetary authority to transfer the assets from the Golf Course Fund to the General Fund.

A \$404,500 adjustment for the Public Safety Fund will provide budget authority for the police Mobile Data Terminals acquired from Portable Computer Systems, Inc. and financed via a Municipal Lease-purchase Agreement. The purchase was approved by Council on August 27, 2007. Although this is not a cash transaction, budget authority is required because the transaction is recorded to comply with generally accepted accounting principles.

The request for the SID Construction, Storm Drain, Arterial, and Solid Waste Funds is for budget authority for the costs of street improvements to King Avenue West from South 31st Street West to Shiloh Road (SID 1379). Construction assessments to property owners passed at the August 13th City Council Meeting for \$374,738.94. The construction bid was awarded to JTL Group, Inc. at the October 9th City Council Meeting for \$4,971,752.50. The Storm Drain, Arterial, and SID Funds are requesting budget authority for the costs associated with the project. Originally, the City of Billings had plans to construct the water and sewer mains in that segment of King Avenue in 2008 and install the surface and storm drain improvements in 2013. Shiloh Crossing Development will contribute cash in the amounts of \$120,128.32 for their SID assessment and approximately \$138,701.00 for the roundabout construction. Until financing is available, Arterial construction costs will be paid from transfers from the Solid Waste Fund.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2007/2008 per attached.

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

ATTACHMENT

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

RESOLUTION 07-

A RESOLUTION TO MAKE **FISCAL YEAR 2008**
ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-
6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND
REVISIONS WITHIN THE GENERAL CLASS OF SALARIES
AND WAGES, MAINTENANCE AND SUPPORT AND
CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a **Quarterly** Budget Review (**FY 2007/2008**), it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 22nd day of October, 2007.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Attachment A**BUDGET ADJUSTMENTS****Revenue****Expenditure**

010-1212-412	1148	4,260 Municipal Court
010-1220-412	1148	7,750 Municipal Court
010-1512-415	1148	6,247 Finance Accounting
010-3141-434	1148	939 Engineering
010-4321-419	1148	872 Code enforcement
010-5110-453	1148	1,560 Parks, Rec & Public Lands
010-5112-452	1148	22,346 Parks, Rec & Public Lands
010-5127-451	1148	3,176 Parks, Rec & Public Lands
010-5142-436	1148	4,851 Parks, Rec & Public Lands
150-2121-421	1148	1,798 Police
150-2151-421	1148	21,958 Police
150-2170-441	1148	1,743 Animal shelter
150-2171-441	1148	1,737 Animal shelter
150-2172-441	1148	5,118 Animal shelter
150-2225-422	1148	43,939 Fire – 9-1-1 center/dispatch
209-3151-428	1148	7,715 Building
209-3152-428	1148	9,009 Building
211-3132-433	1148	11,808 Street/traffic
211-3133-433	1148	8,351 Street/traffic
211-3134-433	1148	16,664 Street/traffic
211-3136-433	1148	11,911 Street/traffic
211-3137-433	1148	5,891 Street/traffic
211-3138-433	1148	5,817 Street/traffic
211-3139-454	1148	4,079 Street/traffic
240-4301-419	1148	2,115 Planning
240-4306-419	1148	174 Planning
240-4307-419	1148	97 Planning
240-4308-419	1148	561 Planning
240-4309-419	1148	271 Planning
240-4310-419	1148	97 Planning
240-4311-419	1148	97 Planning
240-4312-419	1148	97 Planning
240-4313-419	1148	97 Planning
240-4315-419	1148	97 Planning
260-5512-455	1148	4,277 Library
260-5513-455	1148	11,921 Library
260-5514-455	1148	9,535 Library
260-5515-455	1148	4,920 Library
260-5516-455	1148	5,963 Library

260-5517-455	1148	5,899 Library
260-5518-455	1148	2,209 Library
276-6753-467	1148	87 Fair Housing
286-6619-464	1148	261 Home Program
293-6518-463	1148	523 CDBG
502-7311-602	1148	5,231 Water
502-7312-602	1148	17,499 Water
502-7314-602	1148	1,922 Water
502-7420-603	1148	18,525 Water
502-7430-603	1148	14,868 Water
502-7512-609	1148	19,712 Water
502-7611-610	1148	1,824 Water
502-7810-602	1148	832 Water
512-8311-622	1148	5,231 Wastewater
512-8314-622	1148	1,922 Wastewater
512-8420-623	1148	24,204 Wastewater
512-8430-623	1148	8,938 Wastewater
512-8542-625	1148	13,863 Wastewater
512-8611-627	1148	1,824 Wastewater
512-8810-622	1148	832 Wastewater
541-3121-435	1148	3,493 Solid Waste
541-3122-435	1148	63,797 Solid Waste
541-3123-435	1148	20,184 Solid Waste
561-7110-711	1148	2,591 Airport
561-7112-711	1148	23,178 Airport
561-7113-711	1148	35,551 Airport
561-7114-711	1148	17,843 Airport
571-7142-713	1148	57,145 Transit
571-7143-713	1148	3,383 Transit
571-7144-713	1148	5,373 Transit
571-7147-713	1148	25,964 Transit
601-1550-481	1148	4,331 Motor Pool
601-1552-481	1148	13,557 Motor Pool
601-1553-481	1148	3,389 Motor Pool
601-1555-481	1148	847 Motor Pool

This budget adjustment is to increase salary and benefit budgets to include the teamster COLA, signing bonus and related benefits negotiated after the budget was approved.

550-5152-451	8216		873 Golf Course
010-1511-383	7514	873	General Fund

To transfer assets from the Golf Course Fund to the General Fund

150-2150-421	2925		404,500 Computer equipment < 5,000
150-2150-381	6800	404,500	Loan proceeds

This adjustment is to provide budget authority for the police MDT's (computer equipment) acquired from Portable Computer Systems, Inc. and financed via a Municipal Lease-Purchase Agreement. Although this is not a cash transaction, budget authority is required because the transaction is required by generally accepted accounting principles.

457-3161-431	9310		494,867 SID capital construction
457-3161-365	6630	120,128	SID developer contribution
840-3184-431	9310		654,564 Storm Drain capital construction
845-3186-431	9310		3,283,583 Arterial capital construction
845-3186-365	6630	138,701	Arterial developer contribution

To increase budget authority for street improvements to King Avenue West from 31st West to Shiloh Road.

541-3121-435	8214		3,144,882 Transfer to other funds
845-3186-383	7523	3,144,882	Transfer from Solid Waste

To budget transfers from the Solid Waste Fund to the Arterial Fund to pay construction costs until financed funding becomes available.

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: Public Hearing and Resolution Expanding Downtown Business Improvement District No. 0001

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: On August 30th the City received a petition from Stockman Bank to expand the boundaries of Downtown Business Improvement District (BID) No. 0001 to include its property at the corner of 4th Avenue North and North Broadway. On September 24th, the City Council adopted a Resolution of Intent to expand the district and set a public hearing for October 22. The Council will conduct a public hearing and consider whether to grant the petition and expand the district.

ALTERNATIVES ANALYZED: The Council may approve or disapprove the resolution.

FINANCIAL IMPACT: There is little or no financial impact on the City. The City does not charge for its oversight or for assessing the BID properties. It collects the assessments from the County Treasurer and passes them to the BID in full.

RECOMMENDATION

Staff recommends that Council approve the Resolution expanding the Downtown Business Improvement District No. 0001.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A: Resolution Expanding BID
- B: Stockman Bank petition

ATTACHEMENT A

RESOLUTION _____

A RESOLUTION EXPANDING BILLINGS DOWNTOWN BUSINESS IMPROVEMENT DISTRICT NO. 0001 FOR THE PURPOSE OF PROVIDING AND MAINTAINING THE COMMON AREA IMPROVEMENTS AND OTHER PORTIONS OF IMPROVEMENTS MADE IN DOWNTOWN, CITY OF BILLINGS, MONTANA

WHEREAS, the Downtown Business Improvement District No. 0001 was created by the Billings City Council on August 22, 2005; and

WHEREAS, on August 30, 2007, the City received a petition from Stockman Bank to expand the boundaries of the BID to include its property at the intersection of 4th Avenue North and Broadway; and

WHEREAS, the City Council adopted a resolution of intent to expand the district on September 24, 2007, advertised its intent to expand the district and conducted a public hearing on October 22, 2007 regarding the proposed expansion; therefore

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

Section 1. Expansion of Business Improvement District (B.I.D.) No. 0001: In accordance with the Resolution of Intent No. 07-18602, the City Council hereby expands the Downtown Business Improvement District (B.I.D.) No. 0001. The expanded boundaries are as displayed on Exhibit A attached hereto. The expansion property is described as;

Lots 1, 2, 3, 4, 5, and 6 in Block 53, Foster’s Addition in the City of Billings, Yellowstone County, Montana according to the official plat thereof on file and of record in the office of Clerk and Recorder of said county, under Document No. 012383.

The described property is subject to and will benefit from all assessments, improvements, services, governance and other activities that are provided to and for the preexisting balance of the District.

Section 2. Duration of District. The duration of the B.I.D. shall be for a period of 10 years from the date of its formation (August 22, 2005) as prescribed in Section 7-12-1141 M.C.A.

APPROVED by the City Council of the City of Billings, Montana this 22nd day of October, 2007.

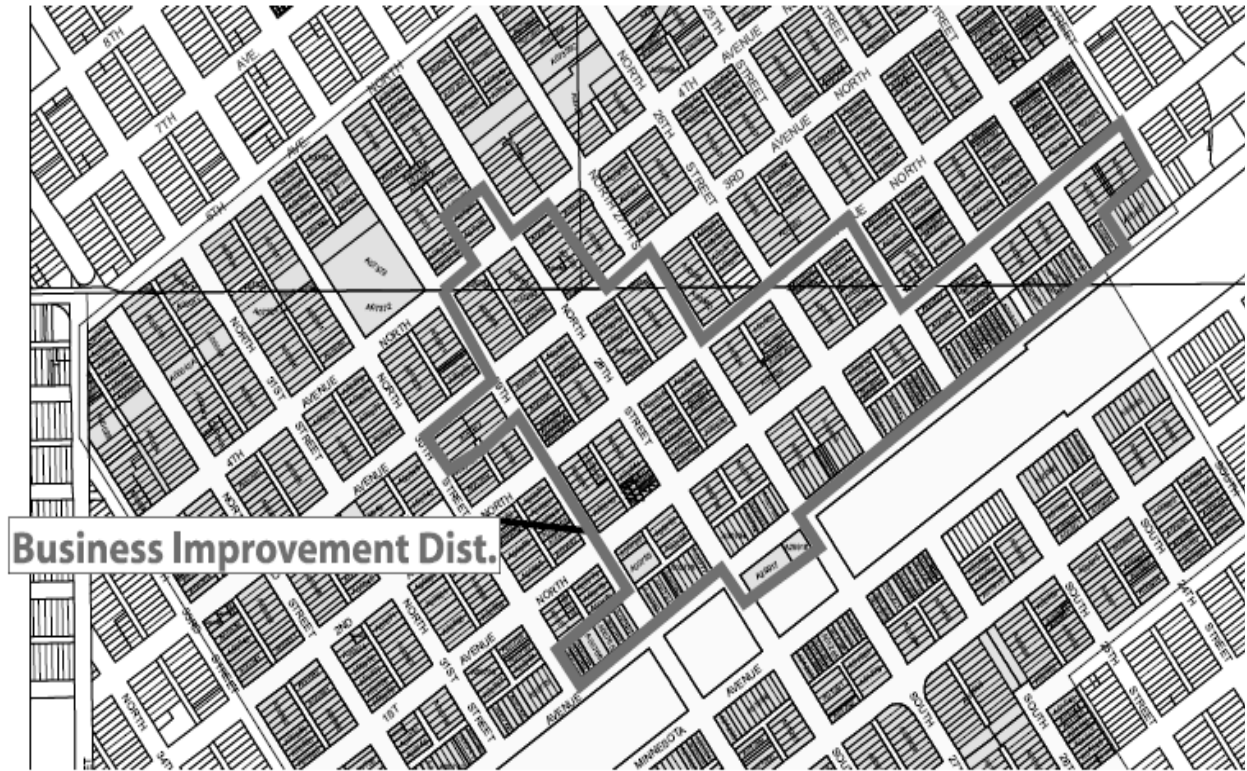
THE CITY OF BILLINGS:

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

EXHIBIT A



ATTACHMENT B

PETITION TO AMEND THE BOUNDARIES FOR BUSINESS IMPROVEMENT DISTRICT 0001 IN DOWNTOWN BILLINGS

In accordance with Title 7, Chapter 12, Part 11. *Business Improvement Districts*, of the Montana Code Annotated 2005, the undersigned hereby petition the *Governing Body* of the City of Billings to amend the Boundaries of the District as described in Section 3 of Resolution 05-18328 as approved by the Governing Body of the City of Billings on August 22, 2005 with a Duration as stated in Section 9 for a period of 10 years. All of the properties listed below are to be added to Business Improvement District #0001 and such addition is in accordance with Title 7, Chapter 12, Part 11, and are contagious to the properties previously assembled.

[illegible]

(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

TITLE: Annexation #07-24 Public Hearing and Resolution
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, Hanser Capital Holdings, is requesting annexation of a property legally described as Tract 1B, Certificate of Survey 1335, Amended, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located in the NE 1/4, Section 23, Township 1N, Range 26E, and is just south of the intersection of Wicks Lane and Hawthorne Lane. The petitioners are requesting annexation in order to obtain city water and sewer services for a residential development. The 5-acre property is currently vacant land and is zoned Residential 7000 (R-70). The owner is proposing to construct up to 16 duplex units and 9 single family units in a condominium development. The Council acknowledged receipt of the petition at its October 9, 2007, meeting and will hold a public hearing and may vote on the petition at this meeting.

ALTERNATIVES ANALYZED: The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA). The subject property is wholly surrounded by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next 5 years.

FINANCIAL IMPACT: The City can provide municipal services to the subject property. The property can develop with single-family or duplex residences under the current zoning. If the property is annexed it will likely develop as a condominium project, thereby increasing the tax revenue for the city.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Tract 1B, Certificate of Survey 1335, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

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

ATTACHMENT

- A. Resolution and Annexation Map

INTRODUCTION

Owner and petitioner, William Hanser of Hanser Capital Holdings, LLC is requesting annexation of a property legally described as Tract 1B, Certificate of Survey 1335, Amended, into the City of Billings pursuant to Section 7-2-4600, MCA. The subject property is located in the NE 1/4, Section 23, Township 1N, Range 26E, and is just south of the intersection of Wicks Lane and Hawthorne Lane.

PROCEDURAL HISTORY

- On August 2, 2007, a pre-application meeting was held with City staff to review a proposed condominium development on the property.
- On August 15, 2007, the annexation petition was received by the Planning Division.
- On October 9, 2007, the City Council acknowledged the annexation petition and set a public hearing date for October 22, 2007.
- On October 22, 2007, the City Council will conduct the public hearing for the annexation.
- On November 13, 2007, if the annexation is approved by the City Council, a public hearing for the first reading of an ordinance to expand the City Council Ward 2 boundary will be conducted.
- On November 26, 2007, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading of the ordinance for ward boundary expansion.

BACKGROUND

The subject property is wholly surrounded by properties within the City limits and is depicted on the updated Annexation Map as within the area favorable for annexation within the next five years. The property is five acres in size, and based on preliminary drawings submitted for a conceptual development review meeting, the developer would like to make use of City infrastructure and services for a condominium development with single family and duplex units.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexations may affect the City's ability to provide services to annexed properties without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements for the subdivision, including streets, satisfy City standards.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will

be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments, Heights Water District, Yellowstone County representatives, and School District #2 were given the opportunity to comment on this annexation. All City departments responded favorably; no comments were received from Yellowstone County or School District #2.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

- **Water:** Water to the subject property will be extended from the Heights Water District's main line within Hawthorne Lane located along the western boundary of the subject property. The District has indicated initial support of the proposal, but noted that the property will need to be annexed into the Water District's service area prior to extension of services.
- **Sewer:** Sanitary sewer can also be extended from the main line within Hawthorne Lane located along a portion of the western boundary of the subject property.
- **Stormwater:** All stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department at the time of site development. Engineering staff has indicated that the development will most likely be able to tie into an existing storm drain line in Hawthorne Lane.
- **Transportation:** Access to the property will be via an access off of Hawthorne Lane. This and any other accesses, as well as street improvements will be reviewed during site development.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 1601 St. Andrews (Fire Station #6).
- **Parks:** The subject property has three neighborhood parks within one mile: Hawthorne Park to the north, Primrose Park to the south, and Walden Grove Park to the west. Additionally, the Emma Jean Heights Subdivision adjacent to the east was preliminarily approved earlier this year with another park area, and a trail system along the BBWA canal. Park requirements or cash contributions for this property will be evaluated at the time of development.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. Sidewalks along Hawthorne Lane will be required at the time of construction. Internal sidewalks will also be required and reviewed at the time of

development. Also, the BBWA canal is nearby this property, and a 20-foot wide trail corridor is proposed with the adjacent Emma Jean Heights Subdivision. This will provide further pedestrian and bicycle travel opportunities for this development.

- **General City Services:** These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.
- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The police department did not provide comments on this proposed annexation.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Engineering Division (Street and Traffic):** The Street and Traffic Division did specify that they have concerns regarding the ability for service to these annexed areas after 2008, due to budget cuts.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively effected by this annexation.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on October 12, 2007, and published in the Billings Times on October 11, 2007. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy*:

- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)
- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 5)
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6)

RECOMMENDATION

Staff recommends that the City Council approve the Resolution annexing Tract 1B, Certificate of Survey 1335, subject to the following conditions of approval:

- c. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- d. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

ATTACHMENT

A. Resolution and Annexation Map

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY OF BILLINGS
APPROVING PETITIONS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the NE1/4 of Section 23, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 1B, Amended Tract 1 of Certificate of Survey No. 1335, Recorded March 1, 1978, Under Document No. 1080869, Records of Yellowstone County, Montana.

Said Tract containing 5.000 acres.

(# 07-24) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:
 - a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of SIDs shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The

subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 22nd day of October, 2007.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

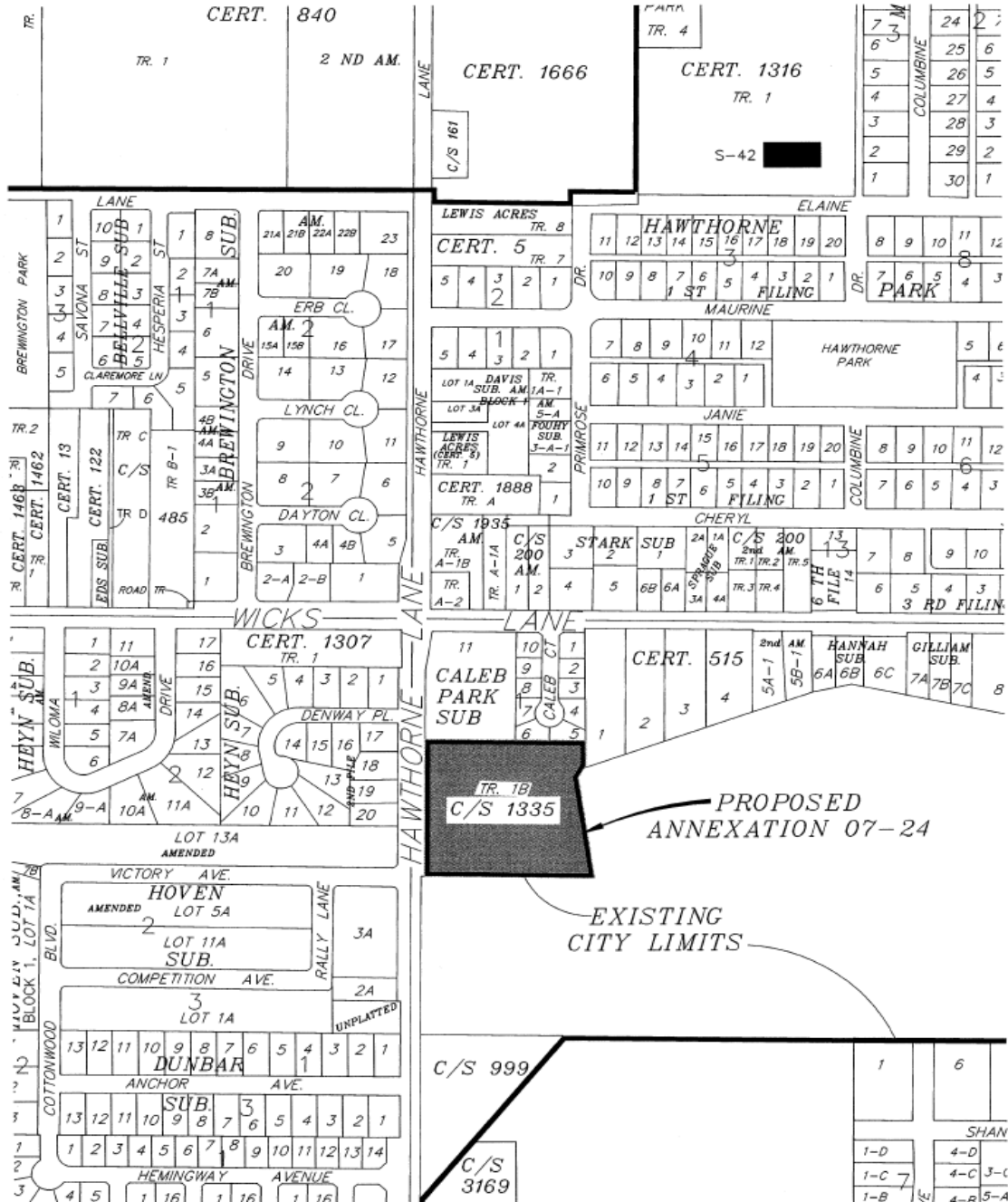
ATTEST:

BY: _____

CITY CLERK

(AN 07-24)

EXHIBIT A



(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, October 22, 2007**

TITLE: Zone Change #822 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential 9,600 (R-96) to Residential 7,000 Restricted (R-70R) on a 400-acre property north and west of the High Sierra Subdivision and Lake Hills Subdivision. The owner is the Dover Ranch, the developer is Oakland Companies, and the representing agent is Engineering, Inc. The Zoning Commission conducted a public hearing on October 2, 2007. It then forwarded a recommendation of approval, on a 4-0 vote, for the requested rezoning except for land located adjacent to certain Lake Hills Subdivision properties listed below.

ALTERNATIVES ANALYZED: State law, MCA 76-2-304, requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change as requested
2. Deny the zone change as requested
3. Approve the zone change as recommended by the Zoning Commission
4. Allow withdrawal of the application
5. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change would facilitate the development of the property which would increase the City's tax revenue on the parcel.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval of Zone Change #822 except for land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills Subdivision 14th Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision 14th Filing; Lots 9A, 9B, 10A, 11, 12, 13 and 14, Block 44 of Lake Hills Subdivision 13th Filing; and Lots 1 through

13, Block 64 of Lake Hills Subdivision 25th Filing, to the City Council and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

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

ATTACHMENTS:

- A: Site Photographs
- B: Zoning Map
- C: Draft Master Plan
- D: Applicant Letter
- E: Ordinance

INTRODUCTION

The applicant is requesting a zone change from R-96 to R-70R on a 400-acre property north of the High Sierra Subdivision and west of the Lake Hills Subdivision in the Heights. The property was annexed into the City limits on September 24, 2007, and is proposed to be subdivided as High Sierra Subdivision, 5th through 12th Filings.

PROCEDURAL HISTORY

- On August 6, 2007, the application for zone change was submitted for review.
- On September 4, 2007, the City Zoning Commission opened a public hearing for the proposed zone change and voted 5-0 to allow a 30-day delay and to continue the public hearing at its next meeting.
- On October 2, 2007, the City Zoning Commission continued the public hearing for the proposed zone change and voted 4-0 to forward a recommendation of approval of the zone change to the City Council, except for two 100-foot wide “buffer strips” adjacent to existing larger lot residential neighborhoods.
- On October 22, 2007, the City Council will conduct a public hearing and 1st reading to approve or deny the zone change.
- On November 13, 2007, if approved on the 1st reading, the City Council will conduct the 2nd reading of the proposed zone change.

BACKGROUND

The proposed zone change is one step in the larger master planning effort by the developers of the property, The Oakland Companies. As noted in the developers’ letter dated September 20, 2007, the proposed development is intended to provide “affordable, innovative residential lots that enhance the quality of life and encourage home ownership” through a design concept called “coving”. The proposed design and layout requires more flexibility than is provided with the R-96 zoning. Therefore, the R-70R zone has been requested to maintain affordability, flexibility, and variety in the proposed lots, while integrating the new single-family community into the existing contiguous neighborhoods to the east and south.

It is fortunate to have the entire 400-acre property under review, even with its 10-15 year build-out time frame. This allows the City to better evaluate its comprehensive and long-term impacts on the existing surrounding neighborhoods and to better plan the most efficient way to serve the property with City services. Many of the details of the subdivision and master plan will be reviewed at the platting stage. At this point the Zoning Commission and City Council must rely on the 12 zoning criteria when reviewing the potential zoning implications of the proposal. Some of criteria for consideration include availability of services, effects on the character of the existing and future neighborhood, population density, traffic flow, and how the proposal fits with the goals of the Growth Policy. The 12 criteria for zone changes are discussed below in the Alternative Analysis section.

The Zoning Commission is forwarding a recommendation of approval of the request, with the exception of two buffer areas adjacent to an existing larger lot neighborhood in Lake Hills Subdivision (see Attachment B). Based on public testimony, the Zoning Commission voted to

approve the R-70R zoning except for two 100-foot wide strips in order to provide a transition in lot sizes from the existing neighborhood to the new development. Under the Zoning Commission recommendation, the 100-foot wide strips would remain in the existing R-96 zoning.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The following are the Zoning Commission's determinations.

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed development is consistent with the following goals and objectives of the 2003 Growth Policy:

- *New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites. (Land Use Element #2, pg. 6)*

The proposed zone change would enable a single-family subdivision with similar lot sizes and residential densities to those existing developments to the south and east.

- *More housing and business choices within each neighborhood. (Land Use Element #6, pg. 6)*

The developer proposes to offer an affordable housing supply similar to what they have been successfully offering in adjacent lots within High Sierra Subdivision.

- *Safe and efficient traffic circulation around and through the City. (Transportation Element #2, pg. 9)*

Once this development is fully built out, several key street connections to the south and east will have been completed allowing additional traffic circulation options in this part of the Heights.

- *Increased circulation connections for improved traffic flow. (Transportation Element #10, pg. 10)*

2. *Is the new zoning designed to lessen congestion in the streets?*

Any change of use of the ranch property will add additional traffic to the network, regardless of the zoning. However, with the opportunity to review the entire 400-acre property, existing and future traffic concerns in this area can be mitigated. There are several existing dead end streets that will be connected to offer more traffic flow options into and out of the entire area. For example, Annandale Rd., a proposed minor arterial, would be connected to Gleneagles Blvd., a principal arterial street, and eventually connected to Wicks Lane, another principal arterial. Also, High Sierra Blvd. would be connected to the north and Matador Ave. to the east.

3. Will the new zoning secure safety from fire, panic and other dangers?
The nearest fire station is located nearby at 1601 St. Andrew's Drive. The property will also be served by City water and sewer services when development occurs. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning would allow single-family residences to be built with City services. No public health or safety issues have been raised with this application.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet. The master plan submitted with the zoning application indicates a variety of lots sizes with parkland intermixed. It also indicates that the average lot size would be approximately 8,200 square feet. At the time of development, setbacks, lot coverage, height, and other requirements will help to prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*
The new zoning would allow the development of single family homes on lots that are a minimum of 7,000 square feet. The master plan submitted indicates that the average lot size would be approximately 8,200 square feet. It also proposes over 36 acres of parkland intermixed throughout, which would make up 11% of the net lot area. The R-70R zoning is set up to avoid undue concentrations of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
As noted above in #2, there are a number of transportation connections proposed that will facilitate more efficient traffic flow throughout the entire area. Additionally, there are existing sewer and water mains that will be extended and looped throughout the development.

The southern portion of the subject property is within School District #2 for all ages of school children, while the northern part is within Independent School District #52 for elementary school, and School District #2 for middle and high school students. Given the projected 10-15 year build-out for the property, the schools should have time plan for the gradual addition of students. Also, SD#2 owns a parcel of land adjacent to the south of the subject property that could eventually be developed with an additional elementary school if needed.

Parkland will be dedicated as the property is platted. The master plan indicates that approximately 11% of the net area is proposed for parkland that will connect linearly throughout the blocks and to the existing school-owned property to the south.

Police and fire provisions are to be provided by the City. These public services are always of special concern as properties develop. The nearest fire station is located nearby at 1601 St. Andrew's Drive. Access and service availability to the proposed development will be reviewed with the subdivision, however, given the 10-15 year build-out time frame, the police and fire departments may be adequately equipped over time to handle additional roof tops.

9. *Does the new zoning give reasonable consideration to the character of the district?*

Staff is comfortable that the new zoning does give reasonable consideration to the character of the surrounding community in that it would allow development of similarly-sized single-family lots. The developer reports that they have had conversations with adjacent property owners, particularly to the east in the Lake Hills Subdivision, who have concern over the potential smaller lot sizes. The developer has offered to maintain larger lot sizes within the vicinity of these existing R-96 zoned lots through the platting process. In order to solidify this agreement, the Zoning Commission voted to recommend approval of the zone change with the exception of a 100-foot wide portion of land that fronts the existing R-96 development on the far eastern segment of the subject property (see Attachment B). This 100-foot wide buffer would remain R-96 zoning, requiring a minimum lot size of 9,600 square feet.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is dryland pasture land that is adjacent to the existing City limits. It would seem to be a suitable location for expanding the existing residential neighborhood, and continuing a number of proposed street connections throughout the area. The proposed zoning would make this use physically and economically viable.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

As noted in #9 above, the new zoning would seem to conserve the value of the similarly priced residences to the south of the subject property. The developer intends to use a "coved" layout to design a variety of lot sizes while preserving neighborhood views and parkland connections. This design concept has been utilized in other parts of town and has successfully maintained and protected property values. The proposed R-96 buffer would further help to formalize conserving of lot sizes similar to those adjacent properties to the east.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The subject property is currently dryland pasture adjacent to the City limits on the south and east. The developer indicates that properties to the south in the High Sierra Subdivision (3rd and 4th Filings) are quickly being sold for entry to mid-level homes, and that there is demand

for more similar lots. Expanding this residential use and adding community amenities such as parks, trails and transportation connections would seem to be an appropriate use of this non-irrigated land.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on October 2, 2007. The applicant, Gary Oakland, provided a brief overview of the intent of the zone change, which is summarized in the attached letter (see Attachment D). The applicant's agent, John Stewart of Engineering, Inc., also spoke and mentioned that the proposed subdivision design integrates a variety of lot sizes, green space and more efficiently designed streets and infrastructure. He further stated that overall, the number of lots (and density) proposed with this design would be the same as the number of lots in an R-96 zone using a traditional grid design layout. There were six other proponents for the zone change who provided testimony. They spoke in favor of the "coving" design concept that Mr. Oakland presented, stating that with the open space features and other amenities of the design, it creates a neighborhood setting that does not feel dense. They all indicated that the slightly smaller lots are necessary to keep them affordable to the average working citizen in Billings, which makes up 75% of the buyers now.

Two adjacent residents spoke in opposition to the proposal. They stated that the proposed zoning would not be consistent with the larger lots found within their neighborhood to the east within Lake Hills Subdivision. One concern expressed was that all of the houses in their neighborhood have 3-car garages, and with smaller lots, only 2-car garages may be possible. A petition was submitted in opposition as well; however it incorrectly stated opposition to a zone change to Residential-7000, not R-70R. The difference is that Residential-7000 would allow duplex housing, while R-70R does not. The applicant himself stated he would not be supportive of strictly R-7000 zoning for this property because of the duplex housing ability. The petition was signed by 28 different households within the vicinity of the proposal; 8 of these properties are within 150 feet of the subject property. Staff feels the petition misrepresents the proposal significantly and is not treating this as a "valid" protest.

The Zoning Commission considered the testimony and concluded that overall the proposal was a positive zone change for the area. However, they were also sympathetic to the opponents' view points and wanted to formalize a way to ensure that the developer would maintain a buffer of larger lots as they fronted the existing residential lots along Lake Heights Drive and Annandale Road. In order to do so, the Zoning Commission voted to exclude a 100-foot deep strip of land adjacent to those existing residential lots from their recommendation of approval, which would maintain the R-96 zoning in that buffer area.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval of Zone Change #822 except for land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills

Subdivision 14th Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision 14th Filing; Lots 9A, 9B, 10A, 11, 12, 13 and 14, Block 44 of Lake Hills Subdivision 13th Filing; and Lots 1 through 13, Block 64 of Lake Hills Subdivision 25th Filing, to the City Council and adoption of the 12 Zoning Commission Determinations on a 4-0 vote.

ATTACHMENTS:

- A: Site Photographs
- B: Zoning Map
- C: Draft Master Plan
- D: Applicant Letter
- E: Ordinance

Attachment A



Figure 1: Across
subject property looking
southwest.



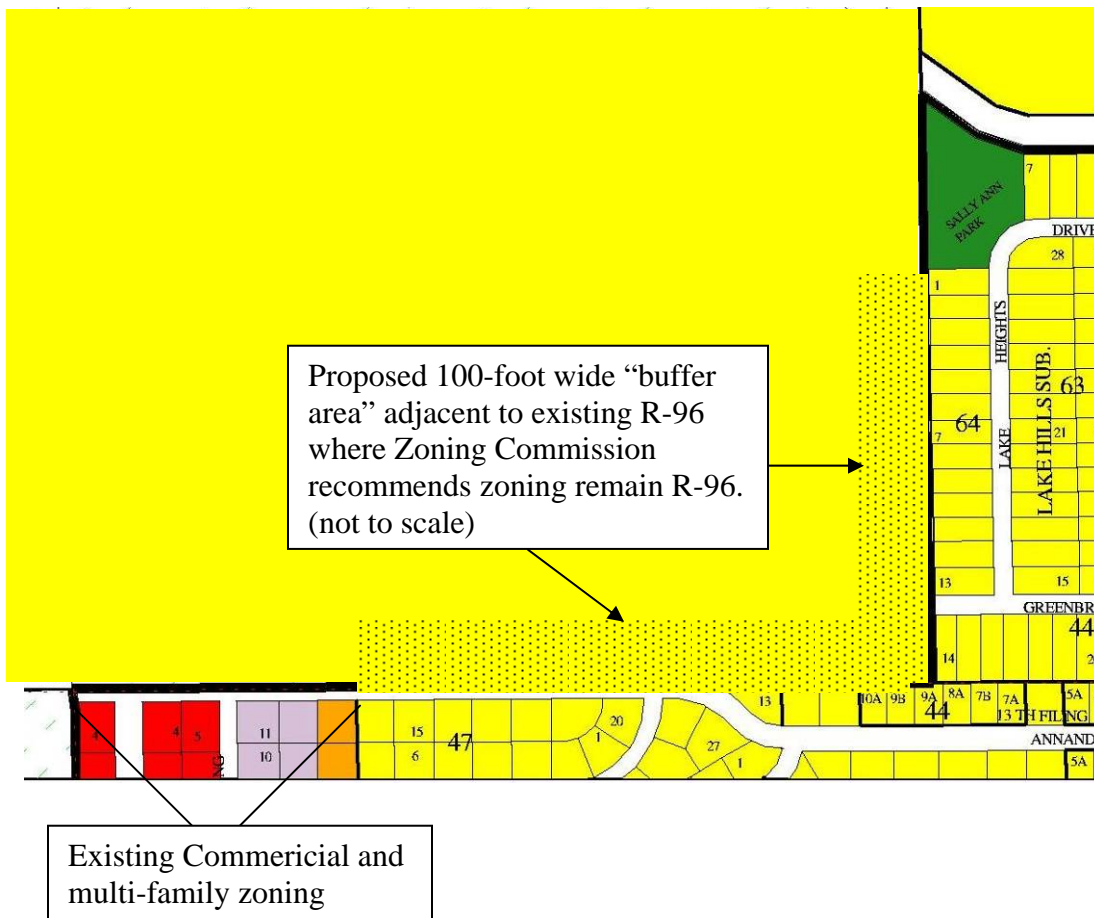
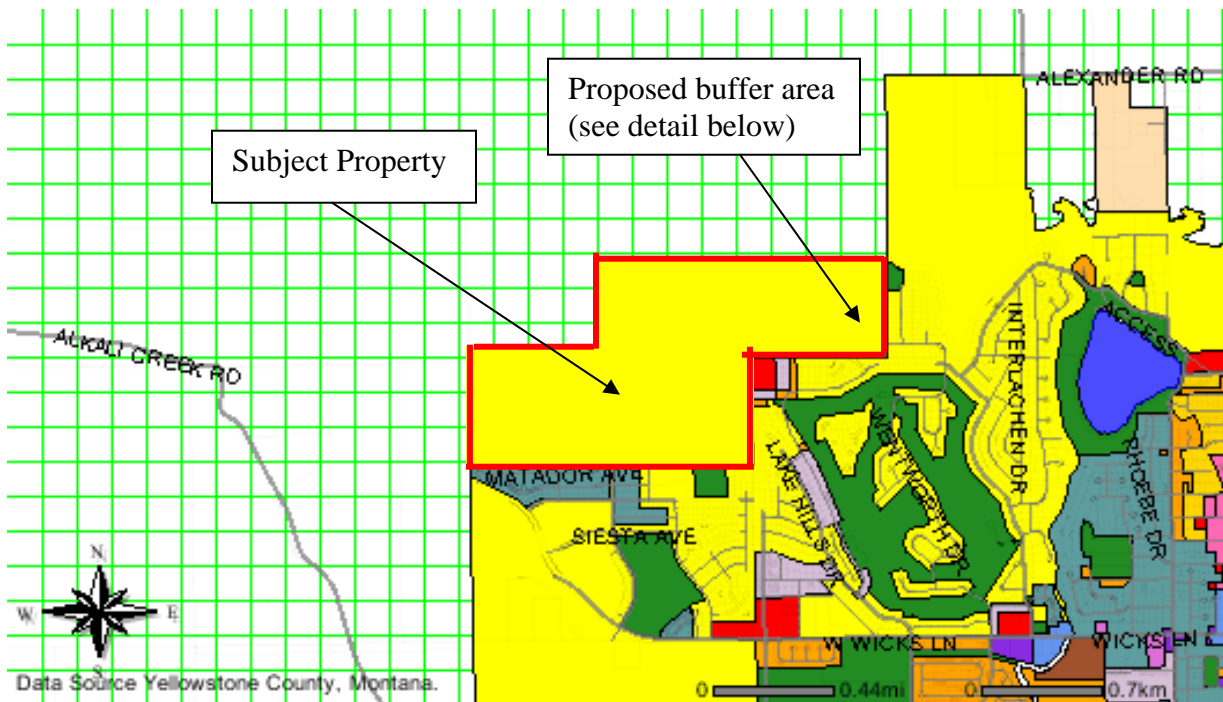
Figure 2: View to the
west of subject property.



Figure 3: View from
end of Gleneagles
looking NE toward Lake
Hills Subdivision.

Attachment B

Zoning Maps



LEGAL DESCRIPTION:

A tract of land situated in the SE 1/4 of Section 8, the SW 1/4 of Section 9, and the NW 1/4 of Section 10, T. 1 N., R. 2 E., P.M.M., Yellowstone County, Montana, and tract being more particularly described as follows, to-wit:

Certificates of Survey No. 2017 and the S1/2SE1/4 of Section 8 and the S1/2SW1/4 of Section 9, T. 1 N., R. 2 E., P.M.M., Yellowstone County, Montana said tract having a gross area of 402.67 acres more or less.

NOTES:

- TOTAL AREA OF SITE= 402.67 AC
- TOTAL AREA OF R.O.W.= 87.734 AC
- TOTAL AREA OF PARK= 38.80H
- TOTAL NUMBER OF LOTS= 1270
- MINIMUM LOT SIZE= 7,000 SF
- MAX LOT SIZE= 10,800 SF
- AVERAGE LOT SIZE= 8,200 SF

NORTH

SCALE 1" = 300'

THE OAKLAND COMPANIES

**WELLS FARGO CENTER
175 NORTH TWENTY-SEVENTH STREET, SUITE 940
BILLINGS, MONTANA 59101**

TEL: (406) 248-3641

FAX: (406) 248-1159

OAKLAND
OAKLAND & C
OAKLAND COMM

September 20, 2007

Honorable Mayor and City Council
and City Zoning Commission
c / o Ms. Juliet Spalding, AICP, Planner II
City of Billings / Yellowstone County Planning Department
510 North Broadway
Billings, MT 59101

RE: Zone Change #822.

Dear Ms. Spalding:

As you know, the City of Billings recently annexed this 402 acre parcel of property into the City. The parcel of land is unique in several ways. The property has been part of the Dover Ranch for many years. Over the last 3 to 4 years, The Oakland Companies have worked closely with the ownership of the Dover Ranch to plan and acquire the property in a mutually beneficial way. Through many meetings and conversations, the Dover Ranch operation and The Oakland Companies agreed to a size and shape of land allowing both minimal impacts on the ongoing agricultural operation of the Dover Ranch, and yet provides exciting opportunities for The Oakland Companies to do needed residential development in the Billings Heights.

The property is located in such a way that it is a crucial piece for the efficient future development of the Billings Heights. As the surrounding neighborhood stands today, there are many important road structures and utilities terminating into this property without a thoughtful way to interconnect the street and utility systems. By having one company develop the master plan for the entire 402 acre parcel, the traffic issues and dead-end roads can be connected into a meaningful system of efficient streets and safe neighborhoods.

Our goal and duty as the developer of the property is to provide the residents of Billings with affordable, innovative residential lots that enhance the quality of life and encourages home ownership. We are pleased to present this project and our zoning change for your consideration. We feel the project includes many interesting and exciting design details that go above and beyond what is possible under the current R-9600 zoning.

As you have seen in the past, we are proposing a "coved" approach in the design of this property. The Oakland Companies pioneered the concept in Montana with the

development of the Copper Ridge Subdivision on the west end of Billings. (The Copper Ridge Subdivision was one of the first to receive the R-7000 R zoning in the City of Billings.) In addition to Copper Ridge, The Oakland Companies have successfully received approvals for two other coved communities in Billings and one coved community in the City of Belgrade. Each of these communities required special consideration and requests from the municipalities in order to maximize the benefits of coving and state-of-the-art design.

Billings, like every other suburban city, is developed upon a set of zoning ordinances and subdivision regulations. These ordinances only give “minimum” dimensional controls. Developers and designers take these minimum dimensions as the absolute dimensions in an effort to increase density and positively affect affordability. This creates the cookie-cutter environment known today as suburbia. With the “coving” concept we are able to address the desirable features of the traditional neighborhood with much more efficient use of the land. The result is the optimum combination of safety, connectivity, space, character, and affordability.

Our request for a zone change from the default zoning of R-9600 to R-7000 Restricted is based on our firm belief that the proposed zoning will provide a more desirable environment than could be achieved within the current zoning, for the following reasons:

1. More economical and efficient use of land.
 - a. Although the R-7000 R zoning obviously allows for a lot size as small as 7000 square feet, our initial design is indicating an average sized lot closer to 8200 square feet. (Design is not final at this stage.) The lots should range in size from 7000 square feet on the western portion of the project to over 10,000 square feet on the eastern portion of the project. Coving and proper design will provide a range of lot sizes which allows for a larger portion of the citizenry to realize home ownership. By allowing the R-7000 R zoning versus the R-9600 zoning, we are able to offer a greater range of lot sizes, while at the same time reducing the roads, water, and sewer necessary to serve the lots by close to 20%. Under the R9600 zone, the economies of development would force each lot to be the same size and shape, giving the neighborhood little or no creativity or innovation, which in turn would force the lot prices higher.
2. A choice in the types of physical environment, occupancy tenure, and building type available to potential residents.
 - a. The proposed design, pending the appropriate zoning, offers lots of different sizes and shapes and all have different view sheds. In addition, the coving of the streets and setbacks allow for vastly larger view sheds when looking out from the residence. When viewing homes from the street, a sense of extra space and air is achieved. A further benefit is the uniqueness of each lot allowing a choice in home

site qualities for the potential resident including lot size and proximity to parks, trails, or active recreation.

3. An efficient network of streets and utilities.

- a. One of the main concepts behind “coving” is to design the development with fewer streets and utility corridors. The coving method has been documented to use up to 20% less street length and corresponding utilities. Our proposed design goes one step further in designing an efficient sidewalk system as well. There is a tremendous difference between vehicle traffic and pedestrian traffic. Most planning techniques create streets to walk on or along. With standard sidewalk planning, where you have to follow the road route exactly, the sidewalks are not used as often as they should be. This is due to a difficult and unenjoyable walk. Our proposed walkways make it easy to enjoy the neighborhood utilizing its beautiful and safe meandering system that cuts through blocks to enhance connectivity, and therefore livability.

Coving is certainly possible under any residential zone classification. It is our job as the developer to determine lot size, price, and proper location the market is demanding. We have several years experience as the provider of affordable lots in the Billings Heights. With nearly 200 lots sold to Billings residents and contractors in the last 3 years, we feel we are in touch with the market and are making a valid and meaningful request to the Zoning Commission and the City Council. If the zoning were to remain R-9600, this would force the minimum sized lot to be no smaller than 9600 square feet. Since coving offers lots of various sizes, the average lot size would balloon to over 11,000 square feet, which means the average lot price would no longer be attainable to the majority of Billings homebuyers.

Another important aspect of the proposed design is the proper integration of our new neighborhood into the existing contiguous neighborhoods. We understand the level of concern existing homeowners may have regarding a development of this size. We are committed to meeting with neighboring property owners and addressing their concerns during the design and entitlement process as we move toward breaking ground. We have complete faith in the subdivision process that allows the City Council and the citizens of Billings to work with the developer to ensure the proper fit of a new subdivision into our city. We have already had several meetings with the community to the east and have agreed to increase the minimum size of the lots adjoining the common fence line between the two subdivisions. This will allow a more seamless joining of the two neighborhoods and will benefit the entire community.

As far as our timeline is concerned, we are planning on moving forward with the design of the first phase of the development during the winter of 2007/2008. There is a need for additional lots in the Billings Heights starting in the fall of 2008. Due to the costly nature of designing a subdivision, (much less a 400 acre, multi-phase project), it is imperative

we receive the requested R-7000 R zoning before proceeding any further with our design. If we were not to receive our requested zoning, our design and thought process would have to defer back to a more standard subdivision design, meeting the minimum requirements and delivering a less innovative and more expensive project. Due to the fairly predictable housing market in Billings, we are designing a master plan covering the entire 400 acre parcel that will consist of 10-12 phases. Each phase will consist of around 75-100 single family lots. According to our market history, we are anticipating a sales rate of approximately one phase per year. Considering the above assumptions, the property will take anywhere from 10 to 15 years to fully develop. Keeping in mind the length of time involved and the vast number of lots, we are moving forward with the understanding that a large amount of trust between the City of Billings and The Oakland Companies must be shared as we work together building a master plan for this parcel of property. The Oakland Companies have been in business in Billings for over 30 years and we are committed to the long-term nature this size of a project demands. It is with confidence and experience that we are respectfully requesting the unanimous approval of Zone Change #822.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Oakland", with a stylized, flowing script.

Gary Oakland
President

Attachment E

Zone Change #822

ORDINANCE NO. 07-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR the S ½ of the SE ¼ of Section 8, T1N, R26E, the S ½ of the SW ¼ of Section 9, T1N, R26E, and Tract 1, Certificate of Survey 2017, except the land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills Subdivision 14th Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision 14th Filing; Lots 9A, 9B, 10A, 11, 12, 13 and 14, Block 44 of Lake Hills Subdivision 13th Filing; and Lots 1 through 13, Block 64 of Lake Hills Subdivision 25th Filing, containing approximately 393 acres.

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

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

2. DESCRIPTION. A tract of land known as the S ½ of the SE ¼ of Section 8, T1N, R26E, the S ½ of the SW ¼ of Section 9, T1N, R26E, and Tract 1, Certificate of Survey 2017, except the land within 100 feet of the following lots: Lots 14 through 20, Block 47 of Lake Hills Subdivision 14th Filing; Lots 26 and 27, Block 46 of Lake Hills Subdivision 14th Filing; Lots 9A, 9B, 10A, 11, 12, 13 and 14, Block 44 of Lake Hills Subdivision 13th Filing; and Lots 1 through 13, Block 64 of Lake Hills Subdivision 25th Filing, containing approximately 393 acres and is presently zoned Residential 9,600 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9,600** to **Residential 7000-Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 7000-Restricted** as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading October 22, 2007.

PASSED, ADOPTED AND APPROVED on second reading November 13, 2007.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
City Clerk

ZC #822

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, October 22, 2007

TITLE: Lockwood Sewer District Wastewater Agreement
 DEPARTMENT: Public Works
 PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. At the District's request, the Council reconsidered the agreement at the August 14, 2006, meeting and subsequently disapproved the agreement. In preparation for pursuing a bond election the District again requested that the City enter into a new agreement for wastewater service. The Council conducted a public hearing and considered an agreement at the October 9 council meeting with the outcome being to delay action to the October 22 council meeting with further discussion to take place at the October 15 work session.

ALTERNATIVES ANALYZED: Staff has identified the following alternatives:

1. Approve.
2. Approve with modifications.
3. Do not approve.

FINANCIAL IMPACT: Staff has identified the following financial impacts:

1. **Approve as requested:** The financial impact of this action is that, per the agreement, the City will undertake a rate study to determine the rates to be charged to the District. This study would not be undertaken until it was assured that the District was proceeding with their project. Staff estimates this study will cost \$40,000 to \$50,000. The contract provides that this cost will be paid by the District directly or through the rate structure. The agreement also provides for a minimum 15% rate of return on investment to the City. The 15% would be applied to the rate base, which generally consists of plant in service less accumulated depreciation; plus construction work in progress, materials and supplies, and working capital; and less contributions in aid of construction, and customer advances.

This return will provide revenue over and above the cost to treat the District's wastewater.

2. **Approve with modifications:** The financial impacts related to this action will depend on the modifications the Council may incorporate; however, as a minimum, the cost of a rate study as mentioned in the above alternative would also apply here. This action will also include the minimum 15% rate of return.
3. **Do not approve:** There is no financial impact associated with this action.

RECOMMENDATION

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

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

ATTACHMENT

A. Wastewater Service Agreement

INTRODUCTION

The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. At the District's request, the Council reconsidered the agreement at the August 14, 2006, meeting and subsequently disapproved the agreement. In preparation for pursuing a bond election the District again requested that the City enter into a new agreement for wastewater service. The Council conducted a public hearing and considered an agreement at the October 9 council meeting with the outcome being to delay action to the October 22 council meeting with further discussion to take place at the October 15 work session.

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

PROCEDURAL HISTORY

- The Public Utilities Board recommended approval of the original service agreement on August 26, 1999.
- The City Council approved the original agreement on September 13, 1999.
- The District requested a 3 year extension of the agreement and waiver of the reserve plant capacity charge by letter dated March 11, 2004.
- City Administrator Kristoff Bauer responded to the District on November 1, 2004 indicating that, for various reasons, the agreement should be allowed to lapse.
- The Public Utilities Board, at the June 15, 2006 meeting, recommended approval by the City Council of a new agreement, which was requested by the District.
- At the July 10, 2006 meeting the Council delayed action on the agreement for one month to allow further discussion. The Council further discussed the agreement at the July 31, 2006 work session with District board members in attendance.
- The District requested reconsideration of an agreement at the August 27, 2007 council meeting.
- The Council discussed an agreement at the September 17, 2007 work session and directed staff to place the agreement on the October 9 regular agenda.
- The Council conducted a public hearing at the October 9, 2007 council meeting and delayed action to the October 22 meeting.
- The Council further discussed the agreement at the October 15 work session.
- The action before the Council is to act upon the agreement at the October 22 meeting.

BACKGROUND

The District has conducted multiple, unsuccessful bond elections to build a wastewater system for Lockwood. They wish to conduct another bond election and have asked the City to enter into

a new service agreement. The new agreement mirrors that considered by the Council at the August 14, 2006, meeting with the following modifications:

- System Development Fees (Section 21) – in addition to the normal wastewater rates the District will be subject to system development fees to be assessed on a per-connection basis due and payable at the time of the individual connection to the District system. The rate expert may recommend an alternate method of assessment if deemed appropriate, subject to city approval. The fees will be determined through a study and the rate expert will determine the most appropriate methodology to use in determining the level of the fee. However, if the rate expert does not recommend a particular method, the method to be used will be one most advantageous to the City with the City making the final determination.
- Reserve Capacity (Section 4) – the base year that is used to establish the wastewater plant reserve capacity has been updated to the year 2020. The 1999 agreement and all subsequent versions included a section specifying the amount of wastewater plant capacity the City will set aside for use by the District. The 1999 agreement used the estimated wastewater flows and loadings based on the year 2010 to establish this capacity. This was never updated and due to the long time lapse of this ongoing issue, this did not allow a reasonable time for the District to develop their system, particularly in light of the most recent proposal to use a phased approach with sub-district concept.

ALTERNATIVES ANALYSIS

Approve: Council approval of the agreement will provide the District with a continued opportunity to pursue construction of a wastewater system. There is sufficient capacity in the wastewater treatment plant to accommodate Lockwood with current average wastewater flows into the plant of approximately 16 mgd as compared to an average plant design flow capacity of 26 mgd. The City's discharge permit for the wastewater plant was renewed in November 2006 and will expire in 2011. For the most part, the permit carried forward the historic discharge limits. However, indications are that the next permit cycle will include limits requiring a higher degree of treatment, which will necessitate modifications to the treatment process and facilities at a future time. While the detail and extent of these modifications have not been identified, staff believes that the city's service requirements will drive the need for these modifications with or without the Lockwood flow contribution.

Approve with modifications: Approval of the agreement with modifications as the Council may determine will, as a minimum, provide the District with the continued opportunity mentioned above. The remaining benefits to the District will, of course, depend upon the nature of the modifications. Such modifications could include a provision for future annexation. This could be addressed by requiring property owners to waive their right to protest annexation at the time of connection to the wastewater system. While the Council has determined that near-term annexation is not desirable, this type of provision could give future councils the ability to rethink the annexation issue. It also addresses the City's current goal of providing for either immediate or future annexation when furnishing municipal services. Staff has concerns with this in that such a system would be difficult to administer since the City would not be directly issuing the

connection permits as happens within the city system. Based on the media coverage during past District bond elections staff expects annexation will be a controversial issue.

Do not approve: This action will not provide the District with the flexibility and time they need to consider further options.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The City's annexation policy anticipates that property receiving municipal services will be annexed as a condition of receiving services. The recent staff report and subsequent council action established that it is not desirable for the City to annex the Lockwood area in the near-term. However, while not allowing for immediate annexation, a provision for waivers of annexation, should the Council choose to include such a provision, will give the City the option for future annexation.

An opposing perspective to the city's normal annexation requirement is to view the new agreement as a business transaction and contract for service. A benefit of such an arrangement is to provide a needed health-related service to an area that is part of the global community.

RECOMMENDATION

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

ATTACHMENT

A. Wastewater Service Agreement

Wastewater Service Agreement

THIS AGREEMENT made and entered into this ____ day of _____, 2007, by and between the City of Billings, Montana, a municipal corporation, hereinafter referred to as "CITY," and the Lockwood Area/Yellowstone County Water and Sewer District, a county water and sewer district organized and existing under the laws of the State of Montana, hereinafter referred to as "DISTRICT";

W I T N E S S E T H

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility; and

WHEREAS, the DISTRICT is authorized under state law to construct, purchase, lease, acquire, operate and maintain a wastewater system to benefit the inhabitants of the DISTRICT; and

WHEREAS, the DISTRICT has determined that it would be cost effective at this time for the DISTRICT to transport its wastewater to the municipal wastewater system and to contract with the CITY for the treatment and disposal of said wastewater; and

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the DISTRICT'S wastewater in a manner that meets all the effluent limitations set forth in the CITY'S current Montana Pollutant Discharge Elimination System Permit, MT-0022586.

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the parties hereto, it is hereby agreed as follows, inclusive of the referenced Exhibits and Attachments:

1. **Contractual Relationship:** Approval of this wastewater service agreement (Agreement), including payment by the DISTRICT of system development fees, does not create in behalf of the DISTRICT and/or the DISTRICT'S users any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and the DISTRICT and/or the DISTRICT'S wastewater users created hereby. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual customer (DISTRICT), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either party.

2. **Service Area:** This Agreement obligates the CITY to accept for treatment domestic wastes that are contributed from the DISTRICT'S users whose properties are situated entirely

within the boundaries of the DISTRICT at the time of its creation under County Resolution #96-83, dated August 22, 1996, and as more specifically described and shown on Exhibit "A" and Exhibit "B," respectively. Said area will hereinafter be referred to as "Service Area." It is further understood between the parties hereto that the DISTRICT shall not expand its Service Area to include any additional properties without first obtaining the CITY'S written consent to do so and that CITY has sole discretion to withhold such consent.

3. Point of Connection: The DISTRICT'S force main shall connect to the municipal wastewater system at or near the site of the municipal wastewater treatment plant, with the exact location subject to the written approval of the Public Works Director (Director). A professional engineer licensed to practice in the State of Montana shall design the method of connection. The Director and the Montana Department of Environmental Quality (DEQ) shall approve in writing the detailed plans and specifications for the connection prior to its construction. The DISTRICT shall bear all costs associated with construction, operation, maintenance and replacement of the DISTRICT'S force main and appurtenances, including the connection of its force main with the municipal wastewater system.

4. Reserve Capacity: Exhibit "C" is a January 22, 1998 Memo from Bill Enright, Morrison-Maierle, Inc., to Al Towleron, Public Utilities Department. Therein the District's engineering consultant estimates the per capita contributions for various wastewater constituents. Exhibit "D" is an excerpt from the Lockwood Water and Sewer District Facility Plan Report, which was subsequently supplied to Alan Towleron, Public Works Department, by Carl Anderson of Morrison-Maierle, the DISTRICT'S engineering consultant. Therein, the projected population for Lockwood is 9,119 for the year 2020. Applying the per capita contributions to the projected population shows that for the Year 2040 20, the DISTRICT'S average daily wastewater flow will be 0.82 0.91 million gallons per day (mgd), its maximum daily flow of wastewater will be 2.53 2.74 mgd, and its maximum day-to-average-day peaking factor will be 3.1 (2.53/0.82) utilizing a 3.0 peaking factor. Said engineering consultant also estimates therein that for the Year 2010, the DISTRICT'S average Biochemical Oxygen Demand (BOD) Loading will be 1,715 1,915 pounds per day and its average Total Suspended Solids (TSS) Loading will be 1,707 2,006 pounds per day. The aforementioned flows, loadings and peaking factors shall constitute the amount of capacity that the CITY will reserve in the municipal wastewater system for the sole benefit and use of the DISTRICT. The rates and billing methodologies developed for these flows and loadings, as outlined in paragraphs 19 and 20 shall be complied with by the DISTRICT. If there are flows or loads exceeding the limits specified in this section that have not been previously negotiated the CITY shall notify the DISTRICT of such noncompliance. If the DISTRICT does not restrict the flows or loads exceeding the limits within 5 days, the rates for these flows and loadings shall be tripled.

Each time this Agreement is renegotiated, the DISTRICT may, at its sole discretion, decrease the amount of the reserve capacity set forth herein. Any increase in the reserve capacity at that time, however, shall be subject to the approval and acceptance of the CITY. Said renegotiated adjustments in the reserve capacity shall be taken into account the first time the CITY adjusts the rates that it charges the DISTRICT for treatment of the DISTRICT'S wastewater following such renegotiations. In any event, the CITY reserves the right to require the DISTRICT to contribute up-

front for the construction cost of any additional reserve capacity that may be renegotiated.

The DISTRICT shall not sell nor transfer to any other party all or any portion of this reserve capacity. Any reserve capacity not being used by the DISTRICT at the termination of this Agreement (measured by utilizing the last 365 days of flow data as well as BOD and TSS Loading data) shall revert back to the CITY at no cost or charge to the CITY.

The DISTRICT may not at any time exceed the reserve capacity the CITY has set aside for the DISTRICT. In the event that the DISTRICT should exceed such reserve capacity, The DISTRICT shall accept no new customers or service line connections into its system and will immediately commence design and construction of pretreatment and/or I/I storage facilities to reduce flows and loads received by the CITY below the reserve capacity. Such facilities shall be completed within two years of notification by the CITY and if not completed, this contract will be terminated and service will be disconnected within an additional two years.

5. Compliance with Regulations: The DISTRICT hereby agrees to accept and abide by the following regulations governing wastewater service:

A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing Wastewater Service or any future amendments thereto;

B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto; and

C. Any special conditions set forth in this Agreement.

If DISTRICT violates any of said codes, regulations and/or special conditions, the indemnification provisions set forth in Paragraph ~~28~~ 29 shall apply.

6. Flow Measurement: The DISTRICT, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director. The DISTRICT shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, as a minimum, accurately and continuously indicate and record at the municipal wastewater treatment plant the rate of flow and volume of all wastewater passing through the DISTRICT'S force main and into the municipal wastewater system.

All such flow measuring facilities shall be calibrated at least annually under the direct supervision of a professional engineer who is licensed to practice in the State of Montana. Said professional engineer shall be mutually acceptable to both the DISTRICT and CITY. The professional engineer shall certify in writing to the CITY and DISTRICT within thirty (30) days of performing the calibration that the flow measuring facilities, including the wastewater meter, have been properly calibrated according to the manufacturer's recommendations and are operating within approved accuracy limits. All costs associated with the annual calibration of the flow measuring facilities, including the wastewater meter, shall be borne by the DISTRICT.

Reasonable, estimated flow adjustments shall be made for any incorrect meter readings. The DISTRICT agrees to verify the calibration of the flow measuring facilities, at its sole expense and at the request of the CITY, in the event flow information deviates from normal indicating a problem with the facilities.

7. Testing and Sampling: The DISTRICT, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director. As a minimum, the DISTRICT shall install sampling and testing facilities at or near the point of connection of the DISTRICT'S force main with the municipal wastewater system and prior to the mixing of the CITY'S and DISTRICT'S wastewater. Such facilities shall be designed by a professional engineer, licensed to practice in the State of Montana. The facilities shall be located above ground and shall be designed to meet appropriate safety regulations and to satisfactorily operate under all weather conditions. The DISTRICT and the CITY shall have equal access at all times to said facilities.

The Director shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on the DISTRICT'S influent wastewater. Said parameters are subject to change from time to time at the Director's sole discretion. Such changes do not require renegotiations of this agreement. (See Attachment I)

A mutually acceptable DEQ-certified testing laboratory (CTL) shall perform all the sampling and testing of the District's wastewater required under this Agreement. The CTL shall perform said sampling and testing in accordance with 40 Code of Federal Regulations (CFR) Part 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants*. The CTL shall provide the CITY and DISTRICT with a written copy of the results of each test within 30 days of performing the test. The DISTRICT shall bear all costs associated with such testing and sampling. Reasonable, estimated adjustments shall be made for incorrect test results.

8. Test Noncompliance: Test results on samples of the DISTRICT'S wastewater that are in noncompliance with specified limits shall automatically trigger repeat sampling and testing by the CTL. If the follow-up test results remain out of compliance, the DISTRICT shall forthwith begin an in-depth investigation to determine the cause of noncompliance. Upon making such determination, the DISTRICT shall take immediate steps to correct the problem and regain full compliance. The DISTRICT shall, as a result of such noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations.

9. Sewer Use Regulations: The DISTRICT shall adopt sewer use regulations to regulate the use of its wastewater system. Said regulations shall be subject to the Director's written approval prior to their adoption by the DISTRICT. The sewer use regulations shall, as a minimum, be equivalent to the CITY'S adopted sewer use regulations and the model sewer use ordinance set forth in WPCF Manual of Practice No. 3, *Regulation of Sewer Use*, 1975. The DISTRICT shall aggressively enforce such regulations at all times, especially as it relates to prohibited pollutants and/or any limited pollutants allowed to enter the DISTRICT'S wastewater system. The DISTRICT agrees to adopt and enforce any sewer use regulations of the CITY as they may change from time to time.

The sewer use regulations shall also specifically prohibit the discharging of septage into the DISTRICT'S wastewater system. The DISTRICT shall assure, both through regulation and practice, that the discharging of any nondomestic and/or nonmetered wastes into the DISTRICT'S wastewater system from vehicular washing facilities, recreational vehicle (RV) dumps, and floor drains located in facilities utilized to maintain, repair or house vehicles and other motorized equipment shall conform with all policies, practices, administrative orders, rules and regulations, resolutions and ordinances of the CITY. The DISTRICT shall also prohibit in its sewer use regulations the discharge of any unpolluted waters into its wastewater system, such as storm water, groundwater, roof runoff, subsurface drainage, cooling water or industrial process waters.

10. Construction Standards: The DISTRICT shall adopt the CITY'S construction, testing and inspection standards that govern the installation of its sanitary sewers, the purpose of which shall be to ensure proper installation of said sewers and to ensure compliance with infiltration/inflow (I/I) requirements set forth herein. Plumbing systems and building sewers serving property within the DISTRICT'S Service Area shall comply with the Uniform Plumbing Code prior to connection with the DISTRICT'S wastewater system. I/I in the DISTRICT'S sanitary sewers and building sewers shall not exceed, at any time, 100 gallons per day, per inch-diameter, per mile of sewer pipe.

The DISTRICT shall maintain adequate records (such as inspection reports, test results, as-built drawings, permits, etc.) to document that its facilities have been properly inspected, tested and constructed during installation.

11. Operation and Maintenance: Failure by DISTRICT to properly operate and maintain its wastewater system can substantially influence the volume, rate of flow, and characteristics of the wastewater discharged by DISTRICT into the municipal wastewater system. Accordingly, the DISTRICT shall at all times operate and maintain its wastewater system in a manner that is consistent with good utility practice, as set forth in Water Environment Federation Manual of Practice 7, *Wastewater Collection systems Management*, latest edition. The DISTRICT shall maintain adequate records to document its compliance with this section.

To ensure access to the DISTRICT'S wastewater system for operation and maintenance purposes, the DISTRICT'S sanitary sewer lines shall be located in street right-of-way and easement locations shall be kept to a minimum. In any event, all such easements shall guarantee DISTRICT unrestricted access to its sanitary sewers for such purposes at all times and under any weather conditions.

12. Conservation: The DISTRICT shall actively encourage its users to conserve water and to utilize flow reduction measures, such as reduced-flow shower heads, toilets, and faucets. The DISTRICT shall maintain an ongoing educational program for this purpose.

13. Pretreatment Program: The DISTRICT shall not permit any person to discharge industrial wastes into the DISTRICT'S wastewater system without first adopting a Pretreatment Program, which shall be subject to the prior written approval of the Director and the EPA Regional Pretreatment Coordinator. The Director's approval shall be withheld until such time as the DISTRICT legally adopts enforceable pretreatment standards and requirements equal to or exceeding that adopted and enforced by the CITY and those set forth in 40 CFR Part 403. For further information and details regarding this issue as well as information regarding significant industrial users, see BMCC 26.611.

14. Odor and Corrosion Control: The DISTRICT recognizes the CITY'S concern of the potential for odor generation and facility corrosion at the point of connection between the DISTRICT'S force main and the municipal wastewater system as well as downstream thereof. Accordingly, the DISTRICT shall construct adequate facilities to control such odors and corrosion using the Best Available Technology prior to beginning discharge of its wastewater into the municipal wastewater system. All odor and corrosion facility plans shall be reviewed and approved by the CITY prior to construction.

15. Enlargements and Modifications: The DISTRICT shall obtain the Director's written approval prior to enlarging or modifying any of its wastewater facilities which would change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in this Agreement.

16. Access, Records and Contact Person: The DISTRICT shall grant the Director access at all times to DISTRICT'S wastewater system facilities for the purpose of inspecting, sampling, and studying the DISTRICT'S wastewater and permission to contact any individual users. Also, the DISTRICT shall, on request, provide the Director with copies of any flow, sampling and testing records that the Director may deem appropriate for said purposes or for the purpose of checking DISTRICT'S compliance with sewer use, industrial waste and/or pretreatment regulations. Prior to beginning the discharge of wastes into the municipal wastewater system, the DISTRICT shall also advise the Director in writing of the name, telephone number and mailing address of its official representative, who shall be authorized to make decisions on the DISTRICT'S behalf regarding the terms of this Agreement and to receive any notices, service bills, correspondence, etc. required herein.

17. Notification: The DISTRICT shall immediately notify the Director and the CITY'S wastewater treatment plant in the event of any accident, negligence, or other occurrence that occasions discharge to the municipal wastewater system of any waters or wastes not covered by this Agreement as well as any accidental slug discharges of authorized pollutants. In addition, the DISTRICT agrees to file with the Director, within five (5) working days of such discharge, a written report explaining why said discharge occurred. The report shall also identify in detail the DISTRICT'S plan of action to prevent reoccurrence of such type discharge. The DISTRICT shall be responsible for all damages, costs, and fines of the CITY due to unauthorized or negligent discharges.

18. **Degree of Treatment:** It is understood by the parties hereto that the CITY can only treat the DISTRICT'S wastewater to the extent the CITY is presently capable of treating said wastewater utilizing the existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a greater degree of treatment, the CITY shall comply with such requirements and DISTRICT shall be assessed a higher rate for the disposal as agreed by the parties or as set forth in paragraph 24 22 and 22 23 herein.

19. **Billing:** The DISTRICT shall pay to the CITY a monthly charge for the treatment and disposal of the DISTRICT'S wastewater. Monthly payments shall begin at the time the DISTRICT commences discharge of wastewater into the municipal wastewater system. Payments are due and payable in full no later than thirty (30) days from the date of billing. Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge. The late-payment interest charge shall be the amount stated in the CITY'S wastewater special fees and charges. If agreed by the DISTRICT and CITY, system development fees may be included in this billing process and, if so, will be subject to all provisions contained herein.

20. **Future Wastewater Rate Making Methodology:** It is the intent of the parties hereto that during the life of this agreement, the DISTRICT shall pay reasonable and just rates for treatment of its wastewater and that the CITY, in turn, shall receive a reasonable and just compensation for the treatment of the DISTRICT'S wastewater. Accordingly, the wastewater rate charged to the DISTRICT in the future for treatment of its wastewater shall be based upon cost-of-service principles as set forth in 40 Code of Federal Regulations (CFR) Part 35, *Guidelines for User Charges*. When calculating the cost-of-service rate to be charged the DISTRICT for treatment of its wastewater, the CITY'S rate expert shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the rate expert shall, among other things, take into consideration the following when calculating the cost-of -service rate to be charged the DISTRICT:

A. The amount and level of service that the CITY is providing the DISTRICT as well as any contributions the DISTRICT has made for the construction of the CITY'S wastewater treatment facilities.

B. The amount of contributions made by inside-city customers towards facilities utilized to serve the DISTRICT.

C. The amount of reserve capacity that the CITY has set aside for the DISTRICT in the municipal wastewater system.

D. The costs of any construction improvement required for increases in reserve capacity requested by the DISTRICT.

E. The cost of performing the rate study, unless arrangements are made between the CITY and DISTRICT for payment otherwise.

The rate expert shall also take into consideration the fact that the DISTRICT is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. Moreover, the return on investment paid by the DISTRICT shall be based, among other things, upon the depreciated cost of the facilities needed to provide the reserve capacity the CITY has set aside for the DISTRICT'S exclusive use. Finally, the rate of return to be used to calculate the return on investment shall be a minimum of 15% in order to recognize the risks incurred by the CITY in serving the DISTRICT as well as the fact that the replacement cost of the reserve capacity the CITY has set aside herein for the DISTRICT will greatly exceed its original cost as a result of inflation, etc.

The DISTRICT shall pay its proportionate share of any federal, state or local fees assessed the municipal wastewater utility. Such fees shall be due and payable as set forth in Section 19, above.

In the event the strength of the pollutants (BOD, TSS, etc.) contained in the DISTRICT'S wastewater are determined to exceed those normally present in domestic wastes, the CITY may charge the DISTRICT reasonable fees for the treatment of such extra-strength wastes.

The rates the CITY charges the DISTRICT for the treatment of any special wastes and/or permitted industrial wastes shall be determined on a case-by-case basis. Determination of such rates requires separate study and negotiation. (See BMCC 26-106 for additional information regarding special agreements and payments for unusual wastewater treatment.) In any event, such rates shall be charged to the DISTRICT in addition to any other rates set forth herein.

The CITY reserves the right to periodically adjust the rates set forth herein ~~under the procedures set forth in~~ in conformance with the provisions of paragraph Section 20, 21 22 and 22-23.

21. System Development Fees: In addition to the wastewater rates the DISTRICT shall pay to the CITY wastewater system development fees with the amount of the fee to be determined by the CITY'S rate expert. The rate expert shall determine the methodology to be used to calculate the fees that is most fitting for this AGREEMENT; however, lacking such a determination by the rate expert, the methodology used shall be one most advantageous to the CITY as determined by the CITY.

The fees shall be assessed on a per-connection basis and shall be due at the time of connection to the DISTRICT'S sewer system; however, the rate expert may recommend an alternate assessment method if deemed appropriate to this AGREEMENT, provided, however, that any alternate method must be approved by the CITY. The DISTRICT shall maintain sufficient records to document connections to their system and information necessary to determine the system development fees to be paid by the DISTRICT. Such records shall be available to the CITY upon request. Failure to properly maintain records and pay the system development fees due will be grounds for termination of this AGREEMENT. Details of the procedure to accomplish this process shall be cooperatively determined by the DISTRICT and CITY.

24.22. Wastewater Rate Study: With respect to any wastewater rate study that would affect the wastewater rate charged to the DISTRICT, the CITY shall give the DISTRICT advance notice of its intent to have a rate expert undertake such a study. The rate expert's draft report(s), work papers and any underlying data used to generate such report(s) shall be available upon request to the DISTRICT. The CITY'S rate expert shall be available to meet at reasonable times with the DISTRICT and/or its rate experts during this process or the DISTRICT Manager or member of the DISTRICT'S staff, but not to include counsel. The DISTRICT agrees to provide any information relevant to determining the DISTRICT'S customer service characteristics.

Once the CITY'S rate expert has completed its written report, the CITY shall promptly provide a copy of that report to the DISTRICT, and the DISTRICT shall respond to that report within forty-five (45) days after receiving the report by submitting a written response to the Director.

If the CITY and DISTRICT are unable to agree on a reasonable and just wastewater rate to be charged the DISTRICT, then the CITY and DISTRICT shall have thirty (30) days from the date of submission of the DISTRICT'S response to the CITY'S wastewater rate study within which to informally attempt to reach an agreement through non-binding mediation. The CITY and DISTRICT agree to work together in good faith in attempting to reach an agreement on a reasonable and just rate.

22.23. Wastewater Rate Arbitration Procedure: If, after the consultation described in Section ~~24~~ 22, the DISTRICT and the CITY are still unable to agree on a reasonable and just wastewater rate to be charged to the DISTRICT, then the matter(s) in dispute shall be submitted to binding arbitration. The CITY'S wastewater rate expert, who conducted the study and participated in the negotiation described in Section ~~24~~ 22, and a wastewater rate expert retained by the DISTRICT shall mutually agree and appoint a third wastewater rate expert who shall be the sole neutral arbitrator of the dispute. The appointment of the arbitrator shall be made within twenty (20) days of the conclusion of the negotiation period described in Section ~~24~~ 22. The arbitrator shall be neutral, shall never have been a resident of Yellowstone County, shall never have worked for either of the parties, and shall be a qualified wastewater rate expert.

A. Within twenty (20) days of the appointment of the arbitrator, the parties shall exchange expert disclosure statements containing the information set forth in Rule 26(b)(4), Mont. R. Civ. P., together with any draft report(s), work papers, and underlying data generated and/or used by any expert, and shall provide a list of all lay witnesses and the substance of their testimony.

B. The arbitration hearing shall be held no later than sixty (60) days following the appointment of the arbitrator, and the arbitrator shall render a decision no later than thirty (30) days after the hearing.

C. Both the CITY and the DISTRICT shall present their respective positions to the arbitrator. Following the arbitration hearing, the arbitrator shall be limited to adopting that

party's position which best represents the intent of this agreement, but shall be prohibited from adopting any alternative rates.

D. The arbitration hearing shall be conducted according to such procedure as the arbitrator may choose so as to allow each party to fully present its position and may be formal or informal.

E. The cost of the arbitrator shall be borne equally by both parties.

~~23.~~24. **Annexation and Dissolution of District:** Should fifty-five (55) percent or more of the property within the DISTRICT'S Service Area become annexed either voluntary or by election into the corporate city limits, the DISTRICT shall take, at the CITY'S sole discretion and with the CITY'S written consent, whatever steps are legally necessary to transfer its assets and liabilities to the CITY and dissolve the DISTRICT. Failure to timely comply with this section shall be sufficient grounds to terminate this agreement.

~~24.~~25. **Term of Agreement:** The term of this Agreement is fifteen (15) years. This Agreement is renegotiable at any time if both parties so consent in writing. Either party may terminate this agreement by giving the other party eight (8) years written notice. If no notice to terminate is received at least one (1) year prior to the expiration of this Agreement, then this Agreement will renew for an additional ten (10) years. This Agreement may be subsequently renewed three more times for an additional ten (10) years each, subject to the preceding clause.

~~25.~~26. **Milestones:** The DISTRICT shall have two (2) years from the date this agreement is initially signed to successfully approve a financing program that will allow construction of a wastewater system. Construction of the wastewater improvements shall commence within three (3) years from the date this agreement is initially signed. Should the DISTRICT fail to meet either of these milestones, this agreement shall terminate immediately.

~~26.~~27. **Non-Binding Mediation:** As a prerequisite to commencing litigation on any unresolved dispute arising from this Agreement, the parties agree that, with the exception of wastewater rate adjustment matters, all unresolved claims, demands, disputes, controversies and differences that may arise between the parties concerning the content of this Agreement shall first be submitted to non-binding mediation. The parties shall confer and agree upon selection of a mediator for such purposes; however, if they cannot agree, each party shall select a mediator and both mediators shall then agree upon and select a third mediator before whom all disputes shall be presented. Thereafter, either party may pursue litigation and shall have a right to file an action if mediation does not result in a final agreement and release between the parties which resolves all disputes pending at that time. Jurisdiction of all litigation shall be in Montana State District Court and venue shall be in Yellowstone County, Montana. Each party shall bear its own internal costs of mediation including attorney fees and costs, if any. Each party shall pay 50% of any and all fees and costs charged by the selected mediator.

In lieu of the above paragraph, the parties may agree and stipulate to binding arbitration in lieu of mediation. The arbitrator shall be selected, the arbitration conducted and the arbitration ruling

shall be pursuant to the Montana Arbitrators' Association. Binding arbitration shall preclude litigation in District Court by either party on any issue decided by the arbitrator. Each party shall bear their own attorney fees and related costs and expenses if binding arbitration is selected as the dispute resolution method.

The Court shall be authorized to award the prevailing party reasonable attorney fees and costs should the parties proceed with litigation as described above in District Court.

27.28. Definitions: Terms/phrases used herein this Agreement (such as but not limited to Biochemical Oxygen Demand (BOD), customer, domestic wastes, industrial wastes, Montana Pollutant Discharge Elimination System (MPDES) Permit, municipal wastewater system, municipal wastewater treatment plant, municipal wastewater utility, pollutant, pretreatment, public works department, public works director, rules and regulations, septage, service agreement, Total Suspended Solids (TSS), infiltration/inflow (I/I), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings Montana City Code or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

28.29. Indemnification: The DISTRICT agrees to indemnify, hold harmless, and defend the CITY from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which the CITY may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage is caused by; (1) the DISTRICT breach of this Agreement; or (2) any negligent or willful act or omission of DISTRICT or its employees or agents in the performance of services.

The CITY agrees to indemnify, hold harmless, and defend the DISTRICT from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the DISTRICT may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of this Agreement; or (2) any negligent or willful act or omission of the CITY or it's employees or agents.

29.30. Severability: In the event any provision of this Agreement is declared void, invalid or contrary to law, the parties hereto agree that the remaining provisions shall continue and remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

City of Billings, Montana

By: _____
Mayor

By: _____
City Attorney

Attest:

City Clerk

Lockwood Area/Yellowstone
County Water & Sewer District

By: _____
Chairman

By: _____
District Attorney

Attest:

Secretary

ATTACHMENT I

Pursuant to the Agreement between the City of Billings (City) and the Lockwood Area/Yellowstone County Water and Sewer District (District), this Attachment sets forth the tests to be performed by District on the wastewater it discharges into the municipal wastewater system. This Attachment also sets forth the frequency of sampling, the limits for test compliance and the methods of sampling. The following parameters and other criteria are subject to periodic change by the Director, at his sole discretion:

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
BOD ₅	300 mg/l	Weekly ¹	Composite
TSS	300 mg/l	Weekly ¹	Composite
pH	5.5 - 9.0	Daily	Grab
Total Oil & Grease ^{2,5}	100 mg/l	2x/week	Grab
TPH (Total Petroleum Hydrocarbons)	100 mg/l	Bi-monthly	Grab
Total Phosphorus (as P)		1x/Quarter	Composite
Total Ammonia (as N)		1x/Quarter	Composite
Nitrate & Nitrite (as N)		1x/Quarter	Composite
TKN (Total Kjeldahl Nitrogen)		Quarterly	Composite
Temperature		Weekly	Instantaneous
Volatile Organics ^{3,4}		Annually	Grab
Organic Acids ^{3,4}		Annually	Composite
Base/Neutral Organics ^{3,4}		Annually	Composite
Pesticides ^{3,4}		Annually	Composite
Antimony (Total)		Quarterly	Composite
Arsenic (Total)	2.5 mg/l	Quarterly	Composite
Beryllium (Total)		Quarterly	Composite
Cadmium (Total)	13.9 mg/l	Quarterly	Composite
Chromium (III)		Quarterly	Composite
Chromium (VI)		Quarterly	Grab
Chromium (Total)	35.3 mg/l	Quarterly	Composite
Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
Lead (Total)	2.2 mg/l	Quarterly	Composite
Mercury (Total)	0.15 mg/l	Quarterly	Composite
Nickel (Total)	26.8 mg/l	Quarterly	Composite
Selenium (Total)	< Detection Limit	Quarterly	Composite

Silver (Total)	1.1 mg/l	Quarterly	Composite
Thallium (Total)		Quarterly	Composite
Zinc (Total)	1.1 mg/l	Quarterly	Composite
Cyanide (Total)	2.6 mg/l	Quarterly	Grab
BTEX (Benzene, Toulene, Ethelbenzene, Xylene)		Monthly	Grab
Tetrachloroethylene		Quarterly	Grab

Footnotes:

- 1 A 24-hour, composite sample to be taken on progressive days each sampling event.
- 2 A visual sheen shall be considered a violation.
- 3 Minimum parameters to be tested for as determined by the Director.
- 4 A minimum of every 5 years, or sooner if determined necessary by the Director; monthly analysis for parameters designated by Director shall be done in support of local limits re-evaluation.
- 5 In addition to the visual sheen criteria set forth in Footnote 2, above, oil and grease shall not cause any interference or obstruction in the municipal wastewater system.

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