

NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA

CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

AGENDA

COUNCIL CHAMBERS

April 13, 2009

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Pitman

ROLL CALL

MINUTES – March 23, 2009

COURTESIES

PROCLAMATIONS

- Arbor Day, April 24, 2009
- Fair Housing Month, April, 2009
- Billings Child Abuse Prevention and Awareness Month, April 2009

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 7, 8a and 8b ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. Bid Awards:

- (1) Mini Buses (2) for Parks and Recreation Department.
(Opened 3/31/09) Recommend Intermountain Coach, \$119,706.
- (2) Cab and Chassis for Billings Logan International Airport.
(Opened 3/24/09) Recommend Motor Power Equipment, \$118,687.
- (3) W.O. 08-02 Miscellaneous/Developer Related Project and Additive Alternate No. 1. (Opened 3/24/09) Recommend J & J Concrete, \$404,200.

(4) W.O. 08-12 Waste Water Treatment Plant Digester Gas Condensate Drain Vault Entrance. (Opened 3/10/09 and delayed from 3/23/09.) Recommend reject all bids.

(5) W.O. 08-24 Broadwater Crossing connecting Descro Park and Lillis Park – Billings Federal Aid Project STPE 1099(63) MDT CN6634. (Opened 3/24/09) Recommend H.L. Ostermiller Construction, Inc., \$75,733.66, pending CTEP approval.

(6) W.O. 09-04 2009 Accessibility Ramps on Grand Avenue and 19th Street West. (Opened 3/24/09) Recommend J & J Concrete, \$333,910.

(7) W.O. 09-05 Poly Surface Improvements from Westfield Drive to Aspen Drive. (Opened 3/24/09) Recommend Knife River Construction, \$109,448.50.

B. Grant Agreement with Department of the Army for Orchard Lane Water Main Replacement Design and Construction, \$184,000.

C. Certified Local Government Program Contract with the State of Montana Historic Preservation Office for historic preservation activities, \$5,500 (4/1/09—3/31/10). Local matches: City of Billings - \$1,031; Yellowstone County - \$1,000; City of Laurel - \$469.

D. Acknowledging receipt of petition to annex #09-02: .74 acres of Lot 26, Block 19, Lillis Heights Subdivision, generally located on the northwest corner of Rimrock Road and Rim Point Drive at 4739 Rimrock Road; MCS Properties, LLC, petitioner, and setting a public hearing for April 27, 2009.

E. Confirmation of Police Officer:

(1) Jacob Best

F. Street Closures:

(1) Montana Women's Run, 5/9/09. Closures -- 6 a.m. to 12 noon: 2nd and 3rd Avenues from N. 10th to Division Street; 8:25 a.m. to 10 a.m.: Clark and Yellowstone Avenues (partial); and 6 a.m. to 12 noon: 2nd Avenue N. from N. 27th Street to N. 29th Street and Broadway from 1st Avenue N. to 3rd Avenue N.

(2) Yellowstone Valley Farmers Market – Saturdays, 7/18/09 through 10/3/09, 6 a.m. to 1 p.m., and **Wednesdays,** 8/5/09 through 8/26/09, 3 p.m. to 9 p.m., N. 28th from 1st to 3rd Avenue N. and 2nd Avenue N. from 29th to 1st Avenue N on Saturdays and N. 28th from 2nd to 3rd Avenue N. on Wednesdays.

G. Approval of Donations to send School Resource Officers to the National Conference in Baltimore, MD (6/29/09 – 7/3/09).

(1) GST, Inc., \$2,053.
(2) Wal-Mart Foundation, \$500.

H. Approval of application for an AmeriCorps VISTA Project, approximately \$320,000 per year through the American Recovery and Reinvestment Act (ARRA) of 2009.

I. Approval of application and acceptance of 2009 Internet Crimes Against Children Recovery (ICAC Recovery) Grant, \$422,046 through the American Recovery and Reinvestment Act (ARRA) of 2009.

J. Approval of application for a Recreational Trails Program grant for continuation of the Swords Park Trail through the east end of the park and connecting to the existing Airport Road underpass, \$35,000 maximum.

K. Resolution of Intent to Create SID 1386, MacDonald Drive Street Improvements, and setting a public hearing date for May 11, 2009.

L. Second/final reading ordinance for revisions to the Animal Ordinance: changes to the existing ordinance by the Animal Control Board due to the contract entered into between the City of Billings and Yellowstone Valley Animal Shelter.

M. Exempt Plat of Amended Lot 2A-4, Block 1, Miller Crossing Subdivision.

N. Bills and Payroll

- (1) March 6, 2009
- (2) March 13, 2009
- (3) March 20, 2009

(Action: approval or disapproval of Consent Agenda)

REGULAR AGENDA:

2. **RESOLUTION** relating to Special Improvement District Bonds 1384, Yellowstone Club Estates; determining the form and details and authorizing the execution and delivery. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
3. **PUBLIC HEARING AND APPROVAL** of contract with RedFlex Traffic Systems, Inc. to provide red light camera traffic enforcement services to the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR SOCIAL HOST ORDINANCE.** An amendment to Chapter 18 of the Billings City Code adding Article 12, holding a person accountable for organizing a party or event in which underage consumption of alcohol takes place. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

5. **PUBLIC HEARING AND FIRST READING ORDINANCE AUTHORIZING A MUNICIPAL TREATMENT COURT ADMINISTRATIVE FEE.** An ordinance that authorizes a \$25.00 court fee to help defray administrative costs incurred by Municipal Court for processing misdemeanor criminal offenses in Billings Adult Misdemeanor Drug Court, Billings Adult Misdemeanor DUI Court, and Billings Adult Misdemeanor Mental Health Court. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE AUTHORIZING CLOSURE OF HAZARDOUS FIRE AREAS AND UPDATING REFERENCES TO THE FIRE CODE.** An ordinance that provides authority to the Billings Fire Department to close hazardous fire areas, and updates the Billings City Code with appropriate language to provide the enforcement mechanism to manage hazardous fire areas. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
7. **PUBLIC HEARING AND RESOLUTION APPROVING TAX INCENTIVES FOR KIMMET PROPERTIES, LLC, DBA CELLULAR PLUS** for commercial building expansion on property located at 815 Main Street. Kimmet Properties LLC and Adam Kimmet, owners. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
8. **LENHARDT SQUARE MASTER PLAN AGREEMENT.** Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
9. (a) **MANAGEMENT AGREEMENT WITH DOWNTOWN BILLINGS PARTNERSHIP, INC.** to manage the Expanded North 27th Street Urban Renewal Area/Tax Increment District, \$98,580.
(b) **MANAGEMENT AGREEMENT WITH BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC.** to manage projects within the East Billings Urban Renewal Area/Tax Increment District, \$2,000.
10. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

Council Initiatives

ADJOURN

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, April 13, 2009

TITLE: PRPL Mini-Buses Bid Award
DEPARTMENT: Parks and Recreation
PRESENTED BY: Mike Whitaker, PRPL Director
Kory Thomson, Recreation Supervisor

PROBLEM/ISSUE STATEMENT: On Monday, April 24, 2008, City Council approved the Exxon EPA Emissions Reduction Plan Agreement with the City of Billings. The Exxon/Mobile Refinery is required by the EPA to undertake a diesel fuel emissions reduction project in the Billings area for the amount of \$300,000. Exxon chose to fund an equipment replacement project with the PRPL Department. The plan commits the City to destroy the old diesel engines, maintain the vehicles that are purchased, to only burn ultra-low sulphur fuel, and include idling control equipment. The Billings Parks, Recreation and Cemetery Board reviewed the agreement on February 13, 2008. As part of the agreement, the PRPL Department is replacing their old retired MET Transit Bus with two new mini-buses. The cost for both buses is expected to range between \$120,000 - \$140,000. The remainder of the monies is expected to be used for purchase of a new garbage truck for the Parks Division, as well as diesel engine replacement for two large wing mowers. Those replacements are expected to go out to bid within the next couple months. The call for sealed bids was published in the Billings Times on March 12 and 19, 2009. Bid opening was March 31, 2009. The list of vendors and bid amounts are as follows:

Intermountain Coach	\$119,706.00
Harlow's Bus Sales	\$121,000.00
Davey Coach	\$131,977.00

ALTERNATIVES ANALYZED: To award or not award the bid.

FINANCIAL IMPACT: Both buses are being purchased through the Exxon/Mobile agreement at no cost to the City. The City has budgeted money to pay for the purchases and will be reimbursed through Exxon/Mobile.

RECOMMENDATION

Staff recommends that the City Council approves the low bidder, Intermountain Coach, in the amount of \$119,706 for the purchase of two mini-buses for the Parks and Recreation Dept.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Award of a Cab and Chassis for Billings Logan International Airport
DEPARTMENT: Aviation and Transit
PRESENTED BY: Tom Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: This year's approved Equipment Replacement Program includes the replacement of the cab and chassis for the Airport's water tender, which is 28 years old and has more than 400,000 miles. Also included in this bid is the removal of the six-year-old water tank from the old cab and chassis and its installation onto the new cab and chassis. This equipment is used to transport 3,000 gallons of water to re-supply Aircraft Rescue and Fire Fighting vehicles during aircraft/airport emergencies, and also provides mutual aid support during structural and wild land fire fighting throughout the community.

This project was advertised in the *Billings Times* for three weeks, and was on the City's Web site. On March 24, 2009, we received the following bid on this project:

<u>SUPPLIER</u>	<u>BID</u>
Motor Power Equipment	\$118,687
ESTIMATE	\$125,000

FINANCIAL IMPACT: The total cost of this equipment is \$118,687, and will be paid for with Passenger Facility Charge (PFC) funds, which are budgeted and available.

RECOMMENDATION

Staff recommends that the City Council approve the award of a Cab and Chassis to the sole bidder, Motor Power Equipment, for the amount of \$118,687.

Approved By: City Administrator City Attorney

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: WO 08-02 Miscellaneous/Developer Related

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-02, Miscellaneous/Developer Related, on March 24, 2009. This project constructs curb, gutter, and sidewalk improvements at various locations in the city.

ALTERNATIVES ANALYZED:

1. Award the contract for W.O. 08-02 to J & J Concrete, Inc. in the amount of \$404,200; or
2. Reject all bids and do not award contract for W.O. 08-02

FINANCIAL IMPACT: We received seven bids for this project as follows:

<u>Contractor</u>	<u>Base Bid</u>	<u>Total Base Bid +Additive Alternate No. One</u>
Engineer's Estimate	\$521,280.00	\$528,680.00
J & J Concrete	\$397,450.00	\$404,200.00
Asphalt Plus	\$470,477.50	\$477,977.50
Aztec Concrete	\$431,187.50	\$440,000.00
CMG Construction, Inc.	\$497,925.00	\$507,300.00
HL Construction	\$548,667.76	\$555,631.51
Riverside Sand & Gravel	\$810,035.00	\$819,785.00
HL Ostermiller	\$509,810.25	\$522,935.25

A breakdown of the project funding sources available is listed below:

<u>Estimated Assessed Costs</u>	\$337,000
<u>Storm Drain Funds</u>	\$52,500
<u>Gas Tax Funds</u>	\$217,500
<u>Public Works Belknap Funds</u>	\$5000
Funding Available	\$612,000

RECOMMENDATION

Staff recommends that Council award the bid for WO 08-02 Miscellaneous/Developer Related to J & J Concrete, Inc. in the amount of \$404,200.00, which includes the Additive Alternate No. One for rubber sidewalks.

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

City of Billings, Montana
Monday, April 13, 2009

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

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-12, WWTP Digester Gas Condensate Drain Vault Entrance, on March 10, 2009. This project consists of eliminating a confined manhole entrance to digester gas condensate drain by providing stairs for the access at the Waste Water Treatment Plant. The bid award was delayed from the March 23, 2009, Council Meeting since the low bid exceeded the available budget to construct the project. Staff is analyzing other methods of removing the gas condensate that is within the allotted budget and recommends rejecting all bids.

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

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

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

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

RECOMMENDATION

Staff recommends that Council reject all bids for Work Order 08-12 WWTP Digester Gas Condensate Drain Vault Entrance.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: WO 08-24 Broadwater Crossing – Billings Federal Aid Project No. STPE 1099(63) MDT CN6634

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 08-24 Broadwater Crossing, Federal Aid Project No. STPE 1099(63) MDT CN6634 on March 24, 2009. This project will provide a mid-block crossing on Broadwater connecting Descro Park and Lillis Park.

ALTERNATIVES ANALYZED:

2. Award the contract for W.O. 08-24 to HL Ostermiller Construction, Inc. in the amount of \$75,733.66; or
2. Reject all bids and do not award contract for W.O. 08-24

FINANCIAL IMPACT: We received two bids for this project as follows:

<u>Contractor</u>	<u>Base Bid</u>
Engineer's Estimate	\$74,987.00
HL Ostermiller Construction, Inc.	\$75,733.66
Riverside Sand & Gravel	Non-Responsive

A breakdown of the project funding sources available is listed below:

Local Funds	\$ 16,323
CTEP	\$ 92,325
<u>Obligated Funds (PE & CE Contract)</u>	<u>\$(20,106)</u>
Funding Available	\$ 88,542

RECOMMENDATION

Staff recommends that Council award HL Ostermiller Construction, Inc.'s bid for WO 08-24 Broadwater Crossing – Billings in the amount of \$75,733.66 pending CTEP Approval.

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

AGENDA ITEM:

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

Monday, April 13, 2009

TITLE: Work Order 09-04, 2009 Accessibility Ramps

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for the 2009 Accessibility Ramps on March 24, 2009. This project will construct Accessibility Ramps on Grand Avenue and 19th Street West. Per the agreement between the Department of Justice and the City Of Billings, the City is required to construct accessibility ramps on all streets that have been reconstructed or overlaid since 1992. This project has \$400,000 of gas tax funds for FY2009.

ALTERNATIVES ANALYZED:

1. Award Work Order 09-04, 2009 Accessibility Ramps, to J & J Concrete in the amount of \$333,910.00; or
2. Not award Work Order 09-04, 2009 Accessibility Ramps.

FINANCIAL IMPACT: Funding for Work Order 09-04, 2009 Accessibility Ramps, will be provided from Gas Tax. We received 4 bids for this project as follows:

	<u>Total</u>
Engineer's Estimate	\$ 431,231.50
H.L. Ostermiller	\$ 409,208.90
Riverside Sand & Gravel	\$ 509,000.00
CMG Construction	\$ 439,075.00
J & J Concrete	\$ 333,910.00

CIP Project #ENG ADA

Approved Budget	\$400,000.00
Previous Encumbrances	\$000,000.00
Bid Award Amount	<u>\$333,910.00</u>
Budget Fund Balance (after this award)	\$ 66,090.00

RECOMMENDATION

Staff recommends that Council approve the construction contract for Work Order 09-04, 2009 Accessibility Ramps, with J & J Concrete in the amount of \$333,910.00.

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

AGENDA ITEM:

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

Monday, April 13, 2009

TITLE: W.O. 09-05 Poly Surface Improvements – Construction Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for W.O. 09-05 Poly Surface Improvements from Westfield Drive to Aspen Drive on March 24, 2009. This project consists of installation of new curb/gutter, sidewalk and street improvements to Poly Drive just north of Rush Park.

ALTERNATIVES ANALYZED:

3. Award W.O. 09-05 to Knife River in the amount of \$109,448.50; or
2. Reject all bids and do not award W.O. 09-05.

FINANCIAL IMPACT: This project will be funded by Gas Tax Funds. Four bids were received for this project and are shown below:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 167,614.00
Knife River Construction	\$ 109,448.50
Ostermiller Construction	\$ 115,446.50
Riverside Sand and Gravel	\$ 121,900.00
CMG Construction	\$ 122,891.00

Any remaining funds for this project shall be used for construction administration, staking, and change orders. A breakdown of the project funds per the CIP is listed below:

<u>W.O. 09-05 Funding</u>	-	
Gas Tax Funds		\$ 176,000.00
<u>Contract Amount (This Memo)</u>		<u>\$ (109,448.50)</u>
Remaining Funds		\$ 66,551.50

RECOMMENDATION

Staff recommends that Council award Knife River's bid for W.O. 09-05 in the amount of \$109,448.50.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Grant Acceptance and Approval of the Billings Orchard Lane Water Main Replacement Design and Construction Agreement Between the Department of the Army and the City of Billings

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Section 595 of the Water Resources Development Act of 1999 provides Federal funds authorized to be appropriated for design and construction assistance for projects undertaken in Montana. A grant for \$184,000 of this funding has been allocated for a water replacement project on Orchard Lane from King Avenue East to State Avenue. This project replacement is one schedule (schedule 4) of the much larger “2008-2009 Water and Sewer Replacement Project”. The Orchard Lane project will replace over 5,100 linear feet of existing 12-inch diameter water main with a new 16-inch diameter PVC main and appurtenances. The project will also replace over 550 linear feet of existing 8-inch diameter cast iron water mains with new 8-inch diameter PVC mains. Signing of this agreement is necessary to utilize this grant funding for this project.

ALTERNATIVES ANALYZED:

- Approve the Billings Orchard Lane Water Main Replacement Design and Construction agreement between the Department of the Army and the City of Billings
- Do not approve this agreement.

FINANCIAL IMPACT: The Army has indicated that they must utilize approximately \$6,000 of the grant for \$184,000 leaving \$178,000 of the grant amount available for the project. The total project cost is estimated at approximately \$1,679,000. The grant amount will be used towards this amount. The City Of Billings funding portion of the project will be paid using water revenues.

RECOMMENDATION

Staff recommends that Council approve the Billings Orchard Lane Water Main Replacement Design and Construction agreement between the Department of the Army and the City of Billings.

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

ATTACHMENT

A. Billings Orchard Lane Water Main Replacement Design and Construction agreement between the Department of the Army and the City of Billings

orchard

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AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF BILLINGS, MONTANA FOR
DESIGN AND CONSTRUCTION
ASSISTANCE
FOR THE
BILLINGS ORCHARD LANE WATER REPLACEMENT PROJECT, YELLOWSTONE
COUNTY, BILLINGS, MONTANA

DRAFT

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U. S. Army Engineer, Omaha District and the City of Billings, Montana (hereinafter the "Non-Federal Sponsor"), represented by the Mayor, City of Billings, Montana.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, for water-related environmental infrastructure and resource protection and development projects in Idaho, Montana, rural Nevada, New Mexico, and rural Utah (hereinafter the "Section 595 Program") pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

WHEREAS, Section 595 provides that the Secretary of the Army may provide assistance for a water-related environmental infrastructure and resource protection and development project only if the project is publicly owned;

WHEREAS, Section 595 provides that \$25,000,000 in Federal funds are authorized to be appropriated for design and construction assistance for projects undertaken in Montana pursuant to the Section 595 Program;

WHEREAS, the U.S. Army Engineer, Omaha District (hereinafter the "District Engineer") has determined that the Billings Orchard Lane Water Replacement Project in Yellowstone County, Billings, Montana (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) is eligible for implementation under Section 595;

WHEREAS, Section 595 provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, Section 595 specifies the cost-sharing requirements applicable to the *Project* including that the Secretary of the Army shall afford credit for the reasonable costs of design

completed by the non-Federal interest before entering into a written agreement with the Secretary;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable programs and projects in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design and construction assistance for the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the Billings Orchard Lane Water Replacement Project in Yellowstone County, Billings, Montana as generally described in the Scope of Work, dated March 23, 2009 and approved by the District Engineer on _____, _____.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to design and construction of the *Project*. Subject to the provisions of this Agreement including audits conducted in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs, the term shall include, but is not necessarily limited to: the costs of the Non-Federal Sponsor's *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Non-Federal Sponsor's design costs incurred after the effective date of this Agreement; the Government's costs of review in accordance with Article II.A.1. of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's costs of inspection in accordance with Article II.A.6. of this Agreement; the Government's costs of technical assistance in accordance with Article II.A.1. and Article II.A.6. of this Agreement; the Non-Federal

Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A.1. and Article XIV.A.2. of this Agreement; the Non-Federal Sponsor's and the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B. of this Agreement; the Non-Federal Sponsor's construction costs; the Non-Federal Sponsor's supervision and administration costs; the Non-Federal Sponsor's costs of identification of legal and institutional structures in accordance with Article II.J. of this Agreement not incurred pursuant to any other agreement for the *Project*; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Non-Federal Sponsor's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement but not to exceed 25 percent of total project costs; the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement; and any other costs incurred by the Government pursuant to the provisions of this Agreement. The term does not include any costs of activities performed under any other agreement for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of establishment and maintenance of legal and institutional structures in accordance with Article II.J. of this Agreement; any costs of *betterments*; any costs incurred in advertising and awarding any construction contracts prior to the effective date of this Agreement; any construction costs incurred prior to the effective date of this Agreement; any interest penalty paid in accordance with Article VI.B.4. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.E. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

E. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

H. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

I. The term “*sufficient invoice*” shall mean submission of all of the following three items: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work in accordance with this Agreement, or a written certification by the Non-Federal Sponsor to the Government that it has received bills from contractors, suppliers, or employees for performance of work in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments or bills received; and (3) a written request for reimbursement for the amount of such specified payments or bills received that identifies those costs that have been paid or will be paid with *Federal program funds*.

J. The term “*Section 595 Program Limit for Montana*” shall mean the amount of Federal funds authorized to be appropriated for projects undertaken in Montana pursuant to the Section 595 Program. As of the effective date of this Agreement, such amount is \$25,000,000.

K. The term “*Section 102 Limit*” shall mean the annual limit on credits and reimbursements imposed by Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103.

L. The term “*pre-Agreement design work*” shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *Project* in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsor shall require all contractors to whom it awards design contracts to provide 30 percent and 100 percent design information to enable in-progress review of the design. The Government may participate in the review of the design at each stage of completion and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. The Government shall perform a final review to verify that the design is complete and is necessary for the *Project*. Upon completion of design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

2. Using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, an Environmental Assessment and Finding of No

Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter “NEPA”). The Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Non-Federal Sponsor’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *Project* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article XI of this Agreement. As necessary to ensure compliance with such laws, regulations, ordinances, and policies, the Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *Project*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *Project*, including relevant plans and specifications, prior to the Non-Federal Sponsor’s issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Non-Federal Sponsor.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *Project*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the *period of design and construction*. Further, the Government shall perform a final inspection to verify the completion of construction of the entire *Project* or completed portion thereof as the case may be. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing such inspections.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall perform or ensure performance of all *relocations* that the Non-Federal Sponsor and the Government jointly determine to be required or to be necessary for construction, operation, and maintenance of the *Project*. In addition, the Non-Federal Sponsor shall obtain all permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands.

C. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor that the District Engineer determines are directly related to design and construction of the *Project*, subject to the conditions and limitations of this paragraph.

1. Pursuant to paragraph A.6. of this Article, all work performed by the Non-Federal Sponsor for the *Project* is subject to on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

2. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

3. No costs shall be included in *total project costs* for any construction of the *Project* that was performed prior to compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

4. In the performance of all work for the *Project*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of costs for construction in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. The Non-Federal Sponsor's costs for design and construction that may be eligible for inclusion in *total project costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the work is completed and the time the costs are included in *total project costs*.

6. The Government shall not include in *total project costs* any costs paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose

is expressly authorized by Federal law.

D. The Government shall reimburse the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, the amount necessary so that the Federal contribution towards *total project costs* equals 75 percent; however, any reimbursement by the Government is subject to the availability of funds and is limited by the *Section 595 Program Limit for Montana*

E. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

[REDACTED]

The Government makes no commitment to request Congress to provide additional Federal funds for the Section 595 Program in Montana or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the Government's future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement. However, if the Government cannot make available sufficient Federal funds to meet the Federal share of *total project costs* in the then-current *fiscal year* solely due to the *Section 102 Limit*, only the Government's future performance related to reimbursement pursuant to paragraph D. of this Article shall be suspended.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 595 Program in Montana has reached the *Section 595 Program Limit for Montana*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 595 Program Limit for Montana* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 595 Program Limit for Montana*, the parties shall terminate this Agreement and proceed in accordance with Article XIII of this Agreement.

F. During the *period of design and construction*, the Non-Federal Sponsor shall prepare and furnish to the Government for review a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the “OMRR&R Manual”). The failure of the Non-Federal Sponsor to prepare an OMRR&R Manual acceptable to the Government shall not relieve the Non-Federal Sponsor of its responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the entire completed *Project*, or any completed portion thereof as the case may be, in accordance with the provisions of this Agreement.

G. Upon completion of construction and final inspection by the Government in accordance with paragraph A.6. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, in accordance with Article VIII of this Agreement. Further, after completion of all contracts for the *Project*, copies of all of the Non-Federal Sponsor’s Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Government.

H. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan. Such plan shall include necessary design, completion of all necessary NEPA compliance, preparation of appropriate engineering plans and specifications, preparation of an OMRR&R Manual, and any other matters related to design and construction of the *Project* in accordance with this Agreement.

J. The Non-Federal Sponsor shall identify, establish, and maintain such legal and institutional structures as are necessary to ensure the effective long-term operation of the *Project*. The Non-Federal Sponsor shall provide to the Government a description of such legal and institutional structures and such descriptions shall be included in the OMRR&R Manual prepared by the Non-Federal Sponsor. The Non-Federal Sponsor’s costs of identification of such legal and institutional structures shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government shall have no obligation under this Agreement for any costs of establishment and maintenance of such legal and institutional structures.

K. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

L. The Non-Federal Sponsor may request the Government to acquire lands, easements, or rights-of-way or to perform *relocations* for the *Project* on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the services performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

M. In the event that the Non-Federal Sponsor elects to include *betterments* in the design or construction of the *Project* during the *period of design and construction*, the Non-Federal Sponsor shall notify the Government in writing and describe the *betterments* it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to *betterments*, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

N. The Government shall determine and include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total project costs* for *pre-Agreement design work*.

1. *Pre-Agreement design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

2. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

3. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this paragraph are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

5. The Government shall not include in *total project costs* any costs for *pre-
Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless
the Federal agency providing the Federal portion of such funds verifies in writing that
expenditure of such funds for such purpose is expressly authorized by Federal law.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS,
AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Non-Federal Sponsor and the Government jointly shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the lands, easements, and rights-of-way jointly determined to be required. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Non-Federal Sponsor and the Government jointly determine the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that said interests have been acquired. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Non-Federal Sponsor and the Government jointly shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. Upon reaching such determination, the Government shall provide written confirmation to the Non-Federal Sponsor thereof including a description of the *relocations* jointly determined to be necessary. Prior to the issuance of the solicitation for each contract for construction of the *Project*, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the *Project* using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Non-Federal Sponsor and the Government jointly determine to be necessary for that work and certify in writing to the Government that said work has been performed. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* necessary for construction, operation, and maintenance of the *Project*.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS AND COSTS OF PERMITS

A. The Government shall include in *total project costs* the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government jointly determine must be provided by the Non-Federal Sponsor pursuant to Article III.A. of this Agreement and the value of the *relocations* that the Non-Federal Sponsor and the Government jointly determine must be performed by the Non-Federal Sponsor or for which it must ensure performance pursuant to Article III.B. of this Agreement. The Government also shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands. However, the Government shall not include in *total project costs* the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. Further, the Government shall not include in *total project costs* the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that reimbursement for the value and costs of such items is expressly authorized by Federal law. Finally, no value or costs of such items shall be included in *total project costs* pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value or costs in excess of 25 percent of *total project costs*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or Article III.B. of this Agreement and to determine the reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits pursuant to Article II.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions and the reasonable costs for obtaining such permits and include in *total project costs* the amount of such value and costs that does not exceed 25 percent of *total project costs*.

C. For the sole purpose of determining the value to be included in *total project costs* in accordance with this Agreement and except as otherwise provided in paragraph E. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as

determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *Project*, or, if the Non-Federal Sponsor performs the construction using its own forces, the date that the Non-Federal Sponsor begins construction of the *Project*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide a copy of each appraisal to the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way

acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

- a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.
- b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.
- c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Non-Federal Sponsor and the Government jointly determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plan maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for review by the Government pursuant to paragraph C.2.a. of this Article subject to an audit in accordance with Article X.C. of this Agreement to determine

reasonableness, allocability, and allowability of costs.

5. **Waiver of Appraisal.** Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Montana would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. The value to be included in *total project costs* for *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, inclusion of the value of *relocations* in *total project costs* may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way or performs *relocations*, the value to be included in *total project costs* in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total*

project costs in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. The Government shall include in *total project costs* the reasonable costs incurred by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement that are associated with obtaining permits necessary for construction, operation, and maintenance of the *Project* on publicly owned or controlled lands, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and the construction portion of the *Project*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or completed portions thereof as the case may be; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government and the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the Non-Federal

Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement , and the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$245,333; the Government's share of *total project costs* is projected to be \$184,000; the Non-Federal Sponsor's share of *total project costs* is projected to be \$61,333; *total project costs* to be incurred by the Government are projected to be \$6,000; *total project costs* to be incurred by the Non-Federal Sponsor are projected to be \$239,333; total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$178,000; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement is projected to be \$0; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement are projected to be \$0; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$0; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement is projected to be \$0; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

[REDACTED] by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Government's share of *total project costs*; the Non-Federal Sponsor's share of *total project costs*; *total project costs* incurred by the Government; *total project costs* incurred by the Non-Federal Sponsor; total reimbursements paid to the Non-Federal Sponsor; the value included in *total project costs* of lands, easements, rights-of-way, *relocations*, and permit costs determined in accordance with Article IV of this Agreement; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.N. of this Agreement; the Government's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.E. of this Agreement; and the Government's total financial obligations to be incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds for such obligations required by Article I.I.L. of this Agreement.

B. The Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor, in accordance with the provisions of this paragraph, the amount required pursuant to Article II.D. of this Agreement.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a *sufficient invoice* for costs the Non-Federal Sponsor has incurred for the *Project*.

2. Upon receipt of such *sufficient invoice*, the Government shall review the costs identified therein and shall determine: (a) the amount to be included in *total project costs*, subject to the limitations in Article II.C. of this Agreement; (b) the total costs incurred by the parties to date (including the value of lands, easements, rights-of-way, and *relocations*, and the costs of permits determined in accordance with Article IV of this Agreement); (c) each party's share of *total project costs* and the costs of data recovery activities in accordance with Article XVII.E. of this Agreement incurred by the parties to date; (d) the costs incurred by each party to date; (e) the total amount of reimbursements the Government has made to date in accordance with this paragraph; (f) the balance of Federal funds available for the *Project*, as of the date of such review; (g) the amount of reimbursement, if any, due to the Non-Federal Sponsor; and (h) the amount that actually will be paid to the Non-Federal Sponsor (hereinafter the "payment amount") if the amount of reimbursement determined above cannot be fully paid due to an insufficiency of Federal funds or the limitations of the *Section 595 Program Limit for Montana* or the *Section 102 Limit*.

3. Within 30 calendar days after receipt of the *sufficient invoice* provided in accordance with paragraph B.1. of this Article (hereinafter the "payment period"), the Government shall: furnish the Non-Federal Sponsor written notice of the determinations made in accordance with paragraph B.2. of this Article; provide an explanation, if necessary, of why the

payment amount is less than the amount of reimbursement determined due to the Non-Federal Sponsor; and make a payment to the Non-Federal Sponsor equal to the payment amount.

4. If the payment amount is not paid by the end of the payment period, the designated payment office shall credit to the Non-Federal Sponsor's account an interest penalty on the payment amount, without request from the Non-Federal Sponsor. Unless prescribed by other Federal authority, the interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the first day after the end of the payment period.

a. The interest penalty shall accrue daily from the first day after the end of the payment period through the date on which the payment is made. Accruals shall be compounded at 30 calendar day intervals through the date on which the payment is made.

b. The interest penalty shall not accrue, nor be compounded, during suspension of all of the Government's future performance or during suspension of only the Government's future performance to provide reimbursement. Further no interest penalty shall accrue, nor be compounded, upon termination of this Agreement under Article XIII of this Agreement.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Government's total required shares of *total project costs* and the costs of any data recovery activities exceed the Government's total contributions provided thereto, the Government, no later than 90 calendar days after completion of the interim or final accounting, as applicable, shall make a payment to the Non-Federal Sponsor, subject to the availability of funds and as limited by *Section 595 Program Limit for Montana* and the *Section 102 Limit*, in an amount equal to the difference.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Government for *total project costs* and the costs of any data recovery activities exceed the Government's total required shares thereof, the Non-Federal

Sponsor shall refund the excess amount to the Government within 90 calendar days of the date of completion of such accounting by delivering a check payable to "FAO, USAED, Omaha District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the Government is due a refund and funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for the first financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of such work. No later than 30 calendar days prior to the Government incurring any financial obligation for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such work by delivering a check payable to "FAO, USAED, Omaha District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph D.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such work from being

conducted in a timely manner, the Government shall conduct an interim accounting of such work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Omaha District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *Project* on behalf of the Non-Federal Sponsor exceeds the total obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon completion of construction and final inspection by the Government in accordance with Article II.A.6. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or a completed portion thereof as the case may be, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection, if the Government determines an inspection to be necessary. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor

and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this

Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend the Government's future performance under this Agreement.

B. In the event all of the Government's future performance under this Agreement or only the Government's future performance to provide reimbursement is suspended pursuant to Article II.E.2. of this Agreement such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D. and Article XVII.E. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; or 3) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.E. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. The Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination. Notwithstanding such termination, the Non-Federal Sponsor may continue with design and construction of the *Project*, at no cost to the Government.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.E. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment

became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and coordination with the Government, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government jointly determine to be required for construction, operation, and maintenance of the *Project*, pursuant to Article III of this Agreement, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement,

in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that either the Non-Federal Sponsor and the Government jointly determine pursuant to Article III of this Agreement, or that the Non-Federal Sponsor otherwise determines, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement or suspend its future performance under this Agreement, including reimbursement pursuant to Article II.D. of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Vern Weidner P.E.
Deputy Director, Public Works
310 N. Broadway – 4th Floor
Billings, Montana 59101

If to the Government:

U. S. Army Corps of Engineers
Omaha District
District Engineer
1616 Capitol Avenue

Omaha, Nebraska 68102

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter "Section 106") prior to initiation of construction by the Non-Federal Sponsor. At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the Non-Federal Sponsor relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *Project*, in accordance with this paragraph.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the Non-Federal Sponsor pursuant to paragraph B. of this Article shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the *Project*, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects in Montana implemented pursuant to the Section 595 Program shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Section 595 Program in Montana. None of the costs of data recovery activities shall be included in *total project costs*.

E. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements of the Section 595 Program, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF BILLINGS, MONTANA

BY:

David C. Press
Colonel, Corps of Engineers

BY:

Ron Tussing
Mayor, City of Billings, Montana

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Brent Brooks, do hereby certify that I am the principal legal officer of the City of Billings, Montana, that the City of Billings, Montana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Billings, Montana in connection with the ~~Billings Olneyville Water Replacement Project~~ and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Billings, Montana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
day of _____.

Brent Brooks
Attorney, City of Billings, Montana

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Ron Tussing
Mayor
City of Billings, Montana

DATE: _____

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Certified Local Government Program Contract
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Lora Mattox, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The State of Montana Historic Preservation Office has designated the City of Billings as a Certified Local Government (CLG) for historic preservation activities. As a CLG, the City is eligible to receive state funding to coordinate historic preservation efforts in our area. In January of 2009, the City of Billings applied for these funds through the CLG Program. On March 19, 2009, the City received approval for this grant cycle of April 1, 2009, through March 31, 2010, and 2 original contracts for the Authorized Representative (Mayor) to sign.

ALTERNATIVES ANALYZED: Agree or decline to participate in State CLG program and accept CLG grant funding to coordinate historic preservation activities.

FINANCIAL IMPACT: City Council approval would provide \$5,500 in State of Montana Certified Local Government funding. Local match for the CLG includes \$1,031 from the City of Billings Planning Division, \$1,000 from Yellowstone County and \$469 from the City of Laurel for a total program of \$8,000. The Planning Division will also continue to provide in-kind match through staff support of approximately 20 hours a week to administer the Yellowstone Historic Preservation Board (YHPB) activities and the CLG Grant Administration. The funding package will be used to contract with the Western Heritage Center for consulting services that assist with completion of projects identified in the YHPB Work Plan.

The budget proposed with local funds and in-kind match is sufficient to meet the requirements of the CLG Grant and has been approved by the State Historic Preservation Office.

RECOMMENDATION

Staff recommends that the City Council authorize the Mayor to sign the Certified Local Government Grant Contracts for a \$5,500 Certified Local Government grant from the Montana State Historic Preservation Office.

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

ATTACHMENTS

- A. Certified Local Government Agreement
- B. FY 2009 Work Plan

Attachment A

Certified Local Government Agreement

Agreement Number: **MT-09-012**

STATE OF MONTANA AGREEMENT

This agreement is hereby made between **City of Billings**, PO Box 1178, Billings, Montana, 59103 (The "Subgrantee") and the Montana Historic Preservation Office, Montana Historical Society, 1410 8th Ave, PO Box 201202 Helena, Montana 59620-1202 (The "Grantee"). The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I: SERVICES

The Subgrantee will:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Insure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Have on staff a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
 - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
 - b. Monitor Preservation Covenants and Agreements and provide historic preservation information and assistance to property owners;
 - c. Provide technical assistance, direction, literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
 - d. Inspect and evaluate historic properties for potential and feasible reuse and rehabilitation;
 - e. Coordinate, promote and participate in events such as National Historic Preservation Week and/or other preservation related activities;
 - f. Cooperate and communicate with the Grantee and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
 - g. Submit quarterly reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantee. Final products or services that do not fulfill the requirements of this Agreement and do not comply with the appropriate

Secretary of the Interior's Standards will not be reimbursed and any advance payments made in connection with such products or services must be repaid to the Grantee.

SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

The Agreement shall take effect as of April 1, 2009 and shall terminate March 31, 2010 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantee" for all purposes under this contract shall not exceed: \$5,500. Payment shall be made on a reimbursement basis by request of Subgrantee to the SHPO.

SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantee agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit Progress Reports, meeting minutes and Requests for Reimbursement quarterly. Reports will be accompanied by the following documentation:
 - a. The Subgrantee's name, address and agreement number **MT-09-012**;
 - b. Report discussing work completed during the quarter. Include meeting agendas and minutes;
 - c. An itemized listing of cash or in-kind donations that comprise the non-federal match;
 - d. An itemized listing of project expenses that are charged to the federal grant;
 - e. The net request for payment; and
 - f. Products produced during the quarter.
2. All Requests for Reimbursement must be approved by the Grantee prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Subgrantee may request a copy of the CLG Manual from the SHPO and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Grantee may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

SECTION IV: TERMINATION

1. The Subgrantee understands and agrees the Grantee, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantee may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the

Subgrantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Subgrantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS and the Subgrantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Subgrantee will not be relieved of liability to the Grantee for damage sustained by the Grantee by virtue of any breach of the Agreement by the Subgrantee and the Grantee may withhold any reimbursement to the Subgrantee for the purpose of off-set until such time as the exact amount of damages due the Grantee from the Subgrantee is agreed upon or otherwise determined.
3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the other party.
4. The MHS may terminate this Agreement for failure of the Subgrantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantee will provide the Subgrantee with written notification of the reasons for the Subgrantee's performance failure and allow the Subgrantee a period of not less than ten (10) days nor more than thirty (30) days after receipt of said notification to rectify the identified failure to perform.

SECTION V: GENERAL AND SPECIFIC CONDITIONS

The Subgrantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Subgrantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of OMB Circular A-102, (as further amended, 8/29/97) and Chapter 17 of the Historic Preservation Grants Manual.
2. The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.
3. Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Subgrantee shall document in

writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantee prior to the initiation of the project.

4. Noncompetitive negotiation may be used with prior written approval from the Grantee when, after the solicitation in accordance with Section VI, 3. above, competition is determined inadequate.
5. The Subgrantee will notify the SHPO upon the selection of a subcontractor. Subgrantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the SHPO for review and written or verbal approval prior to its execution.
6. Prior to the beginning of project work or any grant payment, the Subgrantee must submit to the SHPO the below listed items to demonstrate that the federal procurement requirements have been met in full:
 - a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
 - b. Copy of the Subgrantee documentation of the selection criteria and process;
 - c. A copy of the successful proposal and a description of the Subgrantee reasons for selection;
 - d. Listing of the unsuccessful offerors;
 - e. Copy of the proposed contract between the Subgrantee and the subcontractor.

Note: SHPO must review and approve all contracts between the Subgrantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Subgrantee 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.
2. The Subgrantee will comply with Section 504 of the Rehabilitation Act of 1973 which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

3. The Subgrantee will comply with The Age Discrimination Act of 1975 prohibit discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

SECTION VIII: FAIR LABOR STANDARDS

The Subgrantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the MHS, SHPO and the Subgrantee.

SECTION IX: PROHIBITION AGAINST LOBBYING

The Subgrantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

SECTION X: INDEMNIFICATION

The Subgrantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantee because of negligence on the part of the Subgrantee, its agents, representatives, or employees. The Subgrantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Subgrantee's actions.

SECTION XI: WORKERS' COMPENSATION

The Subgrantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

1. This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.

2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. SHPO will be consulted to review the change to determine if it substantially alters the scope of work or the cost of the approved project. If the change is determined to be substantial, the SHPO will process the amendment through NPS. Failure to notify the SHPO of any such changes may be construed as just cause for revocation and/or recovery of the grant funds.

SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Preservation Review Board and no member of the Subgrantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his personal or pecuniary interest. The Subgrantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Subgrantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantee and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.
2. Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U. S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

Publications must include the nondiscrimination statement:

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

Office for Equal Opportunity
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

2. The Subgrantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

SECTION XV: AUDITING

The Subgrantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post-audit and analysis purposes in determining compliance with the terms of this Agreement. The Subgrantee shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantee to the Subgrantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Subgrantee to allow access to records necessary to carry out the legislative post-audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in OMB Circular A-102, as amended.

SECTION XVI: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SECTION XVII: EXECUTION

This Contract consists of this Agreement and pages of attachments; the original copy is to be retained by SHPO. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the date set out below:

Chief Elected/Authorized Official ~ Subgrantee

Date

Administrator, Centralized Services Division
Montana Historical Society

Date

Attachment B
2009 YHPB Work Plan

Yellowstone Historic Preservation Board Work Plan
2009-2010

Goals & Objectives:

- I. Promote the preservation of historic buildings, sites or neighborhoods.
- II. Increase community awareness on the benefits of historic preservation activities.
- III. Promote increased awareness of preservation activities and the work of the YHPB through the four governing bodies represented on the Board.
- IV. Comply with the duties and responsibilities of historic preservation organizations under the State Certified Local Government Program and the requirements of the Inter-local Agreement.

2009 Projects

1. To assist with the National Register of Historic Places nomination of McKinley Elementary School.

Time Frame: 2009-2010
Who: YHPB Board and HPO/WHC, North Elevation Task Force
Status: This is part of the North Elevation Task Force but will be nominated individually.

2. To assist North Elevation Task Force in the development of a Historic Residential District, provide technical assistance as needed.

Time Frame: Begin 2/19/08 and continuing
Who: Brian Roberts is the lead board member, YHPB Board, WHC and staff, North Elevation Task Force
Status: This project is ongoing and the board will continue assisting as needed.

3. To assist the Old Town Neighbors, Inc. with the survey and completion of a National Register Nomination of the properties along Minnesota Avenue that were approved for a Preserve America Grant.

Time Frame: 2009-2010
Who: Maisie Sulser is the lead board member, YHPB, WHC, HPO and the Old Town Neighbors, Inc.
Status: Contract with state signed. RFP for consultant underway.

4. To assist the City of Laurel with the historic survey of downtown through funding from Preserve America.

Time Frame: 2009-2010

Who: Emelie Eaton is the lead board member, YHPB, WHC, HPO and the City of Laurel

Status: This project is commencing and the board will assist as needed.

5. Continue fund raising for the “Billings Through the Decades” sign board.

Time Frame: 2009-2010

Who: Bill DuBeau is the lead board member, YHPB, WHC, HPO

Status: This project is seeking funding to complete.

6. Prepare education trunks for area elementary schools.

Time Frame: 2009-2010

Who: Kathleen Armstrong is the lead board member, YHPB, WHC, HPO, possibly Montana SHPO

Status: This project is working toward completion.

7. Assure existing YHPB products are current and disseminated in communities (Laurel Walking Tour, Billings Walking Tour, South Side Presentation, and Rural Yellowstone County Presentation, etc).

Time Frame: 2009-2010

Who: Maisie Sulser is the lead board member, YHPB, WHC, HPO

Status: The board will review the Billings Downtown Walking Tour booklet for update and republishing. The board will review other media outlets for dissemination such as radio and computer downloads (mp3 files, etc).

8. Review data prepared by MSU-B students on the inventory of historic barns, silos and other important structures in Yellowstone County. Determine if 2 to 3 properties could be eligible for the National Register and contact property owners to gage interest.

Time Frame: 2009-2010

Who: YHPB, WHC, HPO

Status: The board will review this project as time allows.

Annual Board Activities

1. Continue the review of building permits submitted for properties located within the designated historic district.

Time Frame: Ongoing
Who: Committee and HPO

2. To provide up to date information to the general public, continually update the web site on activities and programs.

Time Frame: Ongoing
Who: WHC

3. Promote additional nominations to the National Register. Assure resources are available for property owners, such as literature and technical assistance. Look at possible nomination of school sites in conjunction with local school districts.

Time Frame: Ongoing
Who: YHPB Board/HPO/WHC

4. Expand YHPB meetings to alternate locations. To take advantage of some of our many historic venues, the board wishes to expand meetings to alternate locations. This is an event that will take place quarterly.

Time Frame: Ongoing
Who: HPO/WHC

5. Due to a loss of potential historic buildings within the City of Billings, an effort is being made to notify WHC and a member of the board about upcoming demolitions. The Building Department notifies HPO on the release of demolition permits, HPO notifies members of the demolition and a determination is made to either document/photograph building.

Time Frame: Ongoing
Who: HPO/WHC/Board

6. To provide additional funds to the YHPB for projects, continue exploration of grant opportunities.

Time Frame: Ongoing
Who: HPO/WHC

7. To keep the YHPB abreast of Historic Preservation Activities, consultants and the HPO will attend meetings as needed.

Time Frame: Ongoing
Who: WHC/HPO

8. To provide a forum for Historic Preservationist to share their successes and discuss projects and to present historic preservation awards, continue to host the Historic Preservation Roundtable yearly.

Time Frame: Yearly
Who: WHC/HPO/Board
Status: Preservation Month - May

9. To continually update the local governing bodies of the activities undertaken by the YHPB, annual PowerPoint Presentations will be made to the City of Billings, the City of Laurel and Yellowstone County.

Time Frame: Yearly
Who: Chair/WHC/HPO
Status: The scheduling of these meetings will take place yearly during spring.

10. Celebrate National Historic Preservation Month. Board will decide on a program, speakers and other events to commemorate this event.

Time Frame: Yearly
Who: Committee/WHC
Status: This event will occur yearly during May.

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Annexation Petition #09-02: Acknowledge Receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, MCS Properties, LLC, is requesting annexation of a property legally described as Lot 26, Block 19, Lillis Heights Subdivision into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the northwest corner of Rimrock Road and Rim Point Drive at 4739 Rimrock Road. The petitioner is requesting annexation in order to obtain city sewer services for the existing residence on the property. The subject property currently receives city water services, but the existing individual septic system has failed and requires on-going pumping. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for April 27, 2009. The Council will take action on the annexation request at the April 27th public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on two sides 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 five (5) years.

FINANCIAL IMPACT: A service impact analysis and staff recommendation will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for April 27, 2009, to consider annexing this property.

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

ATTACHMENTS

- A. Property Data
- B. Annexation Petition
- C. Annexation Map

ATTACHMENT A
Property Data

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

Petitioner: MCS Properties, LLC

Purpose of annexation: To obtain City sewer services

Property included: Lot 26, Block 19, Lillis Heights Subdivision

Location: Northwest corner of Rimrock Road and Rim Point Drive (4739 Rimrock Road)

Total area: 0.74 gross acres/0.255 net acres

Current zoning: Residential-9600

Current land use: Residential assisted-living

Future zoning: Same

Future land use: Commercial and multi-family residential

ATTACHMENT B -- Annexation Petition

09-169

PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

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

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:

- a. The present and proposed boundaries of the municipality;
- b. The present streets, major trunk water mains and sewer mains;
- c. The zoning of the property requesting annexation and the property immediately adjacent to it.

3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, Parks and Recreation Department, and the Finance Department. If the departments find no problems with the Petition, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

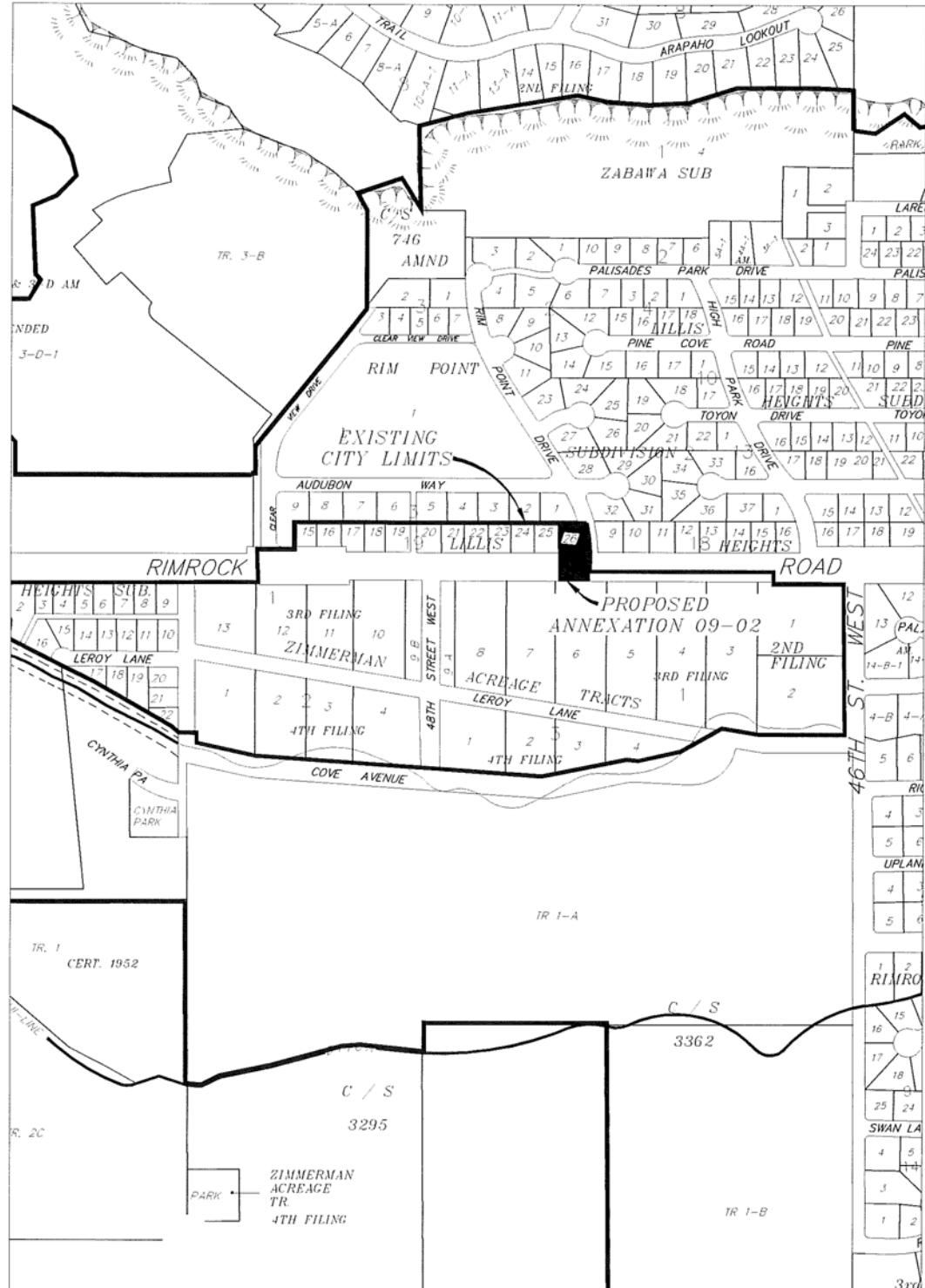
RESIDENT FREEHOLDER ELECTORS

(continued on separate page)

Revised 10/03

ATTACHMENT C
Annexation Map

EXHIBIT "A"



E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Confirmation of Probationary Police Officer
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On March 31, 2008, Officer Jacob Best was hired by the Billings Police Department as a probationary Police Officer. According to MCA 7-32-4113, his probationary period is for one year from date of hire. At this time Officer Best has completed his one year probation, and according to state statute, his name is to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officer Best's performance are positive and indicate that he is doing a good job, and recommend confirmation.

RECOMMENDATION

City staff recommends Officer Jacob Best be confirmed as a Billings Police Officer.

Approved By: City Administrator City Attorney

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Montana Women's Run Street Closure
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT:

The Yellowstone Rimrunners request temporary street closures on Saturday, May 9, 2009, from 6:00 am to 12:00 noon, for their annual Montana Women's Run. Closures are as follows: 2nd and 3rd Avenues from N. 10th to Division St.; Clark and Yellowstone Avenues from 8:25-10:00 am and to close 2nd Ave. N. from N. 27th St. to N. 29th St. and Broadway from 1st Ave. N. to 3rd Ave. N. for our post-race party and awards ceremony from 6 am to 12:00 noon.

Recommended conditions of approval include that the Yellowstone Rimrunners:

1. Have no alcohol consumption in the public right of way
2. Clean area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide and install adequate traffic barricades and signs directing motorists around closure
5. Provide a certificate of insurance naming the City of Billings as additional insured
6. Insure that a minimum 10' wide unobstructed emergency access lane is provided on all streets located in the block party area

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

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

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

ATTACHMENTS

- A. Letter from Montana Women's Run Coordinator
- B. Right of Way Special Activity Permit
- C. Course description and map
- D. Certificate of insurance



The Montana Women's Run brings women of all ages together to run or walk through the streets of downtown Billings on the day before Mother's Day. The event is really two timed races (5 Miles and 2 Miles), with medals for the first 5 finishers in each age group as well as special awards for the first three overall finishers, the first Masters and first Super Masters finishers in each race. We are also the RRCA State Championship Races for both the 5 Mile and 2 Mile races. However, most of the participants walk, many pushing strollers or wheelchairs. Women come from all over the country to join their friends and family. The 2009 edition is the 28th year for our event and will be held May 9th.

The Montana Women's Run promotes health and fitness among women, and also raises money donated to programs for local women's services. Last year we gave over \$60,000 divided among the Billings YWCA, Billings Clinic Women's Wellness Fund, MSU-B Cross Country scholarship fund, Rocky Mountain College scholarship fund, and the Yellowstone Rim Runners for equipment to stage the races.

On May 9, 2009, we request closure of the streets as shown on the attached map and sheet of explanation basically from 6am- noon: 2nd and 3rd Avenues N. from N. 10th to Division; Clark and Yellowstone Avenues from 8:25-10 am. Roads can open up as the last walkers pass. We request to close 2nd Ave. N. from N. 27th St. to N. 29th St. and Broadway from 1st Ave. N. to 3rd Ave. N. for our Post-race Party and Awards Ceremony from 6 am to noon.

Exel "Ekkie" Wedul
2009 Montana Women's Run Coordinator
656-6973

S Stockman Bank

1933

ExxonMobil

Q2 KTVQ

Billings Clinic.



**City of Billings
RIGHT-OF-WAY ACTIVITY
PERMIT**

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Public Works office, 2224 Montana Ave., Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Exel "Ekkie" Wedul

ORGANIZATION MAKING APPLICATION Montana Women's Run

PHONE 456-6973

ADDRESS 3412 Ben Hogan Ln, Billings MT 59106

CITY STATE ZIP

EMAIL ADDRESS wedul@bresnan.net

APPROXIMATE TIME EVENT WILL:

Assemble 6am Start 8:30 am Disband noon

DATE OF EVENT May 9, 2009

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

28th Annual run & walk; fundraiser for women's programs in the Billings area. Last year we donated \$60,000. We promote health and fitness, especially among women.

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

See map

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

2nd Ave. N. from N. 27th to N. 29th

Broadway from 1st Ave. N. to 3rd Ave. N.

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

Board members and volunteers will clean up their areas.

CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/\$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance is not required for Block Parties)

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

FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

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

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

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

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

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

APPLICANT SIGNATURE. Eyl Widal, Coordinator **DATE** 3-4-09

APPLICATION APPROVED _____ **DATE** _____

APPLICATION DENIED _____ **DATE** _____

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

FOR CITY USE ONLY

Fee: _____

APPLICANT NOTIFIED BY _____

DATE: _____

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

Requested Road Closures for the Montana Women's Run
May 9, 2009

For the Race Route:

Important Intersections

1. North 27th Street at 3rd Avenue North: 8:25-9:30 am
2. Division from 2nd Avenue North to 3rd Avenue North: 8:25-10:00 am
3. North 13th Street from 2nd Avenue North to 3rd Avenue North: 8:00-8:45 am

Other Streets

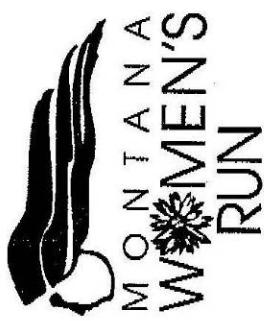
4. 2nd Avenue North from North 10th Street to Division:
Full Closure from N. 27th St. (not including 2nd Ave. intersection) to N. 19th St.: 6-9 am.
Partial Closure from N. 19th St. to N. 10th St.: 8:15-9:30 am.
Full Closure from N. 27th St. (not including 2nd Ave. intersection) to Division: 8:25-10:00 am.
5. 3rd Avenue North from North 10th Street to Division:
Full Closure from N. 19th St. to Division: 8:15-10:00 am.
Partial Closure from N. 19th St. to N. 10th St.: 8:15-9:15 am
6. Clark Avenue and Yellowstone Avenue
Partial Closure from Division to 7th St. W.: 8:25-10:00 am.

Orange sawhorses with "STREET CLOSED" signs on them will be placed at every intersection on 4th Ave. N. and 1st Ave. N. by 8 am. As the last walkers pass each intersection on 3rd Ave. N. east of N. 30th St., the sawhorses will be removed. West of N. 30th St. the sawhorses will be removed as the last walkers pass each intersection on 2nd Ave. N.

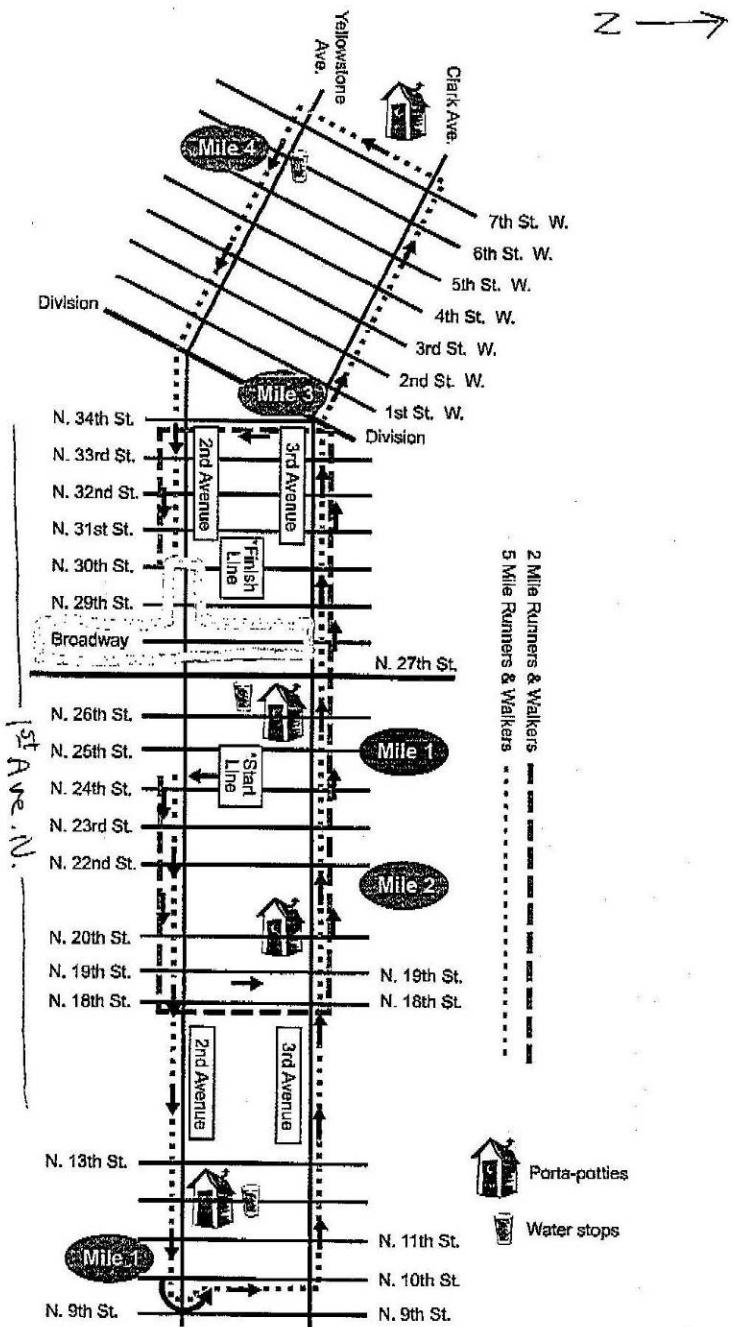
Type 1 barricades with NO signs attached to them will be placed starting at about 7 am to close 2nd Ave. N. at N. 27th. "MERGE", "NO LEFT TURN", and specific "DETOUR" signs will be used to divert traffic on Broadwater away from Division between N. 2nd St. and N. 3rd St.

We will supply our barricades, sawhorses and signs. We will also have several police on Division and on N. 27th St.

Ekkie Wedul, Coordinator
Montana Women's Run
656-6973



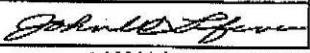
COURSE MAP updated 5/1/2008



ACORD. CERTIFICATE OF LIABILITY INSURANCE					DATE (MM/DD/YYYY) 3/6/2009
PRODUCER (260) 467-5690 FAX: (260) 467-5651 STAR Insurance - Fort Wayne Office 2130 East DuPont Road		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
Fort Wayne IN 46825 INSURED ROAD RUNNERS CLUB OF AMERICA AND ITS MEMBER CLUBS 6434 ROUND APPLE COURT COLUMBIA MD 21045		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A: NATIONAL CASUALTY COMPANY			
		INSURER B: NATIONWIDE LIFE			
		INSURER C:			
		INSURER D:			
		INSURER E:			
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSR ADD'L LTH/INSN'D	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY) 12/31/2008	POLICY EXPIRATION DATE (MM/DD/YY) 12/31/2009	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	KRC00000000172601	12/31/2008 12:01 A.M.	12/31/2009 12:01 A.M.	EACH OCCURRENCE \$ 1,000,000 DAMAGES TO RENTED PREMISES (EX. GUESTS) \$ 300,000 MED EXP (ANY ONE PERSON) \$ 5,000 PERSONAL & ADV. INJURY \$ 1,000,000 GENERAL AGGREGATE \$ NONE PRODUCTS - COMPI/OP AGG \$ 1,000,000
	<input type="checkbox"/> LEGAL LIAB. TO PART. <input type="checkbox"/> \$1,000,000 GEN. AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				
	<input type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				
WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below					Wk. STATUS CTH- HUR. THOUS. ER E.L. EACH ACCIDENT \$ F.I. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	OTHER EXCESS ACCIDENT & MEDICAL	SPX0000003566300	12/31/2008 12:01 A.M.	12/31/2009 12:01 A.M.	EXCESS MEDICAL \$10,000 \$250 DEDUCTIBLE PER CLAIM AD & SPECIFIC LOSS \$2,500
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS CITY OF BILLINGS IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED.					
DATE & EVENT: 05/09/09 MONTANA WOMEN'S RUN INSURED CLUB: YELLOWSTONE RIM RUNNERS, ATTN: DAVE COPROCK, PO BOX 2424, BILLINGS, MT 59103					

CERTIFICATE HOLDER

CANCELLATION

05/09/09 CITY OF BILLINGS ATTN: SUSAN WELLBROOK 390 N. 23RD ST. BILLINGS, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE John Lefever/JR 	

ACORD CERTIFICATE OF LIABILITY INSURANCE

PRODUCER (260) 467-5690 FAX: (260) 467-5651
STAR Insurance - Fort Wayne Office
2130 East DuPont Road

INSURANCE 3/6/2009
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Fort Wayne IN 46825

INSURED
Yellowstone Rim Runners
P O Box 2424

Billings MT 59103

INSURERS AFFORDING COVERAGE

DATE (MM/DD/YYYY)
3/6/2009

COVERAGES
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAYMENT LISTS.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS THEIR INTEREST IN THE OPERATIONS OF THE NAMED INSURED.

DATE & EVENT: 05/09/09 MONTANA WOMEN'S RUN

CERTIFICATE HOLDER

CANCELLATION

05/09/09 CITY OF BILLINGS
ATTN: SUSAN WELLBROOK
390 N. 23RD STREET
BILLINGS, MT 59101

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ACORD 25 (2001/08)

©ACCORD CORPORATION 1988

**ITEM:****CITY COUNCIL AGENDA ITEM**
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Yellowstone Valley Farmers Market Street Closures
DEPARTMENT: Public Works – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Yellowstone Valley Farmers Market requests permission to close the following streets every Saturday starting July 18, 2009 through October 3, 2009 from 6:00 am to 1:00 pm (including set up and disbanding time) and every Wednesday night starting August 5, 2009 through August 26, 2009 from 3:00 pm to 9:00 pm. The closures on Saturdays will be N. 28th from 1st to 3rd Ave N. and 2nd Ave N. from 29th to 1st Ave N. on Wednesdays N. 28th from 2nd to 3rd Ave. N.

Recommended conditions of approval include Yellowstone Valley Farmers Market:

1. Have no alcohol consumption in the public right of way
2. Clean the area to be used after the event and provide and empty waste cans
3. Contact all businesses and make them aware of the event as soon as possible
4. Notify all emergency facilities, bus lines and media as soon as possible
5. Provide and install adequate traffic barricades directing motorists around closure
6. Provide a certificate of insurance with required liability amounts naming the City of Billings as additional insured
7. Provide a ten foot wide unobstructed lane on all streets to provide for emergency vehicle access

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closures named above for the annual Farmers Market.

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

ATTACHMENTS

- A.** Right of Way Special Activity Permit
- B.** Course maps
- C.** Certificate of insurance
- D.** Signatures from business owners
- F.** BID Event Kit Packet



City of Billings RIGHT-OF-WAY ACTIVITY PERMIT

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Public Works office, 2224 Montana Ave., Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Shelli M. Gayvert

ORGANIZATION MAKING APPLICATION Yellowstone Valley Farmers Market
PHONE 259-6266

ADDRESS Billings MT 59101

CITY STATE ZIP

EMAIL ADDRESS dgayvert@imt.net

APPROXIMATE TIME EVENT WILL:

Assemble 6:00 AM Start 6 AM Disband 1:00 PM

DATE OF EVENT Every Saturday Starting 7-18-09 through 10-3-09

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

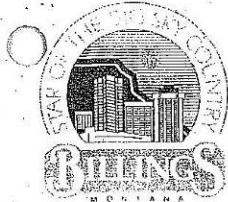
The Farmers Market will include many of the same activities as previous years. We request permission to close the following streets every Saturday Starting

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

N 28th (N. Broadway) from 1st to 3rd (traffic wont be allowed to turn north from 1st Ave N. or south from 3rd Ave N. onto N. 28th 2nd Ave. from alley west of N. 27th to N 29th (Traffic diverted left only onto N. 29th) N 29th from 1st to 2nd Ave (traffic wont be allowed to turn from 1st onto N. 29th)

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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



City of Billings RIGHT-OF-WAY ACTIVITY PERMIT

Please check the type of activity you are applying for:

Parade Run/Walk/Procession Street/Alley Closure Block Party

Submit this application with attachments to either the: Public Works office, 2224 Montana Ave.,

Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Shellie M. Gayvert

ORGANIZATION MAKING APPLICATION Yellowstone Valley Farmers Market

PHONE 259-6266

ADDRESS Billings, MT 59101

CITY

STATE

ZIP

EMAIL ADDRESS dgayvert@mt.net

APPROXIMATE TIME EVENT WILL:

Assemble 3:00 PM Start 3pm Disband 9:00 PM

DATE OF EVENT Wednesday night Starting August 5th through August 26th

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

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

N. 28th (N. Broadway) from 2nd to 3rd Ave
(Traffic will not be allowed to turn south
from 3rd or north from 2nd onto
N. 28th)

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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



CERTIFICATION OF INSURANCE WHICH MUST SHOW: (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/\$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance is not required for Block Parties)

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

FOR DOWNTOWN EVENTS: YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

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

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

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

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

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

APPLICANT SIGNATURE. Shelli M. Gaynor **DATE** 2-4-09

APPLICATION APPROVED _____ **DATE** _____

APPLICATION DENIED _____ **DATE** _____

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

FOR CITY USE ONLY

FEE: _____

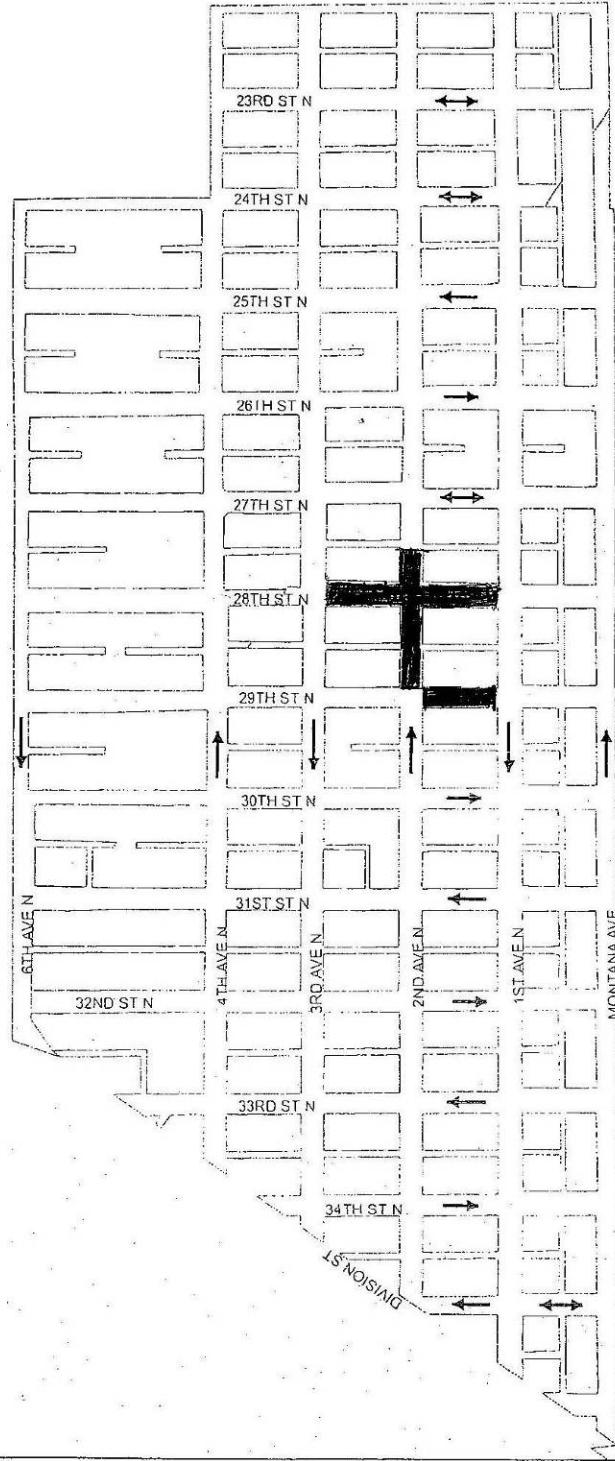
APPLICANT NOTIFIED BY _____

DATE: _____

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

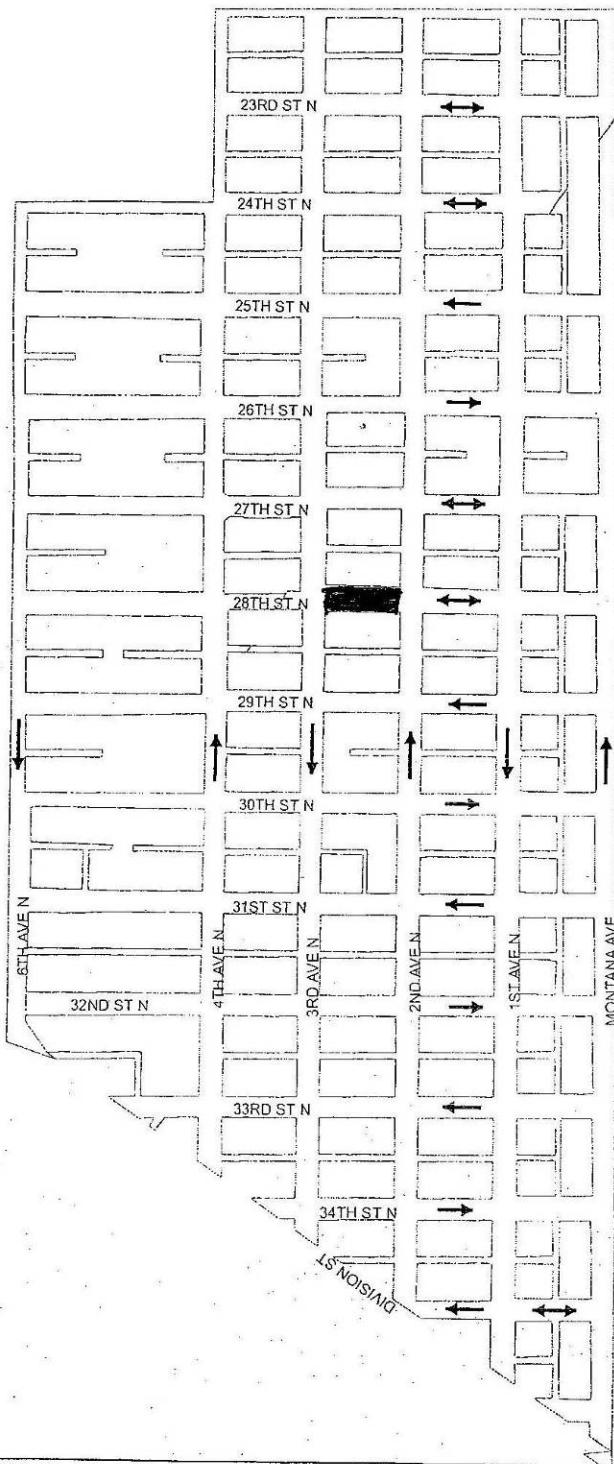
Downtown Billings Street Direction Map

Saturdays



Downtown Billings Street Direction Map

Wednesday's



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PRODUCER			OP ID 8C YELLO61 DATE (MM/DD/YYYY) 02/25/09																																														
Western States Ins - Billings P O Box 80308 Billings MT 59108 Phone: 406-656-9800 Fax: 406-656-1199			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.																																														
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Yellowstone Valley Farmers Mar Shelli Gavvert Po Box 23381 Billings MT 59104			INSURER A: Safeco Insurance Companies INSURER B: INSURER C: INSURER D: INSURER E:																																														
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<p>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p> <table border="1"> <thead> <tr> <th>INSR PUD'L LTR INSRD</th> <th>TYPE OF INSURANCE</th> <th>POLICY NUMBER</th> <th>POLICY EFFECTIVE DATE (MM/DD/YY)</th> <th>POLICY EXPIRATION DATE (MM/DD/YY)</th> <th>LIMITS</th> </tr> </thead> <tbody> <tr> <td rowspan="2">A</td> <td>GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR</td> <td rowspan="2">BINDERCG</td> <td rowspan="2">02/26/09</td> <td rowspan="2">02/26/10</td> <td>EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000</td> </tr> <tr> <td>GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC</td> </tr> <tr> <td rowspan="5"></td> <td>AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS</td> <td rowspan="5"></td> <td rowspan="5"></td> <td rowspan="5"></td> <td>COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$</td> </tr> <tr> <td>GARAGE LIABILITY <input type="checkbox"/> ANY AUTO</td> <td></td> <td></td> <td></td> <td>AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$</td> </tr> <tr> <td rowspan="4">A</td> <td>EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$</td> <td rowspan="4">BINDERCG</td> <td rowspan="4">02/26/09</td> <td rowspan="4">02/26/10</td> <td>EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$ \$</td> </tr> <tr> <td>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below</td> <td></td> <td></td> <td>WC STATE/TORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$</td> </tr> <tr> <td>OTHER</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="6"> <p>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS The City of Billings is listed as a primary additional insured in respects to the General Liability.</p> </td> </tr> </tbody> </table>						INSR PUD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	BINDERCG	02/26/09	02/26/10	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000	GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$	A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$	BINDERCG	02/26/09	02/26/10	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$ \$	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below			WC STATE/TORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	OTHER				<p>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS The City of Billings is listed as a primary additional insured in respects to the General Liability.</p>					
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CERTIFICATE HOLDER	CANCELLATION
<p>City of Billings P. O Box 1178 Billings MT 59103</p>	<p>CITYBIL</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE <i>Christa Gardner</i></p>

C BUSINESS NAME:	ADDRESS	SIGNATURE:
12. Valley Federal Credit Union 207 N. Broadway, Billings, MT		<i>Clara L. Say</i>
13. Sean M. Grewes Montana Brewing Company 113 N th Broadway		<i>S. Grewes</i>
14. Hooligan's Sports Bar 109 N th Broadway		<i>Hooligan's</i>
15. Rocke Gear, Inc. dba Marcaia 100-102 N. Broadway		<i>J. G. G.</i>
16. IN STEP Footwear 108 N. Broadway		<i>H. K. K.</i>
17. Jackets & Company 112 N. Broadway		<i>J. Bracke</i>
18. Cricket Clothing 2814 N. Broadway		<i>59101</i>
19. PAUL'S 2821 2nd Ave N		
20. GoldSmith Gallery 2820 2 nd Ave N		<i>J. P.</i>
21. newee's 2821 2nd Ave N		<i>W. B. C.</i>
22.		
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34.		

BID Event Kit of Parts Usage Packet

Below you will see a step by step process that must be implemented in order to close streets and hold an event. You may stage and implement your own event downtown and make use of the BID's "Kit of Parts." You must obtain your own street closure permission and provide your own liability insurance.

STEP 1: Make sure your have a PLAN AND that your block neighbors are "on board" with the idea...or, at least, do no object to your plan.

Wednesday 8-5, 8-12, 8-19, 8-26

Saturdays

-Date(s) of Event: *7-18, 7-25, 8-1, 8-8, 8-15, 8-22, 8-29, 9-5, 9-12, 9-19, 9-26, 10-3*

-Does this event require any Street Closure? Yes No

-Do you have Liability Insurance that will cover this event? Yes No

(You will be required to provide a "Binder" to the City of Billings showing coverage)

-Will you be serving alcoholic beverages? Yes No

(A permit may be required from the Billings Police Department)

What Blocks will be closed: (Example: The 200 Block of N. Broadway)

List all: Saturdays : N 28th (N. Broadway) from 1st to 3rd (Traffic wont be allowed to turn north from 1st ave. N. or south from 3rd ave N. onto N. 28th 2nd Ave. From alley west of N. 27th to N. 29th (Traffic diverted left only onto N. 29th) N. 29th from 1st to 2nd (Traffic will not be allowed to turn from 1st onto n. 29th)

Wednesdays: N 28th (N. Broadway) from 2nd to 3rd (Traffic will not be allowed to turn south from 3rd or North from 2nd onto N. 28th.

Briefly Describe Your Event Activity/Participants:

-Specify the exact date and TIME the blocks noted above will be CLOSED: _____

-Specify the exact date and TIME the blocks noted above will be REOPENED: _____

-Indicate your traffic re-route plan: BE SEPCIFIC...SEE EXAMPLE

(Example if closing the 200 Block of N. Broadway...Northbound traffic on N. 28th would be diverted west at 1st Ave. North then resume northbound at N. 29th & southbound traffic on N. 28th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

-List All of the Businesses impacted by the closure and have them "sign off" on the event:

BUSINESS NAME:

ADDRESS:

SIGNATURE:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, April 13, 2009

TITLE: Acceptance and Recognition of \$2,053 Donation from GST, Inc. to Send School Resource Officers to National Conference

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On March 23, 2009, the Police Department received a \$2,053 donation from GST, Inc. for the purpose of sending the School Resource Officers (SROs) to the National Conference in Baltimore, Maryland on June 29 through July 3, 2009. The National Conference has been highly recommended as an excellent training conference. This donation from GST, Inc. will allow the SRO's to attend. The cost per officer is approximately \$2,000 which includes registration, lodging, airfare, shuttle and per diem.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$2,053 donation from GST, Inc. to send the School Resource Officers to the National Conference in Baltimore, Maryland on June 29 through July 3, 2009.

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

Attachments

A - copy of CR slip
B - Donation form

ATTACHMENT A

GST, INC.
Billings Police Department

Check Number: 5574 5574
Check Date: Mar 18, 2009

Item to be Paid - Description	Amount Paid
NASRO 2009 SRO/School Safety Conference	2,053.00

GST, INC. 1234 PLEASANT HOLLOW TRAIL SHEPHERD, MT 59079	WESTERN SECURITY BANK PO BOX 2057 BILLINGS, MT 59104-2057 (406) 228-8977	93-70852920 5574 DATE Mar 18, 2009
Memo: Billings SRO Safety Conference	AMOUNT	\$ 2053.00
Two Thousand Fifty-Three and 00/100 Dollars		
PAY TO THE ORDER OF:	Billings Police Department PO Box 1554 Billings, MT 59103	
 AUTHORIZED SIGNATURE		
10055741 129297085410 01020818871		

Mar 30 09 09:27a

GST Inc

1-406-947-2247

FYI
ATTN: SVE

p. 1



CITY OF BILLINGS POLICE DEPARTMENT

P.O. Box 1554 • Billings, MT 59103
220 N. 27th St. • Billings, MT 59101
(406) 657-8460 • Fax (406) 657-8417 • E-mail bpd@ci.billings.mt.us



CITY OF BILLINGS DONOR VERIFICATION

Department POLICE

Please complete the information below concerning your recent donation to the City of Billings. As soon as we received the completed verification form, your donation will be acknowledged and forwarded to the City Council for acceptance. Thank you for your generosity.

Donor: GST, Inc.

Address: 11234 Pleasant Hollow Trail
Shepherd MT 59079

Phone Number: 406 671 6681

Donation: monetary

Value of Donation: \$ 2053.00

Purpose of Donation: (Montana Law allows you to designate a specific purpose for which your donation will be used)

2009 SRO Training

Please print below how you wish your name to be listed:

GST, Inc.

Donor Signature: C. Kitchin

Date: 3/25/2009

I wish to remain anonymous.*

*If you wish to make a donation and remain anonymous, the City will attempt to keep your donation anonymous. However, the City cannot guarantee your anonymity as most financial records of the City are matters of public record and are available to the public upon request. Please check here if you wish to remain anonymous.



G₂

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, April 13, 2009

TITLE: Acceptance and Recognition of \$500 Donation from Wal-Mart Foundation to Send School Resource Officers to National Conference

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On March 16, 2009, the Police Department received a \$500 donation from Wal-Mart Foundation to help pay the cost of sending the School Resource Officers (SROs) to the National Conference in Baltimore, Maryland on June 29 through July 3, 2009. The National Conference has been highly recommended as an excellent training conference. This donation from Wal-Mart Foundation will allow the SRO's to attend. The cost per officer is approximately \$2,000 which includes registration, lodging, airfare, shuttle and per diem.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends City Council's approval and acceptance of this \$500 donation from Wal-mart Foundation to send the School Resource Officers to the National Conference in Baltimore, Maryland on June 29 through July 3, 2009.

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

Attachments

A - copy of CR slip
B - donation form

ATTACHMENT A

03/31/2009 08:28 4066553100
03/30/2009 13:14 FAX 406 657 8417

BILLINGS WEST HIGH
BILLINGS POLICE DEPT

PAGE 01/01
001/001



CITY OF BILLINGS POLICE DEPARTMENT

P.O. Box 1554 • Billings, MT 59103
220 N. 27th St. • Billings, MT 59101
(406) 657-8460 • Fax (406) 657-8417 • E-mail bpd@ci.billings.mt.us



CITY OF BILLINGS DONOR VERIFICATION

Department POLICE

Please complete the information below concerning your recent donation to the City of Billings. As soon as we received the completed verification form, your donation will be acknowledged and forwarded to the City Council for acceptance. Thank you for your generosity.

Donor: West and Sal West

Address: 2525 King President
Billings, MT - 59101

Phone Number: 657-9692

Donation: 100000

Value of Donation: 500.00

Purpose of Donation: (Montana Law allows you to designate a specific purpose for which your donation will be used)

For the last homeless officers
Planning

Please print below how you wish your name to be listed:

West and Sal West

Donor Signature: West and Sal West

Date: 3/31/07

I wish to remain anonymous.*

*If you wish to make a donation and remain anonymous, the City will attempt to keep your donation anonymous. However, the City cannot guarantee your anonymity as most financial records of the City are matters of public record and are available to the public upon request. Please check here if you wish to remain anonymous.

Billings Pride
City-wide

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Application Submittal for an AmeriCorps VISTA Project
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The Community Development Division has been approached by the Corporation for National and Community Services regarding sponsoring a VISTA project to build capacity in Billings to impact poverty and homelessness. Funding for the initial year of the project would be provided by the American Recovery and Reinvestment Act of 2009. The project would be funded on a year-to-year basis, and expected to cover a three-four year period. The deadline for the application is April 19, 2009.

The Billings Metro VISTA Project would place up to ten AmeriCorps VISTA members serving to reduce risk of homelessness and create the tools people in poverty need to build sustainable futures. This aligns with goals of the Mayor's Committee on Homelessness and the Governor's Council on Homelessness. The Billings Metro VISTA Project will join our other four projects throughout the state: MT Legal Services Association; Department of Public Health and Human Services - Prevention Resource Center; Richland County Health Department - Communities in Action; and University of MT - MT Campus Compact. The goal of all of these projects is to address poverty-related issues of hunger, housing and mentoring and each one expects to make an important impact in efforts to end poverty in the state of Montana.

City Council approval for the application would allow the Community Development Division to assist in application preparation and administration of activities on behalf of several community agencies, including Family Service, Inc., the Billings Area Resource Network, Volunteers of America, Salvation Army, United Way, Family Support Network, and Second Chance Homes.

ALTERNATIVES ANALYZED: 1) To submit an application for the AmeriCorps VISTA Project; 2) To not submit an application for the AmeriCorps VISTA Project.

FINANCIAL IMPACT: The City is not required to commit funding to the project and would receive approximately \$20,000 per year to support project coordination and administration costs. Each VISTA placement's personnel value is estimated at \$30,000, and seven to ten VISTA placements are being requested (\$230,000 - \$320,000 grant per year). City match offered in the application includes \$3,500 in in-kind office space and equipment for a volunteer, if the position

is filled. An additional \$15,000 over three years in administrative costs may be allocated as the Community Development administrative budget allows. This is negotiable on an annual basis with the Corporation for National and Community Service.

RECOMMENDATION

Staff recommends that Council authorize submission of an application for an AmeriCorps VISTA Project and authorize City staff to negotiate and finalize the project if awarded.

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

ATTACHMENTS

A: Draft VISTA Project Application (12 pages)

Billings VISTA Project



Elevate the water and all the boats will rise...

Section One: Applicant Information

City of Billings
Community Development Division
PO Box 1178
Billings, Montana 59103

Project Director:

Brenda Beckett, Community Development Manager

510 North Broadway, 4th Floor

Billings, Montana 59101

Phone: 406.657.8286

Fax: 406.657.8327

Email: beckettb@ci.billings.mt.us

Website: <http://ci.billings.mt.us/index.asp?nid=114>

Length of Project: Three Years

Section Two: Application Information

Type of Submission: Non-Construction

Date of Submission: February 17, 2009

Employer Identification Number: 81-6001237

DUNS Number: 194782780

Type of Applicant: Municipal

Name of Agency: Corporation for National and Community Service

CFDA: 94-013

Project Title: Billings VISTA Project

Project Geography: City of Billings

Section Three: Narratives

Executive Summary

1. **Provide a brief description of the proposed project, including the project goal(s) as well as an overview of the activities the requested VISTAs and Leaders will perform.**

Homelessness often congers images of panhandlers stationed on high-traffic corners, an aged man huddled in a doorway or a woman pushing a shopping cart containing all her worldly possessions. There is no doubt that these people exist, even on the streets of Billings. The face of homelessness in our community, however, is diverse and stereotypical preconceptions forestall us from acknowledging the depth of vulnerability and the complexity of homelessness.

In November 2005, the Montana Council on Homelessness chose the City of Billings for a pilot project to end chronic homelessness. In June 2006, Mayor Tussing appointed a 20-member committee including representation from a broad stakeholder group of housing / service providers, civic / business leaders, economic / work force agencies, faith based / philanthropy groups, and other interested parties. The first meeting of the Committee was scheduled in June 2006 and the Committee has been developing a ten-year strategic plan to impact chronic homelessness.

Over 300 cities in the United States have joined in a collective effort to develop plans to end homelessness following the guidelines established by the United States Interagency Council on Homelessness. The City of Billings is committed to inclusive participation in the effort to address chronic homelessness. Work groups have been established to assist the Committee in gathering feedback and developing specific sections of the 10-Year Plan. These groups include, but are not limited to: Service Providers (including a Continuum of Care sub-committee); Homeless Participant Advisory Group; and the Business Consortium for Social Change.

Goals and Objectives

The Committee and its subcommittees are focused on reducing the number of homeless persons in Billings, reducing the risk of homelessness and creating the tools people in poverty need to build sustainable futures. We hope to gain the help of five to ten AmeriCorps VISTAs, who will to enhance and lead these projects, enabling us to actively address this critical community issue. All VISTAs will serve the overarching goals and priorities of the Mayor's Committee on Homelessness to impact poverty, to prevent and intervene in homelessness.

The synergy present during initial strategic planning sessions of the homeless initiative has increased over time. The number of interested participants started at 80 and grew to over 150 in less than a year. More individuals and agencies are becoming involved daily. In order to meet the increased demand for inclusion and maintain momentum of the initiative, administrative support is requested to facilitate the Mayor's Committee on Homelessness and further the following goals:

- **Gather research and data on chronic homelessness:** review existing data available for the Billings area; identify existing services including cost of services provided; identify the costs of homelessness in the community; and establish baselines for performance measurements.

- **Build the information base on homelessness for the public and participants:** increase knowledge base of national best practices and innovative solutions; increase knowledge and awareness of the American Indian and other sub-populations; provide advocacy on behalf of the homeless by de-bunking the myths surrounding homelessness; and create a poverty marketing project to illustrate this issue as it exists in Billings.
- **Create partnerships to facilitate the development and implementation of a 10-Year Plan to impact homelessness:** assist the newly formed Billings Area Resource Network, the Participant Advisory Group, and the Business Consortium for Social Change / Social Enterprise model to further the Committee's goals during plan implementation.
- **Define the Billings community's homeless problem:** identify the characteristics of subpopulations to be prioritized in the plan; identify and assess the root causes of homelessness in our community; and identify gaps for service intervention.
- **Develop strategies to address root causes of homelessness:** further capacity building for Project Homeless Connect as an annual event and gather data regarding impact; identify prevention and intervention strategies for each population.
- **Create the 10-Year Plan to impact homelessness:** finish needs assessment; define projects and priorities; solicit stakeholder feedback; create action plan to implement strategies; announce and publicize the plan; and implement the plan.

The Mayor's Committee on Homelessness has begun prioritizing intervention and prevention strategies which may be included in the ten-year plan. The first priority is to expand available housing by: developing and increasing supportive housing units; increasing the number of permanent rental and transitional housing units; expanding the amount of rental assistance available; increasing the number of veteran's housing units and emergency shelter beds.

The Committee's second priority is to decrease barriers to obtaining existing housing units by developing: incentives for landlords to rent to the homeless or those at risk for homelessness; developing Housing First philosophy housing options; identifying available rental units for released prisoners; implementing life skills training; creating a debt forgiveness program; and creating common housing applications.

The third priority includes expanding and strengthening support services by: establishing / expanding intensive case management services for the homeless; facilitating pre-release intervention (jail or foster care); establishing / expanding street outreach to identify homeless for services; facilitating collective grant applications between organizations that assist the homeless; establishing assistance for application completion assistance; and establishing one-stop shop to access all services for the homeless.

The last priority for the Committee includes expanding mental health and substance abuse services by increasing: the availability of services to low income / uninsured; the amount of assistance available through mental health services plan; increasing the availability / accessibility of outpatient treatment options; utilizing jail diversion programs; the availability / accessibility of inpatient treatment programs; and assistance support for existing expanding programs available to purchase prescription medication.

VISTA Focus - Year One

VISTAs and Leaders can be assigned to various goals and priorities as listed above. For the first year, the VISTA project will focus on the following areas:

- Creating a public awareness campaign to increase public knowledge and understanding of poverty in Billings.
- Implementing a community-wide fiscal literacy.
- Building capacity for administration of the Mayor's Committee on Homelessness and the Billings Area Resource Network.
- Expanding the Social Enterprise model with non-profit organizations in order to build the business capacity of those serving people experiencing or at risk of poverty.
- Expanding Social Enterprise by promoting the "Elevate the Workplace" initiative, which: coordinates retired volunteerism in the workplace; provides job linkage services between nonprofit organizations and social enterprise employers; and brings together entrepreneurs to exchange ideas on idealism and social enterprise as an effective business practice.
- Establish awareness and increase homeless coordination between the American Indian population and the City of Billings.
- Expand services for homeless veterans and coordinate integration of veteran's housing in Billings.
- Investigate the feasibility of implementing re-entry initiatives and build capacity and connectivity of organizations working with prisoners.
- Assist in the expansion and capacity building for poverty prevention programs.
- Assist in long term capacity building for Project Homeless Connect.

2. How many VISTAs and Leaders are you requesting?

The City is requesting five to ten VISTAs to serve in the Billings area with the possibility of expansion based on meeting benchmarks and outcomes for the first three years of the project. The City is also requesting administrative support to fund a VISTA Coordinator to facilitate the project.

3. What is the estimated length of time required to complete the project?

The City is requesting project assistance for a three-year period with the possibility of expansion.

4. Briefly describe your organization's mission, history and the beneficiaries of your organization's programs.

The City of Billings Community Development Division's vision is to act as a catalyst for joining community partners with resources to increase access to housing, to create a sustainable community and to promote neighborhood revitalization. The Division's mission focuses on striving to exceed the expectations of our stakeholders by supporting housing and community partners with

quality leadership, accountability, and innovative programs and services. Guiding values and principles include:

- Embracing diversity and to be respectful of all viewpoints;
- Utilizing creativity to develop best practices in programs, administration, and community service;
- Recognizing that our first responsibility is to low and moderate income individuals who would most benefit from programs; and
- Integrity as public servants to thoughtfully manage and pursue resources to the benefit of the community.

The Community Development Division receives federal entitlement funding through the Community Development Block Grant and the HOME Investment Partnerships program. In fiscal year 2007-2008, the Division had a total overall budget of \$1,606,354 and leveraged \$8,401,130, equaling a 1:5 leveraging ratio. The following statistics are recorded from fiscal year 2007-2008 regarding the impact of the Division's programming.

Total Households / Individuals assisted	7,209
Strategy One: % of total funding allocated to enhance existing housing	25%
Strategy Two: % of total funding allocated to preserve older neighborhoods	6%
Strategy Three: % of total funding allocated to develop new housing opportunities	44%
Strategy Four: % of total funding allocated to support partnerships	15%
Strategy Five: % of total funding to enhance economic opportunity	9%
Number of houses rehabilitated through City home repair programs	31
Number of houses rehabilitated using partnership programs <small>Note: Includes Rebuilding Together non-CDBG funded projects</small>	67
Total CDBG Home Repairs Leveraging Ratio	1:16
Number of homes closed through the First Time Homebuyer program	59
Cumulative # of homes purchased - HOME First Time Homebuyer program	693

The Division's full Consolidated Plan for fiscal year 2008-2009 can be viewed online:

<http://ci.billings.mt.us/DocumentView.asp?DID=3950>

The Division's most recent Comprehensive Annual Performance Evaluation Report can be viewed online:

<http://ci.billings.mt.us/DocumentView.asp?DID=3948>

Need

State in measurable and quantifiable terms the specific poverty-related need(s) identified by the communities that the VISTA project will address, including the number of low-income people directly affected by the problem(s). If your program will operate in multiple sites, demonstrate a need in each community you propose to serve.

Billings has both the largest general population in Montana and 26% of the state's homeless population. With an estimated population in 2006 of 100,148ⁱ and a poverty rate of twelve percent, over 12,000 Billings residents are living in poverty and are at risk of homelessness or are currently experiencing homelessness.

No one should be homeless in Billings, much less children, seniors and pregnant individuals. An annual point-in-time survey conducted each Januaryⁱⁱ has identified an average of over 600 homeless persons in Billings. Homeless service providers estimate almost 2,500 homeless individuals travel through Billings each year. Some sleep outside, some stay with family or friends and some stay at in emergency shelters, motels and treatment facilities. Researching available data brought to light many interesting demographics and characteristics regarding the homeless in Billings:

- Almost **one-third of the homeless in Billings are employed** either part-time or full-time.
- Based on service utilization, the **estimated cost for serving one homeless person for one year in Billings is \$15,534**.
- If 2,000 homeless people lived in Billings for one full year, the cost would exceed **\$31 million annually**.
- **Families with children** are among the fastest growing homeless sub-populations in Montana.
- In 2006, Billings School District #2 identified **326 homeless children in Billings**, and the majority were 5 - 8 years old.
- The Billings *Healthcare for the Homeless* program served **2,479 homeless individuals** in 2006.
- Service providers conservatively estimate over 2,000 homeless individuals and families move through Billings during the course of one year.
- Being homeless can decrease a person's life expectancy by up to **40 yearsⁱⁱⁱ**.
- The death rate for homeless men is **five times** that of the general population.
- Homeless women, aged 18 - 44 are **ten times** more likely to die than women in the general population^{iv}.
- In Billings, **half of the homeless are actively seeking a place to live** and permanent housing is their first choice of housing options.
- At any one point in time, there are an estimated 70 veterans living in Billings without adequate housing. This number is expected to increase due to returning veterans from the Iraq and Afghanistan wars.

There are at least 80 families in Billings at any one point in time, and there are more American Indian homeless people in family situations in Billings than any other race / ethnicity, totaling over 42%. This is statistically significant, as the American Indian population comprises 30% of the overall homeless population in Billings. Members of families self-identifying as Caucasian make up only 40% of the homeless family population.

Strengthening Communities

1. **Describe current activities your organization and other organizations are undertaking to address the problems identified in your need statement. Describe how the proposed project will complement this work.**

The Mayor's Committee on Homelessness is made up of twenty members representing organizations working to impact homelessness locally. The Committee's vision is that no one in Billings has to be homeless and everyone has access to tools and opportunities for safe, appropriate, and affordable housing. The Committee's mission is to partner with local organizations and community members to develop and implement a comprehensive 10-Year plan in the pursuit of ending chronic homelessness in the Billings community. Recent Committee activities include:

- Creation of the Billings Area Resource Network – a group of homeless service providers working together to increase service and grant coordination.
- Billings Addendum to the Continuum of Care point-in-time survey in January 2007.
- Understanding Homelessness in the American Indian Population: Roundtable Discussion in February 2007, the first of its kind in the nation.
- Project Homeless Connect events – March 31, 2007, March 28, 2008, and January 30, 2009. The project served almost 450 people in 2009 and over 40 service providers participated.
- Cultural Competency Training: Understanding the American Indian Perspective – June 2007.
- Creation of the Mayor's Committee ten-year planning priorities.
- Social Enterprise Conference featuring Pioneer Human Services, February 13 & 14, 2008.
- Generating a "Housing First" project by awarding a \$465,000 loan utilizing federal and state funding to house four homeless families by summer 2009.

Current member organizations appointed to the Mayor's Committee on Homelessness include:

- Affleck Consulting
- Interfaith Hospitality Network
- Housing Authority of Billings
- Mental Health Center - The HUB
- Family Service, Inc.
- City of Billings Parmly Billings Library
- Downtown Billings Partnership
- HRDC District 7
- Billings Chamber of Commerce
- Congressman Rehberg's Office
- Billings Public Schools
- Healthcare for the Homeless, RiverStone Health
- Rimrock Foundation
- Native American Development Corporation
- MT / WY Tribal Leader's Council

Although the various organizations involved with the Mayor's Committee on Homelessness have been involved in high-impact activities as listed above, the need for more generalized capacity building has been present since the inception of the project. Leaders are needed to carry initiatives forward and to facilitate research and implementation of many areas of focus to impact poverty and homelessness in Billings.

2. Describe how the new infrastructure or organizational capacity created by your project will address the needs of the community and bring individuals, and, ultimately, the community out of poverty.

The Community Development Division has four full-time staff members and the Division is primarily funded to administer federal entitlement programs for the City of Billings. There is no additional funding to support the Mayor's Committee on Homelessness. Establishing a VISTA project in Billings will enable the Division to vastly increase capacity of the overall initiative by expanding administrative support and facilitation to alternative sites with our community partners. Examples of capacity building activities are provided below.

Mayor's Committee on Homelessness and the Billings Area Resource Network

The Mayor's Committee on Homelessness and the Billings Area Resource Network have expansion potential, including providing leadership and policy recommendations to the State of Montana regarding federal Continuum of Care funding. Currently, less than ten percent of all federal funding allocated to impact homelessness is allocated to Billings area projects, while service providers maintain Billings has the largest homeless population in the State. Other sources of funding should be researched and applications generated to increase funding for various initiatives in the ten-year plan. Service collaboration within the Billings Area Resource Network could be further implemented to improve service coordination with initiatives including a coordinated release of information and common application form for homeless services. Data management can also be coordinated in order to give providers access to common information on the clients they serve.

Fiscal Literacy

The Financial Stability Partnership's goal is to create a comprehensive infrastructure of services and policies that lead to financial stability for families and individuals. This model includes financial education or literacy and the Steering Committee for the Financial Stability Partnership is currently looking at best practices from around the country including models like "America Saves." This Partnership started its work around the need to increase awareness and utilization of state and federal tax benefits, specifically the Earned Income Tax Credit. That work has grown to include increasing the availability of free income tax preparation Volunteer Income Tax Assistance sites in Yellowstone County.

Business Consortium and Social Enterprise

Organizations such as Family Service, Inc. would greatly benefit from further business development to build financial stability for the organization in addition to providing employment opportunities for the people they serve. Business owners do not have a working knowledge of the available social services to prevent and eliminate homelessness for current and future employees. VISTAs can provide business evaluation and development services and can develop marketing materials to connect the business and social services community.

3. How will you involve the community to ensure the sustainability of the proposed project?

Establishing and maintaining partnerships with a myriad of organizations supporting the community vision is the keystone to the Division's planning efforts. The Citizen Participation Plan for the City of Billings is designed to assure citizen involvement in the planning and reporting on the City's programs covered under the U.S. Department of Housing and Urban Development's (HUD) Consolidated Plan requirements. The purpose of the Citizen Participation Plan is to assure that citizens, nonprofit organizations, and other interested parties are afforded adequate opportunity to review and comment on plans, programs, activities and reports regarding the City's federally funded housing and community development programs.

Mayor's Committee on Homelessness meetings are publically advertised and can be attended by the general public. All agendas contain a public comment period during the first part of the meeting to accept questions and comments on activities and initiatives. The Committee and participants are asked to review concept documents and applications for input and feedback on initiatives. If awarded a VISTA project in Billings, the award and concept would be publically reviewed by the City Council following careful review and approval through the Committee.

A full version of the Division's Citizen Participation Plan is available online:
<http://ci.billings.mt.us/DocumentView.asp?DID=1099>.

All projects and initiatives sponsored through the project will include mandatory capacity building and outcome-specific work plans in order to sustain the investment made in the community.

Organizational Capacity

1. **Address your organization's capacity to manage the proposed project including the previous experience working with community volunteers and / or national service participants. Was your organization previously assigned VISTAs? If so, specify the sponsoring organization (if different from your own), years and number of members. Briefly describe how the proposed service activity differs from what your members did previously. Also, if your agency is currently receiving other CNCS resources, specify which program and the number of members.**

The City of Billings hosted a three-year VISTA project to build the capacity of neighborhood task forces from the year 2000 through 2002. The City is also currently hosting a VISTA project through the Montana Campus Compact for three VISTA positions, only one of which has been filled for two consecutive years. The current project began in 2007 and the same VISTA agreed to remain in the program for a second term. Unfilled positions included a VISTA to expand the Business Consortium for Social Change and would have been placed at the Downtown Billings Partnership. Another unfilled VISTA position was planned for the Yellowstone County RSVP program supporting volunteer connections for various homeless initiatives.

The proposed project would be more comprehensive than previous initiatives and would allow for projects dealing with poverty overall in an effort to prevent and intervene in homelessness. The new project would allow for agencies to directly apply to the Division for VISTA support and placement, which is an entirely new aspect of VISTA planning and coordination. The proposed VISTA project would also encompass a VISTA Coordinator position which would focus on recruitment of both agencies and volunteers, provision of support services such as housing and transportation, and

assisting agencies with visioning and work plan development. Providing this support for a burgeoning program is paramount to the success of the project.

2. What resources are available to support the project? Identify the names of partner organizations. Is your organization able to contribute financially for all or some of the costs related to VISTA(s) and Leader(s)? Please indicate if you are able to support a cost-share member (approximately \$10,000-12,000 / year).

The Community Development Division is federally funded through the Community Development Block Grant and HOME Investment Partnership programs as an entitlement community. Administrative funding for each of these programs is capped at 20% and 10% prospectively and the budgets are evaluated annually for capacity to support administrative costs. All budget decisions are approved through public processes and are subject to change due to administrative mandates by the City and federal funding sources.

The Division can commit \$3,500 via in-kind donation for office space to support one VISTA position for a three-year period including computer, printer and supplies support. The City will publicly propose a Request for Qualifications for a contracted VISTA Coordinator position and will cap the hourly rate for the position at \$25/hour.

The Division will propose an additional \$5,000 in administrative costs for three years to support the project locally, totaling \$15,000. This funding would be utilized to support consultation, payroll and other administrative costs directly related to the VISTA project. Similar funding has been allocated in past years to support other grants including the Fair Housing Initiatives Program. This administrative allocation must be approved via public review through the City Administration, the Community Development Board and the City Council.

For FY2009-2010, the City may receive additional stimulus funding through the Community Development Block Grant program and additional administrative funding may be available through public channels to allocate funding to support administrative costs for the project. Notification of additional funding is expected in April 2009.

A current application for an additional \$5,000 in Community Development Block Grant funding has been submitted to support professional services for the Mayor's Committee on Homelessness. If funded, this would be available for distribution as of July 1, 2009 to locally support the administrative costs for the project.

ⁱ US Census Bureau, State and County QuickFacts, 2006 population estimates, retrieved February 2009, <http://quickfacts.census.gov/qfd/states/30/3006550.html>.

ⁱⁱ Montana Homeless Survey, 2005, 2006, 2007 and 2008.

ⁱⁱⁱ "The average age of death of homeless persons is about 50 years...non-homeless Americans can expect to live to age 78", National Center for Health Statistics, <http://www.cdc.gov/nchs/fastats/lifexpect.html>.

^{iv} Wright JD. "Homeless people suffer the same illnesses experienced by people with homes, but at rates three to six times higher", *Poor People, Poor Health: the health status of the homeless*.



AGENDA

ITEM:

CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Application Submittal and Acceptance of 2009 Internet Crimes Against Children Recovery (ICAC Recovery) Grant award in the amount of \$422,046

DEPARTMENT: Billings Police Department

PRESENTED BY: Chief Rich St. John

PROBLEM/ISSUE STATEMENT: On February 17, 2009, President Obama signed into law the landmark American Recovery and Reinvestment Act of 2009. As one of its many elements, the Recovery Act, provides the U. S. Department of Justice with funding for grants to assist state and local law enforcement to combat internet crimes against children. The City has been awarded an ICAC Recovery Grant in the amount of \$422,046 for a period of 4 years. This Recovery Grant will provide 4 years of continuous funding for the Task Force Coordinator/Forensic Examiner. Specifically, funds will pay for salary, benefits of the Task Force Coordinator, and 3 years of overtime for two computer forensic examiners at the Division of Criminal Investigations (DCI) in Helena. The Coordinator's salary and benefits are currently being funded by the 2007 ICAC Grant which will expire on May 31, 2009. City Council is being asked to approve the on-line application submittal and acceptance of the ICAC Recovery Grant award in the amount of \$422,046; and when the award documents are received, authorize City staff to complete the documents on-line.

FINANCIAL IMPACT: City dollars will be spent and reimbursement will be made on a quarterly basis from the U. S. Department of Justice. No City match is required for this grant.

RECOMMENDATION

Staff recommends that Council approve the submittal of the on line application and accept the ICAC Recovery Grant award in the amount of \$422,046 and when the award documents are received, authorize City staff to complete the documents on-line.

Approved By: City Administrator _____ City Attorney _____

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Recreational Trails Program Grant application for Swords Park Trail, Phase 2

DEPARTMENT: Planning and Community Services

PRESENTED BY: Lora Mattox, Transportation Planner

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking funding for the continuation of Swords Park Trail through the east end of the park and connecting to the Airport Road underpass which is already in place. The Recreational Trails Program (RTP) grant for the year 2010 is due on July 1, 2009, so the City Council is being asked for approval to submit this grant application. The RTP grant is designated for the development of trails and has a maximum grant amount of \$35,000. The RTP grant provides reimbursement after monies have been expended for construction and requires a 20% match. The match of \$8,750 could be provided through the BikeNet contribution of \$25,000 that was approved by the City Council in July 2008.

FINANCIAL IMPACT: The Recreational Trails Program Grant is being written to provide some funding for the trail segment through Swords Park. The application will request \$35,000 which is the maximum amount the City can receive. The RTP grant will be submitted for the east section of the Swords Park trail starting where it currently ends along Black Otter Trail and linking to the Airport Road underpass and the east end of the park. This grant provides reimbursement after monies have been expended for the development and requires a 20% match. The match, which will not exceed \$8,750, can be awarded from the BikeNet contribution of \$25,000 for Swords Park that was approved by the City Council in July 2008.

RECOMMENDATION

Staff recommends that Council approve the submittal of a Recreational Trails Program grant for a portion of the Swords Park Trail project.

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

ATTACHMENT

A. Signature Page for Recreational Trails Grant

Part C. Environmental Overview

The Montana Environmental Policy Act (MEPA) and National Environmental Policy Act (NEPA) must be satisfied by the sponsor and land management agency involved in the project whether that project is on federal, state, county, city or private land. The official Montana Fish, Wildlife & Parks MEPA NEPA Checklist is the required format for satisfying MEPA and NEPA for the Recreational Trails Program. The following types of projects are exempted from completion of the FWP MEPA NEPA Checklist: ethics or safety education brochures, and portable exhibits and displays.

Note: Dated MEPA NEPA Checklists and biological review forms are good for two years. If the proposed project is exactly the same as last year's (no variations whatsoever), the MEPA NEPA Checklist and biological review forms from last year may be used with this application.

Part D. Noxious Weed Plan

Please attach a noxious weed plan. Refer to grant application guidelines for details. No weed plan is need for ethics or safety education brochures, and portable exhibits and displays.

Part E. Wildlife And Fisheries Review

Provide a copy of the Wildlife and Fisheries Review Form signed by federal or state wildlife and fisheries biologists or professional consulting biologists. Have your project description, maps, and other information with you at your meeting with the biologists. We strongly encourage grant applicants to have materials in to biologists by May 15, 2009. The reviewing biologist must date and sign the pertinent review form within 2 years of the project application deadline. Review forms with dates older than two years are not considered valid for the purposes of this grants program. Only the following types of projects are exempted from completion of these review forms: ethics or safety education brochures and portable exhibits and displays.

Part F. Public Comment

Provide evidence of public comment through a legal notice in the nearest daily newspaper with widest circulation in the project area. Also, please describe the avenues made available for public input, and the length of the public comment period (dates). Only ethics or safety education brochures, and portable exhibits and displays are exempted from public comment.

Signatures

Ron Tussing Mayor, City of Billings
Typed Name and Title of Authorized Official

Signature of Authorized Official

Date

AGENDA ITEM:

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

Monday, April 13, 2009

TITLE: SID 1386 MacDonald Drive Resolution of Intent to Create District and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The residents along MacDonald Drive have a desire to construct public improvements to their street. These improvements generally consist of street, drive approach, curb/gutter, and appurtenant improvements to MacDonald Drive as shown on the attached exhibit. Assessments are estimated to range between \$4,638.19 and \$11,453.09 depending on each property's individual amount of drive approach construction and whether or not a property already has curb/gutter installed. As many of the improvements within the District are adjacent to Cameran Park, and per the City's SID policy stating that improvements fronting a park cannot be assessed to the residents with the district, the City will have a sizable contribution to this SID; approximately \$182,732.34. Funding for this project is provided for in the CIP as described below.

ALTERNATIVES ANALYZED:

1. Approve the Resolution of Intent to Create SID 1386 and set a public hearing for the May 11, 2009, City Council Meeting; or
2. Do not approve the Resolution of Intent to Create SID 1386.

FINANCIAL IMPACT: The estimated cost of improvements assessed to the City is \$182,732.34. Of the City's contribution, \$166,500.00 will paid from Gas Tax funds, and the remainder will paid from Storm Drain funds. All remaining costs associated with the improvements will be paid for by assessments levied against the properties addressing off of MacDonald Drive. The total estimated assessments to property owners are \$323,000.

RECOMMENDATION

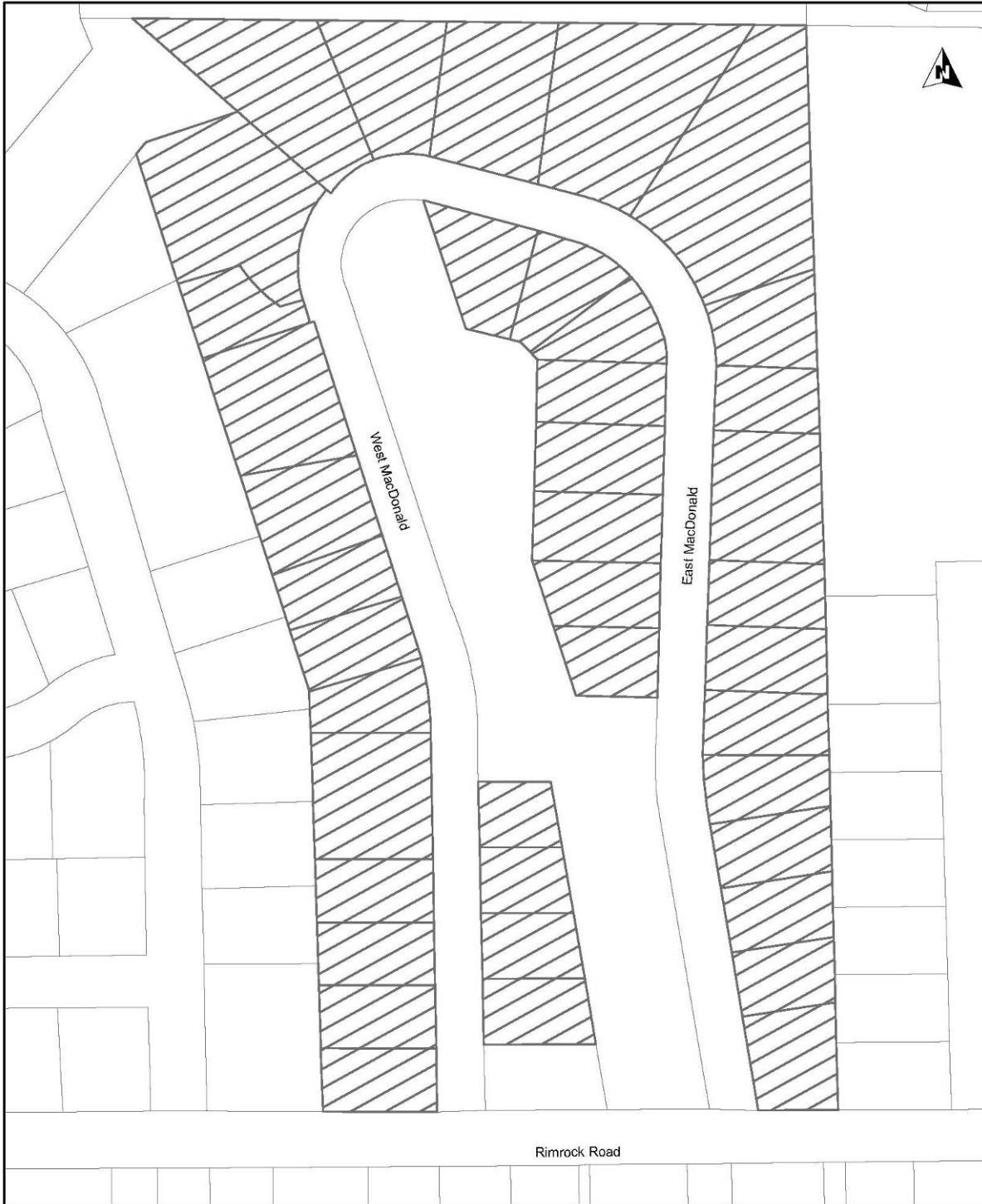
Staff recommends that Council approve the Resolution of Intent to Create SID 1386 and set a public hearing date for May 11, 2009.

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

ATTACHMENT

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1386 MacDonald Drive Resolution of Intent

**SID 1386 - MacDonald Drive
Exhibit A
Boundary Map**



INTRODUCTION

The residents along MacDonald Drive have a desire to construct public improvements to their street. These improvements generally consist of street, drive approach, curb/gutter, and appurtenant improvements to MacDonald Drive as shown on the attached exhibit. Assessments are estimated to range between \$4,638.19 and \$11,453.09 depending on each property's individual amount of drive approach construction and whether or not a property already has curb/gutter installed. As many of the improvements within the District are adjacent to Cameran Park, and per the City's SID policy stating that improvements fronting a park cannot be assessed to the residents with the district, the City will have a sizable contribution to this SID; approximately \$182,732.34. Funding for this project is provided for in the CIP as described below.

PROCEDURAL HISTORY

- April 13, 2009 – Resolution of Intent to Create SID 1386 (this memo).
- April 16, 2009 – Legal notices and protest information mailed to affected property owners.
- May 1, 2009 – 15-day protest period ends.
- May 11, 2009 – Public Hearing and Resolution Creating SID 1386.
- June/July 2009 – Resolution Authorizing for Construction Bids and Construction Contract Award.

BACKGROUND

A majority of the homeowners along MacDonald Drive have approached the City with a desire to create an SID to obtain a new road with an improved driving surface. The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include street, curb/gutter, drive approach, and appurtenant improvements. Storm drainage will most likely consist of altering location of current inlets and installation of curb and gutter.

The public hearing will be held at the May 11, 2009, Council Meeting. If approved, it is anticipated that construction of SID 1386 will begin in the mid to late summer of 2009 and be completed by the fall of 2009.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1386 and set a public hearing date for May 11, 2009.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1386 MacDonald Drive Resolution of Intent

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No._____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1386; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the "Resolution" was duly adopted by the City Council of the City at a meeting on April 13, 2009 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

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

voted against the same: _____;

or were absent: _____.

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

Cari Martin City Clerk

RESOLUTION NO. 09-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1386; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

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

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of MacDonald Drive, as more particularly described in Section 5. The total estimated costs of the Improvements are \$323,000.00. The costs of the Improvements are to be paid by \$323,000.00 of Special Improvement District bonds hereinafter described. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$323,000.00. The Bonds are to be payable from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1386 of the City of Billings, Montana.

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

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

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit E, is the construction of curb and gutter, street, drive approach, and storm drain improvements for MacDonald Drive.

Section 6. Engineer and Estimated Cost. The City of Billings – Public Works Department shall perform the design and construction administration for this project. The City Engineer’s Office has estimated that the costs of the Improvements, including all incidental costs, are \$323,000.00.

Section 7. Assessment Methods.

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

7.1.1 Equal Amount Method.

Assessment #1 will include street construction and appurtenant improvements to be constructed on MacDonald Drive. The properties to be assessed for these improvements include every parcel of land within Gregory Subdivision 1st Filing, Block1, Lots 1-15A, 17A-19, 23A, 25A-34, and 36-47, including amendments thereof as further described in Part III, and Murphy Subdivision, Block 1, Lots 1-2 as further described in Part III. For the purposes of equitably apportioning special benefit to each parcel of land in the District, as above-mentioned, the Engineer has determined that each parcel of land, receiving street and appurtenant improvements, shall equally bear the costs of the improvements as set forth in Part III hereto to arrive at an equal cost for the street and appurtenant improvements. The total estimated cost of Assessment #1 is \$185,527.59 and shall be assessed against each parcel of land within the District, as above-mentioned, receiving street and appurtenant improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$4,638.19 per parcel. Only Gregory Subdivision 1st Filing, Block1, Lots 1-15A, 17A-19, 23A, 25A-34, and 36-47, including amendments thereof as described in Part III, and Murphy Subdivision, Block 1, Lots 1-2 as described in Part III, will be assessed for Assessment #1.

Assessment #2 will include curb and gutter improvements to be constructed on MacDonald Drive. The properties to be assessed for these improvements include the following parcels within Gregory Subdivision 1st Filing: Block1, Lots 1-15A, 17A-19, 23A, 25A-30, 32-33, and 36-39, including amendments thereof as further described in Part III, and Murphy Subdivision, Block 1, Lots 1-2 as further described in Part III. For the purposes of being fair and equitable to each parcel of land in the District, as above-mentioned, the Engineer has determined that each parcel of land, which currently does not have curb and gutter improvements, shall bear the costs equally for the costs of curb and gutter improvements as set forth in Part III hereto to arrive at a per each method for curb and gutter improvements. The total estimated cost of Assessment #2 is \$70,026.07 and shall be assessed against each parcel of land within the District not already having curb and gutter improvements, as above-mentioned, on a equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$2,334.20 per parcel. Only Gregory Subdivision 1st Filing: Block1, Lots 1-15A, 17A-19, 23A, 25A-30, 32-

33, and 36-39, including amendments thereof as further described in Part III, and Murphy Subdivision, Block 1, Lots 1-2 as further described in Part III, will be assessed for Assessment #2.

7.1.2 Area Method.

Assessment #3 will include drive approach, mailbox and appurtenant improvements to be constructed on MacDonald Drive. The properties to be assessed for these improvements include the following parcels within Gregory Subdivision 1st Filing: Block1, Lots 1-11, 26-30, 32-33 and 36-39, including amendments thereof as further described in Part III. For the purposes of being fair and equitable to each parcel of land in the District, as above-mentioned, the Engineer has determined that only parcels receiving drive approach, mailbox and appurtenant improvements shall bear the costs of the improvements within and along their parcel as set forth in Part III hereto to arrive at an area method for drive approach, mailbox and appurtenant improvements. The total estimated cost of Assessment #3 is \$67,446.34 and shall be assessed against only certain parcel of land within the District, as above-mentioned, receiving drive approach, mailbox and appurtenant improvements, on a square foot basis based on the bid price to be received. The total area of Assessment #3 is 4,862.00 square feet. The cost of the improvements associated with Assessment #3 shall not exceed \$13.87 per square foot. The maximum assessment for Assessment #3 is estimated at \$4,480.70, and the minimum assessment is estimated at \$2,108.57 as described further in Part III. Only Gregory Subdivision 1st Filing: Block1, Lots 1-11, 26-30, 32-33 and 36-39, including amendments thereof as further described in Part III, will be assessed for Assessment #3.

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

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

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$323,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

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

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$20,932.00 to \$321,024.00, and is set forth in Exhibit F. The average market value is \$105,499.65 with the median being \$93,851.50. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(a) **Diversity of Property Ownership.** There are a total of 40 parcels within the district boundaries. Private individuals own each lot.

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

(c) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 40 properties, zero (0) properties were delinquent, and is set forth in Exhibit F.

(e) **The Public Benefit of the Improvements.** The total estimated costs of the Improvements are \$323,000.00. All costs of the Improvements are to be paid from the sale of Special Improvement District bonds hereinafter described. All lots within the District are zoned Residential 9600, and all lots included the District are fully built with water and sewer service.

Section 10. Reimbursement Expenditures.

10.1. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception

from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.2. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.3. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$323,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

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

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

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (April 30, 2009), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 11th day of May 2009, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on April 16th and April 23rd, 2009, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 13th day of April, 2009.

Mayor

Attest:

City Clerk

CITY OF BILLINGS, MONTANA
SPECIAL IMPROVEMENT DISTRICT ASSESSMENT DATA
PART TWO

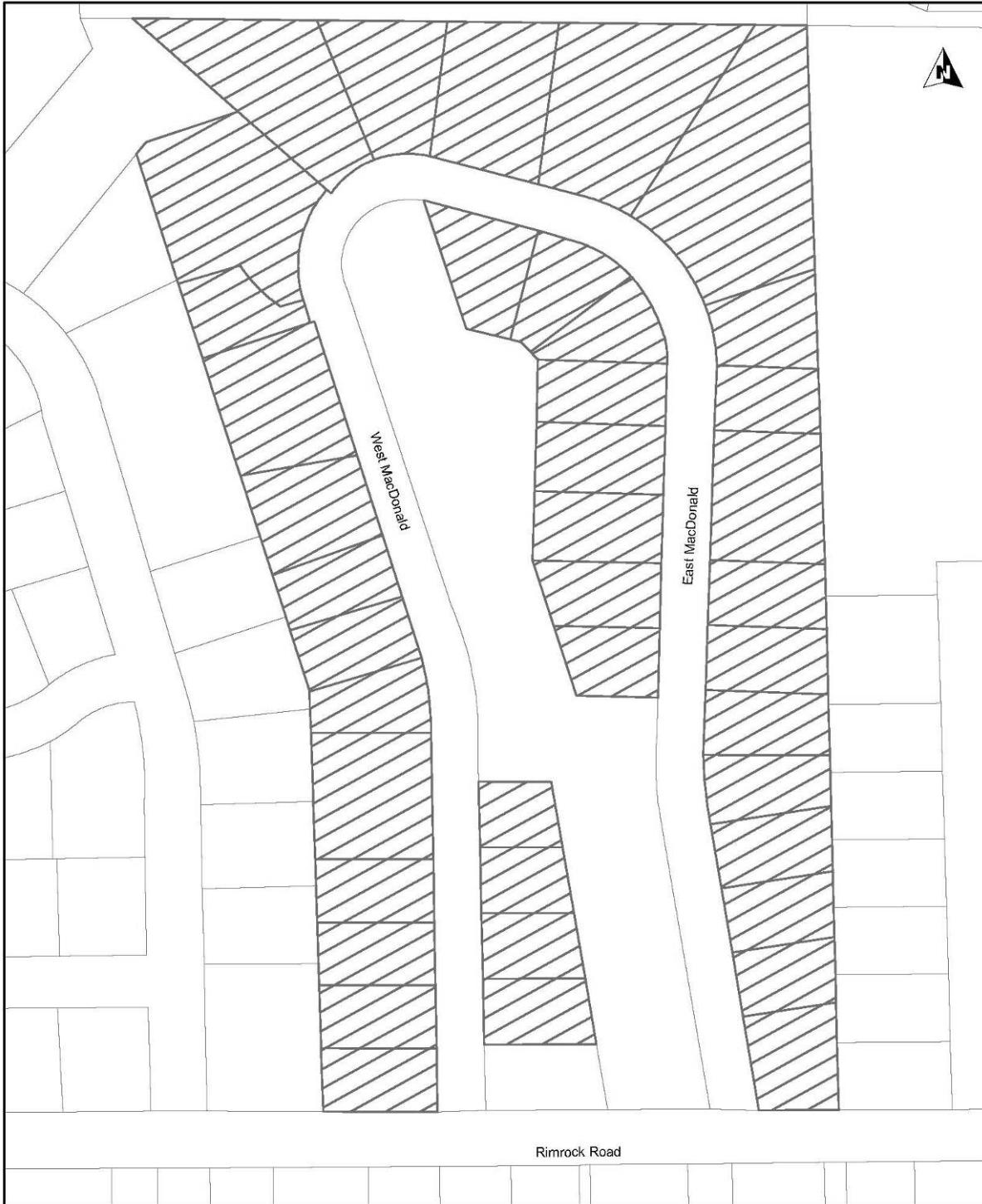
DATE: <u>April 2, 2009</u> S.I.D. NUMBER: <u>1386</u> S.I.D. DESCRIPTION: <u>Street Improvements for East and West</u> <u>MacDonald Drive</u>	DATA CARDS PROCESSING COLS <u>A&B</u> <u>2 - 5</u> <u>A</u> <u>6 - 39</u>																																				
YEARS TO BE ASSESSED: <u>15</u>																																					
TOTAL S.I.D. AREA: <u>N/A</u>																																					
MEASUREMENT: <u>X</u> EA SF LF																																					
S.I.D. COSTS: <u>X</u> ESTIMATED PER CONCEPT PLANS <u> </u> ESTIMATED PER BID PRICE <u> </u> FINAL PER ACTUAL CONSTRUCTION																																					
S.I.D. MAIN IMPROVEMENT COST: <u>\$323,000.00</u>																																					
SPECIAL ADDITIONS: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: left; padding: 2px;">CODE</td> <td style="width: 15%; text-align: left; padding: 2px;">Quantity</td> <td style="width: 15%; text-align: left; padding: 2px;">Unit Cost</td> <td style="width: 15%; text-align: left; padding: 2px;">Total</td> </tr> <tr> <td>3</td> <td>Assessment #1</td> <td>40.00</td> <td>\$ 4,638.1897</td> </tr> <tr> <td>4</td> <td>Assessment #2</td> <td>30.00</td> <td>\$ 2,334.2023</td> </tr> <tr> <td>5</td> <td>Assessment #3</td> <td>4,862.00</td> <td>\$ 13.8721</td> </tr> <tr> <td>6</td> <td>Assessment #4</td> <td> </td> <td> </td> </tr> <tr> <td>7</td> <td>Assessment #5</td> <td> </td> <td> </td> </tr> <tr> <td>8</td> <td>Assessment #6</td> <td> </td> <td> </td> </tr> <tr> <td>9</td> <td>Assessment #7</td> <td> </td> <td> </td> </tr> <tr> <td colspan="2" style="text-align: right; padding: 2px;">TOTAL PROJECT COST</td> <td style="text-align: right; padding: 2px;">=</td> <td style="text-align: right; padding: 2px;">\$ 323,000.00</td> </tr> </table>		CODE	Quantity	Unit Cost	Total	3	Assessment #1	40.00	\$ 4,638.1897	4	Assessment #2	30.00	\$ 2,334.2023	5	Assessment #3	4,862.00	\$ 13.8721	6	Assessment #4			7	Assessment #5			8	Assessment #6			9	Assessment #7			TOTAL PROJECT COST		=	\$ 323,000.00
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3	Assessment #1	40.00	\$ 4,638.1897																																		
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9	Assessment #7																																				
TOTAL PROJECT COST		=	\$ 323,000.00																																		
(ALL COSTS TO INCLUDE PRORATA SHARE OF ADMINISTRATIVE COSTS)																																					
CITY CENTRAL SUPPORT SERVICES TO COMPLETE																																					
FIRST YEAR TO BE ASSESSED: <u> </u>																																					
TYPE ASSESSMENT: <u> </u> PENDING <u> </u> FINAL																																					
INTEREST RATE: <u> </u>																																					
BOND ISSUE DATE: <u> </u>																																					
<u>A</u> <u>89 - 96</u>																																					
<u>A</u> <u>40 - 41</u>																																					
<u>A</u> <u>42</u>																																					
<u>A</u> <u>53 - 58</u>																																					
<u>A</u> <u>73 - 78</u>																																					

PART III
SID 1386- East and West MacDonald Drive
TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY

S10 COSTS:

X ESTIMATE PER CONCEPT PLANS
 X ESTIMATE PER BUD PRICE
 X PERMIT FOR ACTUAL CONSTRUCTION

SID 1386 - MacDonald Drive
Exhibit A
Boundary Map



SID 1386 – MACDONALD DRIVE

Exhibit B
Boundary Description

Being Lots 1 thru 14, 18, 19, 26 thru 34, 36 thru 47 , Block 1, Gregory Subdivision, First Filing according to the official plat recorded May 31, 1950 and now on file in the Office of the Clerk and Recorder of Yellowstone County under Document No. 464132;

Also Lots 15A and 17A, of Amended Plat of Lots 15, 16, and 17, Block 1, Gregory Subdivision, First Filing according to the official plat recorded July 28, 1972 and now on file in the Office of the Clerk and Recorder of Yellowstone County under Document No. 912666;

Also Lots 23A and 25A, of Amended Plat of S1/2 Lot 22 and Lots 23, 24 and 25, Block 1, Gregory Subdivision, First Filing according to the official plat recorded March 16, 2006 and now on file in the Office of the Clerk and Recorder of Yellowstone County under Document No. 3370189;

Also Lots 1 and 2, Block 1, Murphy Subdivision according to the official plat recorded July 15, 1987 and now on file in the Office of the Clerk and Recorder of Yellowstone County under Document No. 1449266.

EXHIBIT C

SID 1386 - East and West MacDonald Drive

ENGINEER'S ESTIMATE OF PROBABLE COST

All Improvements

This estimate is based on approximate quantities and costs for improvements, complete in-place to serve East and West MacDonald Drive

ALL ITEMS ARE COMPLETE IN-PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	Total Cost
<i>Street</i>					
100	1	LS	Mobilization and Insurance (5%)	@ 12268.16 / LS = \$	12,268.16
101	1	LS	Traffic Control	@ 5000.00 / LS = \$	5,000.00
102	1	LS	Erosion Control	@ 5000.00 / LS = \$	5,000.00
103	1	LS	Clearing and Grubbing	@ \$10,000.00 / LS = \$	10,000.00
104	50	LF	Curb & Gutter Removal	@ \$6.00 / LF = \$	300.00
105	10	SY	Concrete Flatwork Removal	@ \$5.00 / SY = \$	50.00
106	10	LF	Concrete Sawcutting	@ \$5.50 / LF = \$	55.00
107	600	SF	Concrete Sidewalk, 6in	@ \$6.00 / SF = \$	3,600.00
108	1,510	LF	Curb & Gutter/Ribbon	@ \$15.00 / LF = \$	22,650.00
109	32	SF	Detectable Warning Panels	@ \$45.00 / SF = \$	1,440.00
110	1,355	TN	Asphalt (3-inch Thick)	@ \$35.00 / TN = \$	47,425.00
111	82	TN	Asphalt PG 64-22	@ \$400.00 / TN = \$	32,800.00
112	3,000	CY	Unclassified Street Excavation	@ \$12.00 / CY = \$	36,000.00
113	1,350	CY	1 1/2 " Minus Crushed Base Course	@ \$22.00 / CY = \$	29,700.00
114	55	SY	Street Restoration (Type A)	@ \$45.00 / SY = \$	2,475.00
115	1	EA	Reset Inlet	@ \$2,000.00 / EA = \$	2,000.00
116	10	EA	Adjust Water Valves	@ \$500.00 / EA = \$	5,000.00
117	12	EA	Adjust Manholes	@ \$500.00 / EA = \$	6,000.00
118	1	EA	Type II Storm Drain Inlet	@ \$2,000.00 / EA = \$	2,000.00
119	60	LF	10" PVC SDR-35 Sewer Pipe	@ \$50.00 / LF = \$	3,000.00
120	14	EA	Tree Removal Class I	@ \$350.00 / EA = \$	4,900.00
121	2	EA	Tree Removal Class II	@ \$750.00 / EA = \$	1,500.00
122	1	EA	Tree Removal Class III	@ \$1,200.00 / EA = \$	1,200.00
123	1	LS	Topsoil	@ \$5,000.00 / LS = \$	5,000.00
124	2,000	SY	Seeding	@ \$3.00 / SY = \$	6,000.00
Subtotal - Streets					= \$ 245,363.16
<i>Curb & Gutter (New)</i>					
100	1	LS	Mobilization and Insurance (5%)	@ \$2,131.58 / LS = \$	2,131.58
108	2,700	LF	Curb & Gutter/Ribbon	@ \$15.00 / LF = \$	40,500.00
Subtotal - Curb/Gutter					\$ 42,631.58

<u>Aprons & Driveways</u>						
100	1	LS	Mobilization and Insurance (5%)	@ \$2,053.05	/ LS = \$	2,053.05
125	2,042	SF	Concrete Driveway, 4in	@ \$5.50	/ SF = \$	11,231.00
126	2,820	SF	Concrete Driveway Apron, 6in	@ \$6.00	/ SF = \$	16,920.00
105	137	SY	Concrete Flatwork Removal	@ \$12.00	/ SY = \$	1,644.00
106	266	LF	Concrete Saw cutting	@ \$5.50	/ LF = \$	1,463.00
127	75	SF	Retaining Wall	@ \$50.00	/ SF = \$	3,750.00
128	20	EA	Reset Mailbox	@ \$200.00	/ EA = \$	4,000.00
Subtotal - Aprons & Driveways					= \$	41,061.05
<hr/>						
Total Construction Costs						\$ 329,055.79
Construction Contingency (15%)						\$ 49,358.37
<hr/>						
TOTAL COST OF CONSTRUCTION IMPROVEMENTS						= \$ 378,414.16
<hr/>						
<u>Construction & S.I.D. Administrative Costs</u>						
<hr/>						
Design and Construction Administration						= \$75,682.83
<hr/>						
TOTAL ADMINISTRATIVE COSTS						= \$75,682.83
<hr/>						
CONSTRUCTION & ADMINISTRATION SUBTOTAL						= \$454,096.99

EXHIBIT C

This estimate is based on approximate quantities and costs for improvements complete in-place.

ALL ITEMS ARE COMPLETE IN-PLACE

ALL ITEMS ARE COMPLETE IN PLACE				ITEM EST.		Total Cost
ITEM	EST.	NO.	QTY.	UNIT	DESCRIPTION	UNIT PRICE
<u>Streets & Storm Drain</u>						
100	1.00	LS	Mobilization and Insurance (5%)	@	\$5,647.42 / LS =	\$5,647.42
101	1.00	LS	Traffic Control	@	\$3,650.00 / LS =	\$3,650.00
103	1.00	LS	Clearing and Grubbing	@	\$7,300.00 / LS =	\$7,300.00
110	665	TN	Asphalt (3-inch Thick)	@	\$35.00 / TN =	\$23,275.00
111	40	TN	Asphalt PG 64-22	@	\$400.00 / TN =	\$16,000.00
112	2,198	CY	Unclassified Street Excavation	@	\$12.00 / CY =	\$26,376.00
113	1,000	CY	1 1/2 " Minus Crushed Base Course	@	\$22.00 / CY =	\$22,000.00
116	7.00	EA	Adjust Water Valves	@	\$500.00 / EA =	\$3,500.00
117	9.00	EA	Adjust Manholes	@	\$500.00 / EA =	\$4,500.00
120	2.00	EA	Tree Removal Class I	@	\$350.00 / EA =	\$700.00
Raw Construction Costs						=
						\$112,948.42
 % Share of Total SID Construction						
						57.44%
Share of SID Construction Contingency						
						\$ 16,942.26
Share of SID Design and CA Costs						
						\$25,978.14
Subtotal						\$ 155,868.82
 Total Units of Assessment #1						
						40.00 EA
Cash Contribution Rater Per Unit (Not Including 2.5% Private Contract Fee)						
						\$3,896.72 / EA
Total Units to be Assessed for Assessment #1						
						40.00 EA
 % Share of SID Bond Administration Costs						
						57.44%
Share of SID Bond Administration Costs						
						\$29,658.77
Total Thru Administration Costs						
						\$ 185,527.59
 Unit Cost Per Assessment						
						\$4,638.19 / EA

EXHIBIT C

SID 1386 - East and West MacDonald Drive

ENGINEER'S ESTIMATE OF PROBABLE COST

ASSESSMENT #2 - CURB/GUTTER IMPROVEMENTS

This estimate is based on approximate quantities and costs for improvements, complete in-place.

ALL ITEMS ARE COMPLETE IN-PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	Total Cost
<u>Curb/Gutter</u>					
100	1	LS	Mobilization and Insurance (5%)	@ \$2,131.58 / LS = \$	2,131.58
108	2,700	LF	Curb & Gutter/Ribbon	@ \$15.00 / LF = \$	40,500.00
			Raw Construction Costs	= \$	42,631.58
			% Share of Total SID Construction		21.68%
			Share of SID Construction Contingency		\$ 6,394.74
			Share of SID Design and CA Costs		\$ 9,805.26
			Subtotal	\$	58,831.58
			Total Units of Assessment #3	30.00 EA	
			Cash Contribution Rater Per Unit (Not Including 2.5% Private Contract Fee)	\$1,961.05 / EA	
			Total Units to be Assessed for Assessment #3	30.00 EA	
			% Share of SID Bond Administration Costs		21.68%
			Share of SID Bond Administration Costs		\$ 11,194.49
			Total Thru Administration Costs	\$	70,026.07
			Unit Cost Per Assessment	\$2,334.20 / EA	

EXHIBIT C

SID 1386 - East and West MacDonald Drive

ENGINEER'S ESTIMATE OF PROBABLE COST

ASSESSMENT #3 - Aprons & Driveways

This estimate is based on approximate quantities and costs for improvements, complete in-place.

ALL ITEMS ARE COMPLETE IN-PLACE

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	Total Cost
<u>Sidewalk</u>					
100	1	LS	Mobilization and Insurance (5%)	@ \$2,053.05 / LS	\$ 2,053.05
125	2,042	SF	Concrete Driveway, 4in	@ \$5.50 / SF	\$ 11,231.00
126	2,820	SF	Concrete Driveway Apron, 6in	@ \$6.00 / SF	\$ 16,920.00
105	137	SY	Concrete Flatwork Removal	@ \$12.00 / SY	\$ 1,644.00
106	266	LF	Concrete Saw cutting	@ \$5.50 / LF	\$ 1,463.00
127	75	SF	Retaining Wall	@ \$50.00 / SF	\$ 3,750.00
128	20	EA	Reset Mailbox	@ \$200.00 / EA	\$ 4,000.00
Raw Construction Costs					\$ 41,061.05
 % Share of Total SID Construction					
					20.88%
					\$ 6,159.16
					\$9,444.04
					\$ 56,664.25
 Total Units of Assessment #3					
					SF
Cash Contribution Rater Per Unit (Not Including 2.5% Private Contract Fee)					
					\$11.65 / SF
 % Share of SID Bond Administration Costs					
					20.88%
					\$10,782.09
					\$ 67,446.34
 Unit Cost Per Assessment					
					\$13.87 / SF of Aprons & Driveways

EXHIBIT C - ENGINEER'S ESTIMATE OF PROBABLE COST

ASSESSMENT #3 - Aprons & Driveways Assessment Table

This estimate is based on approximate quantities and costs for improvements, complete in-place.

Tax ID	Name	Assessable Area / SF	Cash Contribution Rater Per Unit (Not Including 2.5% Private Contract Fee)	Share of Bond	
				Administration Costs	\$3,357.06
A08359	THOMPSON, STANLEY L & MARY E	242.00	\$2,820.39	\$2,913.63	\$3,468.03
A08360	SAYLOR, SCOTT & ANNETTE D	250.00		\$2,657.23	\$3,162.85
A08361	KIATTI, BRUCE K & SALLY E	228.00		\$2,801.97	\$3,454.16
A08362	MARTINEZ, LORENZO R JR & LISAL	249.00		\$2,901.97	\$3,454.16
A08363	SPEER, DOUGLAST & DEBORAH G	249.00		\$2,901.97	\$3,454.16
A08364	BOYER, DAMON E & TENVYSON A	152.00		\$1,717.49	\$2,108.57
A08365	HONAKER, JAMES W	272.00		\$3,170.03	\$3,773.22
A08366	POLLY, WILLIAM R JR & LYNNIE J	241.00		\$2,808.74	\$3,343.19
A08367	GOULDING, ALLAN L & NATALIE S	208.00		\$2,424.14	\$2,885.41
A08368	RUCHTER, KLAUS P & ROBIN L	218.00		\$2,540.68	\$3,024.13
A08369	WOHLGENANT, DUNCAN	0.00		\$0.00	\$0.00
A08370	GORMLEY, BEVERLY M	0.00		\$0.00	\$0.00
A08371	TELLER, PETER I TRUSTEE	0.00		\$0.00	\$0.00
A08371A	LARSEN, PEGGY F	0.00		\$0.00	\$0.00
A08372	RYAN, MARGARET R TRUST	0.00		\$0.00	\$0.00
A08373	RYAN, MARGARET R TRUST	0.00		\$0.00	\$0.00
A08374	WEEDER, DAVID A & LINDEA J	0.00		\$0.00	\$0.00
A08374A	STEINMETZ, KENNETH A & TERRILL	0.00		\$0.00	\$0.00
A08375	GRAHAM, DAVID M	0.00		\$0.00	\$0.00
A08375A	FULTON, ALFRED M J	0.00		\$0.00	\$0.00
A08376	SCHUSTER, RONALD L & VIRGINIA K	304.00		\$3,542.97	\$4,217.13
A08377	DEBOO, JOHN C & ANNE M	255.00		\$2,971.90	\$3,537.40
A08378	MARIENBERG, MARCO & ANDREW	323.00		\$3,764.41	\$4,480.70
A08379	WALTON, RICHARD M &	304.00		\$3,542.97	\$4,217.13
A08379B	WILLIAMSON, MILES BRETT & STACEY	0.00		\$0.00	\$0.00
A08380	LACKMAN, EILEEN BELLE	208.00		\$2,424.14	\$2,885.41
A08381	MAINWARING, CLINT & EMILY	238.00		\$2,737.77	\$3,301.57
A08382	GULLARD, WILLIAM G & BEATRICE	0.00		\$0.00	\$0.00
A08384	ANDERSON, DARRELL, TRUDY	205.00		\$2,389.18	\$2,843.79
A08385	MANSKE, JEANNE H & WILLIAM J	161.00		\$1,876.38	\$2,233.41
A08386	ORTH, CARL P & M SHERLON	239.00		\$2,785.43	\$3,315.44
A08387	KAHN, PATRICIA A	316.00		\$3,682.83	\$4,383.60
A08388	SULLIVAN, JEAN C	0.00		\$0.00	\$0.00
A08389	LOWENSTEIN, BRYAN D & STACEY D	0.00		\$0.00	\$0.00
A08390	STERKAN, DONALD J & MARJORIE A	0.00		\$0.00	\$0.00
A08391	GALL, DANIEL L & KAREN SANFORD	0.00		\$0.00	\$0.00
A08392	SCHLITZ, JOHN A	0.00		\$0.00	\$0.00
A08393	DETRICH, JANET L &	0.00		\$0.00	\$0.00
A08394	HARPER, P BRUCE & BARBARA A	0.00		\$0.00	\$0.00
A08394A	STINSON, EVELYN	0.00		\$0.00	\$0.00
TOTAL		4862.00		\$56,664.25	\$67,446.34

Exhibit C - Ass. #3 Table

4/2/2009

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EXHIBIT D

SID 1386 EAST AND WEST MACDONALD DRIVE

PROJECT DESCRIPTION

Special Improvement District No. 1386 shall construct the following improvements to Clevenger Avenue.

- 1) Construction of street, curb, gutter, and drive approaches on East and West MacDonald.

EXHIBIT E
SID 1386 - East & West MacDonald Drive
TABLE OF ESTIMATED ASSESSMENTS PER ITEM

CODE #	ASSESSMENT ITEM	RAW			SJD	TOTAL PROJECT COSTS	TOTAL UNITS		TOTAL UNITS TO BE ASSESSED			% APPLIED TO CASH CONTRIBUTION			TOTAL THRU-ADMINISTRATION COSTS	UNIT-COST PER ASSESSMENT
		CONSTRUCTION COSTS	% OF CONSTRUCTION	CONTINGENCY			ITEM	UNIT	RATE PER UNIT	ASSESSED PER ITEM	ADMINISTRATION COSTS	ADMINISTRATION COSTS	ADMINISTRATION COSTS	ADMINISTRATION COSTS		
1	Street	\$112,948.42	57.44%	\$16,942.36	\$129,890.68	\$25,978.14	\$155,868.82	40	EA	\$3,896.72	40	\$0.00	57.44%	\$29,658.77	\$185,527.59	\$4,638.19
2	Curb & Gutter (New)	\$42,631.58	21.68%	\$6,394.74	\$49,026.32	\$9,805.26	\$58,831.58	30	EA	\$1,961.05	30	\$0.00	21.68%	\$11,194.49	\$70,026.07	\$2,334.20
3	Aprons & Driveways	\$41,061.05	20.88%	\$6,159.10	\$47,230.21	\$9,444.04	\$56,664.25	4,862	SF	\$11.65	Varies	\$0.00	20.88%	\$10,782.09	\$67,446.34	\$13.87
TOTALS		(\$196,641.05)	(50.00%)	\$10,600.00	\$29,486.16	\$22,013.72	\$45,227.44	\$271,368.55				\$0.00	(50.00%)	\$11,033.00	\$23,000.00	

EXHIBIT F
SID 1386 - EAST AND WEST MACDONALD DRIVE
Storm Drain and Street Improvements

TAX I.D. NUMBER 6-13	PREVIOUS SID SID #	SID PAY-OFF + DELINQUENT + SID 1386			ESTIMATED MARKET VALUE AFTER IMPROVEMENTS		
		PAY-OFF	DELINQUENT	ASSESSMENT			
A08359		\$0.00	\$0.00	\$10,329.45	\$77,220.00	\$87,549.45	
A08360		\$0.00	\$0.00	\$10,440.43	\$80,652.00	\$91,092.43	
A08361		\$0.00	\$0.00	\$10,135.24	\$104,016.00	\$114,151.24	
A08362		\$0.00	\$0.00	\$10,426.55	\$10,426.55	\$98,934.00	\$109,360.55
A08363		\$0.00	\$0.00	\$10,426.55	\$10,426.55	\$100,518.00	\$110,944.55
A08364		\$0.00	\$0.00	\$9,080.96	\$9,080.96	\$88,440.00	\$97,520.96
A08365		\$0.00	\$0.00	\$10,745.61	\$10,745.61	\$87,846.00	\$98,591.61
A08366		\$0.00	\$0.00	\$10,315.58	\$10,315.58	\$80,256.00	\$90,571.58
A08367		\$0.00	\$0.00	\$9,857.80	\$9,857.80	\$128,832.00	\$138,689.80
A08368		\$0.00	\$0.00	\$9,996.52	\$9,996.52	\$82,500.00	\$92,496.52
A08369		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$106,590.00	\$113,562.39
A08370		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$167,640.00	\$174,612.39
A08371		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$165,990.00	\$172,962.39
A08371A		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$129,030.00	\$136,002.39
A08372		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$23,037.00	\$30,009.39
A08373		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$321,024.00	\$327,996.39
A08374		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$128,832.00	\$135,804.39
A08374A		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$156,552.00	\$163,524.39
A08375		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$132,264.00	\$139,236.39
A08375A		\$0.00	\$0.00	\$6,972.39	\$6,972.39	\$20,932.00	\$27,904.39
A08376		\$0.00	\$0.00	\$11,189.52	\$11,189.52	\$87,252.00	\$98,441.52
A08377		\$0.00	\$0.00	\$10,509.79	\$10,509.79	\$93,324.00	\$103,833.79
A08378		\$0.00	\$0.00	\$11,453.09	\$11,453.09	\$90,618.00	\$102,071.09
A08379A		\$0.00	\$0.00	\$11,189.52	\$11,189.52	\$94,049.00	\$105,238.52
A08379B		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$138,600.00	\$143,238.19
A08380		\$0.00	\$0.00	\$9,857.80	\$9,857.80	\$69,630.00	\$79,487.80
A08381		\$0.00	\$0.00	\$10,273.96	\$10,273.96	\$83,160.00	\$93,433.96
A08382		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$90,090.00	\$94,728.19
A08384		\$0.00	\$0.00	\$9,816.18	\$9,816.18	\$91,608.00	\$101,424.18
A08385		\$0.00	\$0.00	\$9,205.81	\$9,205.81	\$72,732.00	\$81,937.81
A08386		\$0.00	\$0.00	\$10,287.83	\$10,287.83	\$86,592.00	\$96,879.83
A08387		\$0.00	\$0.00	\$11,355.99	\$11,355.99	\$118,536.00	\$129,891.99
A08388		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$92,796.00	\$97,434.19
A08389		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$93,654.00	\$98,292.19
A08390		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$102,498.00	\$107,136.19
A08391		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$112,200.00	\$116,838.19
A08392		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$82,302.00	\$86,940.19
A08393		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$106,722.00	\$111,360.19
A08394		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$125,136.00	\$129,774.19
A08394A		\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$107,382.00	\$112,020.19

SID 1386 Creation Bond Analysis -

Exhibit F

4/2/2009

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TAX I.D.	PREVIOUS NUMBER 6-13	SID SID #	PAY-OFF	DELINQUENT	ASSESSMENT	SID PAY-OFF + DELINQUENT + SID 1386	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS	ESTIMATED MARKET VALUE
AVERAGE			\$0.00	\$0.00	\$8,075.00	\$8,075.00	\$105,499.65	\$113,574.65
MEDIAN			\$0.00	\$0.00	\$8,026.67	\$8,026.67	\$93,851.50	\$104,536.16
LOW			\$0.00	\$0.00	\$4,638.19	\$4,638.19	\$20,932.00	\$27,904.39
HIGH			\$0.00	\$0.00	\$11,453.09	\$11,453.09	\$321,024.00	\$327,996.39

RECOMMENDED BONDING COST ANALYSIS

SID 1386-East and West MacDonald Drive

Street & Storm Improvements

SID CONSTRUCTION COSTS	<u>\$378,414.16</u>
ADMINISTRATION COSTS	
DESIGN AND CONSTRUCTION ADMINISTRATION	\$75,682.83
POSTING & BONDING - ADVANCE COSTS (\$4.50 PER TAX CODE)	\$0.00
SUBTOTAL ADMINISTRATION COSTS	<u>\$75,682.83</u>
SUBTOTAL PROJECT COSTS	<u>\$454,096.99</u>
LESS CONTRIBUTIONS	
CITY OF BILLINGS	<u>-\$182,732.34</u>
PROJECT COSTS TO BE APPLIED TO SID	<u>\$271,364.65</u>
SID COSTS	
ENGINEERING FEE (3.5%)	\$11,305.00
ADMINISTRATION / FINANCE FEES (2.5%)	\$8,075.00
SID REVOLVING FUND (5%)	\$16,150.00
BOND DISCOUNT FEE (2%)	\$6,460.00
INSURANCE COSTS (3%)	\$9,690.00
BANK FEES	\$333.00
ROUNDOFF	<u>-\$377.65</u>
TOTAL BONDING COST	<u>\$323,000.00</u>

BONDS AWARDED TO:

INTEREST RATE _____ % DATE BONDS ISSUED: _____
 _____ BONDS @ \$ _____ TOTAL ISSUE \$ _____
 PREMIUM \$ _____ BONDS TO BE PAID ANNUALLY COMMENCING JANUARY 1,
 AND SHALL MATURE JANUARY 1, _____
 APPROVED THIS _____ DAY OF _____ 20_____.

ENGINEER FOR THE DISTRICT

DIRECTOR OF FINANCE

CITY ENGINEER

4/2/2009

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Second and Final Reading for Animal Ordinance
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: A review of the existing Animal Ordinance by the Animal Control Board due to the contract entered into between the City of Billings and Yellowstone Valley Animal Shelter has resulted in the submittal of recommended changes to the Animal Ordinance of the City of Billings, Montana. The City Council held a public hearing and first reading of this Ordinance on March 23, 2009. The Ordinance was approved on first reading. Council is being asked to approve this Animal Ordinance on second and final reading.

ALTERNATIVES ANALYZED:

- Approve the Ordinance on second and final reading.
- Do not approve the Ordinance on second and final reading.

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

RECOMMENDATION

Staff recommends that Council approve the Animal Ordinance on second and final reading.

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

ATTACHMENT
A – Ordinance

ORDINANCE NO. _____

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

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

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

Sec. 2-513. Powers and duties.

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

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

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

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

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

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

Sec. 4-301. Keeping of wild animals.

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

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

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

- (1) A wild animal with an animal that is not wild, including, but not limited to wolf/dog hybrids;
- (2) A wild animal with an animal of a different species, variety or breed;
- (3) An animal that is expressly or impliedly represented to be a wild animal hybrid; or
- (4) An animal, the appearance of which (including but not limited to the color, shape, size and markings) causes a representative of the Montana Fish, Wildlife and Parks or the Billings Animal Shelter Control to reasonably believe that the animal is a wild animal hybrid.

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

(b) No person shall keep or permit to be kept on his or her premises within the city limits any wild or vicious animal or wild animal hybrid for display for exhibition purposes, whether

gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions, or circuses.

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

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

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

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

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

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

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

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

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

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

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

Sec. 4-309. Roadside and flea market sales

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

(b) This section does not apply to:

- (1) An agent of a business that has a certificate of occupancy from the building inspection division authorizing the occupancy of the premises for purposes of operating a business selling pets;
- (2) An event primarily for the sale of agricultural livestock such as hoofed animals or animals or fowl commonly raised for food, dairy, or fiber products; or
- (3) A tax-exempt non-profit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals.

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

ARTICLE 4-400. DOGS, CATS AND SMALL ANIMALS

DIVISION 1. GENERALLY

Sec. 4-401. Definitions.

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

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

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

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

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

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

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

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

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

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

- (1) Inflicts serious bodily injury to a person on public or private property; or
- (2) Is involved in a continuous sustained attack upon a person, not allowing the victim any means of escape, regardless of the extent of injury or defensive action required; or
- (3) Is previously found to be potentially dangerous and while on or off the owner's property chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal;
- (4) Inflicts injury to a person on public or private property, which injury results in the death of the person.

(5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

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

Neutered/Spayed means rendered permanently incapable of reproduction.

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

Persons means two (2) or more people.

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

(1) While off the owner's property, chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal; or

(2) While on the owner's property causes bodily injury to a person; or

(3) While off the owner's property kills a domestic animal, excluding birds, rodents and reptiles.

(4) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

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

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

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

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

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

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

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

Sec. 4-404. Noisy animals.

Every person who keeps, feeds, harbors or allows to stay about any premises occupied or controlled by such person, any animal which unreasonably annoys or disturbs any person by continuous and habitual barking, howling, yelping, whining or other noise is guilty of maintaining a public nuisance and is therefore guilty of a misdemeanor. This section does not apply to an animal that is owned, kept, or harbored as part of the business of a licensed veterinarian, animal boarding facility, or agricultural or livestock operation.

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

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

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

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

Sec. 4-405.1. Quarantine--Rabies.

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

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

- (1) Animal must be kept away from all animals and people except the immediate household.
- (2) Animal must be kept inside an enclosed structure such as a house, garage or if outside, the animal must be in a covered pen from which it cannot escape or come into contact with another animal or person. If confinement is authorized under this condition, the person responsible for the animal shall further assure that the animal shall only be allowed outside the above-described pen or other suitable place approved by the animal control or law enforcement officer if the animal is on a leash which is held by a person that is capable of and is in fact controlling the animal in question.
- (3) Animal cannot be sold, given away, destroyed or moved from the premises until notified by an animal control or law enforcement officer that the quarantine period is over.
- (4) Animal under quarantine is not to receive any vaccinations without the authorization of a veterinarian and the animal control officer.
- (5) If the animal becomes lost, sick, acts strangely in any way, or dies during quarantine it must be reported immediately to the Billings animal control office shelter.
- (6) Animal control and/or law enforcement officers must be allowed reasonable access to the place of quarantine between the hours of 7:00 a.m.--10:00 p.m. for inspections.
- (7) The owner will be responsible and must pay all confinement fees. If the owner fails to pay such fees, the animal control officer shall dispose of the animal.

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

(d) A dog or cat (or other warm-blooded animal) manifesting characteristics of rabies (hydrophobia) may be put to death at the discretion of the animal control or law enforcement officer so that the head may be examined to make a confirmatory search for Negri bodies. All animals definitely known to have been bitten by the infected animal should be destroyed. If, however, the animal is only suspected of having the disease he should not be put to death but quarantined for observation, for a negative laboratory examination at this time would only leave the diagnosis in doubt.

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

(Ord. No. 05-5351, § 5, 12-12-05)

Sec. 4-405.5. Dangerous behavior.

(a) Any person who keeps, feeds, harbors or allows to stay about the premises occupied or controlled by him within the city any animal exhibiting dangerous behavior is guilty of maintaining a public nuisance and is guilty of a misdemeanor. An animal is presumed to have exhibited dangerous behavior if it demonstrated any of the behavior set forth in section 4-401.

Such presumption is rebuttable. Upon conviction of maintaining a public nuisance with a particular dangerous animal, said animal may be ordered by the court to be destroyed by the animal control officer. An animal involved in a fatal attack on a person will be impounded and destroyed by the animal control officer.

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

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

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

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

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

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

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

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

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

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

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

Sec. 4-433. Proof of vaccination prerequisite.

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

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

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

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

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

Sec. 4-448. Records of impounded animals.

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

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

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

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

Sec. 4-450. Disposition of unclaimed animals.

Every dog or cat impounded shall be held for a period of not less than forty-eight (48) hours nor more than seventy-two (72) hours after such impounding ~~and if not claimed by the owner the animal shall become the property of the Yellowstone Valley Animal Shelter, and if not claimed by the owner or by some person acting in the owner's behalf who pay the license~~

and impounding fees as provided in section 4-451, may be put to death by the animal control officer; provided, that instead of putting such dog or cat to death, the animal control officer, in his discretion, may turn any such dog or cat over to some person who agrees to find a home for the dog or cat. Such person must pay the fees referred to in section 4-451, except that no license fee need be paid for a dog to be removed from the city. The refusal or failure of the owner of any such dog or cat to pay the pound fees and charges after due notification shall be held to be an abandonment of the dog or cat by the owner.

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

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

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

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

Sec. 4-453. Animal control shelter fees.

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

Sec. 4-502. Impoundment authorized.

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

Sec. 4-503. Notice to owner.

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

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

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

Sec. 4-505. Auction of unclaimed animals.

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

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

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

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

PASSED by the City Council on first reading this 9th day of March, 2009.

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

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Amended Lot 2A-4, Block 1, Miller Crossing Subdivision, Exempt Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: The Amended Plat of Lot 2A-4, Block 1, Miller Crossing Subdivision is being presented to the City Council for approval. The subject property is zoned Entryway General Commercial and is on the south west corner of the intersection of King Avenue East and Orchard Lane. This exempt plat is providing 3 items: 1) Relocating a public utility easement to be under the proposed drive access on lot 2A-4A, 2) providing a 15 foot wide bike/pedestrian easement on the north border of the property line and 3) providing the required street dedication on Orchard Lane for this subdivision. Sam's Real Estate Business Trust, is the owner. The representing agent is Sanderson Stewart.

This exempt plat is being presented to the City Council because there is a right-of-way dedication involved that requires the mayors' signature on the plat.

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

RECOMMENDATION

Staff recommends that the City Council approve the exempt Amended Plat of Lot 2A-4, Block 1, Miller Crossing Subdivision.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Exempt Amended Plat

ATTACHMENT A
Exempt Amended Plat

AMENDED PLAT OF LOT 2A-4 OF AMENDED PLAT OF LOT 2A OF AMENDED LOTS 2, 3, 4, & 5, BLOCK 1,

MILLER CROSSING SUBDIVISION

SITUATED IN THE NW1/4 OF SECTION 16, T. 1 S., R. 26 E., P.M.M.
IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : SOUTH BILLINGS CENTER, LLC

PREPARED BY : ENGINEERING, INC.

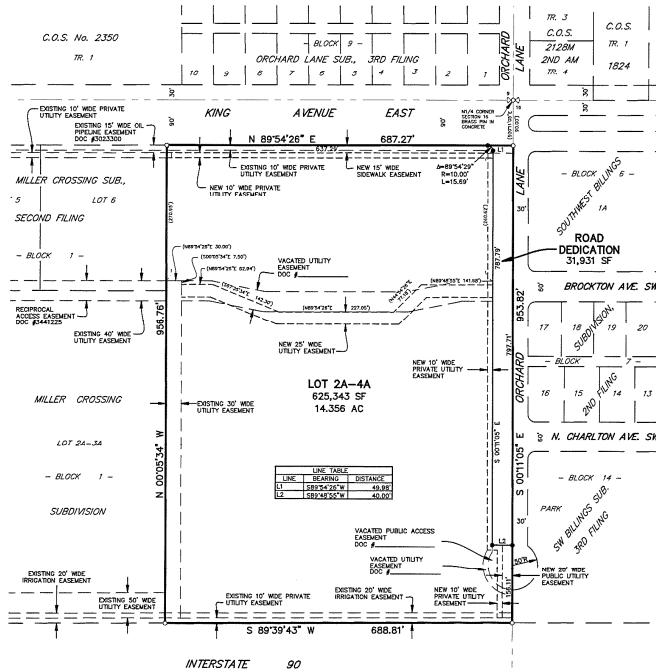
SCALE : 1" = 100'

DECEMBER, 2008
BILLINGS, MONTANA

100 50 0 100 200

BASIS OF BEARING: AMENDED PLAT OF LOT 2A OF AMENDED LOTS 2, 3, 4, & 5,
BLOCK 1, MILLER CROSSING SUBDIVISION

- = FOUND SURVEY MONUMENT, REBAR & CAP MARKED "ENGINEERING, INC."
- = SET 5/8" X 16" REBAR AND CAP MARKED WITH THE LICENSE NUMBER
OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC BILLINGS MT."



ERRORS AND OMISSIONS REVIEW

I hereby certify that I have examined the annexed and foregoing plat for errors and omissions in computations and drafting.

Examining Land Surveyor _____ Date _____

CERTIFICATE OF CITY ATTORNEY

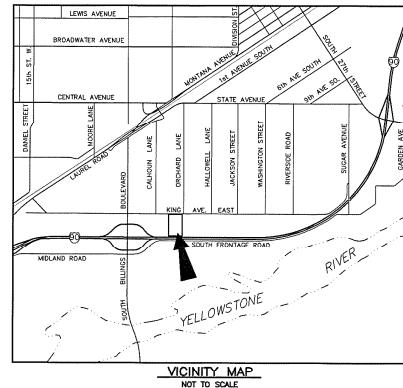
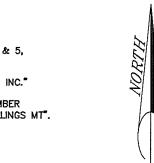
This document has been reviewed by the City Attorney's office and is acceptable as to form.

Date: _____
Reviewed by: _____

CERTIFICATE OF COUNTY TREASURER

I hereby certify that all real property taxes and special assessments have been paid per 76-3-207(3), M.C.A.

Date: _____
Yellowstone County Treasurer
By: _____ Deputy _____



CERTIFICATE OF DEDICATION

STATE OF MONTANA)

County of Yellowstone)

KNOW ALL MEN BY THESE PRESENTS, That the undersigned owner of the following described real estate, does hereby certify, that it has ceased to be surveyed, subdivided and platted into lots, blocks and streets as shown on the annexed plat, said tract being situated in the City of Billings, in the County of Yellowstone, State of Montana, in the City of Billings, Yellowstone County, Montana, said tract being in more particular as follows, to-wit:

Lot 2A-4 of Amended Plat of Lot 2A of Amended Lots 2, 3, 4, & 5, Block 1, Miller Crossing Subdivision, according to the official plat on file in the Office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 344127.

There is no part requirement for this commercial subdivision.

The undersigned hereby grants unto all utility companies, as such are defined and established by law, the right to enter upon and across the property for the location, maintenance, repair and removal of their lines over, under and across the areas designated on the plat as "UTILITY EASEMENT" to have and to hold forever. Said tract to be known and designated as "LOT 2A-4 OF AMENDED PLAT OF LOT 2A OF AMENDED LOTS 2, 3, 4, & 5, BLOCK 1, MILLER CROSSING SUBDIVISION, in the City of Billings, Yellowstone County, Montana, said tract being in more particular as follows, to-wit: LOTS 2, 3, 4, & 5, BLOCK 1, MILLER CROSSING SUBDIVISION, and the lands included in all streets and roads shown on the annexed plat are hereby granted and donated to the use of the public forever.

This division of land is exempt from review as a subdivision pursuant to Section 76-3-207(1)(h), M.C.A. which exempts "any division of land that is created for rights-of-way, utility easements, subdivisions, changes in the use of land to a residential, commercial, or industrial use is subject to the requirements of Chapter 44 of Local Regulation of Subdivisions.

Further, this division of land is not subject to review by the State Department of Environmental Quality pursuant to ARM 77-26.65(2)(c) which exempts a division that has no existing facilities for water supply, wastewater disposal, and solid waste disposal, if no new facilities will be constructed on the parcel".

SAM'S REAL ESTATE BUSINESS TRUST,
a Delaware statutory trust

By: _____
Title: _____

STATE OF _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned Notary Public for the State of _____, personally appeared _____, known to me to be the person who signed the foregoing instrument as _____, of SAM'S REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, and acknowledged to me that said corporation executed the same. Witness my hand and seal the day and year herein above written.

Notary Public in and for the State of _____
Printed Name _____
Reading at _____
My commission expires _____

CERTIFICATE OF SURVEYOR

STATE OF MONTANA)

County of Yellowstone)

The undersigned, Montana Registered Land Surveyor being first duly sworn, deposes and says that during the month of December, 2008, a survey was performed under the supervision of a plat of land to be known as AMENDED PLAT OF LOT 2A-4 OF AMENDED PLAT OF LOT 2A OF AMENDED LOTS 2, 3, 4, & 5, BLOCK 1, MILLER CROSSING SUBDIVISION, in accordance with the request of the owner thereof and in conformance with the Montana Surveyor's Code of Ethics, description of boundaries and dimensions being in accordance with the Certificate of Plan of Survey, plat of survey, and plat; that the monuments found and set are of the character and occupy the positions shown therein and that the gross area is 14.356 acres and the net area is 14.356 acres.

Engineering, Inc.
By: _____
Montana Registration No. _____

Subscribed and sworn to before me, a Notary Public in and for the State of Montana, this _____ day of _____, 20____.

Notary Public in and for the State of Montana
Printed Name _____
Reading at _____
My commission expires _____

N1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$723,275.57 audited and are presented for your approval for payment. A complete listing of the claims dated March 6, 2009 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

N₂

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, April 13, 2009

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,370,264.68 audited and are presented for your approval for payment. A complete listing of the claims dated March 13, 2009 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

N₃

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$969,364.66 audited and are presented for your approval for payment. A complete listing of the claims dated March 20, 2009 in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

SUBJECT: Resolution Relating to Special Improvement District Bonds 1384; Determining the form and details and authorizing the execution and delivery.

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: On February 23, 2009, City Council approved a resolution authorizing the issuance and bond sale for Special Improvement District 1384. US Bank was awarded the bond sale with a true interest rate of 5.844%. The following resolution outlines the form and detail of the bonds.

RECOMMENDATION

It is recommended that the City Council approve the attached resolution.

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

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Yellowstone County, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$495,000 SPECIAL IMPROVEMENT DISTRICT NO. 1384 BONDS; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on April 13, 2009, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

_____,

voted against the same: _____; abstained from voting thereon:

_____, or were absent: _____.

WITNESS my hand and seal officially this _____ day of April, 2009.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$495,000 SPECIAL
IMPROVEMENT DISTRICT NO. 1384 BONDS; FIXING THE
FORM AND DETAILS AND PROVIDING FOR THE
EXECUTION AND DELIVERY THEREOF AND SECURITY
THEREFOR

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

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Resolutions of Intention. By Resolution No. 08-18694, duly adopted by the Council on March 24, 2008, this Council declared its intention to create Special Improvement District No. 1384, for the purpose of financing costs of certain public improvements of special benefit to the properties within the proposed district. Resolution No. 08-18694 designated the number of the District, described the boundaries thereof, stated whether the District was an extended district and stated the general character of the improvements to be made (the “Improvements”) and an approximate estimate of the costs thereof, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”). After giving notice and conducting a public hearing in accordance with Montana law, the Council pursuant to Resolution No. 08-18699, adopted on April 14, 2008, created the District. Property owners in the District were given an opportunity to pay their proportionate share of the costs of Improvements prior to the sale of special improvement bonds to fund all of the costs of the Improvements in the proposed district. A significant number of the property owners in the proposed district prepaid their respective costs of the Improvements. The City determined it was in the best interests of the remainder of the property owners in the proposed district to allow them to finance their share of the costs of the Improvements through the issuance of special improvement district bonds.

By Resolution No. 09-18783, duly adopted by the Council on January 12, 2009 (the “Resolution of Intention”), this Council declared its intention to recreate the district in the amount of \$495,000 to finance the costs of Improvements attributable to the properties and benefited by the Improvements and to modify the boundaries of the original district to include only those properties identified in Exhibit A and B attached thereto (the “District”).

In the Resolution of Intention, this Council further found that it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Special Improvement District Revolving Fund of the City (the “Revolving Fund”), on the basis of factors required to be considered under Section 7-12-4225 of the Act. Those findings are hereby ratified and confirmed.

1.02. Notices. Notices of the passage of the Resolution of Intention were given by two publications, with at least six days between publications, in the *Billings Times*, a weekly

newspaper of general circulation published within the City. Notice of the passage of the Resolution of Intention was also mailed the same day the notice was first published to all persons, firms or corporations or the agents thereof having real property within the District, listed in their names upon the last completed assessment roll for state, county and school district taxes, at their last known addresses. The notice described the general character of the Improvements, stated the estimated cost of the Improvements and the method or methods of assessment of such costs against properties in the District, specified the time when and the place where the Council would hear and pass upon all protests made against the making of the Improvements or the creation or extension of such District, and referred to the Resolution of Intention as being on file in the office of the City Clerk for a description of the boundaries of the District, all in accordance with the provisions of the Resolution of Intention, and included a statement that, subject to the limitations of Section 7-12-4222 of the Act, the general fund of the City may be used to provide loans to the revolving fund or a general tax levy may be imposed on all taxable property in the City to meet the financial requirements of the revolving fund. In the Resolution of Intention, the Council also declared its intention to reimburse the City for costs paid before issuance of the Bonds, as required by Section 1.150-2 of the Income Tax Regulations promulgated under the Internal Revenue Code.

1.03. Creation of District. At the time and place specified in the notice hereinabove described, this Council met to hear, consider and pass upon all protests made against the making of the Improvements and the creation of the District, and, after consideration thereof, it was determined and declared that insufficient protests against the creation or extension of the District or the proposed work had been filed in the time and manner provided by law by the owners of the property to be assessed for the Improvements in the District, and this Council did therefore by Resolution No. 09-18791, adopted February 9, 2009, create Special Improvement District No. 1384, order the proposed Improvements in accordance with the Resolution of Intention, and confirm the findings it made with respect to the pledge of the Revolving Fund in the Resolution of Intention.

1.04. Improvements and Construction Contracts. The District was created to pay the costs attributable to each property in the District for the City's Sewer Construction Fee, the City Sewer Development Fee, and a Franchise Fee, all as established pursuant to Resolution No. 04-18067, adopted by the City Council of the City on January 12, 2004.

All of the construction costs attributable to connecting these properties in the District have been completed and were constructed in accordance with all applicable statutes.

Each property in the District has been connected to the City's sanitary sewer system (or will be connected upon payment of the construction, development and franchise fees from the proceeds of the Bonds. The total costs to be paid from the proceeds of the Bonds are as follows:

Construction	\$450,220.95
Engineering	4,950.00
City SID Administration/ Finance Fees	12,375.00
Revolving Fund	24,750.00
Costs of Issuance	2,704.05

TOTAL	\$495,000.00
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1.05. Costs. It is currently estimated that the costs and expenses connected with and incidental to the formation of the District to the City to be assessed against properties in the District, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contracts and all other costs and expenses, including the deposit of proceeds in the Revolving Fund of \$24,750.00, are \$495,000. Such amounts will be levied and assessed upon the assessable real property within the District on the basis described in the Resolution of Intention. This Council has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the special improvement district funds created for the District, which funds are to be maintained on the official books and records of the City separate from all other City funds, within the 2009 Special Improvement District Fund (the “District Fund”) for the payment of principal and interest when due on the bonds herein authorized.

1.06. Sale and Issuance of Bonds. For the purpose of financing a portion of the costs and expenses of making the Improvements, which are to be assessed against the property within the District as provided in the Resolution of Intention, this Council, pursuant to Resolution No. 09-18793, adopted February 23, 2009, called for the public sale of bonds in the total aggregate amount of \$495,000. This Council authorized the City to enter into a contract with U.S. Bank National Association, of Minneapolis, Minnesota (the “Purchaser”), as the lowest responsible bidder pursuant to which the Purchaser agreed to purchase from the City the Bonds at a purchase price of \$495,000, at the rates of interest set forth in Section 2.01 hereof and upon the further terms set forth in this resolution resulting in a true interest rate of 5.844826% per annum and a true interest cost of \$226,614.38.

1.07. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, and the home rule charter of the City, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Bond.

2.01. Principal Amount, Maturities, Denominations, Date, Interest Rates. For the purpose of paying the costs and expenses incurred in construction of the Improvements, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the proposal described in Section 1.06, the City shall forthwith issue and deliver to the Purchaser the Bonds payable solely from the District Fund and denominated “Special Improvement District No. 1384 Bonds.” The Bonds shall be issued as one Term Bond in the principal amount of \$495,000 maturing on July 1, 2024, shall be dated, as originally issued, and be registered as of April 1, 2009, shall be subject to mandatory sinking fund redemption as set forth in Section 2.07

below, and shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 5.85% per annum (the “Bond”).

Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

2.02. Interest Payment Dates. Interest on the Bond shall be payable on each January 1 and July 1, commencing January 1, 2010, to the owners of record thereof as such appear on the bond register at the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. Upon the original delivery of the Bond to the Purchaser and upon each subsequent transfer or exchange of a Bond pursuant to Section 2.04, the Registrar shall date each Bond as of the date of its authentication.

2.03. Method of Payment. The Bond shall be issued only in fully registered form. The interest on and, upon surrender thereof at the principal office of the Registrar (as hereinafter defined), the principal of each Bond, shall be payable by check or draft drawn on the Registrar.

2.04. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent for the Bond (the “Registrar”). This Section 2.04 shall establish a system of registration for the Bond as defined in the Model Public Obligations Registration Act of Montana.

The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) **Bond Register.** The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of the Bonds and the registration of transfers and exchanges of the Bonds entitled to be registered, transferred or exchanged.

(b) **Transfer.** Upon surrender to the Registrar for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer of any Bond or portion thereof selected or called for redemption. No transfer or exchange of a Bond shall affect its order of registration for purposes of redemption pursuant to Section 2.06.

(c) **Exchange.** Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner’s attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except an exchange upon a partial redemption of a Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or such Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

2.05. Initial Registrar. The City hereby appoints the City's Financial Services Manager, as the initial Registrar for the Bond. The City reserves the right to appoint a successor Registrar, and the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. Upon merger or consolidation of a bank or trust company that is acting as the Registrar, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The City reserves the right to remove any Registrar upon 30 days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in

its possession as Registrar to the successor Registrar and shall deliver the bond register to the successor Registrar. On or before each principal or interest due date, without further order of this Council, the Financial Services Manager shall transmit to the Registrar, solely from money in the District Fund available therefor, moneys sufficient for the payment of all principal, premium, if any, and interest then due on the Bond.

2.06. Redemption.

(a) Mandatory Redemption. If on any interest payment date there will be a balance in the District Fund after payment of the principal and interest due including mandatory sinking fund payments (principal and interest due) on the Bond, either from the prepayment of special assessments levied in the District or from the transfer of surplus money from the Construction Account to the Principal Account as provided in Section 3.02 or otherwise, the Financial Services Manager shall call for redemption on the interest payment date the outstanding principal amount of the Bond, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the District Fund on that date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

(b) Optional Redemption. The Bond is subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described in Subsection (a) of this Section 2.06 on any interest payment date on July 1, 2017, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

(c) Selection of Bonds for Redemption. If less than all of the principal of the Bond is to be redeemed, the principal amount of the Bond shall be redeemed in order of mandatory sinking fund payments. If less than all of the mandatory sinking fund payment is to be redeemed, redemption shall be in \$5,000 principal amounts.

(d) Notice and Effect of Redemption. The date of redemption and the principal amount of the Bond shall be fixed by the Financial Services Manager, who shall give notice thereof to the Registrar in sufficient time for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bond at its address appearing in the bond register, of the principal amount thereof to be redeemed and the date on which payment will be made, which date shall be not less than thirty (30) days after the date of mailing notice. On the date so fixed interest on the principal amount thereof so redeemed shall cease.

2.07. Mandatory Sinking Fund Redemption. The Bond is subject to mandatory sinking fund redemption on July 1 in the year and the principal amount set forth below in \$5,000 principal amounts, selected by the Registrar, by lot or other manner it deems fair, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date:

Stated Maturity of Term Bonds <u>(July 1)</u>	Sinking Fund Payment Date <u>(July 1)</u>	Principal Amount on Sinking Fund Payment Date	Principal Amount due on <u>Maturity</u>
2024	2010	\$35,000	\$5,000
	2011	35,000	
	2012	35,000	
	2013	35,000	
	2014	35,000	
	2015	35,000	
	2016	35,000	
	2017	35,000	
	2018	35,000	
	2019	35,000	
	2020	35,000	
	2021	35,000	
	2022	35,000	
	2023	35,000	

The principal amount of the Term Bond having a stated maturity in 2024 required to be redeemed on the above Sinking Fund Payment Dates shall be reduced by the principal amount of any such term bonds theretofore redeemed and not previously applied to reduce the principal amount of such bonds on a Sinking Fund Payment Date.

2.08. Form. The Bond shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

2.09. Execution, Registration and Delivery. The Bond shall be prepared under the direction of the City Clerk and shall be executed on behalf of the City by the signatures of the Mayor, Financial Services Manager and the City Clerk and sealed with the official seal of the City; provided that the signatures and the corporate seal may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bond shall cease to be such officer before the delivery of the Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. The executed certificate of authentication on the Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution. When the Bond has been so executed, authenticated and registered, it shall be delivered by the Registrar to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed. The Purchaser shall not be obligated to see to the application of the purchase price, but from the net proceeds of the Bond the Financial Services Manager shall credit forthwith \$24,750.00 to the Revolving Fund, as required by Section 7-12-4169(2) of the Act, any accrued interest to the Interest Account in the

District Fund, and the balance of such proceeds to the Construction Account in the District Account, in proportion to the principal amounts of the Bond allocable to the District, as set forth in Section 1.05, to be used solely for the purposes described in Section 3.02.

Section 3. District Fund; Assessments.

3.01. District Fund. There is hereby created and established the District Fund designated as the “2009 Special Improvement District Fund,” which shall be maintained by the Financial Services Manager on the books and records of the City separate and apart from all other funds of the City. Within the District Fund there shall be maintained a separate account for SID No. 1384 (the “District Account”). Within the District Account there shall be maintained three separate accounts, designated as the “Construction Account,” “Principal Account” and “Interest Account,” respectively.

3.02. Construction Account. There shall be credited to the Construction Account in the District Account the proceeds of the sale of the Bond attributable to the District as provided in Section 1.05. Any earnings on investment of money in a Construction Account shall be retained therein. All costs and expenses of constructing the Improvements to be paid from proceeds of the Bond in and for the benefit of a District shall be paid from time to time as incurred and allowed from the Construction Account in accordance with the provisions of applicable law, and money in the Construction Account shall be used for no other purpose; provided that upon completion of the Improvements and after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any money remaining in said Construction Account shall be transferred to the Principal Account in the District Account and used to redeem the Bond as provided in Section 3.03.

3.03. Principal Account and Interest Account. Money in the Principal Account and the Interest Account shall be used only for payment of the principal of and interest on the Bonds as such payments become due or to redeem Bonds. From the proceeds of the Bonds, there shall be deposited in the Interest Account any interest on the Bonds accrued to the date of their delivery, pro rata, in proportion to the principal amount of Bonds issued for such District as set forth in Section 1.05.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each fiscal year on the special assessments to be levied with respect to the Improvements in the District, the Financial Services Manager shall credit to the Interest Account in the District Account so much of said special assessments as is collected as interest payment and the balance thereof to the Principal Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the next succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the District Account. All money in the Interest Account and the Principal Account shall be used first to pay interest due, and any remaining money shall be used to pay the Bond then due and, if money is available, to redeem the principal amounts of the Bond in accordance with Section 2.06; provided that any money transferred to the Principal Account from the Construction Account pursuant to Section 3.02 shall be applied to redeem the principal amounts of the Bond to the extent possible on the next interest payment date for which notice of

redemption may properly be given pursuant to Section 2.06. Redemption of the Bond shall be as provided in Section 2.06, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Section 7-12-4206 of the Act.

3.04. Loans from Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to each of the District Account in an amount sufficient to make good any deficiency then existing in the Interest Account in the District Account, and shall issue an order authorizing a loan or advance from the Revolving Fund to the District Account in an amount sufficient to make good any deficiency then existing in the Principal Account of the District Account, in such order and in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in a Principal Account or an Interest Account in a District Account if the money on deposit therein on any December 15 or June 15 (excluding amounts in the Principal Account representing prepaid special assessments) is less than the amount necessary to pay the principal and interest due (other than upon redemption), and interest on the Bond payable, on the next succeeding interest payment date.

Pursuant to Ordinance No. 1096, the City has undertaken and agreed to provide funds for the Revolving Fund by annually levying such tax or making such loan from the general fund of the City as authorized by Montana Code Annotated, Section 7-12-4222. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement district bonds or warrants of the City is not sufficient to make good all deficiencies then existing in the special improvement district funds for which the City covenants to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds of the special improvement districts in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds or warrants of the City has been paid and to the extent of amounts available in the Revolving Fund. On any date when all accrued interest on special improvement district bonds and warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be lent or advanced to the special improvement district funds for payment and redemption of bonds to the extent the special improvement district funds are deficient for such purpose, and, if money in the Revolving Fund is insufficient therefor, pro rata, in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as the Bond is outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

Section 4. Covenants. The City covenants and agrees with the owners from time to time of the Bonds that until all principal of the Bond and interest thereon are fully paid:

4.01. Compliance with Resolution. The City will hold the District Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this resolution. The provisions hereinabove made with respect to the District Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the sale of the Bonds as set forth in Section 1.06.

4.02. Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts and bonds referred to in Section 1.04 and to ensure the completion of the Improvements for the benefit of the District in accordance with the plans and specifications and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the District Account and within the amount of the proceeds of the Bond appropriated thereto.

4.03. Levy of Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property within the boundaries of the District in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States in an aggregate principal amount not less than \$495,000 for the District. Such special assessments shall be levied on the basis or bases prescribed in the Resolution of Intention, and shall be payable in substantially equal semiannual installments of principal and interest over a period of 15 years, at an annual rate equal to the sum of: (i) the average annual interest rate borne by the then-outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The assessments to be levied will be payable on the 30th day of November in each of the years 2009 through 2014, and on the 31st day of May in the years 2010 through 2015, inclusive, if not theretofore paid, and shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Bonds to January 1, 2010. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-4191. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.04. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-4186. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bonds, including investment income thereon, are applied to the redemption of such Bonds, as provided in Montana Code Annotated, Sections 7-12-4205 and 7-12-4206, or if refunding bonds are issued and the principal amount of the outstanding Bonds of the District is decreased or increased, the City will reduce or increase, respectively, the assessments levied in the District and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this Council, its officers and employees will reassess and re-levy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Montana Code Annotated, Sections 7-12-4176 through 7-12-4178.

4.05. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened questioning the validity or regularity of the creation of the District, the contracts for construction of the Improvements or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the City to issue the Bonds or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser, and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

4.06. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent assessments levied on property in the District for costs of the Improvements, unless the City determines, by resolution of the City Council, that such waiver is in the best interest of the owners of the outstanding Bonds.

4.07. Financial Report. The City covenants to provide a copy of its annual, audited financial statements (the "Audited Financial Statements") within 330 days of the end of each fiscal year to the owner of the Bond as long as the Bond is outstanding. Until otherwise notified the Audited Financial Statements will be sent to the Government Banking Division of U.S. Bank National Association, 9th Floor (EP-MN-S9GB), 101 East 5th Street, St. Paul, MN 55101-1860.

Section 5. Tax Matters.

5.01. Use of Improvements. The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

5.02. General Covenant. The City covenants and agrees with the owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bond to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the

interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

5.03. Arbitrage Certification. The Mayor, the Financial Services Manager, and the City Clerk, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

5.04. Arbitrage Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, unless the Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Bonds (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the Financial Services Manager, and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

5.05. “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The City has not designated any obligations in 2009 other than the Bond under Section 265(b)(3). The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all “subordinate entities” of the City in 2009 in an amount greater than \$30,000,000.

5.06. Information Reporting. The City shall file with the Secretary of the Treasury, not later than August 15, 2009, a statement concerning the Bonds containing the information required by Section 149(e) of the Code.

Section 6. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to bond counsel certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

Section 7. Discharge.

7.01. General. When the liability of the City on all Bonds issued under and secured by this resolution has been discharged as provided in this Section 7, all pledges, covenants and other rights granted by this resolution to the owners of such obligations shall cease.

7.02. Payment. The City may discharge its liability with reference to any Bond or installment of interest thereon which is due on any date by on or before that date depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Bond a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full; or if any Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, by mailing to the registered owner thereof a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full with interest accrued to the date of such deposit or mailing.

7.03. Prepayment. The City may also discharge its obligations with respect to any Bonds called for redemption on any date when they are prepayable according to their terms, by on or before that date depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Bond a check or a draft in a sum sufficient and providing proceeds available, for the payment of the principal, interest and redemption premium, if any, which are then due; provided that notice of such redemption has been duly given as provided herein or irrevocably provided for.

7.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on all Bonds on or before maturity or, if any Bond has been duly called for redemption or notice of such redemption has been irrevocably provided for, on or before the designated redemption date.

7.05. Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 7 with the Registrar shall be irrevocable and held for the benefit of the owners of Bonds in respect of which such deposits have been made.

Section 8. Repeals and Effective Date.

8.01. Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Council that are in any way inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

8.02. Effective Date. This resolution shall take effect immediately upon its passage and adoption by this Council.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 13th day of April, 2009.

Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT A
UNITED STATES OF AMERICA
STATE OF MONTANA
YELLOWSTONE COUNTY

CITY OF BILLINGS

SPECIAL IMPROVEMENT DISTRICT NO. 1384 BONDS

Interest at the rate per annum specified below,
payable on the 1st day of January and the 1st day of July
in each year, commencing January 1, 2010.

No. R-1	\$495,000.00
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<u>Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>
5.85%	July 1, 2024	April 1, 2009

REGISTERED OWNER: U.S. BANK NATIONAL ASSOCIATION
(Tax Identification Number: 31-0841368)

PRINCIPAL AMOUNT: FOUR HUNDRED NINETY-FIVE THOUSAND AND NO/100 DOLLARS

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana, will pay to the registered owner identified above, or registered assigns, on the maturity date specified above the principal amount specified above, solely from the revenues hereinafter specified, as authorized by Resolution No. _____, adopted April 13, 2009 (the "Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of registration of this Bond, as expressed herein, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Financial Services Manager. Interest on this Bond is payable semiannually, commencing January 1, 2010, on the first day of January and the first day of July in each year, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the 15th day (whether or not such is a business day) of the immediately preceding month. Interest on and, upon presentation and surrender hereof at the operations center of the bond registrar and paying agent hereinafter named, the principal of this Bond are payable by check or draft of the Financial Services Manager, as Bond Registrar and Paying Agent, at his address as it appears on the bond register maintained by the Bond Registrar. The principal of and interest on this Bond are payable in lawful money of the United States of America.

This Bond is issued as a Term Bond in the aggregate principal amount of \$495,000, matures on July 1, 2024, and bears interest at the rate of 5.85% (the "Bond"). The Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana

thereunto enabling, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”), and ordinances and resolutions duly adopted by the governing body of the City, including the Resolution, to finance the costs of certain local improvements (the “Improvements”) for the special benefit of property located in Special Improvement District Nos. 1384 (the “District”) of the City. The Bond shall be dated, as originally issued, and be registered as of April 1, 2009, shall be subject to mandatory sinking fund redemption as set forth below, and shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 5.85% per annum. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

This Bond is payable from the collection of a special tax or assessment levied upon all assessable real property within the boundaries of the District, in an aggregate principal amount of not less than \$495,000, except as such amounts may be reduced or increased in accordance with provisions of Montana law. Such assessments constitute a lien against the assessable real estate within the District, District and are to be deposited into the Special Improvement District No. 1384 Fund of the City (the “District Fund”). The Bond is not a general obligation of the City.

The City has also validly established a Special Improvement District Revolving Fund (the “Revolving Fund”) to secure the payment of certain of its special improvement district bonds, including the Bond. The City has also agreed, to the extent permitted by the Act, to issue orders annually authorizing loans or advances from the Revolving Fund to the District Fund, in amounts sufficient to make good any deficiency in the District Fund to pay principal of or interest on the Bond, to the extent that funds are available in the Revolving Fund, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City’s then outstanding special improvement district bonds secured thereby and the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

The Bond is subject to mandatory sinking fund redemption on July 1 in the year and the principal amount set forth below in \$5,000 principal amounts, selected by the Registrar, by lot or other manner it deems fair, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date:

<u>Stated Maturity of Term Bonds (July 1)</u>	<u>Sinking Fund Payment Date (July 1)</u>	<u>Principal Amount on Sinking Fund Payment Date</u>	<u>Principal Amount due on Maturity</u>
2024	2010	\$35,000	\$5,000
	2011	35,000	
	2012	35,000	

<u>Stated Maturity of Term Bonds (July 1)</u>	<u>Sinking Fund Payment Date (July 1)</u>	<u>Principal Amount on Sinking Fund Payment Date</u>	<u>Principal Amount due on Maturity</u>
	2013	35,000	
	2014	35,000	
	2015	35,000	
	2016	35,000	
	2017	35,000	
	2018	35,000	
	2019	35,000	
	2020	35,000	
	2021	35,000	
	2022	35,000	
	2023	35,000	

The principal amount of the Term Bond having a stated maturity in 2024 required to be redeemed on the above Sinking Fund Payment Dates shall be reduced by the principal amount of any such term bonds theretofore redeemed and not previously applied to reduce the principal amount of such bonds on a Sinking Fund Payment Date.

The principal installments of this Bond are subject to mandatory redemption in order of mandatory sinking fund payments and within a stated maturity in \$5,000 principal amounts selected by lot or other manner deemed fair by the Registrar, shall be redeemed before other Bonds of such stated maturity, on any interest payment date if, after paying all principal and interest then due on the Bonds, there are funds to the credit of the District Fund, from the prepayment of assessments levied in the District or from surplus proceeds of the Bond not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. In addition, the principal of the Bond is subject to redemption on any interest payment date on July 1, 2017, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. The redemption price is equal to the principal amount of the Bond or portions thereof to be redeemed plus interest accrued thereon to the date of redemption. The date of redemption and principal amount shall be fixed by the Financial Services Manager, who shall give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner of such Bond at its address shown on the bond register, of the Bond to be redeemed and the date on which payment will be made, which date shall not be less than thirty (30) days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed interest on the Bond or portions thereof so redeemed shall cease to accrue. Upon partial redemption of any Bond, a new Bond will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender

hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance thereof; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Bonds, dated the date of original issuance and delivery of the Bonds.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication herein shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Yellowstone County, Montana, by its City Council, has caused this Bond and the certificate on the reverse hereof to be executed by the facsimile signatures of the Mayor, the Financial Services Manager and the City Clerk, and by a printed facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile Signature)
MAYOR

(Facsimile Seal)

(Facsimile Signature)
FINANCIAL SERVICES MANAGER

(Facsimile Signature)
CITY CLERK

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the Resolution mentioned herein.

CITY OF BILLINGS, MONTANA,
as Registrar

By _____
Financial Services Manager

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in common	UTMA.....Custodian..... (Cust) (Minor)
TEN ENT — as tenants by the entireties	under Uniform Transfers to Minors
JT TEN — as joint tenants with right of survivorship and not as tenants in common	Act (State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

PLEASE INSERT SOCIAL SECURITY
OR OTHER IDENTIFYING NUMBER
OF ASSIGNEE:

/ _____ /

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEED

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Bond Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT B
[FORM OF DTC LETTER]



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Public Hearing and Approval of Contract with RedFlex for Red Light Cameras

DEPARTMENT: Billings Police Department

PRESENTED BY: Chief Rich St. John

PROBLEM/ISSUE STATEMENT: Red light camera systems are a measure available to traffic engineering, enforcement, and safety professionals, that when properly applied, may be effective in the reduction of certain types of collisions at signalized intersections. Red light camera systems have had the greatest success and highest levels of support in communities where they have been implemented as one element of an overall traffic safety management program. The City of Billings is ready to begin implementation of a red light camera program. Staff recommends that City Council approve the contract with RedFlex for the red light cameras.

ALTERNATIVES ANALYZED:

- Approve contract and proceed with Red Light Camera Project,
- Do not approve contract and do not proceed with Red Light Camera project.

FINANCIAL IMPACT: None. Fees established with vendor pursuant to signing of contract.

RECOMMENDATION

Staff recommends that City Council approve the contract with RedFlex for the red light cameras.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

- A – Contract
- B – Staff Report

Attachment A – Contract (Currently not available)

Memorandum

To: City Council through CA Volek

CC:

From: Chief St. John

Date: 4/8/2009

Re: Council Initiative regarding Red Light Cameras and/or Photo Radar



CONFIDENTIAL

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RED LIGHT CAMERA AND/OR PHOTO RADAR PROGRAM IMPLEMENTATION

Red light camera systems and photo radar are two measures available to traffic engineering, enforcement, and safety professionals, that when properly applied, may be effective in the reduction of certain types of collisions at signalized intersections and speeding in general. Red light camera/ photo radar systems have had the greatest success and highest levels of support in communities where they have been implemented as one element of an overall traffic safety management program. There are several key steps to successfully implementing a red light camera/ photo radar system program.

EARLY PLANNING AND STARTUP

The development of a successful red light camera/photo radar program will be based on the systematic analysis of crash data, together with data on citations issued to motorists for red light running, speeding, and inputs from the general public. The objective is to identify locations where red light and speeding violations contribute to crashes.

The key elements recommended for the early planning and startup of a red light camera/photo radar program are as follows:

- * Establish a Steering Committee.
- * Establish Program Objectives.
- * Identify the Legal Requirements.
- * Assess System Procurement Alternatives.
- * Establish Public Awareness and Information Campaign.

Steering Committee of Stakeholder Group Representatives

Any community considering the implementation of a red light camera/photo radar system should first establish a steering committee inclusive of all stakeholders.

The Steering Committee serves to establish broad based program objectives and to monitor program results. The appropriate participants will vary by community and would typically include representatives from the following organizations:

- * State Department of Motor Vehicles.
- * State and local Police and Sheriff's Department.
- * Traffic Engineering Department.
- * Public Works Department.
- * City, County, or State's Attorney's Office.
- * City, County, or State Public Information Office or Community Affairs.
- * Judiciary.
- * Photo Enforcement Services Contractor, if one is hired.
- * Selected Community Representatives.
- * Selected outside Agency Representatives, such as a local Automobile Club.

A high level of quality control and on-going coordination of activities is required for the operation and maintenance of photo enforcement systems. The program also has significant visibility with the community at large and with their elected officials that require coordination to effectively communicate the program's objectives and program results.

Red Light Camera/Photo Radar Program Objectives

The Steering Committee should define as clearly as possible the red light camera/photo radar program objectives. While it is clear that the overall objective of any program is the reduction of collisions at signalized intersections resulting from red light running and issues related to speeding, program objectives should address specific operational needs.

Legal Requirements

Prior to initiating a red light camera/photo radar program, legal aspects and requirements should be identified. Red light camera/photo radar systems pose legal questions and concerns, the answers to which may vary from State to State. In particular, privacy, citation distribution, and types of penalties need to be thoroughly addressed and resolved prior to the startup of a red light camera program. (See Addendum for Billings' legal opinion.)

Presently, there are two approaches that have been adopted by States in the deployment and operation of red light camera/photo radar systems:

* Driver Responsibility. Where the government entity alleges that a driver has committed a violation and receives a citation, there should be photographic evidence that allows the driver to be identified. This requires that one or more red light camera(s) is/are located so that a frontal view of the vehicle is recorded as it runs the red light. Further, the recorded view should allow the driver and vehicle identities to be clearly determined. If the recorded view of a driver is obstructed or not clear, no citation should be issued. Additionally, a method should be provided through which the registered owner can certify that he or she was not the driver at the time of the violation. A photo radar system functions the same way except that excessive speed trips the camera.

In States where red light camera/photo radar systems are applied as described above, infractions are considered to be moving violations with citations carrying the same penalties as citations issued by law enforcement officers, including "points" and holds on vehicle registration or driver license renewals for unpaid fines.

* Registered Owner Responsibility. Where the registered owner is responsible for the citation, only photographic evidence that identifies the vehicle, usually from the rear, and its license number is required. Typically, States where red light camera/photo radar systems have been adopted in this manner have enacted legislation at the State level

that authorizes the use of red light camera systems or permits local agencies to enact local ordinances for use of red light camera systems.

System Procurement Alternatives

There are a number of alternatives available to State and local agencies for the development and operation of red light camera/photo radar programs. A State or local agency may take full responsibility for system operations and citation processing functions or elect to outsource these functions to a private contractor. Where a private contractor is responsible for installation and operation of the red light camera equipment, the State or local agency should establish the necessary procedures so that the agency has complete oversight and day-to-day supervision of the program.

Where a private contractor is responsible for the processing of citations, compensation to private vendors based on the number of citations issued should be avoided. In multiple jurisdictions, the courts have determined that it is inappropriate for the private contractor to be responsible for determining installation locations and operation of the system because of an appearance of a conflict of interest. This conflict of interest should be avoided in all phases of the system installation and operation: startup, design, installation, operation, and maintenance. At all times, the State or local agency should verify and exercise complete oversight of all actions of the private contractor.

Some agencies are compensating their system vendors based on a flat fee per location per time period. Others have installed and operated their own systems. It may also be appropriate to pay a vendor to operate and maintain an agency-designed and - implemented system. Compensation should be based solely on the value of the equipment or the services provided.

Public Awareness and Information Campaign

Education on improving traffic safety is a crucial component for any significant change to occur with traffic control systems. Appropriate educational elements should be applied regardless of the chosen solution. For red light camera programs, often the initial educational program includes issuance of warning citations to likely violators for limited period, and clear public communication of the date on which warning citations will be halted and actual enforcement citations will begin. However, education and media outreach efforts should continue throughout the life of the program to keep the public informed of results and need for safety vigilance. Ongoing awareness of the presence of enforcement measures is important to deterrence and long-term behavior changes.

It is recommended that an information campaign is needed to accomplish three objectives in connection with the implementation of red light camera/photo radar programs. First, public awareness and information should make citizens more aware of their driving habits and safety consequences of running red light and speeding. This should stimulate a voluntary change in behavior at signalized intersections and areas

prone to speeding. Second, communications should be through a variety of media with the public and elected officials to explain program objectives, as well as program results. This is critical to gain public support for program expansion. Lastly, public awareness and information should provide motorists with advance warning that there is increased enforcement. This, by itself, may cause a change in driver behavior, but should describe the effectiveness of the systems. Without an effective educational campaign, motorists may be surprised or confused when they receive a citation. If questions or concerns can be effectively answered through written, telephone, or web-based information, motorists receiving citations will be more supportive of the program and less likely to question the program's overall objectives.

The public awareness and information campaign should encompass the following elements:

- * Clear description of the operation of the red light camera/photo radar equipment in non-technical terms.
- * Clear statement of the program objectives.
- * Description of the advantages of automated enforcement.
- * Explanation of other measures being taken to improve safety at intersections.
- * Description of the use of the red light camera/photo radar program revenues.

The public awareness and information campaign may be developed using the following methods:

- * Outreach efforts to employers, schools, driver education, local community groups, and all area media.
- * Telephone and web-based information centers that include a hot-line for calls about intersection problems and traffic safety concerns, in addition to handling inquiries regarding the operation of the red light camera/photo radar program.

An important aspect of the public awareness and information campaign is the direction provided for individuals who received citations on how to review their citation and/or view the photographic evidence.

It is also important for the success of the red light camera/photo radar program that traffic court officials, including judges, commissioners, and administrative support personnel, be fully informed about the program scope and operation. Officials who often conduct traffic court hearings may not be fully versed in the operation of the automated equipment. It is important that the appropriate documentation is prepared and submitted in a timely manner in the event an individual contests the citation in court. The increased use of electronic data transfers and viewing may be appropriate to ensure that the court packages are readily available when needed.

Public awareness and educational outreach efforts for employers, schools, driver education programs, and local community groups, as well as the media, are necessary.

Reports of program results, emphasizing the achieved safety benefits, should be available and posted on the program web site and local newspapers. The campaign should employ various communications media designed to reach residents and commuters, including regular surveys to gauge public support and awareness, and should focus on a central message of improving traffic safety. An example of a safety message is to emphasize that red light camera systems can be applied as an effective tool to reduce collisions resulting from red light running.

SYSTEM PLANNING

Proper planning by a State or local agency will establish the foundation for a successful red light camera/photo radar system for detecting and documenting infractions. As appropriate, a State or local agency should solicit assistance from other public agencies where red light camera/photo radar programs have been successfully deployed, as well as from qualified consulting engineers with experience in red light camera/photo radar systems design and operations.

Violations Processing Procedure

The violation processing procedure should address the following aspects of the installation and operation of an automated system, and the processing of the recorded violations and citations issued:

- * Establish the enforcement threshold consistent with traditional enforcement methods.
- * The number of days allowable from the date of the violation occurrence before citations can be mailed, if different from applicable legal requirements.
- * How citations for commercial or rental car vehicles will be addressed.
- * Minimum vehicle speed threshold.
- * Should citation issuance be restricted to specific time periods or days of week only?
- * Maximum number of days before citations are reissued to violators following registered owners disputed responsibility and subsequent violator identification.
- * Clear specification of photographic data requirements for issuing citations, including the red signal indication and the time elapsed since onset of red.

The system design and installation should be consistent with the definition of a violation under the applicable State and/or local laws.

The installation should be consistent with other neighboring intersections under the jurisdiction of the responsible agency, so that vehicle operators are held to a uniform standard throughout the jurisdiction.

Site Selection

Sites selected for the installation of red light camera systems should be based on accurate crash and red light violations data. As discussed earlier, data regarding the total number of crashes may be used, although intersections with high numbers of collisions may not have a high number of crashes related to red light running. Violation data needs to be applied with some caution. Likewise, locations where it is known that there are high numbers of red light violations may not have corresponding high numbers of crashes related to the red light running. Heavily traveled intersections where with heavy left turn movements operated on protected left turn phases are often intersections of this type. Traffic volumes, except when used as a factor to determine the incidence of crashes or violations, are not a suitable measure for selecting locations for the installation of red light camera systems.

The installation of a red light camera system at a signalized intersection identified as having a red light running problem should be done when an engineering study of the intersection determines photo enforcement is an appropriate countermeasure to reduce the incidence of red light running.

Other criteria for red light camera system site selection may include recommendations from law enforcement and traffic safety professionals, citizens' complaints, and input from community groups. These criteria should be considered in conjunction with crash data and violations or citations data.

Undesirable characteristics that will also affect decisions regarding the installation of red light camera systems include:

- * Driveways that restrict camera pole or auxiliary flash placement.
- * Approaches that are more than three lanes wide and double left turn lanes where views are more frequently obstructed.
- * Wide crossing streets where second photographs may not be taken at the predetermined location due to motorists speeding up and slowing down as they traverse the intersection.

When red light camera systems are in operation, law enforcement officials should place an emphasis on routine enforcement of traffic laws and regulations that require visible and unobstructed display of license plates.

Site selection for photo radar will have the same considerations as red light cameras if the system will be stationary. However, there are photo radar systems that are portable and can be placed and moved randomly. By utilizing a photo radar system which can

capture up to three photographs per second, speed enforcement efforts can concentrate on locations where either roadway dynamics or vehicle volumes make traditional patrol methods either unsafe or inefficient.

Warning Signs

Signs warning motorists that red light cameras/photo radar systems are being used are typically required by law or ordinance but, whether required or not, should be posted as part of the driver awareness and education process. These warning signs may be placed in the following locations at photo-enforced intersections:

- * In advance of photo-enforced intersections or streets.
- * At photo-enforced intersections, typically on the far side traffic signal pole.
- * On all approaches into an area where red light camera systems are used for red light running.

Warning signs placed on all approaches into an area, while used to satisfy legal requirements in some jurisdictions, are appropriate as supplemental warning signs but not as the primary warning for motorists. Advance warning signs should be installed at photo-enforced intersections.

All advance warning signs should be clearly visible and compliant with all applicable requirements.

Traffic Signal Yellow Times

Yellow times should be established in accordance with applicable guidelines and any informational reports on methods for calculating yellow time intervals.

Changes in the yellow times after red light camera systems are in place and operational will affect the number of photographed violations, increasing the number of violations when yellow times are shortened and reducing the number of violations when yellow times are lengthened. Where changes in the yellow times at intersections with red light camera systems are required as the result of updated speed surveys or other factors, the changes should be clearly described in public information announcements.

Providing warning notices for a reasonable amount of time after the change is particularly important for violations recorded at intersections where the yellow interval has been shortened.

System Selection and Technologies

The most widely used systems employ film-based cameras and inductive loop vehicle detection technologies. However, other automated technologies have become available over the past five years, most notably technologies that employ digital camera equipment where photographic data, including streamed video clips, may be immediately downloaded for processing using leased telephone line or microwave communications. Additionally, automated systems that use video-based and radar

vehicle detection methods, as well as systems that employ overhead camera placements and floodlighting equipment as an alternative to the curb-based placements, are used by many State and local agencies. Photo radar can be packaged in a number of ways. The unit can be installed on a tripod, in a non-moving vehicle, or in a cabinet that is attached to a pole and can be moved from site to site.

A red light camera/photo radar system consists of the following on-the-street components:

- * Camera Units.
- * Intersection Lighting.
- * Camera Housing and Supporting Structure.
- * Vehicle Detection.
- * Communications.
- * Warning Signs.

Each of these components is reviewed in the following sections.

Camera Unit

There are three general types of cameras units used to automatically record red light violations. The types of camera units used in red light camera systems include:

- * 35mm Conventional Film Units.
- * Digital Still Picture Units.
- * Digital Video Units.

Camera Unit: Pros: Cons

35 mm

Pros: Best resolution

Cons: Collection and development of film

Digital Still

Pros: Digital format, Ease of use, No film collection or development

Cons: Needs communication links between cameras and processing center, Comparatively poor resolution

Digital Video

Pros: Provide video clips of alleged violations, Provides circumstances in which violations occur

Cons: Impression of surveillance, Needs communication links between cameras and processing center

Intersection Lighting

Additional intersection lighting is required in conjunction with the operation of the camera units. The additional lighting will need to be installed in accordance with the equipment manufacturer's specifications, as well as with State or local ordinances that govern the amount of lighting that is permitted in the driver's field of view.

For camera units that record violations with one or two photographs or digital images, flash units synchronized with the camera shutter provide additional lighting at the intersection at time of exposure so vehicle license plate and drivers, if local or State law allow, can be more clearly photographed. Typically, one flash unit is installed as an integral part of the camera housing. Additional flash units may be installed at intersections where there are more than two lanes being monitored or to maximize the amount of backlighting in the vehicle interior as it traverses the intersection.

For camera units that record a video clip for each violation, continuous additional lighting will be considered. This may be provided by curb or overhead mounted lighting equipment, as specified by the equipment manufacturer.

Camera Housing and Supporting Structure

The types of camera housing and supporting structures will depend on the type of red light camera system being installed.

Curb-mounted red light camera systems, the most common type currently being employed by State and local agencies, need a camera housing enclosure that is mounted on a pole. The camera unit housing should be weather and damage resistant, and contain a locking mechanism to protect the system from vandalism. Additional poles may be employed for auxiliary flash lighting units. For digital camera systems, a separate enclosure for the data storage and communications equipment is also required at the intersection.

The poles for curb-mounted red light camera systems should be tall enough to provide the necessary angle of view to clearly record violations at the intersection. There are at least two types of poles currently in use. The first, a hinged pole, lowers the camera housing on a hinge located in the center of the pole. A second type, a solid pole, utilizes a motorized "elevator" to raise and lower the camera housing.

Overhead-mounted red light camera systems normally require curb-mounted poles with cantilever arms extending over the traffic lanes. Camera and flash units are mounted on the cantilever arms as required for system operation. Red light camera systems of this type provide an increased field of view that is especially advantageous for red light camera systems on wider arterial streets as well as enhanced lighting for enhanced photographic data quality.

Some jurisdictions have found that they can afford only a limited number of red light

camera systems. By installing red light camera housings at problem intersections, and periodically moving the actual cameras from housing to housing, gives motorists the impression that cameras are omnipresent and reduces red light violations throughout the community.

Vehicle Detection

Vehicle detectors are used to trigger the camera to record a vehicle running a red light. Different vehicle detection technologies are available for this purpose.

Most red light camera systems employ pairs of inductive loops installed near the intersection at a location suitable for showing that a violation has occurred. It is critical for the system design and operation that the inductive loops be installed in the appropriate locations, consistent with the agency's definition of a violation. Red light camera systems may also employ piezo-elements, video-based equipment, or radar devices for vehicle detection and tracking, as an alternative to, or in conjunction with, inductive loop detectors.

The placement of the vehicle detectors is critical to the integrity of the red light camera system and the citations developed from the photographic data.

For red light camera systems that document violations with two photographs, the first photograph should be taken to show the motor vehicle that will be running the red light, at a location immediately before it enters the intersection against a red traffic signal indication. The vehicle detection equipment should be configured to detect the presence of the vehicle at the desired location and to initiate the first photograph being taken with the vehicle at that location. If the vehicle is detected after it has already entered the intersection, it cannot be determined with certainty from the photographs that the vehicle entered the intersection illegally and consequently, a citation should not be issued. The second photograph is taken after the vehicle has entered the intersection, at a time interval after the first photograph calculated to provide the best view of the vehicle and its license plate, and where required, the driver's face.

For red light camera systems that document violations with video clips that show the vehicle running the red light continuously starting at a location before the vehicle enters the intersection against the red traffic signal indication, vehicle detection should be configured so that the video clip recording is initiated at an appropriate location.

The placement of inductive loop detectors immediately in advance of the intersection stop line for vehicle detection may require that existing stop line loop detectors used for the traffic signal operations need to be abandoned, relocated, or replaced with another type of vehicle detection system, such as video-based detection. Generally, a solution that accommodates vehicle detection requirements for both traffic signal operations and the red light camera system can be developed although there may be some additional costs for vehicle detection associated with the installation of the red light camera system equipment under these circumstances.

Vehicle Detection – Photo Radar

The equipment combines two well-known technologies, photography and radar. The equipment is able to track multiple targets simultaneously. When a car passes through the radar field, the unit's electronics calculate its speed and sends a signal to the camera, which then snaps a picture of the violator's license plate and in some cases, the driver.

Communications

For digital camera units, a communications link with adequate bandwidth should be provided from the intersection to a location where the violations data is processed. The required communications may be implemented using State and local agency fiber optics, leased high-capacity telephone lines, or microwave technologies.

No communications outside of the intersection are required for 35mm conventional film camera units.

Communications links are normally required to support certain functions related to citation data processing, including access to vehicle registration and driver's license databases, data transfers to and from traffic court data processing systems, and on-line inquiries or payments from persons receiving citations.

ENGINEERING DESIGN OF RED LIGHT CAMERA SYSTEMS

The red light camera system installation plans should be prepared and signed by an appropriately licensed engineer. Installation plans should be prepared in accordance with the system manufacturer's standard plans and technical specifications, and with State and local agency standard plans and specifications for public works and traffic engineering improvements. The plans should address the placement of the red light camera system equipment and related components, including:

- * Camera equipment.
- * Camera housing and supporting structure.
- * Intersection lighting.
- * Vehicle detection system.
- * Communications.
- * Pullboxes, conduit runs, and conductor schedule.
- * Electrical service.
- * Warning signs.

There are currently no standard plans and specifications for the acquisition and installation of red light camera systems, except for the plans and specifications provided by the manufacturers and standard plans and specifications that have been developed by State and local agencies for their own use and application. The U.S. Department of Transportation (USDOT), through a cooperative agreement with the International Association of Chiefs of Police (IACP), are developing red light camera systems performance specifications and testing laboratories to ensure the accuracy and reliability of these systems.

The installation plans should be processed through the appropriate State or local agency plan review and permitting procedures.

RED LIGHT CAMERA SYSTEM INSTALLATION

Where a contractor does the installation work, the normal construction inspection procedures employed by the State or local agency should be carried out for the installation of the red light camera equipment. Proper installation includes:

- * Installation consistent with the equipment manufacturer's guidelines and State or local agency specifications.
- * Inspection of all installation work by State and local agency officials and, where necessary, by the project engineer.
- * Testing of the red light camera equipment prior to its cutover for unattended operation.
- * The preparation of as-built drawings that reflect actual construction conditions.

Installations should be thoroughly inspected before testing begins. A comprehensive testing program should then be conducted using both simulated and actual traffic before the system is placed into unattended operation. No warning letters or citations should be issued until it is determined that the system is working accurately and reliably.

OPERATION AND MAINTENANCE

As with any integrated system, every element of a red light camera/photo radar system should function properly for the system to produce the desired results. In addition to proper design and installation, procedures to ensure the proper operation and maintenance of the system should be developed and implemented by the State and

local agency.

Proper operation should be consistent with the manufacturer's instructions and the documented operational procedures that have been developed, reviewed, and approved by all parties involved. Periodic checks and audits to verify that it continues to operate properly should also be conducted.

Proper maintenance should include both preventive and corrective maintenance. Preventive maintenance should be performed on a regular basis. Tests of operational performance should be conducted regularly, and actual operational results examined constantly in order to identify any variation from specified performance. If any flaw in the system operation or performance is detected, the issuance of citations should be immediately stopped and any citations previously issued with the possibility of flawed operation or performance should be withdrawn.

Red light camera/photo radar system operations and maintenance should include the following tasks and functions:

- * Collect images of recorded violations and related violations data from photo-enforced intersections.
- * Inspect camera and vehicle detection system operations.
- * Perform preventative maintenance and cleaning.
- * Identify defective equipment and make repairs or replace the equipment.
- * Store recorded violations data.
- * Review recorded violations data to identify violations.
- * Identify vehicle-registered owner.
- * Prepare draft citations for review and approval.
- * Prepare and mail citations to vehicle registered owners.
- * Answer telephone inquiries.
- * Schedule violator appointments.
- * Process vehicle registered owner certifications regarding driver identity at the time of the violation.
- * Provide court-requested information and support court hearings.
- * Prepare monthly progress reports.

Citation Data Processing

The procedures and methods employed for system operations should be designed to ensure the preservation of the chain of custody of evidence for each recorded violation so that backup data and documentation can be easily retrieved when needed. The procedures and methods used for system operations should be comprehensive, clearly documented in writing, and followed without exception.

Citation data processing should be carried out in a secured facility using a data processing system with appropriate security features and firewalls. All personnel, especially those with access to motor vehicle registration and driver's license

databases, should be cleared with appropriate background checks.

Internal quality control is essential and should be achieved by the use of two separate internal reviews of each violation, periodic audits by independent law enforcement or engineering staff, and other procedures. Procedures, especially important to ensure quality control, should be developed for each of the following areas:

- * Guidelines to be applied for issuing a citation. In other words, a very specific definition is needed to identify what constitutes a red light running violation.
- * Citation review and approval requirements, including provisions for the procedure to be used when the time to review is shortened, traffic officers are not available to conduct the reviews, or the number of citations is larger than usual.
- * Quality assurance audits, to be conducted by trained traffic officers for randomly selected sample of recorded violations on a periodic basis.

Only a qualified law enforcement officer should be authorized to issue a citation. Citations should not be created prior to review of appropriate evidentiary material by the officer. Under no circumstances should a citation be issued when the officer expresses any lack of confidence that a properly documented and provable violation has occurred.

System Maintenance

Periodic inspections and preventative maintenance should be required to ensure that the equipment is functioning properly. Service and inspection logs should be maintained to document the inspections and preventative maintenance activities. The service and inspection logs may be required at court hearings to confirm that the red light camera equipment was functioning properly at the time that the violations were recorded.

As part of the periodic preventative maintenance, the camera unit and housing should be thoroughly cleaned and the camera unit activated in its "test" mode and confirmed to be operating correctly. The condition of the camera housing and mounting structure, camera unit, vehicle detection system, and warning signs should be inspected and the conditions noted in the service and inspection logs.

On-Going System Assessment

Continual analysis of violation and crash data, with community input, is an important element of a successful red light camera/photo radar program. Adequate funding should be provided to assure the necessary data analysis, problem identification, and problem diagnostic review work tasks are undertaken.

Automated enforcement efforts should be monitored, with adequate pre- and post-installation study periods, in order to measure the program's effectiveness. Timely collection and reporting of crash data is an important part of the monitoring process, as

are control sites with no photo enforcement so the effects of camera enforcement can be distinguished from other external effects.

The steering committee should meet on a regular basis. Regular agenda items should be to review the data of violations and citations issued with a discussion of any changes or trends noted. Input from the State or local agency's traffic engineering department and street maintenance department should include regular updates on planned traffic signal modifications or street improvements construction that could impact the operation of the system. Discussion should be encouraged on whether program objectives are being met through the deployment of automated systems or whether alternative measures should be applied. The group should have input to the regular prioritization of intersections targeted for safety-related improvements.

A monitoring program based on the timely collection and reporting of crash data is needed. These crash data should include control sites with no photo enforcement so that the effects of camera enforcement can be distinguished from other external effects. Responsibilities for the collection and reporting of crash data need to be established and clearly defined. Traffic safety professionals need to review intersection safety issues and conduct diagnostic reviews of intersections identified from the crash data tabulations as warranting safety-related improvements.

Regular reports on the public awareness and information campaign should be prepared and reviewed. Public use of the web site and telephone information systems should be monitored.

ON-GOING PUBLIC INFORMATION AND EDUCATION

An on-going public information and education campaign is needed to assure the motoring public that the red light camera/photo radar program is being operated in the most effective, efficient, and fair manner possible. Public information and education efforts begin before installation, but do not end when the system is fully operational.

The on-going educational program should be designed to combat red light running and speeding, in general, as well as to provide information related to the operation of the camera equipment. Where possible, the on-going public information and education program should be developed and delivered in a way so as to address any specific populations or conditions that have been identified as contributing extensively to the traffic problem.

The on-going public information and education program should use various media, including the print and broadcast media, to communicate the problem, the program and the results. The agency should monitor the effectiveness of the educational program in order to achieve maximum effectiveness and public support for the red light camera

program.

PROGRAM COSTS:

There are several companies that offer red light camera/photo radar systems. Agencies currently using this technology generally lease the equipment from a vendor. Costs will vary depending on the number of systems put in place, the type of system used, and the negotiated contract. Some private vendors earn a commission for each citation processed while others charge a flat fee. Listed below are some cost considerations:

- Engineering - Approximately \$10,000 - \$15,000 per direction per intersection camera.
- Lease of equipment. Approximately \$2,000 per month for one photo radar van.
- Administrative cost of administering the program.
- Cost of officer to operate photo radar van.
- Cost of officer and equipment to review each photo to ensure that a violation has occurred and the vehicle is properly identified.
- Cost of City's administrative hearing to include officer's presentation.

Addendum:

Issues pertaining to using photo radar and photo traffic light enforcement

Photographic traffic signal enforcement systems are digital cameras mounted above the corners of an intersection pointing in all four directions of traffic. There are several companies that operate these cameras under contract with the municipalities. The cameras are connected by computer to both the traffic signal and to underground electrical wires that activate the cameras when a driver runs a red light. The systems use a passive sensor that switches on the cameras only when a vehicle enters the intersection after the light has turned red. When a vehicle runs a red light, the computer triggers the camera to take two overhead pictures to document the violation: a picture of the vehicle entering the intersection after the light turns red and another picture of the vehicle moving through the intersection while the light is red. A separate camera takes a photograph of the vehicle's license plate. After taking the pictures, the computer superimposes data on the image to include the time and date of the infraction, location of the intersection, speed of the car, and elapsed time between when the light turned red and when the car entered the intersection. Different vendors may have variations of this process.

In 1993 - 94, the City of Billings considered the use of photo radar enforcement for speeding infractions. In response to a request by the City Attorney of Billings, the

Montana Attorney General opined that “the City of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner’s permission, or for a permissive inference that the registered owner was the speeding violator.” There are currently no Montana cities using photo radar enforcement. There are multiple concerns cited by the other cities who have considered photo traffic enforcement:

- The offense would have to be established as an absolute liability offense making the registered owner absolutely liable with no potential for incarceration; because the registered owner would not necessarily be driving the vehicle.
- Offenses could most likely not be reported to the state of Montana as habitual offender offenses; because the registered owner might not be the driver. There could be multiple registered owners of the vehicle which could make it even more challenging.
- There was some concern about the extra work for law enforcement in determining who was in control of leased motor vehicles or rental vehicles, or business vehicles registered to a company rather than an individual.
- There was some concern about an increase in motor vehicle accidents as a result of motorists slamming on their brakes to stop for a changing light and getting rear ended by the motorist following them. There have been conflicting studies over the increase or decrease of rear end accidents after a photo red light enforcement system is put into use.
- There are concerns about the monetary fees or percentage take or something along those lines associated with paying the company. The company is in it to make money, and typically shares in the revenue with the municipality. Also, issuance of criminal citations by a private company is prohibited under Montana Law. The violations would necessarily have to be municipal infractions if a private vendor were going to be issuing the tickets.

The Montana AG opinion did not address red-light cameras but only speeding; however, the rationale supporting the use of photo radar would also be applicable to self-government powers wanting to implement a similar ordinance for photographic traffic signal enforcement. The Attorney General did not address the issues of sharing fines, issuing the citations under Montana criminal procedural statutes, or other constitutional issues. Making a violation of the ordinance or state law a municipal infraction would eliminate the issues related to the criminal procedure statutes and would be consistent with most of the models around the country. The model used by Garland Texas seems to provide the best model to follow if we wanted to initiate a photo traffic enforcement program. The essence of this model is that infraction is civil rather than criminal. The city, not the vendor, issues the citation after weeding out the

infractions where there is inconclusive evidence or legitimate reason for the violation, such as a funeral procession. The citation is issued to the registered owner of the vehicle. The owner can pay the fine, contest the infraction, or provide evidence that someone else was driving. If someone other than the owner was driving, a citation would then be issued to the driver. Signs placing drivers on notice are placed at ingresses to the City rather than at each intersection.

The City may additionally need to obtain permission from the State of Montana to erect the poles and cameras since the poles will most likely be erected upon State or federally funded intersections and right of ways. Once permission is granted, then an RFP for the program can be advertised and proposals received.



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Public Hearing and First Reading of an Ordinance Amending Chapter 18 of the Billings City Code by Adding a New Article 12 to be Known as the Social Host Ordinance

DEPARTMENT: Billings Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: The purpose of this Ordinance is to hold a person accountable that organizes a party or event in which underage consumption of alcohol is taking place. We now bring to you for first reading and approval, the addition of Article 12 to be known as the Social Host Ordinance.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: The financial impact would be revenue to Municipal Court for any violations.

RECOMMENDATION

Staff recommends Council approval on first reading of the new Social Host Ordinance.

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

ATTACHMENT

A – Proposed Social Host Ordinance

INTRODUCTION

We now bring to you for first reading and approval, the addition of Article 12 to be known as the Social Host Ordinance.

BACKGROUND

Questions have come up regarding why drugs are not included in the language of the Social host Ordinance. Under current Montana Criminal Statutes, a person found in possession of drugs or drug paraphernalia could be arrested for one of the following criminal offenses:

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug.

45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in [50-32-101](#).

Another reason not to add drugs to the Social Host Ordinance is that it is rooted and focused on underage alcohol possession and consumption and backed by Montana State Law regarding those ages. It is an offense for anyone of any age to possess drugs.

The Roots of Promise Committee will be looking at drafting a “Maintaining a Disorderly residence” type ordinance for future presentation to the Council. This ordinance will stand on its own and will focus on issues brought up at the work session regarding drug using-disorderly property.

RECOMMENDATION

We now bring to you for first reading and approval, the addition of Article 12 to be known as the Social Host Ordinance.

ATTACHMENT

A – Proposed Social Host Ordinance

Ordinance No._____

AN ORDINANCE AMENDING CHAPTER 18 (OFFENSES) OF THE BILLINGS CITY CODE BY ADDING A NEW ARTICLE 12 TO BE KNOWN AS THE SOCIAL HOST ORDINANCE

Section 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

That Chapter 18 of the Billings City Code is hereby amended by adding a new Article 12 as follows:

**Chapter 14
SOCIAL HOST**

Section	Title
18-1201	PURPOSE, FINDINGS
18-1202	DEFINITIONS
18-1203	PROHIBITED ACTS
18-1204	PENALTIES
18-1205	EXCEPTIONS

18-1201 Purpose, Findings

WHEREAS consumption of alcoholic beverages by minors and parties where minors consume alcoholic beverages present numerous problems for our community, minors and law enforcement. Specifically:

- Montana teens report one of the highest binge drinking rates in the nation (defined as 5 or more drinks in one sitting)
- Eighty-four percent (84%) of underage drinkers were in their own home or in someone else's home when they had their last drink.
- In Yellowstone County in 2008:
One out of ten (10.6%) of eighth graders, almost one out of four (23.5%) tenth graders, and more than one third of twelfth graders (36.3%) reported binge drinking in the two weeks prior to being surveyed.

WHEREAS alcohol abuse is also linked to several other health and life issues for our youth including but certainly not limited to sexual assault, unprotected sexual activity, teenage pregnancy, STDs, physical assault and academic difficulties; and,

WHEREAS, the CITY COUNCIL of the City of Billings finds and declares that the purpose of this ordinance is:

- (1) to protect public health, safety and general welfare;

- (2) to enforce laws prohibiting the consumption of alcohol by minors;
- (3) to reduce the costs of providing police services to parties, gatherings, or events that require a response by requiring social hosts to ensure minors are not consuming alcoholic beverages; and,

WHEREAS under Montana Code Annotated 7-1-4123, Legislative powers, the City of Billings has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

- (1) Preserve peace and order and secure freedom from dangerous or noxious activities;
- (2) Secure and promote the general public health and welfare; and,

WHEREAS Montana Code Annotated 7-32-4302, allows the City of Billings to both control disturbances of the peace as well as prevent intoxication and disorderly conduct within the city and within three miles of the limits.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL:

18-1202 Definitions

Alcohol or Alcoholic Beverage:

Mont. Code Annotated 16-1-106. Definitions. As used in this Article, the following definitions apply:

- (1) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (2) "Alcoholic beverage" means a compound is produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (3) "Beer" means a malt beverage containing not more than 7% of alcohol by weight
- (4) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.
- (5) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

Emergency Responders:

Includes, but is not limited to, law enforcement officers, firefighters, emergency medical service personnel and other persons having emergency response duties.

Enforcement Services or Response Costs:

Includes the salaries and benefits of emergency responders for the amount of time actually spent responding to or remaining at an event, gathering or party and administrative costs attributable to the incident; the actual costs for medical treatment for any injured emergency responder, and the costs of repairing any damage to emergency responder equipment or vehicles, and the cost of use of such equipment or vehicle.

Parent:

Any person having legal custody of a juvenile including natural parent, adoptive parent, step-parent; legal guardian; person to whom legal custody has been given by court order.

Person:

"Person" includes a corporation, company, partnership, association or society as well as a natural person.

Premises:

Any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, hall or meeting room, park or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.

Social Host:

Any person who conducts, allows, organizes, supervises, controls, permits or aids another in conducting, allowing, organizing, supervising, controlling or permitting an event or gathering. The term includes, but is not limited to the following:

- (1) Any person or persons who owns, rents, leases or otherwise controls the premises where the event, gathering or party takes place;
- (2) The person or persons in charge of the premises;
- (3) The person or persons who organized the activity.

Underage Person:

Any person less than 21 years of age.

18-1203 Prohibited Acts

It is a violation of this Chapter for a social host who knows or reasonably should know that an underage person has possessed or consumed alcohol at an event, gathering or party, to fail to take reasonable steps to prevent the underage consumption or possession by the underage person. The social host does not have to be present at the event, gathering or party at the time the prohibited act occurs.

18-1204 Penalties

Any person found guilty of a violation of this Chapter shall be guilty of a misdemeanor, and punished as provided in BMCC Sec. 1-110. In addition to penalties provided therein, the Municipal Judge shall consider any response costs incurred by the City associated with any event, gathering, or party resulting in a violation of this Chapter, and may order restitution to the City for such response costs upon conviction.

18-1205 Exceptions

The provision of an alcoholic beverage in a non-intoxicating quantity to a person under 21 years of age by the person's parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance shall not constitute a violation of this Chapter. (See Mont. Code Ann. 16-6-305).

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

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

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

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

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

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

April 13, 2009

SUBJECT: Public Hearing and First Reading of an Ordinance Authorizing a \$25.00 Municipal Treatment Court Administrative Fee

DEPARTMENT: Municipal Court and Administration-Finance Division

PRESENTED BY: Mary Jane Knisely, Municipal Court Judge; Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The attached ordinance authorizes a \$25.00 court fee to help defray Municipal Court related administrative costs incurred by the City for processing misdemeanor criminal offenses in treatment courts. The Council agreed to consider this fee when it adopted the FY 2009 budget because the fee will offset budgeted expenses in the Treatment Courts. Currently there exists three treatment courts: Billings Adult Misdemeanor Drug Court, Billings Adult Misdemeanor DUI Court and Billings Adult Misdemeanor Mental Health Court.

FINANCIAL IMPACT: The Municipal Court administrative fee will produce approximately \$30,000 general fund revenue annually.

RECOMMENDATION

Staff recommends that Council approve the attached ordinance that establishes Municipal Court Treatment Court Administrative Fee.

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

ATTACHMENTS

A – Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS MONTANA CITY CODE BE AMENDED BY ADDING A SECTION NUMBERED _____; PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE FEE BY MUNICIPAL COURT AS PART OF THE OPERATION OF TREATMENT COURTS.

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

Section 1. That the Billings, Montana City Code be amended by adding a section to be numbered _____, to read as follows:

Sec. _____. Establishment of Municipal Treatment Court administrative fee.

The Municipal Court shall assess an administrative processing fee of twenty five dollars (\$25.00) as part of the disposition of all citations and complaints, criminal and traffic, in which a factual nexus to alcohol, dangerous drugs, controlled substances or drug paraphernalia exists. This surcharge shall be assessed to offset administrative expenses or costs for operation of Billings Municipal Court Treatment Courts. It shall be assessed upon a conviction, bond forfeiture, nolo contendre plea, or plea of guilty entered. This surcharge is not a fine and shall be assessed in addition to other taxable court costs, fees, or fines. The amount of this administrative processing fee may be modified by resolution of the city council.

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

Section 3. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

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

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

CITY OF BILLINGS

By _____
Mayor



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Public Hearing and First Reading Ordinance Adopting City Code Language to Close Hazardous Fire Areas and Update References to the Fire Code

DEPARTMENT: Fire Department

PRESENTED BY: Tina Volek, City Administrator
Paul Dextras, Fire Chief
Frank Odermann, Assistant Fire Chief
Mike Spini, Fire Marshal

PROBLEM/ISSUE STATEMENT: In previous years, the adopted Fire Code in the City of Billings contained language pertaining to the closing of hazardous fire areas. This language provided the Fire Department the necessary authority to close public lands that present exceptional and continuing fire danger because of the density of natural growth, difficulty of terrain, proximity to structures, and accessibility to the public. For many years, the Fire Department has closed all or part of the Rims during the Fourth of July holiday to prevent wildland fires. In 2007, the City of Billings adopted the 2006 International Fire Code (IFC). The language pertaining to hazardous fire areas was inadvertently removed from this edition of the code. The attached ordinance would provide the enforcement mechanism to manage hazardous fire areas.

Sections 27-614 and 24-471 of the Billings, Montana City Code currently reference the Uniform Fire Code. The Uniform Fire Code is no longer adopted and these sections need to be updated with the appropriate language. The attached ordinance will correct this issue.

ALTERNATIVES ANALYZED: The alternative of adding language to the adopted Fire Code instead of City Code was considered. It was decided that placing the language in the City Code would be the best option due to the fact that police and code enforcement personnel can readily access and cite the City Code. The least desirable alternative would be to allow hazardous fire areas to remain open at all times.

FINANCIAL IMPACT: There is no financial impact to the City if the ordinance is approved. There is, however, a potential financial impact if the ordinance is not approved. The cost of

fighting wildland fires in hazardous fire areas such as the Rims is very expensive. Nearby homes and private property could also be threatened by wildfire if hazardous fire areas were to remain open at all times.

RECOMMENDATION

Staff recommends that Council consider and adopt the attached ordinance, which provides the necessary language for the Fire Department to close hazardous fire areas to unauthorized persons.

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

INTRODUCTION

There is currently no specific code or law providing the Billings Fire Department with the authority to close hazardous fire areas. This presents a problematic situation in that the public area around the Rims is typically closed during the Fourth of July holiday. This practice has been occurring for many years and was enforced by language that was previously located in the Fire Code. Specific language addressing this issue needs to be added to the City Code. The attached ordinance would provide the Fire Department with the authority necessary to continue closing hazardous fire areas and would provide an enforcement mechanism for police officers, code enforcement personnel, and fire marshals.

BACKGROUND

- Previous Fire Codes that were adopted by the City of Billings provided the Fire Department with the authority to close hazardous fire areas when deemed necessary.
- In August 2007, the 2006 Edition of the International Fire Code was adopted by the City of Billings. The language providing the Fire Department with the authority to close hazardous fire areas was inadvertently removed from this code and placed in a different code that was not adopted by the City of Billings.
- For the past 20 years, the Billings Fire Department has closed the area around the Rims during the Fourth of July holiday. This area is considered a hazardous fire area due to the abundance of dry vegetation, difficulty of terrain, limited access, and the fact that numerous wildland fires have occurred in the past due to the use of fireworks. This area was closed to the public to prevent wildland fires from occurring.
- Adoption of the proposed ordinance would provide the necessary enforcement capabilities to close hazardous fire areas when necessary.

ALTERNATIVES ANALYSIS

There are two alternatives to the proposed ordinance. The first would be to add language to the currently adopted Fire Code that would address hazardous fire areas. This option would provide the needed enforcement tools to the Fire Department, but would be cumbersome for police officers and code enforcement officers to enforce due to the fact that they are not familiar with the Fire Code and do not typically have the Fire Code readily available to them.

The second alternative would be to allow hazardous fire areas to remain open at all times. This option would remove the Fire Department's ability to protect people and property from certain hazardous situations. Many homes are located close to hazardous fire areas and would be subject to the increased exposure of fire.

STAKEHOLDERS

The stakeholders consist of city residents, property owners, the City of Billings, the Police Department, and the Fire Department.

RECOMMENDATION

Staff recommends that Council adopt the attached ordinance upon first and second readings.

If the ordinance is passed, the Fire Department will continue to close hazardous fire areas when necessary, as it has done for the past 20 years. Additionally, this ordinance will update Sections 27-

614 and 24-471 of the Billings, Montana City Code.

ATTACHMENTS

Attachment A: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING ARTICLE 14-500 AND REVISING SECTIONS 27-614 AND 24-471 OF SAID CODE; PROVIDING FOR THE CLOSING OF HAZARDOUS FIRE AREAS AND PROHIBITING ENTRY AND DAMAGE TO OR REMOVAL OF POSTED NOTICES; UPDATING REFERENCES TO FIRE CODE

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

Section 1. That the Billings, Montana, City Code be amended by adding a new Article 14-500, to read as follows:

Article 14-500. Hazardous Fire Areas

Sec. 14-501. Hazardous Fire Areas

The Fire Chief or his designee is authorized to determine and publicly announce when hazardous fire areas shall be closed to entry and when such areas shall again be opened to entry.

Sec. 14-502. Posting of Hazardous Fire Areas

The Fire Chief or his designee shall post signs prohibiting entry into closed hazardous fire areas. Posting shall be accomplished by placing orange signs of not less than 50 square inches at each normal point of access to the area and at regular intervals of not less than every one-fourth mile along roadways with points of access to the closed area.

Sec 14-503. Criminal Trespass to Hazardous Fire Areas

A person commits the offense of Criminal Trespass to Hazardous Fire Areas if the person enters or remains unlawfully in a properly posted hazardous fire area. Exceptions: owners and occupants of private property within the closed and posted areas; their guests or invitees; authorized persons engaged in the operation and maintenance of necessary utilities such as electrical power, gas, telephone, water, and sewer; and local, state and federal public officers and their authorized agents acting in the course of duty.

Sec. 14-504. Tampering with signs, barricades, or locks

No person shall tamper with, mutilate, destroy or remove locks, barricades, or signs posting or closing hazardous fire areas.

Section 14-505. Penalty. A person convicted of a violation of this article shall be fined not to exceed five hundred dollars (\$500.00) or be imprisoned not to exceed six (6) months or both.

Section 2. That section 27-614 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 27-614. Temporary uses and structures.

(a) *Definitions.* For the purposes of this section, the definitions found in section 27-201 for both temporary uses and temporary structures shall be used in the regulation of such uses and structures. In addition, all uses contained in temporary structures shall be considered temporary uses of property and therefore must comply with the provisions of this section. All temporary uses and structures shall also comply with the adopted Uniform Fire Code.

Section 3. That section 24-471 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 24-471. Parking in fire lanes.

There are established fire lanes adjacent to buildings within the city when so required by ~~Section 10.207 of the~~ adopted Uniform Fire Code. Said fire lanes will be clearly posted and identified pursuant to the directions of the Billings Fire Department. It is unlawful for any person other than fire department personnel to park, stop or stand a vehicle within any posted fire lane.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

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

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

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, April 13, 2009

TITLE: Public Hearing and Resolution Approving Tax Incentive for Kimmet Properties, LLC, dba Cellular Plus

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: In 2007, Kimmet Properties and Adam Kimmet purchased the former Billings Heights Water District property at the corner of Main Street and Hilltop Road. The buildings were demolished and a new structure was built in 2008 for Cellular Plus. The building is being expanded to increase the Cellular Plus space and add a restaurant. The applicant states that the construction is valued at over \$763,000 and he applied for tax abatement for the expansion. In 2005, the City Council adopted Resolution No. 05-18377 establishing tax incentives for remodeling, reconstructing or expanding structures within the city. The process and approval criteria comply with state law that is codified at 15-24-1501 MCA. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants or conditionally grants the tax incentive.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the resolution granting the tax incentive
- Modify and approve the resolution
- Deny the tax incentive application

FINANCIAL IMPACT: 15-24-1501 MCA and city resolution grant this property tax abatement for up to five years. The value of the property improvement, in this case a building expansion, is exempt from city and local school district property taxes during construction and through the 4th year following construction. After that period, the improvements become fully taxable. If the building improvements are valued at \$763,000, the estimated tax abatement is \$8,004 in the first full year of operation (\$763,000 X 85% X 3.01% X 410 mills).

RECOMMENDATION

Staff recommends that Council conduct a public hearing and approve the attached resolution that grants Kimmet Properties LLC and Adam Kimmet commercial building remodel, expansion or reconstruction tax incentives on property located at 815 Main Street.

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

ATTACHMENTS

- A: Kimmet application
- B: Resolution approving tax incentive
- C: City Resolution #05-18377

INTRODUCTION

In 2007, Kimmet Properties and Adam Kimmet purchased the former Billings Heights Water District property at the corner of Main Street and Hilltop Road. The buildings were demolished and a new structure was built in 2008 for Cellular Plus. The building is being expanded to increase the Cellular Plus space and add a restaurant. The applicant states that the construction is valued at over \$763,000 and he applied for tax abatement for the expansion. In 2005, the City Council adopted Resolution No. 05-18377 establishing tax incentives for remodeling, reconstructing or expanding structures within the city. The process and approval criteria comply with state law that is codified at 15-24-1501 MCA. The City Council must conduct a Public Hearing to consider testimony related to granting the incentive and then consider a Resolution that grants or conditionally grants the tax incentive.

BACKGROUND

In 2005 the City Council adopted Resolution 05-18377, which established property tax incentives for properties that are remodeled, reconstructed or expanded. The Resolution implements state statute that is codified at 15-24-1501 MCA. The incentive program is designed to encourage reinvestment in older buildings by eliminating property tax on the value of the improvements. Yellowstone County has a similar program. By City Resolution and state law, the entire taxable value of a property improvement is exempt from city and local school district levies. The abatement term is during construction and for the four (4) tax years following completion. In the fifth and subsequent tax years, 100% of the improvement value is subject to these taxes. In order to qualify, the property improvement has to cost at least \$500,000 and increase the property's value by at least 2.5%.

Cellular Plus is a wireless communications service and equipment provider with several Billings stores. The subject property's initial construction cost was \$798,000 and has a taxable market value of \$177,300. The building expansion is expected to cost at least \$763,000. The company has four (4) full time and four (4) part time employees. The 2009 building expansion is for a restaurant and to increase floor space for Cellular Plus. After the expansion, the restaurant plans to hire three (3) full time and ten (10) part time employees and Cellular Plus plans to add three (3) full time and five (5) part time employees. Wages for Cellular Plus will be \$10 - \$12/hour and for the restaurant they will be \$7 to \$10/hour. The construction should be completed by May, 2009. There are no previously approved property tax incentives on this property.

RECOMMENDATION

Staff recommends that Council conduct a public hearing and approve the attached resolution that grants Kimmet Properties LLC and Adam Kimmet commercial building remodel, expansion or reconstruction tax incentives on property located at 815 Main Street.

ATTACHMENTS

- A: Kimmet application
- B: Resolution approving tax incentive
- C: City Resolution #05-18377

ATTACHMENT A

Kimmet Application

APPLICATION FORM FOR TAX REDUCTION BUILDING REMODEL, EXPANSION OR RECONSTRUCTION

(As allowed under Yellowstone County Resolution 89-56, City Council Resolution and 15-24-1501, 15-24-1502 or 15-24-1601 MCA) *on a Dough Roll LLC; Bada Bing Italian Bist*

1. Name of business: Wireless Communication Inc DBA Cellular PLUS

2. Building Remodel or Reconstruction: Start of construction (date) 12-10-08

Kimmet Properties LLC End of construction (date) 4-30-09

3. X Building Expansion: Start of construction (date) 12-10-08

815 Main St. End of construction (date) 4-30-09

4. Address of business: 618 Radford Square, Billings, MT 59105

Actual location of business: *Hilltop & Main St.*

Tax Code: 000A193840 *384* 000A193840-A19383

Within city limits of Billings YES NO

5. Person representing business and responsible for application:

Name: Adam Kimmet Title: President

Address: 2501 St Johns Ave Telephone: 655-4858
Billings, MT 59102

6. Amount of capital investment for Expansion, Remodel or Reconstruction in Billings / Yellowstone County: \$ 763,800 (attach detailed costs of materials and labor and dates of construction. County Commissioners and/or City Council may request further information, such as financial statements, business references, or other documents prior to acting on this request).

7. Approximate market value of building prior to remodel, reconstruction, or expansion:

\$ 780,000 *800,000*

8. Explain business activity – what business does: Retail cellular sales

& a Restaurant

9. How long has this business been located in Billings and/or Yellowstone County?

10 years & Restaurant is new

10. As of the date of this application, how many employees does the business have:

4 Full-time 4 Part-time

11. How many employees will the applicant have within 2 years after completion of construction:

10 *13* Full-time 19 Part-time

3 5 - Cellular PLUS

3 10 - Restaurant (Bada Bing)

12. Describe job skills required for all new employees both full and part-time: Retail Sales, Repair Tech; Customer Service Reps; Cooks; Servers; Restaurant Manager; Dish washers

13. What is the hourly pay scale of both full and part-time employees to include benefits (new employees only): \$10-\$12 per hour plus commissions

14. Other Economic impacts of capital investment: Placing another eating establishment in the high B

15. Planned hiring schedule: May 2009 Add 3 Full-Time
3 part-time by May 2010 Add 1 more full 2 more PT.

16. List other property tax benefits business currently receives or has applied for: NONE

17. Building permit (attach copy or explain absence): ✓

18. A non-refundable fee of \$500 must accompany this application to cover the cost of application administration. Make checks payable to the Big Sky Economic Development Authority.

19. All items on this application must be addressed. Upon completion and accompanied by the application fee, the original can be submitted to the Big Sky Economic Development Authority, 222 N. 32nd Street, Suite 200, Billings, Montana 59101 (telephone 256-6871). If the application is complete, a duly advertised public hearing will be scheduled, after which the Commissioners and/or City Council, in their discretion, will decide whether to approve or deny the application. The applicant, or a representative of the applicant, must appear in person at the public hearing.

20. The application to the Department of Revenue, which is part of this application, must also be completed and signed by the applicant.

21. The Board of County Commissioners and/or City Council may review this applicant's tax incentive program at any time and terminate further reductions at their discretion if they find the provisions of Resolution are not being met.

22. In order for this incentive program to apply to the applicant's current year taxes, Yellowstone County must receive the properly completed application by March of the year in which the reduction is desired. If within the city of Billings, City Council must approve the application by March of the year in which the reduction is desired.

23. Signature of applicant/representative: kgkit

24. Date of application: 3/19/09

25. County Commissioner's Public hearing held (date): _____

26. City Council's Public hearing held (date): _____

Recommendation by the Big Sky Economic Development Authority:

Approve Deny Signature: _____ Date: _____

County Board of Planning or Laurel-Yellowstone City-County Planning Board certifies that business conforms to zoning regulations:

Signature: ✓ with bldg permit Date: _____

If a non-public water or sewer system is used (i.e., septic tank and water well) County Health Department certifies that system conforms to acceptable standard, or will do so on completion of construction:

Signature: ✓ City Date: _____

County Treasurer's Office certifies that City and County taxes have been paid in full or otherwise satisfied:

Signature: _____ Date: _____

City Finance office certifies that the business has applied for the appropriate City business license:

Signature: _____ Date: _____

Action by Board of County Commissioners:

Approve Deny Chair: _____ Date: _____

Member: _____ Date: _____

Member: _____ Date: _____

APPLICATION TO THE DEPARTMENT OF REVENUE
BUILDING REMODEL, RECONSTRUCTION OR EXPANSION
(Title 15- Chapter 24 – Part 14 MCA)

To: Assessor
Yellowstone County

Name of Applicant: KINNET PROPERTIES, LLC

Mailing Address: 2501 St. Ihsus Ave, Billings MT 59102

Legal description of affected property: A19383, A19384

Date construction permit issued: 12/3/08

(If no permit is required, specify the date when certificate in lieu of building permit was issued).

This application covers the (expansion/new) construction of the plant.

A public hearing on this matter of Building Expansion, Remodel, or Reconstruction was held at the

Yellowstone County Courthouse at (am/pm) on the day of , 20

Due notice as defined in 76-15-103 was given. True and exact copies of said notices are attached to this application. Yes No

The statutory \$100,000 investment requirement for expansion or modernization has been met.

Yes No

The statutory 2.5% increase in value requirement for new improvements has been met.

 Yes No

The qualifying property consists of the following:

(Attach site plats, construction prints, and detailed equipment list identifying the qualifying property.)

This application is made under the provisions of 15-24-1501 or 1601 MCA, and by resolution adopted by the Commissioners of Yellowstone County, on the 29th day of August 1989. A copy of the same is attached.

(Owner/Agent)

~~~~~  
We, the undersigned, Commissioners of Yellowstone County, (approve/disapprove) this application for \_\_\_\_\_ . We find that it (does/does not) conform to the criteria as set forth in the resolution adopted by this Board on the 29<sup>th</sup> day of August 1989.

Name \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**ATTACHMENT B**

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,  
MONTANA, APPROVING TAX BENEFITS FOR KIMMET PROPERTIES LLC  
AND ADAM KIMMET, DBA CELLULAR PLUS ON PROPERTY LOCATED AT  
815 MAIN STREET, BILLINGS, MONTANA

WHEREAS, Resolution 05-18377 provides for granting tax incentives for remodeling, reconstructing or expanding existing buildings in the city, pursuant to Section 15-24-1501, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, Kimmet Property LLC and Adam Kimmet, dba Cellular Plus, has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of Kimmet Properties LLC and Adam Kimmet and has determined that said application meets all qualifications for the tax incentive and should be approved

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

That the application for tax benefits made by Kimmet Properties and Adam Kimmet, dba Cellular Plus, is APPROVED. The tax benefits approved are those provided in Resolution 05-18377. The property receiving the tax benefits is described as follows:

Tax Code #A19383 and #A19384, Lots 1 and 2, Block 1, Wanigan Subdivision

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

CITY OF BILLINGS

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

ATTEST:

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

**ATTACHMENT C**

**RESOLUTION 05-18377**

**A RESOLUTION CREATING A CITY OF BILLINGS TAX INCENTIVE PROGRAM  
FOR REMODELING, RECONSTRUCTING OR EXPANDING BUILDINGS OR  
STRUCTURES AND REPEALING CITY RESOLUTION #89-16126**

**WHEREAS**, the City Council of the City of Billings believes that it is in the public interest that the community's existing buildings and structures be remodeled, reconstructed or expanded, thereby improving the community's appearance, expanding employment and increasing the tax base; and

**WHEREAS**, the Montana Legislature has approved, in Section 15-24-1501, MCA, a means for Montana cities to provide tax incentives for certain remodeling, reconstruction or expansion of existing buildings; and

**WHEREAS**, the City Council desires to offer those property tax incentives to existing building owners that remodel, reconstruct or expand their buildings.

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

1. That it is in the public interest to encourage existing building remodeling, reconstruction or expansion in the city of Billings through property tax incentives.
2. A tax incentive program is hereby established that meets the requirements set forth in Section 15-24-1501, MCA and applicable Administrative Rules of Montana.
3. The incentive applies only to the taxable value of the improvements made to the building due to the remodeling, reconstruction or expansion. The percentage of the increased taxable value that is subject to taxation during the construction period and for the five years following construction shall be as follows:

|                                                           |      |
|-----------------------------------------------------------|------|
| Construction period                                       | 0%   |
| First year through the fourth year following construction | 0%   |
| Fifth year following construction                         | 100% |
| Following years                                           | 100% |

4. Each applicant shall meet the following minimum criteria:
  - a. the construction increases the property's value by at least 2.5% as determined by the Montana Department of Revenue;
  - b. the construction costs meet or exceed \$500,000;
  - c. provide documentation that all property taxes on the property have been paid, except that taxes paid under protest do not preclude application approval;
  - d. provide information on the number and pay ranges of jobs that are created or retained by the construction project; and

- e. the applicant has completed the application procedures outlined in attached Exhibit A.
- 5. The tax incentive is limited to the number of mills levied by the local high school district, the local elementary school district and the City of Billings.
- 6. The City Council must authorize the granting of the tax incentive to any applicant by passing a resolution approving the application of the schedule of tax incentives set forth above in Paragraph or some other schedule, for each existing building or structure as to which the tax incentive is granted.
- 7. City of Billings Resolution No. 89-16126 is hereby repealed.

**BE IT FURTHER RESOLVED** that property owners are hereby encouraged to apply to the City of Billings for consideration of tax incentives authorized pursuant to Section 15-24-1501, M.C.A. for the remodeling, reconstruction or expansion of buildings and structures where the remodeling, reconstruction or expansion of buildings and structures will increase the taxable value by at least 2 1/2% and the cost of the remodeling, reconstruction or expansion exceeds \$500,000, as determined by the State of Montana Department of Revenue or its agents.

**PASSED AND APPROVED** by the City Council this 12<sup>th</sup> day of December, 2005.

CITY OF BILLINGS

By: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

## EXHIBIT A

### APPLICATION PROCEDURES FOR CITY OF BILLINGS, MONTANA TAX INCENTIVE PROGRAM FOR REMODELING, RECONSTRUCTING OR EXPANDING EXISTING BUILDINGS

- Prospective clients contact Big Sky Economic Development Authority (BSEDA) who acts as the intermediary in the application process, and an initial meeting is scheduled.
- At the initial meeting, prospective client project is discussed to determine if the project meets the tax incentive application criteria. If the project appears to qualify for an incentive, the client is given tax incentive applications, copies of the tax incentive program cited in the *Montana Code Annotated* and copies of the adopting resolutions.
- Clients then complete and return applications and supporting documentation and the applicable processing fee to BSEDA. BSEDA reviews the application for completeness.
- An appointment is then scheduled with the designated City staff to review the project documentation and perform a site visit if needed. This leads to either staff endorsement of the project or a determination that the project does not meet the program criteria.
- City staff will prepare and submit a staff report, accompanied by the application documentation, and schedule a public hearing with the City Council. The staff report will advise the Council why the application should be approved, conditionally approved, including recommended conditions, or denied.
- City staff will prepare a resolution for Council consideration that contains the elements required by state law and administrative rules.
- The City Council will conduct a public hearing on the application at its next available regular meeting and will approve, conditionally approve or disapprove the application.
- BSEDA will send a letter to the applicant regarding the Council's decision, including any conditions of approval.
- When the construction reaches substantial completion, the client contacts BSEDA and schedules a final inspection to determine if the project meets tax incentive requirements and any conditions of approval.
- If the project meets all City and State requirements, BSEDA will work with City staff to prepare and submit a final approval letter and appropriate documentation to the Montana Department of Revenue.

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 13, 2009**

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**TITLE:** Lenhardt Square Master Plan Agreement Adoption  
**DEPARTMENT:** Planning and Community Services  
**PRESENTED BY:** Wyeth Friday, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The City annexed the Lenhardt Square Property and also approved Planned Unit Development (PUD) zoning for the Lenhardt Square property in April 2008. The PUD agreement approved by the City Council on April 28, 2008, specified that an Annexation Agreement must be executed between the City and the Lenhardt Square Property owners – Lenhardt Property, LP; Lenhardt Enterprises, LLC; and Lenhardt Farm, LLC. This Master Plan Agreement meets the requirements of, and serves as, the Annexation Agreement specified in the PUD.

City staff, William Cole of the Cole Law Firm, agent for the Lenhardt Square Property owners, and the Lenhardt Square Property owners, have conducted meetings and refined drafts of this agreement for the last nine months. The document is designed to complement the PUD document and add detail as to some of the overall development requirements and guidelines for development of the entire Lenhardt Square Property (See attached Master Plan). The document provides guidance on infrastructure standards, including public water facilities, streets and right-of-way, parks and open space, and sidewalks, bikeways and other pathways. City staff has ensured that the City's standards and requirements have been met in this agreement for infrastructure improvements and also has specified that as portions of the property develop, Subdivision Improvement Agreements or Development Agreements for specific portions of the property may still be required.

**ALTERNATIVES ANALYZED:** Since the PUD Agreement for the Lenhardt Square Property approved by the City Council specifies that this agreement must be approved by the City, the City Council may choose to adopt this agreement or delay action on adoption of this agreement.

**FINANCIAL IMPACT:** There is no immediate fiscal impact to the City by adopting this Master Plan Agreement. It is expected that as development occurs in the Lenhardt Square Property in compliance with requirements in this document, additional tax revenues will be generated.

**RECOMMENDATION**

Staff recommends that the City Council adopt the Lenhardt Square Master Plan Agreement and direct the Mayor to sign the document for the City of Billings.

**Approved by:**

**City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_\_

**ATTACHMENT**

A. Lenhardt Square Master Plan Agreement

## **ATTACHMENT A**

Return to: City of Billings  
Cari Martin, City Clerk  
210 N. 27<sup>th</sup> Street  
Billings, MT 59101

## **LENHARDT SQUARE MASTER PLAN AGREEMENT**

This LENHARDT SQUARE MASTER PLAN AGREEMENT (“Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM, LLC of 4401 Highway 3, Billings, Montana 59106, and LENHARDT ENTERPRISES, LLC, of 240 East Drive, Baton Rouge, Louisiana 70806 (collectively “Founders”), M & K BLUE ONE, LLC, a Montana limited liability company, of 6238 Golden Eagle Way, Billings, Montana 59106 (“M & K”), LENHARDT SQUARE MASTER ASSOCIATION, INC., 4401 Highway 3, Billings, Montana 59106 (“Master Association”) and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, Montana 59101. **The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within Lenhardt Square shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement.** Any obligations of Founders arising under this Agreement shall be binding upon all of the Founders jointly, and all rights inuring to Founders under this Agreement shall be exercised by Founders jointly.

## **ARTICLE I – RECITALS**

### **NOW WHEREAS:**

**1.1** On April 14, 2008 the Billings City Council adopted Resolution No. 08-18702 annexing the following described property:

Tracts of land situated in the S1/2 of Section 10, T.1S., R.25.E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, & 5A, Certificate of Survey 2063, Amended, Recorded April 7, 2008, under Document No. 3460596, records of Yellowstone County, including all adjacent right-of-way of King Avenue West, containing 114.669 gross acres and 114.298 net acres (hereafter “Lenhardt Square”).

On December 20, 2008 Founders sold Tract 1A of Lenhardt Square to M & K pursuant to the terms of a contract for deed that is now in escrow. Founders will retain legal title to Tract 1A until the escrow closes. As equitable owner of the tract, M & K may also enforce, and shall be bound by, the terms of this Agreement relative to Tract 1A.

**1.2** On April 28, 2008 Ordinance No. 08-5460 amending the zone classification for Tracts 1A through 5A of Certificate of Survey 2063, Amended was approved by the Billings City Council, and on May 9, 2008 the Planned Development Agreement for Lenhardt Square (“Planned Development Agreement”) and attached Master Plan were recorded in the records of the Yellowstone County Clerk and Recorder as Document No. 3464966. This Agreement provides additional information concerning the future development of Lenhardt Square and the implementation of the Master Plan, which is also attached hereto. All capitalized terms not defined in this Agreement shall have the same definition and meaning specified in the Planned Development Agreement.

**1.3** As required by the Planned Development Agreement recorded May 9, 2008, under Document No. 3464966, an Annexation Agreement must be executed addressing issues relating to the development of Lenhardt Square so that future development may be accomplished in an orderly and efficient manner beneficial to Founders, Developers, future residents, and the citizens of Billings, Montana. This Master Plan Agreement fulfills the requirements of, and serves as, the Annexation Agreement specified in the Planned Development Agreement for Lenhardt Square.

**1.4** The parties agree that notwithstanding the approval of this Agreement and its contents, when a subdivision plat application, request for building permit, site development plan, or similar site-specific development plan is submitted to the City, City regulations and practices require that either a subdivision improvement agreement or development agreement be executed with the applicants, property owners, developers, or other individuals, corporations, or entities having an interest in property in Lenhardt Square.

**1.5** Developers and owners of Lenhardt Square property are bound by the requirements of the Planned Development Agreement and the CCRs, including the requirement that they obtain consent by the Reviewer before submitting requests for development approval to the City. The approval, or review, of a project by the Reviewer prior to City involvement in a project is strictly between the Founders, Reviewer, and the property owner or Developer. The property owner or Developer, and not the City, is solely responsible for obtaining Reviewer approval of any project submitted for the Lenhardt Square property.

**1.6** The infrastructure and facilities described in this Agreement shall be installed by the future Developers of the Lenhardt Square property. Unless Founders elect to develop an individual Tract and thereby become subject to the requirements of Paragraph 1.4, this Agreement does not require that Founders construct, guarantee, or insure installation of any infrastructure or improvements.

**NOW THEREFORE**, the undersigned hereby establish and declare that the following

provisions, including such restrictions and protective covenants as set forth herein that shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners of such real estate, and shall run with the land.

## **ARTICLE II– INFRASTRUCTURE STANDARDS**

**2.1 Conditions of Annexation.** The annexation petition approved by the Billings City Council on April 14, 2008 under Resolution No. 08-18702 specified conditions of annexation. These conditions remain in effect on the Lenhardt Square property, and the Founders, future property owners, developers and anyone having a property interest in Lenhardt Square are subject to these conditions. Among other things, this Agreement is intended to implement the terms of the aforementioned resolution.

**2.2 Public Water Facilities.** The maximum (and minimum) quantity of City water required to be supplied will be 600,000 gallons/day until such time as the first water storage improvement for Zone 3 (Zone 3 Storage Expansion Project, PWU-W022) is completed. At the time of completion of the first reservoir improvement, an additional 300,000 gallons/day will be available. Once the final improvement to Zone 3 (Zone 3 West End Storage Project, PWU-W030) is completed the entire 1.2 million gallons/day will be available. The Public Works Department will evaluate the availability of water after 600,000 gallons/day based on actual and proposed usage to ensure domestic and fire supply and pressure. Upon request by Founders or their assigns, the Department will determine in its discretion whether additional water in excess of the then-applicable maximum/minimum amounts (600,000, 900,000 or 1.2 million gallons/day) can be provided to the property before the next reservoir expansion project is completed.

**2.3 Public Streets and Rights-of-Way.** The street network in Lenhardt Square will be comprised of public and private courses. Unless otherwise provided in any other agreement approved by the City and Founders, all streets and street rights-of-way, whether public or private, shall be developed to City standards for width, curb, gutter, and surface treatment as those standards exist when the subdivision approval, building permit, or other development approval is granted for the Tract or parcel where the street is located. The right-of-way for the streets identified on the Master Plan as Elsa Mae's Way and Stahl Street will be developed as local access streets and shall be 56 feet wide with at least 10 feet from the back of each curb being reserved for the boulevard and sidewalk or bikeway. Saratov Street (44<sup>th</sup> Street) and Monad Road are classified as proposed collectors. The development standards for Saratov Street (44<sup>th</sup> Street) and Monad Road will be determined at such time as any development plans are submitted for property adjacent to those streets. Nothing in this Agreement shall prohibit Developers of individual Tracts from seeking a variance from City standards for streets or other infrastructure. The parties specifically agree that the Developer of Tract 1A may request a variance that, if granted by the City Council, would permit Saratov Street (44<sup>th</sup> Street) and Monad Road to be constructed with a 39' paved surface and adjacent boulevard/sidewalk areas of 8.5' on east and west sides. All Developers must first seek Reviewer approval of a variance request before bringing the variance to the City.

**2.4 Linear Parkways Generally.** Unless otherwise indicated in Article V(B)(5) and (7) of the Planned Development Agreement, on the Master Plan (attached to this Agreement), in this Agreement, or in a future subdivision improvement agreement or development agreement, each Developer shall grant an easement to the Master Association establishing a ten feet (10') wide Linear Parkway outside of and adjacent to both sides of the right-of-way for each Principal Street (Saratov Street (44<sup>th</sup> Street), Elsa Mae's Way, Stahl Street, and Monad Road). The Linear Parkway area shall be available for use of the residents of the Subdivision and the public. Sidewalks and bikeways shall be located within or meander between and through the right-of-way and the Linear Parkway. Linear Parkways that serve as off-street connector corridors shall be a minimum of thirty (30) feet wide.

**2.5 Sidewalks, Bikeways, and Other Pathways.** All property development shall provide for pedestrian access along or through each Unit to create an integrated, intra-neighborhood system of pedestrian corridors, walkways, bikeways, and sidewalks (collectively "Pathways"). Each Pathway depicted on the Master Plan (attached to this Agreement) shall be installed by the Developer of the Tract where the Pathway is located in the approximate location shown on the Master Plan, but the exact location of each Pathway may be established to accommodate the Developer's construction and amenity plans, subject to approval by the Reviewer and the City.

**2.5.1 Width and Materials.** The travel area of all sidewalks and bikeways shall be constructed of concrete unless asphalt or another hard surface material is specifically permitted by the City. All sidewalks shall be a minimum of five (5) feet wide and shall be boulevard style sidewalks, and all bikeways shall be a minimum of ten feet (10) wide and shall be boulevard style bikeways, unless different dimensions or locations are permitted for sidewalks and bikeways in Tract 4A or Tract 5A, Parcel 2 in accordance with Section 2.5.2. Benches, artwork, or other amenities may be located within the public street right-of-way after issuance of a city encroachment permit (with prior city and Reviewer approval) or the Linear Parkway areas (with prior Reviewer approval; no encroachment permit necessary).

**2.5.2. Design and Layout.** The right-of-way and Linear Parkways adjacent to each Principal Street shall include a sidewalk on one side of the paved street surface and a 10 (ten) foot wide, multi-use hard-surface trail meeting city specifications (hereafter "bikeway") on the other side. A ten (10) foot wide bikeway shall also be included in the right-of-way and/or landscaped green belt (required in Article V(B)(7) of the Planned Development Agreement) on the north side of King Avenue and in the Linear Parkways on the south side of the Shiloh Drain Easement Area and that connect with adjacent properties to the east through Tract 1A and to the west through Tract 5A. However, with City approval, a narrower bikeway or sidewalk may be installed within the right-of-way and/or landscaped green belt on the north side of King Avenue if necessary to match the width of an existing sidewalk or bikeway located on the adjacent property. Bikeways shall also be constructed in the right-of-way and/or Linear Parkway on the east side of Saratov Street (44<sup>th</sup> Street), the west side of Stahl Street, and on the north side of Monad Road. Sidewalks shall be constructed in the rights-of-way and Linear Parkways that

surround Tract 4A (but not adjacent to King Avenue where a bikeway shall be constructed) and Tract 3A. All sidewalks and bikeways shall be curvilinear in design unless an alternative design is approved by the Reviewer and is necessary to accommodate important aesthetic or design needs of individual Developers. If granted prior written approval by Reviewer and approved by the City Council in accordance with BMCC Sec. 23-1101(D) (modification of subdivision standards) or Sec. 6-1210 (site development variance), Developers in Tract 4A and Tract 5A, Parcel 2 may construct curbwalls or alter the location, width, and configuration of the internal sidewalks in those Tracts (not adjacent to a Principal Street) to better integrate with the commercial and office structures, parking, and other facilities in the mixed use areas. Developers shall clearly stake the location of all sidewalks and bikeways prior to any inspection by city officials in order to plainly identify the position of the sidewalks and bikeways relative to streets, boundary lines, structures, and other features.

**2.6 Park Dedication and Maintenance.** The park dedication required under M.C.A. § 76-3-621(1) for this planned development, if applicable, would be 11.2 acres [114.32 (gross acres) - 11.44 (standard dedicated right-of-way) - 1.08 (city ditch easement) = 101.8 net area x 11% = 11.2 acres]. The Master Plan approved with the Lenhardt Square Planned Development Agreement identifies 14.27 acres of Master Common Areas that include additional land for parks, recreational use, Linear Parkways, and other open space. The parties agree that 14.27 acres of Master Common Areas, which represents approximately 14% of the net developable area, shall be located outside the City right-of-way and shall be permanently set aside for park, recreational, and open space use by the persons who will ultimately reside in the development. The parties also agree that the portion of the 14.27 acres that exceeds the 11.2 acre statutory dedication requirement, combined with the Developers' construction and maintenance responsibilities specified in the Planned Development Agreement, were offered by Founders and accepted by the City as an "amenity" not otherwise required by law or regulation. As long as the land permanently set aside for such uses in Lenhardt Square equals or exceeds 14.27 acres as approved in the Lenhardt Square Planned Development Agreement, the City will not require additional land to be set aside for park, recreational and open space uses in Lenhardt Square. It is anticipated that the Developer of each Tract will set aside the approximate amount of land for each Tract that is shown on the Master Plan, but an amount less than what is shown on the Master Plan may be set aside in any particular Tract if approved by Reviewer, the Founders, and the Master Association, and as long as the total acres set aside in Lenhardt Square equals or exceeds 14.27 acres when the last Tract is developed. Additional parkland over and above the 14.27 acres approved with the Lenhardt Square Planned Development Agreement may be permanently set aside by the Founders, future property owners, Developers or anyone having a property interest in Lenhardt Square. However, this additional parkland shall be developed and maintained privately by those who set aside the land or by a property owners' association unless a contrary arrangement is approved by the City.

**2.6.1 Design and Construction of Master Common Areas.** The design and exact location of the Master Common Areas shown on the Master Plan attached to this Agreement, including the "town square" in Tract 4A, the "central park" in Tract 3A, and the east-west Linear Parkway connectors in Tract 1A and Tract 5A, shall be determined by the Developer(s) of the Tract where the Master Common Area is located during the

platting process for each Tract, subject to the approval and consent of the Reviewer and the City. All Master Common Areas shall be designed and constructed in accordance with the CCRs, Master Design Guidelines, and any City site development requirements and regulations. Unless a contrary arrangement is approved and implemented by Founders and the City, the cost of installing the landscaping and constructing the improvements located in the Master Common Areas shall be borne by the Developer(s) of the Tract where the common area is located, and not by the City of Billings, Founders, or any other party. Developers and Unit Owners are hereby advised that it is Founders' current intention, but not obligation, to develop a plan whereby the cost of developing all or some of the Master Common Areas may be spread between multiple Developers and/or Unit Owners. Such an arrangement may be memorialized in the CCRs, private contracts, or other documents.

**2.6.2 Maintenance of Master Common Areas.** The private Master Common Areas and any other private park areas provided in Lenhardt Square shall be maintained by the Master Association or adjacent landowners. The CCRs shall set out the responsibilities of the Master Association concerning maintenance of the Master Common Areas.

## **ARTICLE III - ENFORCEMENT**

**3.1 Statement of Purpose.** The parties acknowledge that from time to time disputes may arise involving the persons bound by this Agreement. In order to minimize financial and other costs that might otherwise be incurred, the parties agree, on behalf of themselves and their successors and assigns, to work together in a spirit of cooperation to attempt to resolve such disputes quickly, harmoniously, and without resort to litigation as much as possible. Such efforts may include personal meetings, non-binding mediation before a neutral mediator, and binding arbitration if subsequently agreed to by the disputants.

**3.2 Right to Enforce.** The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties, the subsequent owners of property within Lenhardt Square and any person or entity claiming under them. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

**3.3 No Other Third Party Beneficiaries.** This Agreement is for the benefit of Founders, the City, Developers, Unit Owners, the Master Association, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the covenants, conditions, and restrictions contained herein, judicially or otherwise.

## **ARTICLE IV - GENERAL PROVISIONS**

**4.1 Amendments.** All amendments to this Agreement shall be in writing and shall be approved by the City, the Master Association, and the Founders or their assigns as long as Founders or their assigns own property in Lenhardt Square.

**4.2 Neutral Interpretation.** Founders and the City hereby stipulate and agree that this Agreement shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party.

**4.3 Notices.** All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally, by electronic mail, or by first class or certified mail. All notices or demands to Founders or the City shall be given at the following addresses or such other addresses as Founders or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Founders to the following address: Lenhardt Farm, L.P., c/o Janice L. Rehberg, 4401 Highway 3, Billings, MT 59106, with a copy to William A. Cole, Cole Law Firm, PLLC, 3860 Avenue B, Suite C West, Billings, MT 59102-7550.

If to M & K: M & K Blue One, LLC, c/o Cal Kunkel, 6238 Golden Eagle Way, Billings, Montana 59106, with a copy to Gary Everson, Esq., 208 North Broadway, Suite 324, P.O. Box 2502, Billings, Montana 59103-2502.

If to the City: City of Billings, Attn: Engineering Division, 2224 Montana Avenue, Billings, MT 59101

If to Master Association: Lenhardt Square Master Association, Inc., Attention: Janice L. Rehberg, Secretary, 4401 Highway 3, Billings, MT 59106, with a copy to William A. Cole, Cole Law Firm, PLLC, 3860 Avenue B, Suite C West, Billings, MT 59102-7550.

**4.4 Waiver.** Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

**4.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

**4.6 Force Majeure.** Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, inclement weather, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

**4.7 Attorneys' Fees and Costs.** In the event any party entitled to enforce this Agreement shall file any proceeding, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the non-prevailing party.

**4.8 Severability.** Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

**4.9 No Partnership.** The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**4.10 Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement shall not be interpreted to modify the Planned Development Agreement, which may only be modified in accordance with Sec. 27-1310 of the Unified Zoning Regulations. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

**4.11 Construction.** In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

**4.12 Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

**4.13 Execution.** A facsimile copy of this Agreement containing the signature of a party shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document. If the Agreement is signed in counterparts, the parties shall provide original signature pages so that the Agreement may be recorded in accordance with Section 4.14. Any person executing this Agreement on behalf of an entity shall be deemed to personally represent that he or she is properly authorized to sign the Agreement, and the entity on whose behalf the Agreement is signed shall be estopped from contesting the authority of the signatory.

**4.14 Recordation.** This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

**4.15 Run with the Land.** The terms and conditions of this Agreement shall run with the land and shall be binding upon and shall inure to the benefit of Founders, the City, Developers, Lot Owners, the Master Association, and their heirs, successors, and assigns. If Founders elect to assign their review and approval rights under this Agreement they shall do so in writing and provide the City with a copy of any such written assignment.

**4.16 List of Exhibits.** The following exhibits are attached to this Agreement:

## Exhibit A      Master Plan

## NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN LENHARDT SQUARE, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN LENHARDT SQUARE, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

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

## FOUNDERS:

## LENHARDT PROPERTY, LP

## LENHARDT ENTERPRISES, LLC

By: \_\_\_\_\_  
Lorraine Newman, General Partner

By: \_\_\_\_\_  
Allan R. Lenhardt, Member

## LENHARDT FARM, LLC

By: \_\_\_\_\_  
Janice L. Rehberg, Member

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Lorraine M. Newman known to me to be the general partner of Lenhardt Property, LP.

---

[signature]

---

[typed/printed name]

Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

STATE OF MONTANA      )  
                            )ss.  
County of Yellowstone    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Janice L. Rehberg known to me to the managing member of Lenhardt Farm, LLC.

---

[signature]

---

[typed/printed name]

Notary Public for the State of Montana

Residing at: \_\_\_\_\_, Montana

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

STATE OF \_\_\_\_\_      )  
                            )ss.  
County of \_\_\_\_\_      )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Allan R. Lenhardt known to me to the managing member of Lenhardt Enterprises, LLC.

---

[signature]

---

[typed/printed name]

Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

**M & K BLUE ONE, LLC:**

M & K BLUE ONE, LLC

By: \_\_\_\_\_  
Cal Kunkel, Member

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Cal Kunkel known to me to a member of M & K Blue One, LLC.

[signature]

[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

## **MASTER ASSOCIATION:**

## LENHARDT SQUARE MASTER ASSOCIATION, INC.

By: \_\_\_\_\_  
Allan R. Lenhardt, President

By: \_\_\_\_\_  
Janice L. Rehberg, Secretary

STATE OF \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Allan R. Lenhardt known to me to the President of Lenhardt Square Master Association, Inc.

[signature]

---

[typed/printed name]

Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

STATE OF MONTANA      )  
                            )ss.  
County of Yellowstone    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Janice L. Rehberg known to me to the secretary of Lenhardt Square Master Association, Inc.

[signature]

---

[typed/printed name]

Notary Public for the State of Montana

Residing at: \_\_\_\_\_, Montana

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

**CITY:**

CITY OF BILLINGS

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

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

STATE OF MONTANA      )  
                            )ss.  
County of Yellowstone    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Ron Tussing, known by me to be the Mayor of the City of Billings.

[signature]

---

[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
Cari Martin, known by me to be the City Clerk of the City of Billings.

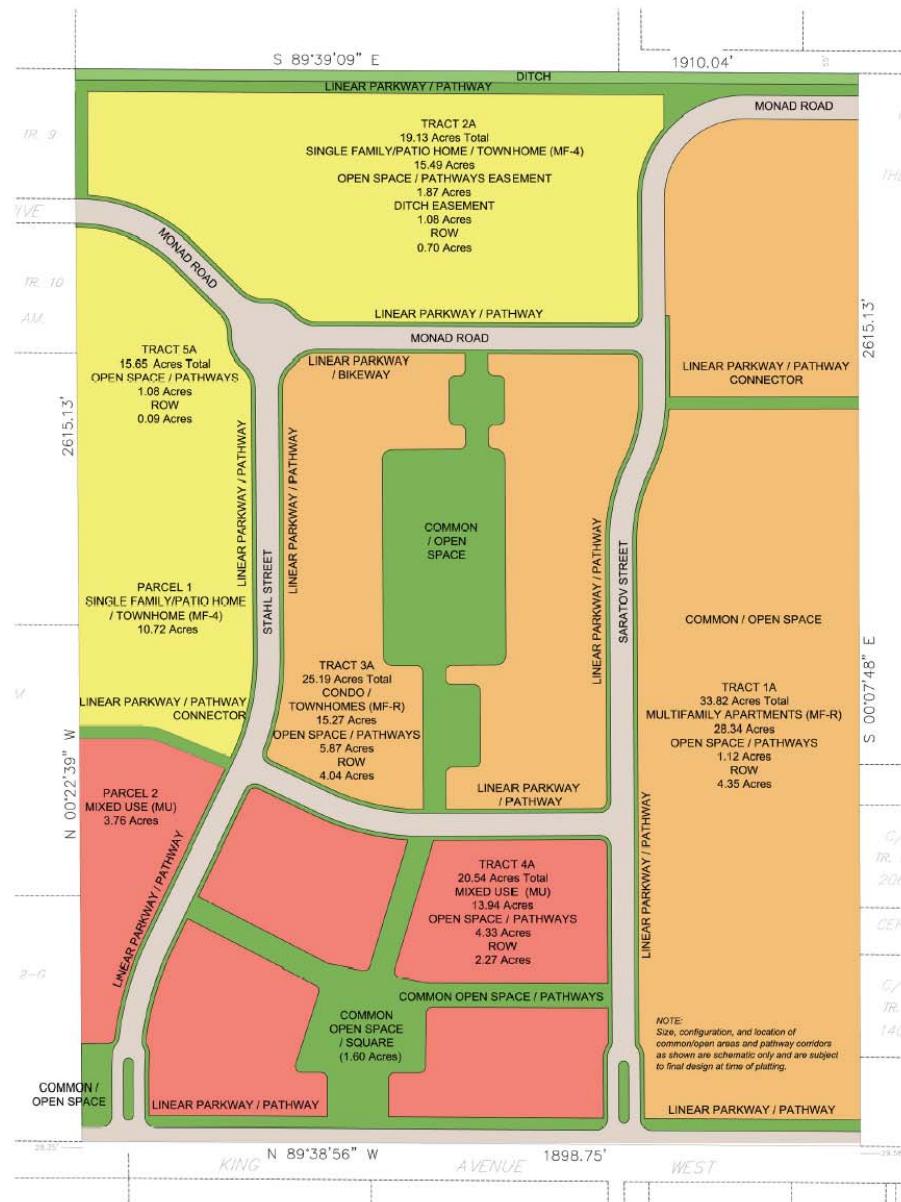
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[signature]

---

[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_

**EXHIBIT A**  
**MASTER PLAN**



**LENHARDT SQUARE**

Billings, Yellowstone County, Montana

CONCEPTUAL MASTER PLAN

January 22, 2008



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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 13, 2009**

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**TITLE:** Management Agreement with Downtown Billings Partnership, Inc. to Manage the Expanded N. 27<sup>th</sup> Street Urban Renewal Area

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** The Downtown Billings Partnership, Inc. (DBP) is proposing an agreement with the City of Billings to manage projects in the Expanded N. 27<sup>th</sup> Street Urban Renewal and Tax Increment District (TID) for FY 2009-2010. The management agreement outlines the proposed work plan, compensation and reporting. Staff recommends that the City Council consider the agreement at this time so that staff may develop the preliminary FY 2010 budget accordingly.

**ALTERNATIVES ANALYZED:** Montana's Urban Renewal Act allows cities to administer urban renewal areas and TID by:

- contracting with public or private agencies
- assigning a City department to the tasks, or
- forming an urban renewal authority

**FINANCIAL IMPACT:** The DBP is requesting that the City appropriate \$98,580 for the FY 2009-2010 management contract. The Expanded N. 27<sup>th</sup> Street TID was created in 2005 and expanded in 2006 and 2008. It has produced a positive increment since its creation and the fund should contain at least \$215,000 by the end of the year. If Council approves the management agreement, about \$90,000 should be available for new projects in FY 2010. The remaining funds will be used for a previously approved project and to pay internal service charges. The amount of annual increment may be higher than predicted due to the 2008 TID expansion.

**RECOMMENDATION**

Staff recommends that the City Council approve a FY 2009-2010 management agreement with the Downtown Billings Partnership, Inc. for up to \$98,580 to manage the Expanded N. 27<sup>th</sup> Street Urban Renewal Area/Tax Increment District.

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

## **INTRODUCTION**

The Downtown Billings Partnership, Inc. (DBP) is proposing an agreement with the City of Billings to manage projects in the Expanded N. 27<sup>th</sup> Street Urban Renewal and Tax Increment District (TID) for FY 2009-2010. The management agreement outlines the proposed work plan, compensation and reporting. Staff recommends that the City Council consider the agreement at this time so that staff may develop the preliminary FY 2010 budget accordingly.

## **BACKGROUND**

The Billings City Council created the N. 27<sup>th</sup> Street Urban Renewal Area for a stand-alone project in 2005. Council expanded the district in 2006 and included redeveloping properties such as the Clocktower Inn, the Wells-Fargo Tower and the Billings Gazette. Council expanded it again in late 2008 so that it contains about 70 blocks of the central downtown area. The Council adopted an urban renewal plan amendment each time it expanded the area. The N. 27<sup>th</sup> TID was created with a tax increment provision, which is identified as a major source of funding for proposed public improvements. The needed improvements include off street parking, streetscape and pedestrian and vehicle transportation improvements. Private redevelopment projects may include mixed use developments, office buildings, hotels and housing.

The proposed management agreement is similar to previous ones that Council approved for the DBP and the current agreement is attached so that Council may compare the two documents. The primary differences are due to the immaturity of the N. 27<sup>th</sup> TID and the difficulty that causes for estimating the amount of available annual increment. The Council will approve all projects, versus past agreements where the Council approved projects over \$50,000. The new agreement does not outline approved programs because the DBP has not yet developed them and will not develop them until the amount of annual increment is stable and can be counted on to fund the programs for several years.

## **ALTERNATIVES ANALYSIS**

According to state law, the City can manage the district itself, it may appoint the members of an urban renewal authority board or it may contract for services.

- City management: the City Council retains all spending and project approval authority. It tasks a City department with developing and managing projects. This is the model that the City used in the former downtown district until about 1990.
- Urban Renewal Authority: Billings has never operated a TID under this arrangement. Butte-Silver Bow and Missoula operate their TIDs in this way.
- Contract: The City may contract with a public or private agency to provide services related to urban renewal area projects. The City of Billings began contracting with the Downtown Billings Partnership for TID management in 1998. Many public and private improvement projects were completed until the district expired in 2008. The DBP is proposing a similar agreement for the expanded N. 27<sup>th</sup> Street TID.

## **RECOMMENDATION**

Staff recommends that the City Council approve a FY 2009-2010 management agreement with the Downtown Billings Partnership, Inc. for up to \$98,580 to manage the Expanded N. 27<sup>th</sup> Street Urban Renewal Area/Tax Increment District.

**ATTACHMENTS**

- A: "New" Management Agreement
- B: "Old" Management Agreement

**ATTACHMENT A**  
**“NEW” MANAGEMENT AGREEMENT**

**CONTRACT SERVICES AGREEMENT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Billings, a Montana Municipal Corporation, hereinafter referred to as the "City", and the Downtown Billings Partnership, Inc., a Montana not-for-profit Corporation, hereinafter referred to as the "Partnership".

**WITNESSETH**

WHEREAS, the City has duly adopted an urban renewal plan for the North 27<sup>th</sup> Street Urban Renewal Area pursuant to Title 7, Chapter 15, Part 42, MCA, the Urban Renewal Plan; and,

WHEREAS, the City has duly approved the use of tax increment financing for the Urban Renewal Area pursuant to Title 7, Chapter 15, Part 42, MCA, the Tax Increment District; and,

WHEREAS, the City has approved the Downtown Billings Framework Plan and incorporated all or a part of the Framework Plan into the Urban Renewal Plan for the Urban Renewal District, and is a voting member of the Partnership which was formed to oversee, coordinate and implement the Framework Plan and Urban Renewal Plan; and,

WHEREAS, the City wishes to contract with the Partnership for the performance of certain services and tasks related to the Urban Renewal Plan and the Downtown Billings Framework Plan.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

**1. Work Plan.**

The Partnership shall perform the work plan described in Exhibit A, which is attached hereto and by this reference incorporated herein. The work plan may be amended annually as mutually agreed to by the parties.

**2. Term of Agreement.**

This Agreement is for the period July 1, 2009 through June 30, 2010. This Agreement will automatically renew for additional one-year periods unless terminated by either party, with or without cause, upon issuance of sixty (60) days written notice that the agreement will be terminated. The terms and conditions of the Agreement may be amended as mutually agreed to by the parties.

### **3. Compensation.**

The City shall budget and pay to the Partnership for services rendered, as outlined in Exhibit B - "Expenditures DBP Operations". Payment shall be made from N. 27<sup>th</sup> Street tax increment funds and shall be paid quarterly, in advance. If there are insufficient funds in the N. 27<sup>th</sup> Street tax increment account, the City may make payment to the Partnership in arrears when unencumbered funds do become available within the N. 27<sup>th</sup> TIF account, without penalty and without interest charges. The City shall have authority to approve the annual Operations Budget of the Partnership.

### **4. Reports.**

The Partnership shall provide quarterly verbal and written progress reports to the City in September, January, April and July, of each year and will provide additional copies of the written report to School District 2 and Yellowstone County.

An Annual Report shall be provided to the City each July with information regarding the operational and financial activities of the Partnership consistent with Montana Code Annotated Section 7-15-4237.

### **5. Grants and Loans of TIF Moneys.**

The Partnership shall engage in predevelopment discussions with private development entities pursuant to the goals of the Urban Renewal Plan.

The Partnership shall facilitate development with the assistance of appropriate City staff.

The Partnership shall write and submit all Development Agreements and loans of TIF money to be presented to the City for approval by the City Council.

The Partnership shall manage the implementation of approved Urban Renewal Projects, prepare verbal and written reports to the City regarding these projects and facilitate and submit appropriate payment request letters to the City.

All grants and loans shall be itemized in the Partnership's quarterly reports and Annual Report.

### **6. Political Activity.**

No City Funds may be used for political purposes including support or opposition of political candidates or support or opposition of any legislative action.

### **7. Project Administration.**

Any project to be funded by TIF dollars which, in the opinion of the City Administrator or designee, will become the responsibility of the City through ownership, maintenance or any other reason, shall involve the appropriate City departments beginning at the planning phase and through completion. Where practical, such projects shall be administered by the City with input and guidance from the Partnership.

The Partnership shall administer all grant, loan, incentive and funding programs in accordance with program guidelines approved by the City Council and is authorized to execute agreements and documents in accordance with the approved program guidelines.

City of Billings

Downtown Billings Partnership, Inc.

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Ron Tussing, Mayor  
Attest:

Partnership Board Member

---

City Clerk

## **EXHIBIT A**

**FY 2010**

**DOWNTOWN BILLINGS PARTNERSHIP, INC.**

**JULY 1, 2009 – JUNE 30, 2010**

**URBAN RENEWAL WORK PLAN**

***N. 27<sup>th</sup> Tax Increment District***

1    **EXECUTIVE SUMMARY**

2

3    **Description of the Corporation**

4

5    In November 1998 the DBP executed a management agreement with the City of Billings to  
6    perform numerous revitalization activities and services within the City's Downtown Tax Increment  
7    Financing District (TIFD). In 2005, the Billings City Council approved the creation of a new Urban  
8    Renewal Tax Increment District known as the N. 27<sup>th</sup> Tax Increment District. This TIFD was  
9    expanded in 2007 and once more in 2008. In 2008, the original Downtown TIFD expired but urban  
10   renewal activities related to that district and the Downtown Framework Plan continue.

11

12   The DBP continues to focus on the administration of and participation within a functioning  
13   "downtown alliance" organization that promotes downtown as a safe, attractive, affordable and  
14   desirable neighborhood in which to conduct business, shop, celebrate the community and live. It  
15   has also worked diligently to provide opportunities for involvement by individuals and groups that  
16   have an interest in downtown.

17

18   The Board of Directors of the Downtown Billings Partnership may contain up to 15 members and  
19   represents eight downtown organizations and there are five at-large members. The downtown  
20   property owners are organized via the Council approved Business Improvement District (BID) (a  
21   501 (c) (3)) and have promoted specific actions or projects and continue to provide "Clean, Safe  
22   and Vibrant" services to our downtown. Using a footprint larger than the BID and corresponding  
23   to the boundaries of the N. 27<sup>th</sup> TIFD, the downtown property owners have formed another 501 (c)  
24   (6) corporation to represent the property owners currently not within the BID. The downtown  
25   cultural institutions continue to work together, under the umbrella of the Billings Cultural Partners,  
26   and the merchants are organized by the Downtown Billings Association (DBA). As of 2007, the  
27   DBP, the BID and the DBA have shared resources under the term "Downtown Alliance" to cut  
28   costs, streamline management and further the missions of all three organizations. The media  
29   continues coverage of downtown events and people. Enthusiasm for the downtown seems to be  
30   building and with organizational issues now clearer, the DBP plans a fruitful fiscal year that will  
31   result in continued urban renewal and tax base stability and growth.

32

33 **Mission Statement**

34 The mission of the DBP has been and continues to be simply stated, "Revitalize Downtown  
35 Billings!" Our goal requires us to serve as an umbrella organization covering the member  
36 partners and a liaison between the private sector and the City of Billings and other governments  
37 and organizations.

38

39 **Products and Services**

40 The DBP serves the community and works towards the ultimate goal of increasing the taxable  
41 value of all of our Tax Increment Districts. Via the Urban Renewal Law the DBP proposes that  
42 Fiscal Year 2010 will see continued implementation of all of the identified legacy projects  
43 proposed in FY2008 as part of the now sunset Old Downtown TIFD:

44       • A renovated Northern Hotel  
45       • A renovated Babcock Theater Building  
46       • A new Federal Courthouse  
47       • Installation of a Railroad Quiet Zone

48

49 **The DBP plans to begin or continue working with City staff and departments on:**

50       • A Stockman Bank Building at 4<sup>th</sup> and Broadway  
51       • Further study and implementation of results of the City Parking Study, 2009  
52       • A possible lodging property at 6<sup>th</sup> and Broadway  
53       • Facilitation and initial site development for a new Federal Office Building  
54       • New and expanded parking near the Courthouse, Northern Hotel, and Montana  
55       Avenue.  
56       • Continued study and development of street level businesses (retention and  
57       recruitment)  
58       • Continued enhancements of traffic and pedestrian flow and access  
59       • Expansion of the Historic District

60

61 **Financial Forecast**

62 Since 1998, the DBP has encouraged investment of 1976 TIFD dollars (City Fund 202) and  
63 reaped a return that has resulted in private investment exceeding \$50 million. Through FY2010  
64 and beyond, the DBP intends to develop and administer programs, incentives and projects for the

65 new city center urban renewal district. The DBP forecasts continued private investment in  
66 downtown Billings in significant amounts that could equal the past 11 years within the first 3.  
67

## 68 **Funding Requirements**

69 For FY2010, the DBP proposes an operations budget (see exhibit B) of \$158,580.00. This is a  
70 27.9% reduction from FY2009. Further, the DBP proposes expending any and all previous year  
71 carryover balances as part of their FY2010 budget. This would require TIFD participation in the  
72 amount of equal to \$98,580.00.

73

74 As part of the efficient and successful operation of a downtown information hub and alliance, the  
75 DBP operations budget includes a 1/3 participation in the overhead costs of the downtown office  
76 shared with the Downtown Business Improvement District and the Downtown Billings Association.  
77 It would be a detrimental finance burden to the BID and DBA, at this time, to absorb the costs  
78 assigned to the DBP.

79

## 80 **HISTORY AND POSITION TO DATE**

81 Since 1998 the Downtown Billings Partnership has been assisting the City of Billings with  
82 management services related to Tax Increment Financing Urban Renewal Districts.

83

## 84 **The Partnership's Activities and Services**

85 In order to continue the implementation of the Downtown Framework Plan, leverage investment of  
86 the Tax Increment Funds, and maintain an organization that will administer the activity and public  
87 sector improvements in the Downtown area beyond well beyond 2010. The DBP activities include  
88 but are not restricted to:

- 89 • Administer, manage and develop programs that will increase property values within  
90 the N. 27<sup>th</sup> St. TIFD
- 91 • Attract and locate new or relocated businesses within the N. 27<sup>th</sup> St. TIFD
- 92 • Retain and assist current business and commercial activity found with the N. 27<sup>th</sup>  
93 St. TIFD
- 94 • Support and implement the creation of new housing units within the N. 27<sup>th</sup> St.  
95 TIFD
- 96 • Support and maintain the current events and activities that take place within the  
97 TIFD and develop new regional and local events that attract conventions, tourists

98 and visitors through the implementation of the Streets and Events Kit of Parts as  
99 outlined in the Framework Plan.

100 • Work with the Parking Advisory Board and the City of Billings Parking Division to  
101 further study and implement Parking Study (2009) plans and recommendations  
102 • Assist the Business Improvement District with expansion and the development and  
103 implementation of the Business Watch program  
104 • Continue to assist the City with various current Development Agreements and  
105 Public Works projects, including the Railroad Quiet Zone  
106 • Assist GSA with the development of a new Federal Courthouse and leased office  
107 building.  
108 • Involve the City of Billings staff in the creation and implementation of Requests for  
109 Proposals for TIFD funded projects.  
110 • Work with the City of Billings to develop a project plan for the N. 27<sup>th</sup> TIFD that  
111 could include Tax Increment Financing Bonds issued by the City of Billings.  
112 • Market the programs, projects and potential investment opportunities found within  
113 the TIFD to the local, state, and regional audience and beyond.  
114 • Work with the City of Billings to begin the implementation of public infrastructure  
115 improvements required in the N. 27<sup>th</sup> St. TIFD  
116 • Continue to study traffic flow including vehicles and pedestrians  
117 • Explore alternate transportation modes and connect the new MET transfer center  
118 to City Center activities  
119 • Continue to implement and develop program applications, formats, materials and  
120 criteria that adhere to the Framework Plan, the Urban Renewal Plans of both  
121 TIFDs and practice a fair, unbiased approach that identifies and addresses any  
122 potential conflicts of interest.  
123

## 124 **Management Team and Key Personnel**

125 The DBP will continue to maintain an "Info-Hub" office at 2815 2<sup>nd</sup> Ave. North and attempt to  
126 become the "one-stop-shop" for downtown revitalization and redevelopment. In addition, the DBP  
127 will assist with the facilitation of services, activities and responsibilities of all partner organization  
128 staff members as it relates to the implementation of urban renewal plan and this Work Plan. This  
129 requires working closely with partner organizations, including the BIRD as it relates to the  
130 connections of the East Billings Urban Renewal District and the N. 27<sup>th</sup> District. In an effort to

131 maximize staffing management and potential while maintaining streamlined operations, the DBP  
132 will assist the operations of the Business Improvement District as well as the Downtown Billings  
133 Association.

134

135

## 136 **RESEARCH AND PLANNING**

137

138 The DBP continues to implement and follow the plans, timetables, and observations detailed in  
139 the following documents:

140 The Downtown Framework Plan, 1997

141 The Urban Design Sketchbook, 1998

142 The Market Potential For Housing in Downtown Billings, 2001

143 Downtown Billings Retail Market Thematic and Spatial Retail Clusters, 2002

144 Railroad Quiet Zone Study, 2005-2006

145 Downtown Billings Partnership Report of Goal Planning, 2004

146 Wayfinding Plan, 2006

147 The City Parking Study, 2009

148 The EBURD Master Plan, 2009 (as it relates to the transition from the N. 27<sup>th</sup> TIFD)

149

## 150 **Economic and Social Factors**

151 Globally, people are locating in and relocating to cities that offer the best living experiences and  
152 diverse amenities. Vibrant city centers with a neighborhood feel, mix of businesses, civic and  
153 government outlets, and cultural and entertainment adventures are a must. The demographics  
154 that comprise this "Urban Tribe" are projected to grow by over 12 Million people in the next 10  
155 years.

156

## 157 **Competitive Environment**

158 As the City of Billings continues to expand, promotion of and development within the core of the  
159 community becomes increasingly unattractive and unaffordable without projects and programs  
160 designed to "level the playing field." Projects and programs offered by the DBP in no way  
161 discourage development outside of the TIFD. Instead, they offer competitive options that will  
162 attract all levels of development. The economic impact of a valuable and productive and densely  
163 populated downtown has a multi-fold impact on the community as a whole. As downtown

164 property values rise, revenue increases to the community overall without much increase in  
165 demand for services and infrastructure. Conversely, as downtown property values decrease, the  
166 strain on a growing city budget prompted by service requirements and infrastructure demands of  
167 growth areas, are not supported. Downtown has been financially supporting our City government  
168 for 125 years and with caring management of resources, it can sustain that high level of support  
169 for another 125!

170

### 171 **Long-Term Opportunities**

172 Beyond 2010, the redevelopment of the East TIFD will provide housing, lodging, entertainment  
173 and industrial opportunities that can enhance the economic viability of the entire region and the  
174 DBP will plan to assist that continued growth. The remaining blight in the core of downtown will be  
175 tackled by the N. 27<sup>th</sup> TIFD and could, over time, double the overall taxable value of downtown  
176 again. The DBP has the opportunity to "fine-tune" a management and administration structure that  
177 will maintain the public improvements to the downtown and continue to manage the assets  
178 developed through public and private investment.

**EXHIBIT B - DBP OPERATIONS/PROJECTS BUDGET FY2010**

*Approved by DBP Board February 27, 2009*

| <b>PROPOSED N. 27TH TIFD DISTRICT FY 2010 BUDGET</b> |                      |
|------------------------------------------------------|----------------------|
| Estimated Cash Balance as of 6/30/09 - Tax Year 2008 | \$134,870.00         |
| Projected Increment - Tax Year 2009                  | \$80,000.00          |
| <b>TOTAL FUND Expenses</b>                           | <b>\$214,870.00</b>  |
| DBP Management Services                              | <b>(\$98,580.00)</b> |
| Approved FY2009 Project Encumbered                   | <b>(\$15,000.00)</b> |
| Council Approved TIFD Projects                       | <b>(\$75,000.00)</b> |
| Other Service Charges                                | <b>(\$9,000.00)</b>  |
| <b>BALANCE</b>                                       | <b>\$17,290.00</b>   |

|                                 | <b>Tax Year 2008</b> | <b>Tax Year 2009</b> |
|---------------------------------|----------------------|----------------------|
|                                 | <b>Current FY -</b>  | <b>FY 2010</b>       |
|                                 | <b>FY2009</b>        | <b>FY 2010</b>       |
| Carryover Balance               | \$80,000.00          | \$80,000.00          |
| From City - Fund 202 - Old TIFD | \$220,000.00         | \$0.00               |
| From City N. 27th TIFD Fund     | \$0.00               | \$98,580.00          |
| BIRD Management Contract        | \$0.00               | \$2,000.00           |
| <b>INCOME TOTAL</b>             | <b>\$280,000.00</b>  | <b>\$160,580.00</b>  |
| Staffing & Occupancy (Alliance) | (\$142,000.00)       | (\$130,529.00)       |
| Professional Services           | (\$30,000.00)        | (\$11,951.00)        |
| Postage                         | (\$4,000.00)         | (\$2,000.00)         |
| Annual Audit                    | (\$5,000.00)         | (\$7,000.00)         |
| D & O Liability Insurance       | (\$2,000.00)         | (\$2,100.00)         |
| Travel                          | (\$13,000.00)        | (\$5,000.00)         |
| Street Expenses                 | (\$5,000.00)         | (\$2,000.00)         |
| Severance                       | (\$19,000.00)        | \$0.00               |
| <b>Balance</b>                  | <b>\$80,000.00</b>   | <b>\$0.00</b>        |

**ATTACHMENT B**  
**“OLD” MANAGEMENT**  
**AGREEMENT**

**AGREEMENT**

This Agreement is made and entered into this 9th day of August, 2004, by and between the City of Billings, a Montana Municipal Corporation, hereinafter referred to as the "City", and the Downtown Billings Partnership, Inc., a Montana not-for-profit Corporation, hereinafter referred to as the "Partnership".

**WITNESSETH**

WHEREAS, the City has duly adopted an urban renewal plan for the Urban Renewal Area pursuant to Title 7, Chapter 15, Part 42, MCA, the Urban Renewal Plan; and,

WHEREAS, the City has duly approved the use of tax increment financing for the Urban Renewal Area pursuant to Title 7, Chapter 15, Part 42, MCA, the Tax Increment District; and,

WHEREAS, the City has approved the Downtown Billings Framework Plan, has or will amend the Urban Renewal Plan to incorporate all or a part of the Framework Plan, and is a voting member of the Partnership which was formed to oversee, coordinate and implement the Framework Plan; and,

WHEREAS, the City wishes to contract with the Partnership for the performance of certain services and tasks related to the Urban Renewal Plan and the Downtown Billings Framework Plan.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

**1. Work Plan.**

The Partnership shall perform the work plan described in Exhibit A, which is attached hereto and by this reference incorporated herein. The work plan may be amended annually as mutually agreed to by the parties.

**2. Term of Agreement.**

This Agreement is for the period July 1, 2004 through June 30, 2005. This Agreement will be extended for additional one-year periods unless terminated on the anniversary date by either party. Such termination may be with or without cause and be effective upon issuance of sixty (60) days notice that the agreement will be terminated. The terms and conditions of the Agreement may be amended annually upon the anniversary date and as mutually agreed to by the parties.

**3. Compensation.**

The City shall budget and pay to the Partnership for services rendered, as outlined in Exhibit B - "Expenditures DBP Operations". Payment shall be made from tax increment funds and shall be paid quarterly, in advance. The City shall have authority to approve the annual Operations Budget of the Partnership.

**4. Reports.**

The Partnership shall provide verbal and written progress reports to the City in September, January, April and July, of each year and will provide additional copies of the written report to School District 2 and Yellowstone County.

**5. Grants and Loans of TIF Moneys.**

The Partnership may approve grants or loans up to a cumulative total of \$49,999 per property or project that are awarded pursuant to grant or loan programs and guidelines that have been approved by the City Council.

All grants or loans for a cumulative total of \$50,000 or more recommended for approval by the DBP shall be subject to City Council approval.

All grants and loans shall be itemized in the Partnership's quarterly reports.

**6. Political Activity.**

No City Funds may be used for political purposes including support or opposition of political candidates or support or opposition of any legislative action.

**7. Project Administration.**

Any project to be funded by TIF dollars which, in the opinion of the City Administrator or designee, will become the responsibility of the City through ownership, maintenance or any other reason, shall involve the appropriate City departments beginning at the planning phase and through completion. Where practical, such projects shall be administered by the City with input and guidance from the Partnership.

The Partnership shall administer all grant, loan, incentive and funding programs in accordance with the program guidelines approved by the City Council and is authorized to execute agreements and documents in accordance with the approved program guidelines.

Subject to the monetary limits in Paragraph 6 of this Agreement, the Partnership has been approved to administer the following programs, in accordance with the applicable program guidelines, without City Council approval of each project:

*The Façade Improvement Program  
The Sign and Awning Program  
The Housing Incentive Program  
Pre-development Loan Program  
Private Parking Improvement Programs  
Technical Assistance Bank  
Streetscape Projects and the Street Kit of Parts Programs  
Event Kit of Parts  
Retail Rehab Grant  
Downtown Educational University Campus Support and Programs*

The Partnership is authorized to administer certain of the following programs, as provided in applicable program guidelines; however, City Council approval is required for program or project expenditures:

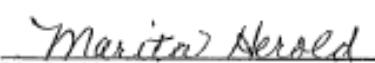
*The Revolving Loan Fund  
Large Project Gap Funding Grant Program  
Railroad Crossing and Quiet Zone Programs and Projects  
Development of a Business Improvement District  
Wayfinding and signage plans and projects  
Downtown Conference Center  
Traffic Calming and Pedestrian Enhancement*

City of Billings

  
Charles Tooley Mayor  
Attest:

Downtown Billings Partnership, Inc.

  
Rock West  
Partnership Board Member

  
Marita Herold  
City Clerk



## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, April 13, 2009**

---

**TITLE:** Management Agreement with Billings Industrial Revitalization District, Inc. for the East Billings Urban Renewal District

**DEPARTMENT:** Administration

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

---

**PROBLEM/ISSUE STATEMENT:** The Billings Industrial Revitalization District, Inc. (BIRD) is proposing an agreement with the City of Billings to manage projects in the East Billings Urban Renewal District for FY 2009-2010. The management agreement outlines the proposed work plan, compensation and reporting. Staff recommends that the City Council consider the agreement at this time so that staff may develop the preliminary FY 2010 budget accordingly.

**ALTERNATIVES ANALYZED:** Montana's Urban Renewal Act allows cities to administer urban renewal areas and tax increment districts (TID):

- by contracting with public or private agencies
- by assigning a City department to the tasks, or
- by forming an urban renewal authority

**FINANCIAL IMPACT:** The agreement will have a small financial impact. The East Billings TID has a negative increment because property values have continued declining since its creation in 2006. That may change with the new First Interstate Bank operations center that is under construction at 6<sup>th</sup> Avenue North and N. 19<sup>th</sup> Street. The BIRD has a services agreement with the Downtown Billings Partnership (DBP) to implement this proposed management agreement. To this point, BIRD has been a membership organization whose only income is from dues. DBP proposes to perform the management services for a maximum fee of \$2,000 and will collect that amount only if the district creates a positive increment.

**RECOMMENDATION**

Staff recommends that the City Council approve a FY 2009-2010 management agreement with the Billings Industrial Revitalization District, Inc. for up to \$2,000 to manage projects within the East Billings Urban Renewal Area/Tax Increment District.

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

## **INTRODUCTION**

The Billings Industrial Revitalization District, Inc. (BIRD) is proposing an agreement with the City of Billings to manage projects in the East Billings Urban Renewal District for FY 2009-2010. The management agreement outlines the proposed work plan, compensation and reporting. Staff recommends that the City Council consider the agreement at this time so that staff may develop the preliminary FY 2010 budget accordingly.

## **BACKGROUND**

The Billings City Council created the East Billings Urban Renewal Area (EBURA) on November 13, 2006. The area was created by the Council's adoption of an urban renewal plan. The plan was prepared by BIRD and that organization requested the plan's adoption. The EBURA was created with a tax increment provision, which was identified as a major source of funding for proposed public improvements in the area. The plan identified needed improvements that include water, sewer, pedestrian and vehicle transportation improvements and especially storm drainage. Once those basic infrastructure needs are met, the plan described a need for mixed use development and housing. Using a grant secured by the Big Sky Economic Development Authority, there is on-going planning for future private redevelopment.

There has been a negative increment for the two tax years since the tax increment district's (TID) creation. A negative increment is created when property values continue to decline after a TID is formed. The district taxable value declined by about \$250,000 or almost 17% from tax year 2007 to 2008.

In mid-2008 the First Interstate Bank announced that it would build a new \$13 million operations center within the EBURA. That project may generate the TID's first positive increment. A small amount of increment may be reported for tax year 2009 but most of the taxable value will be in place for tax year 2010. Taxes for that year will be collected in November 2010 and May 2011. BIRD believes that this project will be the catalyst for additional private redevelopment if the City uses a portion of the TID funds as incentives to developers. Working with prospective developers requires active district management. This proposed management agreement will provide the project and district management that BIRD desires.

## **ALTERNATIVES ANALYSIS**

According to state law, the City can manage the district itself, it may appoint the members of an urban renewal authority board or it may contract for services.

- City management: the City Council retains all spending and project approval authority. It tasks a City department with developing and managing projects. This is the model that the City used in the former downtown district until about 1990.
- Urban Renewal Authority: Billings has never operated a TID under this arrangement. Butte-Silver Bow and Missoula operate their TIDs in this way, as did Helena when it had active TIDs.
- Contract: The City may contract with a public or private agency to provide services related to urban renewal area projects. The City of Billings began contracting with the Downtown Billings Partnership for TID management in 1998. Many public and private improvement projects were completed until the district expired in 2008. The

BIRD is proposing this type of management contract and it will subcontract with the DBP or BSEDA for the day to day management services.

**RECOMMENDATION**

Staff recommends that the City Council approve a FY 2009-2010 management agreement with the Billings Industrial Revitalization District, Inc. for up to \$2,000 to manage projects within the East Billings Urban Renewal Area/Tax Increment District.

**ATTACHMENTS**

A: Management Agreement

**ATTACHMENT A**  
**BIRD Management Agreement**

**CONTRACT SERVICES AGREEMENT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Billings, a Montana Municipal Corporation, hereinafter referred to as the "City", and the Billings Industrial Revitalization District, Inc., a Montana not-for-profit Corporation, hereinafter referred to as the "BIRD".

**WITNESSETH**

WHEREAS, the City has duly adopted an urban renewal plan for the East Billings Urban Renewal Area pursuant to Title 7, Chapter 15, Part 42, MCA, the Urban Renewal Plan; and,

WHEREAS, the City has duly approved the use of tax increment financing for the Urban Renewal Area pursuant to Title 7, Chapter 15, Part 42, MCA, the Tax Increment District; and,

WHEREAS, the City has approved the Downtown Billings Framework Plan and incorporated all or a part of the Framework Plan into the Urban Renewal Plan for the Urban Renewal District, and recognizes that the BIRD was formed to advise the City on the Framework Plan and the Urban Renewal Plan; and,

WHEREAS, the City wishes to contract with the BIRD for the performance of certain services and tasks related to the Urban Renewal Plan and the Downtown Billings Framework Plan; and

WHEREAS, the BIRD has entered into a services agreement with the Downtown Billings Partnership, Inc., (**Exhibit C**) to provide staffing and office facilities for BIRD activities related to this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

**1. Work Plan.**

The BIRD shall perform the work plan described in **Exhibit A**, which is attached hereto and by this reference incorporated herein. The work plan may be amended annually as mutually agreed to by the parties.

**2. Term of Agreement.**

This Agreement is for the period between the date of this Agreement and June 30, 2010. This Agreement will automatically renew for additional one-year periods unless terminated by either party, with or without cause, upon issuance of a sixty (60) days written notice that the agreement will be terminated. The terms and conditions of the Agreement may be amended as mutually agreed to by the parties.

### **3. Compensation.**

The City shall budget and pay to the BIRD for services rendered, as outlined in **Exhibit B** – Budget. Payment shall be made from tax increment funds and shall be paid on or before June 30, 2010. Payment is subject to the availability of funds in the City EBURD account at the time payment is due. If sufficient funds are not available in the EBURD account on or before June 30, 2010, a reduced payment equal to the funds available will be accepted by the BIRD as payment in full and no amount of debt shall be carried forward by the City. The BIRD shall submit an annual budget to the City for the EBURD account. The City shall have authority to approve the annual Operations Budget of the BIRD.

### **4. Reports.**

The BIRD shall provide quarterly verbal and written progress reports to the City in September, January, April and July, of each year and will provide additional copies of the written report to School District 2 and Yellowstone County.

An Annual Report shall be provided to the City each July with information regarding the operational and financial activities of the BIRD consistent with Montana Code Annotated Section 7-15-4237.

### **5. Grants and Loans of TIF Moneys.**

The BIRD shall engage in predevelopment discussions with private development entities pursuant to the goals of the Urban Renewal Plan.

The BIRD shall facilitate development with the assistance of appropriate City staff.

The BIRD shall write and submit all Development Agreements and loans of TIF money to be presented to the City for approval by the City Council.

The BIRD shall advise the City on the implementation of approved Urban Renewal Projects, prepare verbal and written reports to the City regarding these projects and facilitate and submit appropriate payment request letters to the City.

All grants and loans shall be itemized in the BIRD's quarterly reports and Annual Report.

**6. Political Activity.**

No City Funds may be used for political purposes including support or opposition of political candidates or support or opposition of any legislative action.

**7. Project Administration.**

Any project to be funded by TIF dollars which, in the opinion of the City Administrator or designee, will become the responsibility of the City through ownership, maintenance or any other reason, shall involve the appropriate City departments beginning at the planning phase and through completion. Where practical, such projects shall be administered by the City with input and guidance from the BIRD.

The BIRD shall administer all grant, loan, incentive and funding programs in accordance with program guidelines approved by the City Council and is authorized to execute agreements and documents in accordance with the approved program guidelines.

City of Billings

Billings Industrial Revitalization District, Inc.

---

Ron Tussing, Mayor  
Attest:

BIRD Board Member

---

City Clerk



## EXHIBIT A

FY 2010

**BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC.**

**JULY 1, 2009 – JUNE 30, 2010**

### URBAN RENEWAL WORK PLAN

*East Billings Tax Increment District*



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1 **EXECUTIVE SUMMARY**

2

3 **Description of the Corporation**

4

5 Prior to the 2005 creation of the East Billings Urban Renewal District (EBURD), a group of  
6 property owners within the proposed boundaries of that district formed a Montana Non-Profit  
7 Corporation, 501 c (6), to assist the City of Billings in the creation of the district as well as the  
8 implementation of the approved Urban Renewal Plan. The corporation is active and registered  
9 with the state of Montana under the name Billings Industrial Revitalization District, Inc. (BIRD).

10 The EBURD is approximately bounded by N. 10<sup>th</sup> St., The BNSF main line railroad tracks, N. 22<sup>nd</sup>  
11 Ave and properties just north of 6<sup>th</sup> Ave. North (including all of North Park). The bylaws of the  
12 BIRD require members to be property owners within the EBURD.

13

14 **Mission Statement**

15 The mission of the BIRD, simply stated, is to revitalize east downtown Billings. Our goal requires  
16 us to serve as a liaison between the private sector and the City of Billings and other governments  
17 and organizations.

18

19 **Products and Services**

20 The BIRD, via a professional services agreement with the Downtown Billings Partnership, Inc. (a  
21 Montana 501 (c) 4 corporation), using the professional services of an existing downtown office  
22 and staff, will consult and advise the Billings City Council regarding projects and programs  
23 involving the private sector and EBURD:

24

- 25 • Implementation, advice and cooperation between all parties to approved and  
26 pending Urban Renewal Development Agreements
  - 27 • First Interstate Bank Operations Center
- 28 • Possible land assemblage for a major mixed income housing project
- 29 • Assist in development and placement of a new leased GSA office complex
- 30 • Assist in the implementation of the Master Plan for the district
- 31 • Prepare and present the Annual Report as required by MCA – the Urban Renewal  
32 Law.

33           • Market and coordinate BIRD and other property owner activities  
34           • Update and modify, as appropriate, the EBURD urban renewal plan.  
35           • Assist City staff with the district-wide infrastructure plan  
36           • Attempt to grow the district by voluntary annexation into the City (and then the  
37           EBURD) parcels that are adjacent to and/or within the EBURD district that are not  
38           included within the "City Limits."  
39

40 **Financial Forecast**

41 Currently, the BIRD, via dues collections, has about \$5000.00 in the bank. These funds are used  
42 for various membership activities and include an annual charitable contribution. The DBP is  
43 proposing that the BIRD account for 25% of its urban renewal management and implementation  
44 activities in FY 2010. (See Exhibit B – DBP Budget). The amount to be charged to the BIRD is  
45 \$50,000 for FY 2010. The BIRD will be unable to raise that amount via its normal revenue stream  
46 (dues) and keep the organization affordable and available to property owners wishing to  
47 participate.

48 The EBURD district is currently generating a "negative increment." In other words, the blight is  
49 continuing to bring down the taxable value of the district – roughly \$300,000.00 Taxable Value  
50 (about \$-20,000 in actual tax increment revenue, to date), below the base established by the  
51 Montana Department of Revenue in 2006. Through the efforts of the BIRD and the DBP, The  
52 Management Group is constructing a new operations center for First Interstate Bank (FIB) within  
53 the boundaries of the EBURD. In tax year 2009, (FY2010) the FIB project (partially complete) will  
54 generate roughly \$31,000 in actual increment. This should overcome the "negative increment" by  
55 about \$11,000. If the Development Agreement proposed by FIB to the City of Billings is  
56 approved, 45% of that increment will be returned to FIB leaving just over \$6000.00 in the EBURD  
57 dedicated account.

58 However, in FY2011, once the full taxable value of the FIB project is included, the annual  
59 increment should exceed \$100,000.00. If 45% is paid to FIB for public improvements under the  
60 Development Agreement, there should be sufficient increment funds to pay DBP for FY2010 in  
61 arrears. By fiscal year 2012, the EBURD, through active management by the BIRD, should have  
62 implemented sufficient new private development to pay for as much as 40% of the DBP urban  
63 renewal management services.

64 The DBP is willing to "carry" the balance forward via a loan from private sources until such time as  
65 the EBURD can financially bear the burden. There is no risk to the general fund of the City of  
66 Billings as the payment to the DBP is contingent upon sufficient increment in the account. If that

67 doesn't materialize, there is no "debt" to be overcome. The BIRD and the DBP will evaluate the  
68 financial viability of the management agreement annually.

69

## 70 Funding Requirements

71 For FY 2010 the DBP will dedicate 25% of its activities and time to BIRD/EBURD activities and  
72 require compensation from the BIRD, via the City of Billings EBURD fund, in the amount of  
73 \$50,000.00 to be directly to the DBP within 10 days of the receipt of sufficient tax increment funds  
74 into the EBURD fund to cover the entire expense.

75

## 76 HISTORY AND POSITION TO DATE

77 BIRD: The members of the corporation have worked hand-in-hand with Big Sky EDA, the City of  
78 Billings, and the Master Plan consultants to study, analyze and plan for the future of east  
79 downtown Billings. They have recruited new members and actively inform the property owners of  
80 the status of the EBURD as well as future plans for development.

81

82 DBP: Since 1998 the Downtown Billings Partnership has been implementing and tracking the  
83 progress of the 1978 Urban Renewal Plan, the Downtown Framework Plan and the Urban Design  
84 Sketchbook. In 2008, the DBP entered into a management agreement with the Billings Industrial  
85 Revitalization District (BIRD) to facilitate and manage their urban renewal activities and projects.  
86 In 2008, the DBP Board designated one "at-large" member of its Board to a member of the Board  
87 of Directors of the BIRD. In 2009 the DBP plans to add management of the Urban Renewal Plan  
88 of the N. 27<sup>th</sup> TIFD to the list.

89

90 The BIRD/DBP Activities

91 In order to continue the implementation of the EBURD Urban Renewal plan, including the  
92 Downtown Framework Plan and the yet to be approved "Master Plan", leverage investment of the  
93 Tax Increment Funds, and establish an up-to-date plan that will administer the solicitation and  
94 implementation of the private sector improvements in East Downtown area. The BIRD, via the  
95 DRB Development staff, will:

96

- Administer, manage and develop programs that will increase property values in the EBUD.

98

99       • Attract and locate new or relocated businesses to the EBURD.

100      • Support and implement the creation of new housing units within the EBURD as  
101        outlined in the Master Plan

102      • Support and maintain and coordinate the current events and activities that take  
103        place within the two downtown area TIFDs.

104      • Work with the Parking Advisory Board and the City of Billings Parking Division to  
105        implement the public/private parking projects noted in the Master Plan

106      • Assist in the expansion of the Business Improvement District to establish a zoned  
107        benefit area that includes the EBURD

108      • Manage and implement development agreements to allocate Tax Increment Funds  
109        to qualified and approved (by City Council) private projects

110      • Assist the City of Billings with the implementation of public infrastructure  
111        improvements to the EBURD area

112      • Involve the City of Billings staff in the creation and implementation of Requests for  
113        Proposals and TIFD funded projects.

114      • Work with the City of Billings to develop a funding plan for the East TIFD that could  
115        include Tax Increment Financing Bonds issued by the City of Billings.

116      • Market the programs, projects and potential investment opportunities found within  
117        the TIFDs to the local, state, and regional audience and beyond.

118      • Continue to study and involve the private sector in transportation plans and  
119        possible modification of streets and traffic patterns in the EBURD

120      • Continue to implement and develop program applications, formats, materials and  
121        criteria that adhere to the Framework Plan and the Urban Renewal Plan of the  
122        EBURD and practice a fair, unbiased approach that identifies and addresses any  
123        potential conflicts of interest.

124

125 **Management Team and Key Personnel**

126 The DBP will continue to maintain an "Info-Hub" office at 2815 2<sup>nd</sup> Ave. North and attempt to  
127 become the "one-stop-shop" for downtown revitalization and redevelopment. In addition, the DBP  
128 will assist with the facilitation of services, activities and responsibilities of all partner organization  
129 staff members as it relates to the implementation of urban renewal plan and this Work Plan. This  
130 requires working closely with partner organizations, including the BIRD. In an effort to maximize

131 staffing management and potential while maintaining streamlined operations, the DBP will assist  
132 the operations of the Business Improvement District as well as the Downtown Billings Association.

133 **Services**

134 The Downtown Billings Partnership and the BIRD will serve the Community of Billings through the  
135 implementation of the EBURD Urban Renewal Plan including (but not limited to) the following:

136 The creation and structure development of an potential EBURD revolving loan fund

137 Downtown Educational Programs including the Urban Institute and School District 2

138 Traffic Calming, Pedestrian Enhancement and Public Transportation

139 Exploration of Feasibility and Development Opportunities

140 East Transition Zone

141 Civic District expansion

142 Expand Business Improvement District

143 Land Assemblage

144 EBURD expansion through voluntary City annexation

145 Additional Green Space development

146 Continue Grant writing and explore alternative funding options

147 Marketing of Urban Renewal, BID activities, events, and downtown as a destination

148 Utilization of Resources

149 City Council

150 Billings Industrial Revitalization District, Inc.

151 City of Billings Staff

152 Yellowstone County

153 Big Sky EDA

154 The Billings Area Chamber of Commerce

155 Downtown BID and Property Owners

156 DBA and Downtown (core and east) Merchants and Businesses

157 Downtown Workers and Adjacent Neighborhoods

158 Downtown Faith Leaders

159

160

161 **RESEARCH AND PLANNING**

162

163 The DBP/BIRD continues to implement and follow the plans, timetables, and observations  
164 detailed in the following documents (as they relate to EBURD):  
165       The Downtown Framework Plan, 1997  
166       The Market Potential For Housing in Downtown Billings, 2001  
167       Downtown Billings Retail Market Thematic and Spatial Retail Clusters, 2002  
168       Wayfinding Plan, 2006  
169       The "EBURD Master Plan", 2009  
170

### 171 **Economic and Social Factors**

172 Globally, people are locating in and relocating to cities that offer the best living experiences and  
173 diverse amenities. Vibrant city centers with a neighborhood feel, mix of businesses, civic and  
174 government outlets, and cultural and entertainment adventures are a must. The demographics  
175 that comprise this "Urban Tribe" are projected to grow by over 12 Million people in the next 10  
176 years. Further, redevelopment of centrally located industrial, residential and commercial areas  
177 are of prime importance and consistent with national trends. As the economy tightens and  
178 "greenfield" development with chain stores and life-style malls becomes less attractive, centrally  
179 located districts attracting local and regional development will grow and prosper.  
180

### 181 **Competitive Environment**

182 As the City of Billings continues to expand, promotion of and development within the core and  
183 east downtown area of the community becomes increasingly unattractive and unaffordable  
184 without projects and programs designed to "level the playing field." Projects and programs  
185 offered by the DBP/BIRD in no way discourage development outside of the TIFDs. Instead, they  
186 offer competitive options that will attract all levels of development. The economic impact of a  
187 valuable and productive and densely populated downtown has a multi-fold impact on the  
188 community as a whole. As downtown property values rise, revenue increases to the community  
189 overall without much increase in demand for services and infrastructure. Conversely, as  
190 downtown property values decrease, the strain on a growing city budget prompted by service  
191 requirements and infrastructure demands of growth areas, are not supported. Downtown has  
192 been financially supporting our City government for 125 years and with caring management of  
193 resources, it can sustain that high level of support for another 125!  
194

195 **Long-Term Opportunities**

196 The DBA facilitated and coordinated with the assistance and cooperation of the City of Billings  
197 over \$50 Million of private investment since 1998. It is not out of the realm of possibility to  
198 duplicate that amount within two years of TIFD management in the EBURD and the N. 27<sup>th</sup> Street  
199 District. In fact, the potential exceeds over \$100 Million within the lifetime of the two districts.  
200

EXHIBIT B

EBURD Projects/BIRD Operations FY 2010

Approved by BIRD Board March 16, 2009

| EBURD Tax Year                     | 2009            |
|------------------------------------|-----------------|
| Current Base Value of FIB Property | (\$654,819.00)  |
| New Real Property (FIB Partial)    | \$ 2,400,000.00 |
| DOR Growth Value                   | \$1,745,181.00  |
| Exempt at 15%                      | \$ 1,483,403.85 |
| Current NEGATIVE Taxable Value*    | \$ (312,837.00) |
| New Taxable Value                  | \$ 133,887.58   |
| Mill Levy (estimated)              | 0.06100         |
|                                    | Annual          |
| Tax (Real Property)                | \$ 8,153.72     |

| PROPOSED E.B.U.R.D. FY 2010 BUDGET                   |              |
|------------------------------------------------------|--------------|
| Estimated Cash Balance as of 6/30/09 - Tax Year 2008 | \$0.00       |
| Projected Increment - Tax Year 2009                  | \$ 8,153.72  |
| TOTAL FUND                                           | \$8,153.72   |
| Expenses                                             |              |
| BIRD Management Services                             | (\$2,000.00) |
| Council Approved TIFD Projects                       | (\$3,800.00) |
| Other Service Charges                                | (\$2,000.00) |
| BALANCE                                              | \$553.72     |

\*Based upon a NEGATIVE increment DOR Report

|                           | Tax Year 2009 | FY 2010        |
|---------------------------|---------------|----------------|
| Carryover Balance         | \$5,000.00    |                |
| Dues Revenue              | \$2,000.00    |                |
| From City EBURD Fund      | \$2,000.00    |                |
| INCOME TOTAL              | \$9,000.00    |                |
| Contract Payment to DBP   | (\$2,000.00)  |                |
| Goods and Services        | (\$3,000.00)  |                |
| Postage                   | (\$1,000.00)  |                |
| D & O Liability Insurance | (\$3,000.00)  |                |
|                           |               | Balance \$0.00 |

EXHIBIT C

MANAGEMENT SERVICES AGREEMENT

This Agreement is entered into as of the 16th day of March, 2009, between The Billings Industrial Revitalization District, Inc. ("the Company") and The Downtown Billings Partnership, Inc. ("the Contractor").

- 1. Independent Contractor.** Subject to the terms and conditions of this Agreement, the Company hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement.
- 2. Duties, Term, and Compensation.** The Contractor's duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in the annual workplan and budget approved for the East Urban Renewal District by the City of Billings (Exhibit A), which may be amended in writing from time to time, or supplemented with subsequent estimates for services to be rendered by the Contractor and agreed to by the Company, and which collectively are hereby incorporated by reference.
- 3. Expenses.** During the term of this Agreement, the Contractor shall bill and the Company shall reimburse all reasonable and approved out-of-pocket expenses which are incurred in connection with the performance of the duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor in traveling to and from Company facilities shall not be reimbursable.
- 4. Written Reports.** The Company may request that project plans, progress reports and a final results report be provided by Contractor on a quarterly basis. A final results report shall be due at the conclusion of the project and shall be submitted to the Company in a confidential written report at such time. The results report shall be in such form and setting forth such information and data as is reasonably requested by the Company.
- 5. Inventions.** Any and all inventions, discoveries, developments and innovations conceived by the Contractor during this engagement relative to the duties under this Agreement shall be the exclusive property of the Company; and the Contractor hereby assigns all right, title, and interest in the same to the Company. Any and all inventions, discoveries, developments and innovations conceived by the Contractor prior to the term of this Agreement and utilized by [him or her] in rendering duties to the Company are hereby licensed to the Company for use in its operations and for an infinite duration. This license is non-exclusive, and may be assigned without the Contractor's prior written approval by the Company to a wholly-owned subsidiary of the Company.
- 6. Confidentiality.** The Contractor acknowledges that during the engagement Contractor will have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by the Company and/or used by the Company in connection with the operation of its business including, without limitation, the Company's business and product processes, methods, customer lists, accounts and procedures. The Contractor agrees that Contractor will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of this engagement with the Company. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to the business of the Company, whether prepared by the Contractor or otherwise coming into Contractor's possession, shall remain the exclusive property of the Company. The Contractor shall not retain any copies of the foregoing without the Company's prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the Company, the Contractor shall immediately deliver to the Company all such files, records, documents, specifications, information, and other items in Contractor's possession or under Contractor's control. The Company agrees that Contractor may

disclose Contractor retention as an independent contractor or the terms of this Agreement to any person without the prior written consent of the Company and acknowledges that Contractor operates under the corporate structure guidelines of a 501(C)3 using, in part, public funds and in the public interest.

**7. Conflicts of Interest; Non-hire Provision.** The Contractor represents that Contractor is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. Further, the Contractor, in rendering Contractor's duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which Contractor does not have a proprietary interest. During the term of this agreement, the Contractor shall devote as much of Contractor's productive time, energy and abilities to the performance of Contractor's duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the Company. For a period of six months following any termination, the Contractor shall not, directly or indirectly hire, solicit, or encourage to leave the Company's employment, any employee, consultant, or contractor of the Company or hire any such employee, consultant, or contractor who has left the Company's employment or contractual engagement within one year of such employment or engagement.

**8. Right to Injunction.** The parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Company under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement will cause the Company irreparable injury and damage. The Contractor expressly agrees that the Company shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Company may have for damages or otherwise. The various rights and remedies of the Company under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law.

**9. Merger.** This Agreement shall not be terminated by the merger or consolidation of the Company into or with any other entity.

**10. Termination.** Either the Company and/or the Contractor may terminate this Agreement at any time by 60 working days' written notice to the other party. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of the Company, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, the Company at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.

**11. Independent Contractor.** This Agreement shall not render the Contractor an employee, partner, agent of, or joint venturer with the Company for any purpose. The Contractor is and will remain an independent contractor in Contractor's relationship to the Company. The Company shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**12. Insurance.** The Contractor will carry liability insurance relative to any service that Contractor performs for the Company.

**13. Successors and Assigns.** All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and

assigns.

**14. Choice of Law.** The laws of the state of Montana shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

**15. Arbitration.** Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in Montana in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof.

**16. Headings.** Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

**17. Waiver.** Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

**18. Assignment.** The Contractor shall not assign any of Contractor's rights under this Agreement, or delegate the performance of any of Contractor's duties hereunder, without the prior written consent of the Company.

**19. Notices.** Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

*If to the Contractor:*

Greg A. Krueger, Executive Director  
Downtown Billings  
2815 2<sup>nd</sup> Ave. N.  
Billings, MT 59101

*If to the Company:*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

**20. Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

**21. Entire Understanding.** This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

**22. Unenforceability of Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

Billings Industrial Revitalization District, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_ [title or position]

Downtown Billings Partnership, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_ [title or position]

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**EXHIBIT A – ATTACH BIRD AGREEMENT, BUDGET AND WORKPLAN FOR  
THE EBURD**