

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

June 8, 2009

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Brewster

ROLL CALL

MINUTES – May 26, 2009

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 7a, 7b, and 7c 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) General Aviation Taxi Lane Rehabilitation (Opened 5/26/09)
(Delay of Award 5/26/09) Recommend Knife River-Billings; \$1,004,237.10.

B. Declaring surplus property and authorizing the City Clerk to release older-model, non-working HP Color LaserJet 4550 Printer to Automated Office Systems to be used for parts in exchange for the \$45 service call fee.

C. (1) Approval of Unified Planning Work Program Amendment to fund Alternative Modes Coordinator Services and **recommendation** of the amendment to the PCC on 6/9/09.

(2) Contract with Active Transportation Alternatives, LLC, for alternative modes coordinator services; 6/9/09 – 9/30/09; not to exceed \$5,667 per month (pro-rated in June 2009).

D. Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency (Emergency) Response Network for the State of Montana and **designation** of the City Administrator as the Authorized Official under the agreement.

E. Vehicle Lease Agreement with Underriner Motors for use by the Montana Internet Crimes Against Children (ICAC) Task Force Coordinator/Forensic Examiner; 6/1/09 - 5/31/2010; \$4,500 total, budgeted through ICAC Continuation Grant.

F. Vehicle Lease Agreement with Underriner Motors for six vehicles for the City County Special Investigation Unit (CCSIU); 7/1/09 - 6/30/2010; \$28,800 total, budgeted through FY 2010 Drug Forfeiture Fund.

G. Amendment #8, Engineering Services for Airport Improvement Program (AIP 37) Taxiway East Rehabilitation Project funded with American Recovery and Reinvestment Act Funds; Morrison Maierle, Inc., \$187,126.

H. Acceptance of Federal Aviation Administration Airport Improvement Program (AIP) Grant 37 funded with American Recovery and Reinvestment Act Funds to be used for the Taxiway "A" East End Rehabilitation Project, \$1,134,559.

I. Supplemental Amendment #5, W.O. 02-10, 6th Avenue North to Bench Boulevard, Phase 1, Professional Architectural and Engineering Services Contract; Morrison-Maierle, Inc., \$597,921.

J. Amendment #7, W.O. 04-12, Alkali Creek Road Slope Stability, Professional Services Contract; Kadrmas, Lee & Jackson, Inc., \$197,424.

K. Proposed Fee Increase for Mountview Cemetery.

L. Street Closures:

(1) Reporter Big Sky Office Relay for Life Car & Motorcycle Show; North 14th Street between 1st and 2nd Avenues North, 9:00 a.m. to 3:00 p.m., 6/20/09.

(2) Billings Clinic's Classic Street Party; N. Broadway between 3rd and 4th Avenues N. from midnight, August 28, 2009, through 5:00 p.m., August 30, 2009; the N. 27th/28th alley between 3rd and 4th Avenues North from 9:00 p.m., August 28, 2009, through 5:00 a.m., August 30, 2009; and N. 28th/29th alley between 3rd and 4th Avenues North from 6:00 a.m., August 29, 2009, through 2:00 a.m., August 30, 2009.

(3) **Chase Hawks Association Burn the Point Parade and Street Dance**, September 4, 2009 – Parade: standard downtown parade route, 7:00 p.m.;

Street Dance: North 28th Street from 1st Avenue North to 2nd Avenue North, 4:30 p.m. until 1:00 a.m.

M. Resolution of Intent to create Special Improvement Lighting Maintenance District 307: Shiloh Road from Rimrock Road to Pierce Parkway; and setting a public hearing date for July 13, 2009. (Original Resolution of Intent to Create #09-18813 was passed on 5/11/09 and rescinded with Resolution #09-18818 on 5/26/09.)

N. Final Plat of Whitetail Square Subdivision.

O. Bills and Payroll

- (1) May 8, 2009
- (2) May 15, 2009

REGULAR AGENDA:

2. **PUBLIC HEARING ON ENERGY EFFICIENCY & CONSERVATION BLOCK GRANT APPLICATION AND ENERGY EFFICIENCY & CONSERVATION STRATEGY.** Action scheduled for 6/22/09 City Council Meeting.
3. **PUBLIC HEARING AND RESOLUTION FOR LIMITS OF ANNEXATION MAP AMENDMENTS.** Annexation Committee recommends approval. (**Action:** approval or disapproval of Annexation Committee recommendation.)
4. **PUBLIC HEARING AND RESOLUTION** creating SID 1387: Zimmerman Trail Subdivision Sanitary Sewer Improvements. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
5. **PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC-09-01:** A variance from Section 1208(h)(5) allowing one additional curb cut onto Frontier Drive from Lot 2, Block 1, of Riverfront Pointe Subdivision. Dan Marsich, property owner/developer; Sanderson Stewart, agent. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
6. **PUBLIC HEARING AND RESOLUTION** vacating a portion of Zimmerman Trail abutting Lot 5, Scott Subdivision, for a value of \$4,176.26. James and Jenica Bunker, petitioners. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)
7. (a) **RESOLUTION** approving a revised and restated Interlocal Agreement for Montana Municipal Insurance Authority Membership. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

(b) **RESOLUTION** approving and adopting the Montana Municipal Interlocal Authority Amended and Restated Liability Coverage Program Agreement. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

(c) **RESOLUTION** approving and adopting the Montana Municipal Interlocal Authority Amended and Restated Workers' Compensation Coverage Program Agreement. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

8. **PUBLIC HEARING AND RESOLUTION** assessing residential/commercial collection, disposal, and landfill fees for Fiscal Years 2010, 2011, and 2012. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

9. **PUBLIC HEARING AND RESOLUTION** setting FY2010 mill levy rates for General, Transit, Library, and Public Safety I. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

10. **PUBLIC HEARING AND RESOLUTIONS** setting annual FY 2010 assessments for Park Maintenance Districts; Light Maintenance Districts; Fire Hydrant Maintenance; Street Maintenance; Storm Sewer; Arterial Construction; Business Improvement District; and Tourism Business Improvement District. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

11. **PUBLIC HEARING AND RESOLUTION** approving and adopting the FY 2010 Budget. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.)

12. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

Council Initiatives

ADJOURN

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

Visit our Web site at:
<http://ci.billings.mt.us>



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: Award of Airport Improvement Program (AIP) Project for General Aviation Taxi Lane Rehabilitation and an Alternative to Repave City Owned Ramps

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: One of the Airport's FY 2009 approved Capital Improvement Program projects is the General Aviation Taxi Lane Rehabilitation. This work will be funded 95% with Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant funds, and 5% local capital funds. This project will resurface taxi lanes in the Fixed Base Operator (FBO) area near Gates 14, 15, and 16, and at the west end General Aviation Hangar and Executive Hangar areas.

Additionally, an alternative bid schedule was included for the repaving of the City owned ramp areas adjacent to the taxi lanes being resurfaced in the Executive Hangar area. This bid schedule was included to take advantage of the potentially favorable pricing that the Airport could receive for this work since the contractor will already be in this area to perform the taxi lane work. In addition, staff believes that while oil prices are still down, compared to the previous year's prices, it may be an opportune time to do the additional paving needed for these 20 plus year old ramps. While this alternative schedule of work is not part of this year's AIP grant program, it would be eligible for reimbursement in future years at 95%. The Airport has sufficient funds available for this work in the Airport's Capital Fund.

The project was advertised in the *Billings Times* for two weeks, and was on the City's Web Site. On May 26, 2009, the following bids for the project were received and the City Council postponed award to the June 8, 2009 City Council meeting:

<u>CONTRACTOR</u>	<u>BID (including alternative)</u>
Knife River-Billings	\$1,004,237.10
Riverside Sand & Gravel, Inc.	\$1,143,053.80
ESTIMATE	\$1,432,120.80

ALTERNATIVES ANALYZED:

The low bidder included an alternative bid amount of \$150,615 for the repaving of the City owned ramps. The Engineer's estimate for this work was \$202,493.50 and staff believes this is a very good bid for this work. While this work is eligible for FAA AIP grant funding, this year's

Grant cannot accommodate this work, but the City can seek to be reimbursed at 95% in a future grant. Subsequently, the City Council must determine the following:

- Take advantage of the favorable alternative bid and accept the work for the repaving of the City owned ramps and seek FAA AIP grant reimbursement at 95% in a future grant.
- Do not accept the alternative bid of \$150,615 to repave the City owned ramps and only accept and proceed with the taxi lane work being funded at 95% in this year's AIP Grant and with a 5% local match.

FINANCIAL IMPACT: The AIP portion of the Taxi Lane Rehabilitation project cost will be \$853,622.10 and will be funded at 95% through this year's FAA AIP Grant with a 5% local share match. The FAA AIP Grant portion will be \$810,941 and the local match is \$42,681.10, which is budgeted in the Airport's Capital Fund. Additionally, the alternative project for the pavement rehabilitation of the City owned ramps was bid at \$150,615 and would be funded with available dollars in the Airport's Capital Fund and reimbursed at 95% in a future AIP grant.

RECOMMENDATION

Staff recommends that the City Council approve the award of the General Aviation Taxi Lane Rehabilitation and Repaving of City Owned Ramps to the low bidder Knife River-Billings for the amount of \$1,004,237.10.

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

**ITEM:**

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Declaring Hewlett-Packard Color LaserJet 4550 Printer as Surplus Property

DEPARTMENT: Administration

PRESENTED BY: Tina Volek, City Administrator
Cari Martin, City Clerk

PROBLEM/ISSUE STATEMENT: In 2001, the City Clerk purchased a Hewlett-Packard Color LaserJet 4550 Printer. The printer recently required service, and Automated Office Systems, a local authorized Hewlett-Packard service center, provided a repair estimate of \$500. The current value of an identical, refurbished printer is \$150. Automated Office Systems has offered to take the older-model printer to use for parts in exchange for their \$45 service call fee. Because repair of the printer far exceeds its value, it is requested that the City Council declare the printer as surplus property and authorize the City Clerk to release the printer to Automated Office Systems to use for parts. The unrepainted printer could be held in storage until the city's annual auction in the fall. If the printer does not sell at the auction, it will be disposed of in the Billings landfill.

ALTERNATIVES ANALYZED:

- Approve the exchange of the unrepainted printer for the \$45 service call fee; or
- Disapprove the exchange and hold the unrepainted printer for the City's annual auction, with likely disposal in the Billings landfill.

FINANCIAL IMPACT: There is no financial impact to the City other than the savings of the \$45 service call fee.

RECOMMENDATION

Staff recommends that Council declare the printer as surplus property and authorize the City Clerk to release the printer to Automated Office Systems to use for parts in exchange for the \$45 service call fee.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: Recommendation to Policy Coordinating Committee for 2009 Unified Planning Work Program Amendment to Fund the Contract for Alternative Modes Coordinator Services

DEPARTMENT: Planning & Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The 2009 Unified Planning Work Program (UPWP) needs to be amended by the Policy Coordinating Committee (PCC) due to a change in funding for the Alternative Modes Coordinator contract position. The Alternative Modes Coordinator staff position was cut on March 31st, 2009, due to budget limitations in the Planning Division. The Division has had extensive discussions with the Montana Department of Transportation (MDT) to fund a non-employee, contract position, to provide Alternative Modes Coordinator services. The contract has been approved by MDT and includes Federal and local funds to complete the contract services. The contract is for about four months initially to align with the Federal Fiscal Year and when the Planning Division will be preparing a UPWP for the 2010 Federal Fiscal Year that starts in October 2009. The Division anticipates the contract will be extended for one year for Alternative Modes Coordinator services in line with the approved 2010 UPWP.

ALTERNATIVES ANALYZED: Approve the 2009 UPWP amendments to align with the proposed contract and secure 75% of the contract cost from federal funding to maintain non-motorized transportation planning services for the Billings community. Deny the 2009 UPWP amendments and prevent the contract from moving forward, thereby severely limiting the non-motorized transportation planning services provided for the Billings community.

FINANCIAL IMPACT: The Alternative Modes Coordinator Services contract is being funded from the current 2009 UPWP. The breakdown of funding includes \$13,885 in PL funds (Federal) and \$4,750 in local match. The Planning Division will pay 100% of the local match spread between FY2009 and FY2010.

RECOMMENDATION

Staff recommends that the City Council approve the 2009 UPWP amendment to fund the Alternative Modes Coordinator Services and direct the Council Representative to PCC to take the recommendation to the PCC meeting on June 8, 2009. The approval of this amendment will

allow the contract to begin following City Council approval of the contract at this meeting and PCC approval of the 2009 UPWP amendment on June 9, 2009.

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

ATTACHMENT

A. Summary of 2009 UPWP amendments

ATTACHMENT A

The amendments to the 2009 UPWP will affect four of the Work Elements in the Work Program. The changes are described by Work Element below and referenced by page number to the 2009 UPWP:

Work Element 100 - PROGRAM SUPPORT & ADMINISTRATION

Page 5: Staffing - footnote to indicate change in city/county staff months to Alternate Modes consultant.

Page 6: Funding Limitation - Alternate Modes consultant - \$5,590.88 = \$3,074.98 Federal (PL) / \$2,515.89 Planning Division (Local)

Work Element 102 – CITIZEN INVOLVEMENT

Page 9: Staffing - footnote to indicate change in city/county staff months to consultant.

Page 10: Funding Limitation - Alternate Modes consultant \$1,863.63 = \$931.81 PL / \$931.81 Local

Work Element 200 – COMMUNITY PLANNING

Page 12: Staffing - footnote to indicate change in city/county staff months to consultant.

Page 13: Funding Limitation-Alternate Modes consultant \$1,863.63 = \$559.09 PL / \$1,304.54 Local

Work Element 300 – TRANSPORTATION SYSTEM DATA

Page 18: Staffing - footnote to indicate change in city/county staff months to consultant.

Page 19: Funding Limitation \$9,318.13 = \$9,318.13 PL / \$0 Local

Page 31: Table IV: Adjust Bike/Ped. staff time to only reflect Sept.-March 31 rather than the whole year.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: Contract for Alternative Modes Coordinator Services
DEPARTMENT: Planning & Community Services Department
PRESENTED BY: Scott Walker, Transportation Planner

PROBLEM/ISSUE STATEMENT: The Planning Division on behalf of the RFP Selection Committee for the Alternative Modes Coordinator Services contract is presenting to the Council the Committee recommendation to enter a contract with Active Transportation Alternatives, LLC for Alternative Modes Coordinator Services. The Alternative Modes Coordinator staff position was cut on March 31st, 2009, due to budget limitations in the Planning Division. The Division has had extensive discussions with the Montana Department of Transportation (MDT) and the Federal Highway Administration (FHA) to fund a non-employee, contract position, to provide Alternative Modes Coordinator services. The contract attached has been approved by MDT and FHA and includes Federal and local funds to complete the contract services. The contract is for about four months initially to align with the Federal Fiscal Year and when the Planning Division will be preparing a Unified Planning Work Program (UPWP) for the 2010 Federal Fiscal Year that starts in October 2009. The Division anticipates that with the 2010 UPWP approval the contract will be extended for one year for Alternative Modes Coordinator services in line with the 2010 UPWP.

ALTERNATIVES ANALYZED:

- Approve the contract to have non-motorized transportation planning services continue to be provided for the Billings community.
- Deny the contract and cease or severely limit the non-motorized transportation planning services provided for the Billings community.

FINANCIAL IMPACT: This contract is being funded from the current 2009 Unified Planning Work Program (UPWP). The breakdown of funding includes \$13,885 in PL funds (Federal) and \$4,750 in local match. The Planning Division will pay 100% of the local match spread between FY2009 and FY2010 using Planning Division Revenue.

RECOMMENDATION

The RFP Selection Committee for the Alternative Modes Coordinator Services recommends that the City Council approve and sign the contract for Alternative Modes Coordinator Services with Active Transportation Alternatives, LLC.

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

ATTACHMENT

- A. Alternative Modes Coordinator Services Contract

SERVICES AGREEMENT

FOR

Alternative Modes Coordinator

THIS AGREEMENT made and entered into on June 9, 2009, by and between the following:

CITY OF BILLINGS, a Municipal Corporation,
Billings, Montana 59103,
hereinafter designated the **CITY**

and

Active Transportation Alternatives, LLC

Billings, MT 59106
hereinafter designated the **CONSULTANT**

WITNESSETH:

WHEREAS, the **CITY** proposes to contract for Alternative Modes Coordinator Services and desires that the **CONSULTANT** furnish the **CITY** certain services as described herein;

WHEREAS, the **CITY** has authority to contract for such services, and;

WHEREAS, the **CONSULTANT** represents that she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to provisions of such services;

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

1. **SCOPE OF CONSULTANT'S SERVICES:** The scope of the work (Attachment A) shall include: Services for Alternate Modes Coordinator.
2. **CONTRACT TIME:** This Agreement shall be for a period beginning June 9th and running to September 30, 2009.
3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this Agreement, the **CITY** agrees to pay **CONSULTANT** a price not to exceed \$5,667/Month (pro-rated in June 2009).

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the **CONSULTANT** will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

4. INSURANCE

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

5. AGREEMENTS OF CONSULTANT: As an inducement to the execution of this Agreement by the CITY and in consideration of the agreements to be performed by the CITY, the CONSULTANT agrees that:

A. Qualifications

The CONSULTANT is qualified to perform the services to be furnished under this Agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The CONSULTANT has not employed any person to solicit this Agreement and has not made, and will not make, any payment or any Agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this Agreement.

C. Facilities and Personnel

The CONSULTANT has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this Agreement shall be subcontracted without the prior approval of the CITY.

E. Affidavits of Compliance

The CONSULTANT will, if requested by the CITY, furnish the CITY affidavits certifying compliance with the provisions of this Section 4.

6. **AGREEMENT OF CITY:** To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the City of Billings' portion of the project as designated in the scope of work.

Name a Project Manager who shall be the liaison between the Consultant and the City of Billings. For this project, the Project Manager for **CONSULTANT** designated is Darlene Tussing and the Project Manager for **CITY** designated is Scott Walker, Transportation Planner.

7. **NONDISCRIMINATION**

A. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The **CONSULTANT** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to Work on Agreement jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.

D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this Agreement.

E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

8. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the **CONSULTANT** under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this Agreement.

9. **NONWAIVER:** The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the

validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

- 10. DECLARATION OF NO FINANCIAL INTEREST:** The **CONSULTANT** hereby declares that he does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Section 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this Agreement, any person having any such interest. Until the property is acquired by the **CITY** or excluded from its project by resolution of its governing body, the **CONSULTANT** and any employees of the **CONSULTANT**, so long as they are employed by the **CONSULTANT**, will not acquire any such interests and will not, for their own account or for other than the **CITY**, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
- 11. SUCCESSORS AND ASSIGNS:** This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **CONSULTANT** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.
- 12. CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this Agreement for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to the Agreement will be issued with the appropriate change of services and Agreement fee noted.
- 13. LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
- 14. TERMINATION OF AGREEMENT:** The right is reserved by mutual agreement that either party (The **CITY** or **CONSULTANT**) can terminate this Agreement at any time upon not less than thirty (30) days written notice to the other party.

In the event the **CITY** terminates this Agreement, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the Agreement fee.
- 15. ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
- 16. OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of the Agreement, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request.
- 17. PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**.
- 18. PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.

19. RECORDS: The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the Agreement term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.

20. ATTORNEY'S FEES AND COSTS: That in the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.

21. LITIGATION LOCATION: The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the contract or the performance of its terms.

22. MODIFICATION AND AMENDMENTS: That any amendment or modification of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

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

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

CONSULTANT

CITY OF BILLINGS, MONTANA

NAME: _____

BY: _____

BY: _____

Ron Tussing, Mayor

TITLE: _____

BY: _____

Brent Brooks, City Attorney

ATTACHMENT A

Scope of Work

Monthly Responsibilities

- Implement the City of Billings and Yellowstone County Heritage Trail Plan
- Work with a team of multimodal planners, engineers, and volunteer groups to continue development of a bike/pedestrian friendly community
- Conduct public presentations
- Maintain bicycle/pedestrian database of trail locations in conjunction with City GIS staff
- Participate in implementation of Billings Area Transportation Plan
- Participate in the subdivision review process as it pertains to the Heritage Trail Plan
- Participate on a variety of boards and commissions, including providing administrative support to the City of Billings and Yellowstone County Bicycle and Pedestrian Advisory Committee
- Investigate problems and complaints along the trail system; conduct field inspections of areas of the trail corridor and individual properties
- Provide monthly reports due by the last working day of each month

Ongoing Responsibilities

- Review and coordinate responses to citizen requests for projects
- Research availability of grants, prepare or oversee grant applications, and administer grants for various city or county Heritage Trail Plan improvements
- Attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of bike/ped planning
- Prepare graphics, narratives, and other presentations of survey data
- Develop partnerships with community organizations and other agencies (such as the medical and health community, the schools, MET Transit, museums, law enforcement) to sponsor bicycle and pedestrian programs
- Participate in negotiations of sensitive and significant non-motorized planning issues, including location of trail rights-of-way and easements
- Secure and maintain data relative to various phases of the Heritage Trail Plan, including information about securing land or easement arrangements for the trail system
- Represent the Heritage Trail Plan to other City and County departments, city and county elected officials, and outside agencies and organizations
- Coordinate Heritage Trail Plan implementation with other departments and outside agencies and organizations
- Coordinate surveys, outreach, education and training activities
- Promote cycling and pedestrian activities

Special Responsibilities

- Organize multi-media campaigns and educational programs for special events including preparing press releases, newspaper articles, power-point presentations and photographs for publications

- Prepare surveys and technical studies of community needs, resources, population statistics and trends, as they relate to the Heritage Trail Plan
- Provide testimony or documentation on non-motorized planning activities, when directed, to state and federal legislators; represent the City of Billings and Yellowstone County on Heritage Trail Plan issues, as well as, provide a communication link with the public through e-mail, newsletters or other communication links

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network for the State of Montana (MTWARN)

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: There exists a state-wide body (MTWARN) whose function is to provide the framework and ongoing coordination for the voluntary emergency response among water/wastewater utility members. This agreement will provide the framework for a disaster/emergency response both from within the state and between states. Staff believes it is beneficial for the City to participate and recommends that the Council approve the subject agreement.

ALTERNATIVES ANALYZED: Staff has identified the following alternatives:

- Approve agreement – approving the agreement will enable the City to be eligible to receive and offer mutual aid as well as be eligible for federal disaster funding for water/wastewater.
- Disapprove agreement – not approving the agreement may limit the City's availability of mutual aid. In addition, the availability of federal disaster funding for water/wastewater will be limited or eliminated.

FINANCIAL IMPACT: There is no immediate financial impact as a result of this agreement.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network for the State of Montana (MTWARN) and to designate the City Administrator as the Authorized Official under the agreement.

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

ATTACHMENTS

Attachment A – Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network for the State of Montana (MTWARN)
Attachment B – MTWARN “Utilities Helping Utilities” Brochure

INTRODUCTION

There exists a state-wide body (MTWARN) whose function is to provide the framework and ongoing coordination for the voluntary emergency response among water/wastewater utility members. This agreement will provide the framework for a disaster/emergency response both from within the state and between states. Staff believes it is beneficial for the City to participate and recommends that the Council approve the subject agreement and designate the City Administrator as the Authorized Official under the agreement.

BACKGROUND

Significant disaster events over the last few years, such as 9/11, the Red River flooding, and Hurricanes Katrina and Rita, identified a need for water and wastewater utilities to create more mutual aid programs and agreements. MTWARN is such a program. The program provides the framework, procedures and member contacts to enable members to help members in the time of such disaster events. Participation is voluntary with no obligation to respond to a request for aid. However, federal disaster aid funding may be limited or eliminated for any organization that is not a party to available mutual aid agreements. The agreement provides for cost reimbursement to responders by the respondents in the event members do help each other. In addition, the system puts in place the framework necessary to allow out of state entities to respond to needs within Montana. For example, Denver would not respond to an incident within Montana without this system and agreement in place.

Since this system is just being formalized by the various entities, we don't know who all will participate but we expect the larger communities within Montana will. We don't know the number of incidents that may occur; however, we hope and expect, given the general nature and significance of these types of incidents that the occurrences are infrequent. Because of the nature of these incidents, the potential costs are hard to predict; however, respondents are responsible for reimbursing responder costs. The attached brochure (Attachment B) provides more detail on the program.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network for the State of Montana (MTWARN) and to designate the City Administrator as the Authorized Official under the agreement.

ATTACHMENTS

Attachment A – Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network for the State of Montana (MTWARN)

Attachment B – MTWARN “Utilities Helping Utilities” Brochure

ATTACHMENT A

**Mutual Aid and Assistance Agreement for Intrastate
Water/Wastewater Agency Response Network for the State
Of Montana (MTWARN)**

AGREEMENT

This Agreement is made and entered into by public and private Water and Wastewater Utilities that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance.

Statutory Authority – This Agreement is authorized under State law including but not limited to Title 7, Chapter 11, Part 1 of Montana Code Annotated which allows utilities to cooperate with other utilities and Title 10, Chapter 3, Part 9 of Montana Code Annotated which establishes an intrastate mutual aid system.

ARTICLE I. PURPOSE

Recognizing that emergencies may require aid or assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities hereby establish an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance Program, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Intrastate Mutual Aid and Assistance Program.

ARTICLE II. DEFINITIONS

- A. Authorized Official – An employee or officer of a Member utility that is authorized to:
 1. Request assistance;
 2. Offer assistance;
 3. Refuse to offer assistance or
 4. Withdraw assistance under this agreement.
- B. Emergency – A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, threats to public health and safety, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate internally.
- C. Members – Members of MTWARN shall be as defined below:
 1. Utility Member – Any Water or Wastewater Utility be it a municipal corporation, quasi-municipal corporation, department or agency of a municipal corporation, department or agency of a quasi-municipal corporation, service district, political subdivision or private utility company that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement. Utility Members may be Public, Private or Tribal entities.

1 2. Associate Member – An organization, municipal corporation, quasi-municipal
2 corporation, agency, or private group that is not a water or wastewater system, but
3 provides services to the water and wastewater industry be it advise, service, donation
4 grant, or support to the MTWARN efforts that do not officially sign this agreement.
5 Organizations wishing to become Associate Members shall petition to the Chairman and
6 be approved by majority vote of the Committee.
7
8 3. Requesting Member – A Member who requests aid or assistance under the Mutual Aid
9 and Assistance Program.
10
11 4. Responding Member – A Member that responds to a request for aid or assistance under
12 the Mutual Aid and Assistance Program.
13
14 5. Non-Responding Member - A Member or Associate Member that does not provide aid or
15 assistance during a Period of Assistance under the Mutual Aid and Assistance Program.
16
17 D. Confidential Information - Any document considered under State law to be eligible for
18 confidential status, shared with any signatory of this Agreement that is marked confidential,
19 including but not limited to any map, report, notes, papers, opinion, or e-mail which relates
20 to the system vulnerabilities of a Member or Associate Member. It is recognized by
21 signatories of this agreement that State law does not generally allow these types of
22 documents to be considered confidential if they are owned by a public agency. See
23 "Sensitive information".
24
25 E. Period of Assistance – A specified period of time when a Responding Member assists a
26 Requesting Member. The period commences when personnel, equipment, or supplies
27 depart from Responding Member's facility and ends when the resources return to their
28 facility (portal to portal). All protections identified in the agreement apply during this period.
29 The specified Period of Assistance may occur during response to or recovery from an
30 emergency, as previously defined.
31
32 F. National Incident Management System (NIMS): A national, standardized approach to
33 incident management and response that sets uniform processes and procedures for
34 emergency response operations.
35
36 G. Sensitive Information – Any document not considered under State law to be eligible for
37 confidential status, shared with any signatory of this Agreeemnt that is marked sensitive,
38 including but not limited to any map, report, notes, papers, opinion, or e-mail which relates
39 to the system vulnerabilities of a Member or Associate Member.
40

41 **ARTICLE III.**
42 **ADMINISTRATION**

43
44 The Mutual Aid and Assistance Program shall be administered through a Statewide Committee.
45 The Committee, under the leadership of an elected Chairperson, shall meet at least annually to
46 address Mutual Aid and Assistance Program issues. The Committee shall also meet at least
47 annually to review emergency preparedness and response procedures. In addition to
48 representing the interests of the Members, the Committee may include representatives from MT
49 Department of Environmental Quality, Montana Section American Water Works Association,
50 Montana Rural Water Systems, Montana Water Environment Association, Midwest Assistance
51 Program, Montana Association of Water and Sewer Systems and similar organizations as

1 outlined in the MTWARN Bylaws. Under the leadership of the Chair, the Committee members
2 shall plan and coordinate emergency planning and response activities for the Mutual Aid and
3 Assistance Program.

4

5 **ARTICLE IV.**
6 **PROCEDURES**

7

8 In coordination with emergency management and public health system of the state, the
9 Committee shall develop operational and planning procedures for the Mutual Aid and
10 Assistance Program. These procedures shall be reviewed at least annually and updated as
11 needed.

12

13 **ARTICLE V.**
14 **REQUESTS FOR ASSISTANCE**

15

16 A. Member Responsibility: Members shall identify an Authorized Official and alternates;
17 provide contact information including 24-hour access and maintain resource information that
18 may be available from the utility for mutual aid and assistance response. Such contact
19 information shall be updated annually or when changes occur and provided to the
20 Committee.

21

22 In the event of an Emergency, a Member's Authorized Official may request mutual aid and
23 assistance from a participating Member. Requests for assistance can be made orally or in
24 writing. When made orally, the request for personnel, equipment, and supplies shall be
25 prepared in writing as soon as practicable. Requests for assistance shall be directed to the
26 Authorized Official of the participating Member. Specific protocols for requesting aid shall
27 be provided in the required procedures (Article IV).

28

29 B. Response to a Request for Assistance – Members are not obligated to respond to a request.
30 After a Member receives a request for assistance, the Authorized Official evaluates whether
31 to respond, whether resources are available to respond, or if other circumstances would
32 hinder response. Following the evaluation, the Authorized Official shall inform, as soon as
33 possible, the Requesting Member whether it will respond. If the Member is willing and able
34 to provide assistance, the Member shall inform the Requesting Member about the type of
35 available resources and the approximate arrival time of such assistance.

36

37 C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does
38 not create any duty to respond to a request for assistance. When a Member receives a
39 request for assistance, the Authorized Official shall have sole and absolute discretion as to
40 whether to respond, or the availability of resources to be used in such response. An
41 Authorized Member's decisions on the availability of resources shall be final and under no
42 circumstances constitute grounds for any claim of any nature against a Member.

43

44 **ARTICLE VI.**
45 **RESPONDING MEMBER PERSONNEL**

46

47 A. National Incident Management System - When providing assistance under this Agreement,
48 the Requesting Member and Responding Member shall be organized and shall function
49 under the National Incident Management System.

1 B. Control - While employees so provided may be under the supervision of the Responding
2 Member, the Responding Member's employees come under the direction and control of the
3 Requesting Member, consistent with the NIMS Incident Command System to address the
4 needs identified by the Requesting Member. The Requesting Member's Authorized Official
5 shall coordinate response activities with the designated supervisor(s) of the Responding
6 Member(s). The Responding Member's designated supervisor(s) must keep accurate
7 records of work performed by personnel during the specified Period of Assistance.
8

9 C. Food and Shelter – Whenever practical, Responding Member personnel must be self
10 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
11 reasonable food and shelter for Responding Member personnel. If the Requesting Member
12 is unable to provide food and shelter for Responding personnel, the Responding Member's
13 designated supervisor is authorized to secure the resources necessary to meet the needs of
14 its personnel. Except as provided below, the cost for such resources must not exceed the
15 State per diem rates for that area. To the extent Food and Shelter costs exceed the State
16 per diem rates for the area, the Responding Member must demonstrate that the additional
17 costs were reasonable and necessary under the circumstances. Unless otherwise agreed
18 to in writing, the Requesting Member remains responsible for reimbursing the Responding
19 Member for all reasonable and necessary costs associated with providing food and shelter,
20 if such resources are not provided.
21

22 D. Communication – The Requesting Member shall provide Responding Member personnel
23 with radio equipment as available, or radio frequency information to program existing radio,
24 in order to facilitate communications with local responders and utility personnel.
25

26 E. Status - Unless otherwise provided by law, the Responding Member's officers and
27 employees retain the same privileges, immunities, rights, duties and benefits as provided in
28 their respective jurisdictions.
29

30 F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
31 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
32 shall be allowed to carry out activities and tasks relevant and related to their respective
33 credentials during the specified Period of Assistance.
34

35 G. Right to Withdraw - The Responding Member's Authorized Official retains the right to
36 withdraw some or all of its resources at any time for any reason in the Responding
37 Member's sole and absolute discretion and exercise of such right shall under no
38 circumstances constitute grounds for any claim against a Responding Member or its
39 Authorized Official. Notice of intention to withdraw must be communicated to the
40 Requesting Member's Authorized Official as soon as is practicable under the circumstances.
41

42

43

44

ARTICLE VII. **COST- REIMBURSEMENT**

45 The Requesting Member shall reimburse the Responding Member for each of the following
46 categories of costs incurred during the specified Period of Assistance as agreed in whole or in
47 part by both parties; provided, that any Responding Member may assume in whole or in part
48 such loss, damage, expense, or other cost, or may loan such equipment or donate such
49 services to the Requesting Member without charge or cost.
50

1 A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
2 personnel costs incurred for work performed during the specified Period of Assistance.
3 Responding Member personnel costs shall be calculated according to the terms provided in
4 their employment contracts or other conditions of employment. The Responding Member's
5 designated supervisor(s) must keep accurate records of work performed by personnel
6 during the specified Period of Assistance. Requesting Member reimbursement to the
7 Responding Member must consider all personnel costs, including salaries or hourly wages,
8 costs for fringe benefits, and indirect costs.
9

10 B. Equipment – The Requesting Member shall reimburse the Responding Member for the use
11 of equipment during the specified Period of Assistance, including, but not limited to,
12 reasonable rental rates, all fuel, lubrication, maintenance, transportation, and
13 loading/unloading of loaned equipment. All equipment shall be returned to the Responding
14 Member in good working order as soon as is practicable and reasonable under the
15 circumstances. At a minimum, rates for equipment use must be based on the Federal
16 Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding
17 Member uses rates different from those in the FEMA Schedule of Equipment Rates, the
18 Responding Member must provide such rates orally or in writing to the Requesting Member
19 prior to supplying the equipment. Mutual agreement on which rates are used must be
20 reached in writing prior to dispatch of the equipment. Reimbursement for equipment not
21 referenced on the FEMA Schedule of Equipment Rates must be developed based on actual
22 recovery of costs. If Responding Member must lease a piece of equipment while its
23 equipment is being repaired, Requesting Member shall reimburse Responding Member for
24 such rental costs.
25

26 C. Materials and Supplies – The Requesting Member must reimburse the Responding Member
27 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
28 returnable supplies. The Responding Member must not charge direct fees or rental charges
29 to the Requesting Member for other supplies and reusable items that are returned to the
30 Responding Member in a clean, damage-free condition. Reusable supplies that are
31 returned to the Responding Member with damage must be treated as expendable supplies
32 for purposes of cost reimbursement.
33

34 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting
35 Member for all expenses incurred by the Responding Member while providing assistance
36 under this Agreement. The Responding Member must send the itemized bill not later than
37 (90) ninety days following the end of the Period of Assistance. The Responding Member
38 may request additional periods of time within which to submit the itemized bill, and
39 Requesting Member shall not unreasonably withhold consent to such request. The
40 Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following
41 the billing date. The Requesting Member may request additional periods of time within
42 which to pay the itemized bill, and Responding Member shall not unreasonably withhold
43 consent to such request, provided, however, that all payment shall occur not later than one-
44 year after the date a final itemized bill is submitted to the Requesting Member.
45

46 E. Records - Each Responding Member and its duly authorized representatives shall have
47 access to a Requesting Member's books, documents, notes, reports, papers and records
48 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of
49 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member
50 and its duly authorized representatives shall have access to a Responding Member's books,
51 documents, notes, reports, papers and records which are directly pertinent to this

1 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,
2 maintenance or regulatory audit. Such records shall be maintained for at least three (3)
3 years or longer where required by law.

ARTICLE VIII. DISPUTES

8 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
9 but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to
10 resolve the dispute by negotiation, followed by mediation and finally shall be settled by
11 arbitration in accordance with the Rules of the American Arbitration Association. Any court of
12 competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that
13 is binding on the parties.

ARTICLE IX.
REQUESTING MEMBER'S DUTY TO INDEMNIFY

18 A. For Public Entities: Immunity from liability under this agreement shall be as set forth in Title
19 10, Chapter 3, Parts 1 and 9 of Montana Code Annotated.
20

21 B. For Private Entities: The Requesting Member shall assume the defense of, fully indemnify
22 and hold harmless, the Responding Member, its officers and employees, from all claims,
23 loss, damage, injury and liability of every kind, nature and description, directly or indirectly
24 arising from Responding Member's work, inaction and/or withdrawal of work or resources
25 during a specified Period of Assistance. The scope of the Requesting Member's duty to
26 indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful
27 or withheld use of equipment or supplies on loan to the Requesting Member, or faulty
28 workmanship or other negligent acts, errors or omissions by Responding Member or the
29 Responding Member personnel. The Requesting Member's duty to indemnify is subject to,
30 and shall be applied consistent with, the conditions set forth in Article X.
31

32 C. For Tribal Entities: A federally recognized Indian tribe located within the boundaries of the
33 state may participate in this agreement as allowed in Title 10, Chapter 3, Part 9 of Montana
34 Code Annotated. In this case, immunity from liability under this agreement shall be as set
35 forth in Title 10, Chapter 3, Parts 1 and 9 of Montana Code Annotated.

ARTICLE X.
SIGNATORY INDEMNIFICATION

41 A. For Public Entities: This Article shall not apply.

42

43 B. For Private Entities: In the event of a liability, claim, demand, action, or proceeding of
44 whatever kind or nature arising out of a specified Period of Assistance, the Members who
45 receive assistance shall have a duty to defend, indemnify, save and hold harmless all Non-
46 Responding Members, their officers, agents and employees from any liability, claim,
47 demand, action, or proceeding of whatever kind or nature, including legal fees, arising out of
48 a Period of Assistance to the extent provided by law.

49

50 C. For Tribal Entities: Signatory indemnification shall be in accordance with the laws of the
51 State of Montana.

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ARTICLE XI.
WORKER'S COMPENSATION CLAIMS

5 The Responding Member is responsible for providing worker's compensation benefits and
6 administering worker's compensation for its employees. The Requesting Member is responsible
7 for providing worker's compensation benefits and administering worker's compensation for its
8 employees.

9

ARTICLE XII.
NOTICE

10 A Member who becomes aware of a claim or suit that in any way, directly or indirectly,
11 contingently or otherwise, affects or might affect other Members of this Agreement shall provide
12 prompt and timely notice to the Members who may be affected by the suit or claim. Each
13 Member reserves the right to participate in the defense of such claims or suits as necessary to
14 protect its own interests.

15

ARTICLE XIII.
INSURANCE

16 Members of this Agreement shall maintain an insurance policy or maintain a self insurance
17 program that covers activities that it may undertake by virtue of membership in the Mutual Aid
18 and Assistance Program.

19

ARTICLE XIV.
SENSITIVE AND CONFIDENTIAL INFORMATION

20 To the extent provided by law, any Member or Associate Member shall maintain in the strictest
21 confidence and shall take all reasonable steps necessary to prevent the disclosure of any
22 Confidential Information or Sensitive Information disclosed under this Agreement. If any
23 Member, Associate Member, third party or other entity requests or demands, by subpoena or
24 otherwise, that a Member or Associate Member disclose any Confidential Information disclosed
25 under this Agreement, the Member or Associate Member shall immediately notify the owner of
26 the Confidential Information and shall take all reasonable steps necessary to prevent the
27 disclosure of any Confidential Information by asserting all applicable rights and privileges with
28 respect to such information and shall cooperate fully in any judicial or administrative proceeding
29 relating thereto. Confidential Information and Sensitive Information shall not be copied or
30 distributed without permission of the owner and the original shall be returned to the owner and
31 copies returned or destroyed after they are no longer needed to provide assistance.

32

ARTICLE XV.
EFFECTIVE DATE

33 This Agreement shall be effective after the Water and Wastewater Utility's authorized
34 representative executes the Agreement and the Committee Chair receives the Agreement. The
35 Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance
36 Program.

37

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2
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ARTICLE XVI.
WITHDRAWAL

4 A Member may withdraw from this Agreement by providing written notice of its intent to
5 withdraw to the Committee Chair. Withdrawal takes effect 60 days after the appropriate officials
6 receive notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's
7 duty to reimburse a Responding Member for cost incurred during a Period of Assistance or a
8 Requesting Member's duty to indemnify a Responding Member as herein provided, which duties
9 shall survive such withdrawal.

10
11
12
13
ARTICLE XVII.
MODIFICATION

14 No provision of this Agreement may be modified, altered or rescinded by individual parties to the
15 Agreement. Modifications to this Agreement may be due to programmatic operational changes
16 to support the agreement, legislative action, creation of an interstate aid and assistance
17 agreement, or other developments. Modifications require a simple majority vote of Members.
18 The Committee Chair must provide written notice to all Members of approved modifications to
19 this Agreement. Approved modifications take effect 60 days after the date upon which notice is
20 sent to the Members.

21
22
23
24
ARTICLE XVIII.
SEVERABILITY

25 The parties agree that if any term or provision of this Agreement is declared by a court of
26 competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms
27 and provisions shall not be affected, and the rights and obligations of the parties shall be
28 construed and enforced as if the Agreement did not contain the particular term or provision held
29 to be invalid.

30
31
32
33
ARTICLE XIX.
PRIOR AGREEMENTS

34 This Agreement supersedes all prior Agreements between Members to the extent that such
35 prior Agreements are inconsistent with this Agreement.

36
37
38
39
ARTICLE XX.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

40 This Agreement is for the sole benefit of the Members and no person or entity must have any
41 rights under this Agreement as a third party beneficiary. Assignments of benefits and
42 delegations of duties created by this Agreement are prohibited and must be without effect.

43
44
45
46
ARTICLE XXI.
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

47 To the extent practicable, Members of this Agreement shall participate in Mutual Aid and
48 Assistance activities conducted under the State of Montana Intrastate Mutual Aid System and
49 the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily
50 agree to participate in an interstate Mutual Aid and Assistance Program for water and
51 wastewater utilities through this Agreement if such a Program were established.

1
2 Now, therefore, in consideration of the covenants and obligations set forth in this Agreement,
3 the Water and Wastewater Utility listed here manifests its intent to be a Member of the Intrastate
4 Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this
5 Agreement on this _____ day of _____ 20____.

6
7 Water/Wastewater Utility: _____

8
9 By: _____

By: _____

10 Title: _____

Title _____

11
12 Please Print Name

Please Print Name

13
14 Please Print Name

Please Print Name

15
16 Approved as to form and legality

17
18
19

20 By: _____
21 Attorney for Utility

22
23
24

25 Please Print Name

26
27 Accepted by MTWARN

28 By: _____

29 Title: Chairperson

30 Date: _____

ATTACHMENT B

Utilities

Helping

Utilities



April 2009



Utilities helping Utilities

Water and Wastewater Agency Response
respond to and recover from emergencies.

The purpose of a MT WARN is to provide a method whereby water/wastewater utilities that have sustained or anticipate damages from natural or human-caused incidents can provide and receive emergency aid and assistance in the form of personnel, equipment, materials, and other associated services as necessary from other water/wastewater utilities.

The MT WARN Framework provides Montana's Water and Wastewater Utilities a forum for establishing and maintaining emergency contacts

The objective of this network is to provide rapid, short-term deployment of emergency services to restore the critical operations of the affected water/wastewater utility. The backbone of the WARN concept is the Mutual Aid and Assistance Agreement. It is in the Mutual Aid and Assistance Agreement where provisions for network activation, reimbursement, liability and other issues are mutually agreed upon by participating utilities.

The objective of this network is to provide rapid, short-term deployment of emergency services to restore the critical operations of the affected water/wastewater utility. The backbone of the WARN concept is the Mutual Aid and Assistance Agreement. It is in the Mutual Aid and Assistance Agreement where provisions for network activation, reimbursement, liability and other issues are mutually agreed upon by participating utilities.

- large events impact regional areas, making response from adjacent utilities impractical;
- disasters impact utility employees and their families creating greater need for relief;
- agreements must be established and in place for federal reimbursement eligibility; and
- engagement in mutual aid/assistance supports Department of Homeland Security requirements for compliance with the National Incident Management System (NIMS).

Participation is voluntary; there is no obligation to respond, and there is no direct cost to become a

member of the network. Events such as 9/11, the 1994 Northridge earthquake, the 1997 Red River flood, and more recently Hurricanes Katrina and Rita have helped identify a need for water and wastewater utilities to create more intricate mutual aid and assistance programs because:

- utilities require specialized resources to sustain operations;
- government response agencies and other critical infrastructure rely on water supplies;
- utilities must provide their own support in the immediate aftermath of an incident as state and federal resources will not likely be available or

- Step 1: Go to the MT WARN website: <http://www.MTWARN.org> (available mid-summer 09), or skip Step 2 and contact MT WARN directly.
- Step 2: Click on the Join MT WARN button and complete the requested information.

Is my community required to join MT WARN?
NO – MT WARN is a voluntary program. You join to help your community and help other communities.

What if my community cannot respond during a disaster?

Signing the mutual aid agreement does not obligate your organization to provide emergency assistance to any organization during any emergency. Each request for assistance is separate and independent from all others.

MTWAPN contacts:

MT. WARN
c/o Nancy Bruner of MSAWWA
885 Berland Loop
Conrad MT 59425

Phone: (406) 627-2478 • Cell: (406) 450-9878
Fax: (406) 271-2331

WWW.MTWARN.ORG
(available mid-summer 2009)

OR CALL for a packet of information.

Utilities Helping Utilities

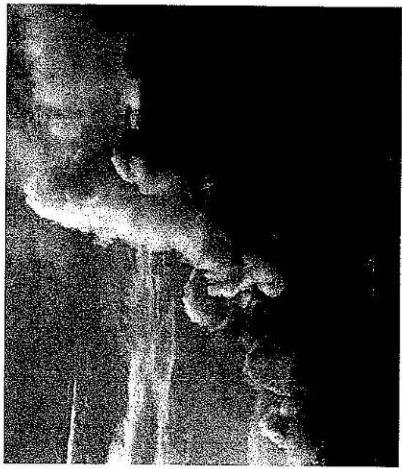


Benefits of a Statewide WARN Program

- Creates one uniform statewide mutual aid program for all Water and Wastewater utilities.
- Facilitates coordinated regional emergency responses.
- Effectively utilizes resources (manpower and equipment).
- Provides access to statewide and regional experts from a variety of local organizations.
- Expedited responses because mutual aid agreements are signed in advance of a disaster.
- Facilitates federal reimbursements if disaster funds become available (mutual aid agreements are required to receive federal funds).
- Reassures your public through the continuity of vital service during emergencies.

Special Thanks to our Leadership Group:

City of Great Falls
City of Bozeman
City of Billings
City of Havre
City of Kalispell
Hill County Water District
Wolfe Water Management Inc.
Mountain Water Company
MT Dept. Environmental Quality
MT Rural Water Systems
MT Section American Water Works Association
MT Water Environment Association
MT Association of Water & Sewer Systems
Midwest Assistance
HDR Engineering, Inc.
MT Water & Wastewater Critical Infrastructure Committee
MT Disaster and Emergency Services
US Environmental Protection Agency



MT WARN can provide rapid, short-term deployment of emergency services and equipment to assist water/wastewater utilities in recovering from:

Natural Disasters

Tornadoes, high winds, floods, snow and ice storms, wildfire, lightning & thunder storms, regional electrical outages, pandemics, etc.

Manmade Disasters

Significant accidents, vandalism, hazardous materials release, riots, or terrorist attacks.



April 2009



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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

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

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: The City has been awarded an Internet Crimes Against Children (ICAC) Continuation Grant in the amount of \$200,000, which will provide monies to Montana affiliate task forces for overtime, equipment, training, supplies, vehicle lease, and phone services. The lease vehicle will be for the use of the Montana ICAC Task Force Coordinator/Forensic Examiner. Underriner Motors has agreed to a lease agreement which will run from June 1, 2009, thru May 31, 2010. City Council is being asked to approve this vehicle lease agreement in the amount of \$4,500 for the Montana ICAC Task Force Coordinator/Forensic Examiner.

FINANCIAL IMPACT: The cost of leasing this vehicle will be \$4,500 (\$375 per month), and the dollars are budgeted in the grant.

RECOMMENDATION

Staff recommends Council approval of the attached lease agreement between Underriner Motors and the City of Billings to lease one (1) vehicle for the Internet Crimes Against Children Task Force from June 1, 2009, through May 31, 2010, in the amount of \$4,500.

Approved By: City Administrator City Attorney

ATTACHMENT

A - Lease Agreement with Underriner Motors – 5 pages

AUTOMOBILE LEASE AGREEMENT

This AGREEMENT made June 8, 2009, by and between **UNDERRINGER MOTORS** with its principal place of business at 523 North 29th Street, Billings, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of one (1) vehicle for the Internet Crimes Against Children (ICAC) Task Force.

The terms of this agreement is for a period of 12 months from June 1, 2009, through May 31, 2010, with the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of THREE HUNDRED SEVENTY FIVE DOLLARS (\$375.00) per vehicle for a total of FOUR THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$4,500.00).

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

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

4) **INSURANCE:**

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

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

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

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

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

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

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

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

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

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

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby releases and agrees to indemnify the LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by applicable insurance as otherwise herein provided. However, Lessee does not release and indemnify LESSOR for any negligent act or omission of LESSOR arising from this lease.

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

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

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

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

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

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

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

event any legal proceedings shall be instituted by LESSOR against LESSEE to recover any sums due or to become due hereunder and/or for the repossession of the vehicle(s) leased hereunder, LESSEE shall pay to LESSOR reasonable attorneys' fees and costs of repossession.

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

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

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

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

LESSEE:

CITY OF BILLINGS

BY _____
RON TUSSING, MAYOR

LESSOR:

UNDERRINER MOTORS

BY _____
BILL UNDERRINER
ITS: OWNER

ATTEST BY:

CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

SUBJECT: Vehicle Lease Agreement with Underriner Motors for City County Special Investigations Unit (CCSIU)

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: For many years the Billings Police Department has had officers operating in an undercover capacity. The work entails the use of unmarked cars that are unique from standard detective vehicles. Because undercover officers and their equipment are routinely exposed to the criminal element, it is necessary to rotate equipment. Rotating cars is an essential aspect of undercover operations. The reason for frequent rotation of cars is to ensure the safety of the undercover officer and to prevent the operation from being compromised. Major car dealers in the City have been contacted for bids on these vehicles. Underriner Motors is the only dealer interested in leasing vehicles to the City for special operations purposes. Staff recommends Council approval of the attached agreement between Underriner Motors and the City of Billings to lease six (6) vehicles for the City contingent of the City County Special Investigations Unit (CCSIU) from July 1, 2009, to June 30, 2010, in the amount of \$28,800.

FINANCIAL IMPACT: The cost of leasing 6 vehicles will be \$28,800 (\$400 per vehicle per month) and the dollars have been budgeted in the drug forfeiture fund for FY 10. This is an increase of \$25 per vehicle over last year's agreement.

RECOMMENDATION

Staff recommends Council approval of the attached agreement between Underriner Motors and the City of Billings to lease six (6) vehicles for the City contingent of the City County Special Investigations Unit (CCSIU) from July 1, 2009, to June 30, 2010, in the amount of \$28,800.

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

ATTACHMENT

A - Lease Agreement with Underriner Motors – 5 pages

AUTOMOBILE LEASE AGREEMENT

This AGREEMENT made June 8, 2009, by and between **UNDERRINER MOTORS** with its principal place of business at 523 North 29th Street, Billings, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE DEPARTMENT**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of six (6) vehicles.

The terms of this agreement is for a period of 12 months from July 1, 2009, to June 30, 2010, subject to the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of FOUR HUNDRED DOLLARS (\$400.00) per vehicle (6 vehicles) for a total of TWENTY EIGHT THOUSAND EIGHT HUNDRED DOLLARS (\$28,800.00), paid on an annual basis.

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

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

4) **INSURANCE:**

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

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

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

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

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

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

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

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

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

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

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

14) **OWNERSHIP:** It is expressly understood and agreed that this Agreement is a contract for leasing only, and that the LESSEE acquires no ownership, title, or property right or

interest in, of, or to the said motor vehicle(s) and equipment, but acquires only the right to use the vehicle(s) in accordance with the provision of this lease. Any accessories installed on said vehicle(s) by the LESSEE may be removed upon expiration of this lease. If such removal shall, in the opinion of the LESSOR, cause damage to said vehicle(s), the LESSEE agrees to pay the Lessor for such damage.

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

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

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

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

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

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

due or to become due hereunder and/or for the repossession of the vehicle(s) leased hereunder, LESSEE shall pay to LESSOR reasonable attorneys' fees and costs of repossession.

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

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

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

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

LESSEE:

CITY OF BILLINGS

BY _____
RON TUSSING, MAYOR

LESSOR:

UNDERRINER MOTORS

BY _____
BILL UNDERRINER, OWNER

ATTEST BY:

CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: Approval of Amendment Eight with Morrison and Maierle, Inc., for Engineering Services for Airport Improvement Program (AIP) 37 Taxiway "A" East Rehabilitation Project Funded with American Recovery and Reinvestment Act (ARRA) Funds

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide the design surveys for the project, development of projects plans, specifications and bidding documents, contract administration, to include coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, construction surveys, and development and submittal of the final project closeout documents, as required for this ARRA funded project. The base five-year contract is amended each time a new project is undertaken, and Amendment #8 for the amount of \$187,126 includes all of the services indicated above for the Taxiway "A" East Rehabilitation Project. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff and have also been approved by the FAA. This project includes the replacement of the asphalt pavement surface on the east end of Taxiway "A" and the removal of an adjacent hillside which poses an obstruction to large aircraft movements. This Amendment will produce an estimated \$1,100,000 worth of construction.

FINANCIAL IMPACT: The total cost of Amendment #8 to the five year engineering contract with Morrison-Maierle, Inc. is \$187,126, and will be funded 100% with an American Recovery and Reinvestment Act Grant administered through the Federal Aviation Administration (FAA) Airport Improvement Program (AIP).

RECOMMENDATION

Staff recommends that the City Council approve Amendment #8 in the amount of \$187,126 for the engineering services required for the AIP 37 Taxiway "A" East Rehabilitation Project funded with American Recovery and Reinvestment Act funds.

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 8, 2009**

TITLE: Acceptance of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant 37 Funded with American Recovery and Reinvestment Act (ARRA) Funds

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant 37 is being funded with American Recovery and Reinvestment Act (ARRA) funds. Staff is requesting the City Council's approval and authorization for the Mayor to execute AIP Grant 37. Economic stimulus funds authorized for airports in the ARRA are being administered through the FAA similar to AIP discretionary funds. AIP Grant 37 contains ARRA funding that will be used to undertake the approved, shovel ready project of Rehabilitating the East End of Taxiway "A." The ARRA funding in AIP Grant 37 will cover 100% of the project costs. As required by the FAA, the Grant offer amount is determined based on the actual amounts of the awarded engineering contract for this project, and the bid amount of the construction costs for the Airport's Taxiway "A" East End Rehabilitation project. The engineering Amendment #8 for this work is for \$187,126 and the bid amount for the construction work was \$947,432.55. The combined amounts are rounded to the nearest dollar resulting in a Grant amount of \$1,134,559. Once the Grant is awarded to the City of Billings, the contractor will be given a 30-day notice to begin construction. The City Council previously approved moving this project into this year's capital program, with a budget amendment on April 27, 2009.

FINANCIAL IMPACT: The total amount of the Grant will be \$1,134,559 to complete the ARRA funded Rehabilitation of the East End of Taxiway "A" project. This AIP 37 Grant is funded 100% with ARRA funds.

RECOMMENDATION

Staff recommends that the City Council approve the acceptance of AIP Grant 37 funded with American Recovery and Reinvestment Act funds and authorize the Mayor to execute the Grant offer from the FAA.

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



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: Work Order 02-10-P1 – 6th Avenue North to Bench Boulevard Phase 1
DEPARTMENT: Public Works Department – Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: On February 10, 2003, Morrison-Maierle, Inc. and the City of Billings entered into a contract to provide engineering services for the 6th Avenue North to Bench Boulevard project. After four contract amendments, the project has progressed to a preliminary design stage (Alignment & Grade plans were submitted for the Montana Department of Transportation's review in August, 2006). Due to financial restraints, it was determined to continue the project as designed in two separate phases. The first phase is construction of a bridge across Alkali Creek, extension of Bench Boulevard from the north connection to existing Bench Boulevard improvements, and the final connections through the MetraPark complex. This phase includes an at-grade intersection at the 6th Avenue North/Main Street intersection. In order to progress with design on this project, the City Council must authorize the Mayor to amend the original contract to include final design services for Phase 1 of the project.

ALTERNATIVES ANALYZED:

- Authorize the Mayor to sign the agreement
- Do not authorize the Mayor to sign the agreement

FINANCIAL IMPACT: The design fee for Phase 1 of the 6th Avenue North to Bench Boulevard project totals \$597,921.00.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Supplemental Amendment Number 5 to Contract for Professional Architectural and Engineering Services for the 6th Avenue North to Bench Boulevard project.

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

ATTACHMENTS

A. Supplemental Amendment No. 5 (4 Pages)

INTRODUCTION

On February 10, 2003, Morrison-Maierle, Inc. and the City of Billings entered into a contract to provide engineering services for the 6th Avenue North to Bench Boulevard project. After four contract amendments, the project has progressed to a preliminary design stage (Alignment & Grade plans were submitted for the Montana Department of Transportation's review in August, 2006). Due to financial restraints, it was determined to continue the project as designed in two separate phases. The first phase is construction of a bridge across Alkali Creek, extension of Bench Boulevard from the north connection to existing Bench Boulevard improvements, and the final connections through the MetraPark complex. This phase includes an at-grade intersection at the 6th Avenue North/Main Street intersection. In order to progress with design on this project, the City Council must authorize the Mayor to amend the original contract to include final design services for Phase 1 of the project.

PROCEDURAL HISTORY

- February 10, 2003 – Original contract for engineering services signed with Morrison-Maierle, Inc.
- May 2003 – Original contract amended to include costs associated with Subsurface Utility Engineering and air quality assessments.
- July 2005 – Original contract amended to include analyses of additional alternatives, such as, ramp configurations, grade separations, roundabouts, and traffic control alternatives for the 6th Avenue North/Main Street intersection.
- May 2006 – Original contract amended to include a new Alignment Review package to incorporate design changes to bring the project's scope and impact back to original expectations.
- June 2009 – Original contract amended to complete design of the Phase 1 alternative (this memo)

ALTERNATIVES ANALYSIS

If the Council does not authorize the Mayor to sign the Supplemental Amendment No. 5, the 6th Avenue North to Bench Boulevard connection will not be able to progress.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign the Supplemental Amendment No. 5.

ATTACHMENTS

A. Supplemental Amendment No. 5 (4 Pages)

SUPPLEMENTAL AMENDMENT NO. 5

TO

**CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND
ENGINEERING SERVICES**

CITY OF BILLINGS WORK ORDER #02-10

FOR

CM 1099(32), 6th Avenue North to Bench Boulevard, CN 4553

THIS AGREEMENT made and entered into on _____, 2009, by and between the following:

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

and

Morrison-Maierle, Inc.
315 N. 25th Street
Suite 102
Billings, MT 59101
Hereinafter designated the CONSULTANT

WITNESSETH:

WHEREAS, the CITY and CONSULTANT have entered into a contract dated February 10, 2003, for CONSULTANT to provide engineering services to CITY for design engineering of certain improvements for the project referenced above; and

WHEREAS, the contract was modified by Supplemental Amendment #1 in May 2003 to account for costs associated with Subsurface Utility Engineering and air quality assessment; and

WHEREAS, the contract was modified by Supplemental Amendment #2 in July 2005 to account for costs related to evaluation of numerous alternatives for the referenced project, including but not limited to various ramp configurations, grade separations, roundabouts, and a number of traffic control alternatives; and

WHEREAS, the contract was modified by Supplemental Amendment #3 in July 2005 to account for costs related to a detailed operational review of roundabout options for the project, evaluation of Main Street / 6th Avenue North intersection options, including but not limited to an

at-grade intersection, modified diamond, and single point urban interchange, and consideration of re-alignments of 4th Avenue North, west of Main Street; and

WHEREAS, the contract was modified by Supplemental Amendment #4 in May 2006 to develop a new Alignment Review package incorporating changes to certain project features / modifications in an effort to bring the project's scope and impact back in-line with original expectations; and

WHEREAS, the CITY has requested additional engineering services for a detailed design for the 6th Ave. N to Bench Blvd - Billings, Phase 1 project. Activities shown in Attachment A are activities followed in the Montana Department of Transportation's Consultant Design Project Activities and Duration.

WHEREAS, the costs and expenses of these additional engineering services are identified on Attachment A, dated May 28, 2009; and

WHEREAS, the CONSULTANT represents that he is qualified to perform such services, is in compliance with the Montana Statutes relating to the registration of professional engineers, and is willing to furnish such services to the CITY; and

WHEREAS, the CITY has the authority to contract for consulting engineering services.

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

1. This amendment updates the Time for Performance. Modify Part I, Section 3. Time for Performance, Subpart C.

From:

This contract shall terminate at midnight on April 1, 2004.

To:

This contract shall terminate at midnight on March 31, 2011.

2. This amendment updates the indirect cost rate in the Method of Payment. Modify Part I, Section 4A. Method of Payment, Subpart A.

From:

This Agreement will be administered on a cost plus fixed fee basis. The indirect cost (overhead) rate, payroll fringe benefit rate, and other compensatory rates will remain fixed for the duration of the Agreement. Projected salary rate increases must be based on established company practices.

To:

This Agreement will be administered on a cost plus fixed fee basis. The indirect cost (overhead) rate as shown in Attachment A, payroll fringe benefit rate, and other compensatory rates will remain fixed for the duration of the Phase 1 design services. Projected salary rate increases must be based on established company practices.

3. This amendment increases the total contract by \$597,921.00. Modify Part I, Section 4B. Compensation, Subpart A.

From:

Total payment to the Consultant for the work covered under this Agreement will not exceed Six Hundred Thirty-Six Thousand One Hundred Eighty-Seven Dollars and no/100 (\$636,187.00).

To:

Total payment to the Consultant for the work covered under this Agreement will not exceed One Million Two Hundred Thirty-Four Thousand One Hundred Eight Dollars and no/100 (\$1,234,108.00).

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

MORRISON-MAIERLE, INC.

NAME: Carl J. Anderson, P.E.
BY: _____
TITLE: Vice President
DATE: _____

CITY OF BILLINGS, MONTANA

BY: _____
ITS: _____
DATE: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

These activity descriptions are intended to describe the effort for Morrison-Maierle, Inc. (MMI) and its subconsultants to complete the design documents for the construction of the improvements associated with “Phase I” of the 6th Avenue North to Bench Boulevard Project.

Hereinafter, Phase I is also referred to as the “Bench Connector Project” which generally includes minor modifications to 4th Avenue North, Main Street widening associated with providing a triple left turn off 4th Avenue North (with minor modifications to the existing raised median on Main Street), Bench Boulevard from Lincoln west to the end of Phase I, parking lot approach tie-ins, Airport Road modifications, including a new traffic signal at its intersection with Bench Boulevard, Lake Elmo Drive modifications, and additional storm drains. The storm drainage improvements at the west end of the project are characterized as being modifications to the existing storm sewer system.

112 UPDATE Preliminary Traffic Report

This activity includes the preparation of the updated Preliminary Traffic Report as defined in the Consultant Users Manual & Activity Descriptions. The following will be included under this activity:

- Coordinate updated ADT and Peak Hour Turning movements with COB & MDT;
- Verification of existing conditions (traffic operations, geometry) and update baseline analysis;
- Verification of growth projections;
- Prepare the capacity analysis and LOS for vicinity intersections;
- Update crash data and dominant trends; and
- Provide traffic recommendations accommodating Phase I improvements.

The following assumptions are made regarding the preliminary traffic report:

- Existing decision of not incorporating roundabouts within the project improvements will remain;
- The capacity analysis for 6th / Main will be conducted for at-grade conditions only;
- All Traffic data will be provided by the City of Billings (Peak Hour Turning movements, ADT, Crash Incidents); and
- No Traffic operations analysis will be conducted for the Phase II project.

134 Prepare Plans For Plan-In-Hand

This activity includes the preparation of plans and related information for the plan-in-hand review meeting as defined in the Consultant Users Manual & Activity Descriptions. The following will be included under this activity:

- Prepare for and attend one public meeting
- Prepare Roadway plan sheets for tasks as described in Tasks for Activity 134
- Incorporate plans from other disciplines as described in Tasks for Activity 134
- Prepare special provisions

- Prepare construction cost estimate of current design

The following assumptions are made regarding the current design:

- Design effort includes incorporation of the previous plans submitted for the Alignment and Grade milestone on 08/18/2006, with the exception of the revised phasing scheme.
- The included phasing scheme eliminates the underpass and does not incorporate design elements west of Main Street in the vicinity of 6th Avenue North intersection.
- The existing 6th Ave. North/Main Street/Bench Boulevard at grade intersection remains as it operates currently in 2009 prior to beginning the project.
- Coordination of Utility relocations is to be performed by others
- It is assumed that the Conoco Phillips pipeline, located in vicinity of the confluence of Bench Boulevard and the eastbound Main Street ramp, relocation is not required prior to the initiation of Phase II.
- Effort is included for conversion of the project from Metric to English units. No prior reports / memos / deliverables will be revised to make this conversion.
- In conformance with the environmental document, no effort is included for designing improvements for a parking lot adjacent to Bench Boulevard on the east side of Alkali Creek, or for improvements to the Earl Guss Park trail system adjacent to Alkali Creek.

136 Structures Plans for PIH

This activity will include the preparation of the Alkali Creek Bridge plans for Plan-in-Hand as outlined in the Consultant Users Manual & Activity Descriptions. No effort is included to revise or revisit preferred AGR bridge layout or structure type because of the compressed design schedule. The following will be included in this activity:

- Perform preliminary bridge layout revisions
- Prepare foundation plans
- Develop preliminary loads for foundation recommendation
- Prepare draft cost estimate
- Develop draft special provisions
- Prepare title and quantity sheets

It is assumed that retaining walls are not required at the Alkali Bridge and the slip-lane for this project. It is assumed that two retaining walls are required at the following locations:

- 1) Upper parking lot: Bench Boulevard station 117+10 to 118+70 right, and
- 2) Upper parking lot: Bench Boulevard station 118+90 to 120+00 right.

Since the retaining walls will be detailed within Roadway Detail Plan Sheets, effort for the retaining wall layout, design special provisions, and cost estimate is included in Activity 134 – Prepare Plans for Plan-in-Hand and effort for the final plan revisions is included in Activity 152 – Final Plan Preparation and Activity 162 – Final Plan Revisions.

Other points of clarification are as follows:

1. Bridge staff will not attend PIH review or Final Plan Review meeting.
2. Project design will be complete by winter 2010 i.e. no delays outside of MMI's direct

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control.

It is assumed overhead sign structures will be designed by the Contractor; therefore, no effort is included for structural design or structural detailing of overhead sign structures.

It is assumed that miscellaneous utility and hydraulic structural details are not required for this project.

115 Utility Conflicts for Plan In Hand

This activity will include the preparation of plans for the Bench Connector Project (including 4th Ave N., Main St., Bench Blvd., parking lot approaches, Airport Rd., Lake Elmo Dr., also including additional storm drain beginning at the lower parking area to the existing storm sewer outfall) for Plan-in-Hand as outlined in the Consultant Users Manual & Activity Descriptions. The following MMI effort will be included in this activity:

- Provide engineering support to the Subsurface Utility Engineering sub-consultant.
- Integrate utility data into appropriate plans
- Prepare the Utility Conflict Report

Assumptions for this activity are as follows:

- Decisions for water line relocations affecting Phase I of the project have been made by the City of Billings and Yellowstone County. Pertinent current decisions needed include resolution of the existing water valve vault at the northwest area of the lower parking lot adjacent to Main Street (approx. EB Ramp Station 103+10 LT)

164 Prepare Traffic Plans for PIH

This activity will include the preparation of the traffic plans for the Bench Connector Project (including 4th Ave N., Main St., Bench Blvd., parking lot approaches, Airport Rd., Lake Elmo Dr.) as defined in the Consultant Users Manual & Activity. The following will be included under this activity:

- Traffic Signal design at following intersections:
 - Main St./6th Ave. N. & Bench Blvd. (modify existing)
 - Main St./4th Ave. N. (modify existing)
 - Bench Blvd./Airport Road (new)
- Lighting design of Bench Connector
- Finalize Electrical Plans title sheets and quantity sheets
- Prepare Electrical special provisions
- Prepare detailed electrical and signing cost estimate using MDT Cost Estimate Spreadsheet
- Submit plans and electronic files for Plan-In-Hand review

No effort is included for the following: geometric design of affected Metra parking lots, sign and striping plans for parking lots, and lighting design for affected Metra parking lots.

It is assumed that all Phase I design will accommodate the Phase II concept of a future Bench Blvd. underpass of Main Street.

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172 Final Hydraulics Report

This activity will include an update of the preliminary hydraulics report dated October 2003, focused on Phase I of the larger 6th Avenue North to Bench Boulevard project.. The key drainage scope includes evaluating the capacity of the existing City of Billings storm drain system serving Main Street, MetraPark, and all storm water drainages affected by Phase 1. The hydraulics scope for the Bench Connector includes:

- 10-year storm event design for Phase I of 6th Avenue and Main Street storm drain discharging southwest to the existing City of Billings storm drain system.
- 10-year storm event design for MetraPark circulation road and Bench Boulevard storm drain discharging to Alkali Creek.
- No new or additional outfalls will be evaluated for this project. The existing City of Billings Main Street and the MetraPark trunk main outfalls will be used for this project.

This activity will also include preparation of the Final Hydraulics Report associated with only the Phase I of the 6th Avenue North to Bench Boulevard project, i.e. the Bench Connector Project. The findings and conclusions generated in the review of the Updated Preliminary Hydraulics Report will establish the scope for the Final Hydraulics Report. All assumptions made for the update of the Preliminary Hydraulics Report, above, are carried forward for scoping the Final Hydraulics Report. Some points of clarification are listed below:

1. No update to preliminary Hydraulics Report. Existing report will stand.
2. No analysis of hydraulics for Phase II project (there will be questions remaining from MDT Hydraulics that will have to be deferred to Phase II).
3. Storm drain system will be based on a simple tie to existing Metra Park storm drain. No analysis of the Metra Park system capacity and outfall capacity will be made. This condition is assumed to be acceptable as an interim solution until the Phase II project is completed.
4. Floodplain permit for bridge will be prepared, but no comments from the County, DNRC or FEMA are anticipated.
5. It is assumed that the City will handle any storm drain agreements with the County to use the Metra Park storm drain system.
6. Hydraulics staff will not attend the final plan review.

130 Final Geotechnical and Materials Report

This activity will include Geotechnical (Geotech) subconsultant coordination and plan implementation of associated information acquired as outlined in the Consultant Users Manual & Activity Descriptions. The following MMI effort will be included in this activity:

- Coordinate site specific support efforts as required to assist the Geotech subconsultant in performance of duties
- Review of Preliminary soil survey and R-Values provided by the Geotech
- Collect additional topographic information relating to soils logs and monitoring wells as needed

- Incorporate soil survey information as provided by the Geotech into plan sheets
- Revise draft cost estimate with information as provided by the Geotech
- Incorporate draft special provisions as provided by the Geotech
- Submit reports, addendums, and relevant information as provided by the Geotech

No effort is included for writing special provisions specific to the technical aspects that are necessary and under the purview of the Geotechnical professional.

138 Preliminary Right-of-way

This activity will include the preparation of the preliminary right-of-way plans for the Bench Connector Project in accordance with the Consultant Users Manual & Activity Descriptions for Preliminary R/W Plan for Plan In Hand. The following assumptions are made regarding this activity.

- Right-of-way for only Phase I will be secured.
- Right-of-way on all publicly owned properties will be secured via easement; 2 parcels (1 owner).
- Right-of-way on privately owned properties will be secured fee simple; 1 parcels.

146 Structural Design

This activity will include the preparation of the bridge plans for the Alkali Bridge Structure for the activities defined in the Consultant Users Manual & Activity Descriptions for Structure Design. The following will be included under this activity:

- Perform foundation and general layout revisions
- Finalize title and quantity sheets
- Develop final quantity and check quantity calculations
- Finalize foundation loads and design
- Abutment design and detailing
- Wingwall design and detailing
- Girder design and detailing
- Slab design and detailing
- Fence and barrier design and detailing
- Prepare special provisions
- Prepare detailed structure cost estimate using MDT Bridge Bureau Cost Estimate Spreadsheet
- Submittal of 90-percent plans w/o drawing numbers and electronic files for review
- Request drawing numbers from Bridge Bureau

For the development of the final design effort for the Alkali Creek Bridge the following assumptions are made: 2:1 abutment backslopes without slope protection; right-angle bridge (no skew – as shown on AGR layout); U-Shaped abutment wingwalls; 52.0 meter single-span welded plate girder superstructure; three travel lanes; form lined barriers; sidewalks; pedestrian fencing; and bridge construction in one phase. No effort is included for the following: accelerated construction techniques, approach slabs, lighting on the structure, abutment monuments, ornate / ornamental pedestrian railing and other ornate aesthetic treatments.

152 Final Plan Preparation

This activity will include the preparation of the final plans for the Bench Connector Project activities defined in the Consultant Users Manual & Activity Descriptions for Final Plan Preparation. The following will be included under this activity:

- Revisions to all plans and design based on the Plan-in-Hand Report
- Submit Final cost estimate using MDT Cost Estimate Spreadsheet
- Submittal of 100-percent plans, special provisions and electronic files for construction

It is assumed that all Phase I design will accommodate the Phase II concept of a future Bench Boulevard underpass of Main Street.

174 Final Hydraulics Updates

This activity will include the development of final storm drain plans, details, quantity summaries, and special provisions in accordance with the Consultant Users Manual & Activity Descriptions.

148 Final Environmental and Permits

The initial biological evaluation and environmental review have been completed for the proposed project activities. Environmental compliance to date has included finalization of a Categorical Exclusion to meet National Environmental Policy Act requirements and a De Minimis determination for the amended Department of Transportation Act Section 4(f) compliance. It is assumed that review of the Categorical Exclusion and De Minimis determination will be completed by others to ensure final project design is in compliance with these documents; it is also assumed that modification of these documents will not be required.

Project activities have been identified that could potentially impact aquatic resources. Therefore, project development will include the effort required for preparation of a technically complete Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies. The permit application will be developed for compliance with the Stream Protection Act 124 requirements, Clean Water Act Section 404 requirements, and 318 Short-Term Water Quality Standard for Turbidity requirements. The permit application will be prepared for client review and approval. Following receipt of approval, the permit application package will be submitted to Montana Department of Fish, Wildlife and Parks, Montana Department of Environmental Quality, and the U.S. Army Corps of Engineers for their respective reviews. It is assumed that one site visit (each) may be required for Montana Department of Fish, Wildlife and Parks and the U.S. Army Corps of Engineers.

It is assumed that Clean Water Act Section 404 regulatory compliance can be completed through an appropriate U.S. Army Corps of Engineers Nationwide permit. Furthermore, it is assumed that total impacts to waters of the U.S. will not exceed the minimum threshold requiring mitigation for the identified Nationwide permit. Therefore, the effort to develop or secure wetland mitigation has not been included in the overall project effort.

166 Utility Plans

This activity will include the preparation of the Utility plans for the Bench Connector Project activities defined in the Consultant Users Manual & Activity Descriptions for Utility Plans. The following will be included under this activity:

- Completed utility plans including: final construction limits, Right-of-Way, hydraulic information and environmental documents
- Submittal of construction plans and cross sections
- Submittal and electronic files for review

Assumptions for this activity are as follows:

- It is assumed that Phase I design will accommodate the Phase II concept of a future Bench Boulevard underpass of Main Street.
- It is assumed that relocation of the Conoco Phillips pipeline, located in vicinity of the confluence of Bench Boulevard and the eastbound Main Street ramp, is not required prior to the initiation of Phase II.
- Decisions for Water line relocations affecting Phase 1 of the project have been made by the City of Billings and Yellowstone County. Pertinent current decisions include resolution of the existing water valve vault at the northwest area of the lower parking lot adjacent to Main Street.
- No provisions are made for design for, or mitigation of suspected hydrocarbon saturated soils present in Phase II.

158 Geotechnical and Materials Revisions

This activity will include Geotechnical (Geotech) subconsultant coordination and plan revision of Plan in Hand comments as outlined in the Consultant Users Manual & Activity Descriptions. The following will be included in this activity:

- Coordinate specific support efforts as required assisting Geotech subconsultant in performance of duties
- Incorporate soil survey information as provided by the Geotech into plan sheets
- Revise construction cost estimate with information as provided by the Geotech
- Incorporate special provisions as provided by the Geotech
- Submit reports, addendums, and relevant information as provided by the Geotech

No effort is included for writing special provisions specific to the technical aspects that are necessary and under the purview of the Geotechnical professional.

190 Utility Plan Revisions

This activity includes the revision of Utility plans resulting from Right Of Way revisions and as defined in the Consultant Users Manual & Activity Description. The following will be included under this activity:

- Revise Utility plans to reflect all R/W changes

147 Final Bridge Plans

This activity will include the preparation of the Alkali Creek structure final bridge plans as \\4fl-w2k01\\PW-Engineering\\Engineering Data\\Work Orders\\WO 02-10-P1 - 6th to Bench Phase 1\\Data Received\\090528 Revised Fee Estimate\\Scope of Services.doc

outlined in the Consultant Users Manual & Activity Descriptions and will include the following:

- Revise plans for CAD comments
- Update plans for Drawing Numbers
- Prepare quantities sheet
- Perform final Quality Control for minor plan changes
- Finalize Special Provisions
- Prepare detailed structure cost estimate using MDT Bridge Bureau Cost Estimate Spreadsheet
- Submit final bridge plans

Effort for final stamped, signed and dated mylars of the bridge plans and a copy of design calculations is included in Activity 162 Final Plan Revisions.

175 Final Plan Review

This activity will include final tasks as described in the Consultant Users Manual & Activity Description. The following will be included under this activity:

- Preparation for and attendance at the Final Plan Review meeting as required by the Department.
- Submit Final Plan Review Report to the Department
- Confirm Design Exception approvals if applicable

Assumptions made for this activity are as follows:

- No changes in alignment or grade following Plan-in-Hand approval.
- Timely response by City of Billings or Yellowstone County regarding all documentation concerning easements and acquisition necessary for completion of the project.

165 Final Traffic Plans

This activity will include the preparation of the traffic plans for the Bench Connector Project activities defined in the Consultant Users Manual & Activity Descriptions for final Traffic Plans. The following will be included under this activity:

- Revise Traffic plans to reflect all Final Plan Review comments
- Finalize Traffic Signal design at following intersections:
 - Main Street/6th Avenue North & Bench Boulevard (modify existing)
 - Main St./4th Ave. N. (modify existing)
 - Bench Boulevard/Airport Road (new)
- Lighting design of Bench Connector
- Finalize title sheets and quantity sheets
- Finalize electrical special provisions
- Finalize detailed electrical and signing cost estimate using MDT Cost Estimate Spreadsheet
- Submittal of 100-percent plans and electronic files for construction

No effort is included for the following: geometric/circulation design of affected Metra parking lots, sign and striping plans for parking lots, and lighting design for affected Metra parking lots.

162 Final Plan Revisions

This activity will include final tasks as described in the Consultant Users Manual & Activity Description. The following will be included under this activity:

- Submit one complete (11x17) hard copy of all plans, non-standard special provisions, cross sections, quantity calculations, and final construction cost estimate. Also submit one CD with all current files and a text file with file descriptions.
- All other deliverables are as described in the Consultant Users Manual & Activity Description.

Montana Department of Transportation
S I N G L E P R O J E C T S C H E D U L E

Run Date: 28/MAY/09
Run Time: 12:29

District:	05 Billings	Eng Desc:	GRADE,GRAVSUR,PMS			Phase:	SURVEY		
Project ID:	MT-CM 1099(32)	Location:	6TH AVE N TO BENCH BLVD - BLGS			Ready Date:			
Control No:	4553000					Const Est (K\$):	20,386		
Cr	Name	Description	FM	Manhrs	Duration	Earliest Start	Latest Start	Earliest Finish	Latest Finish
*	128	Prepare Scope of Work	2509	4	5d	22/JUN/09	22/JUN/09	26/JUN/09	26/JUN/09
*	266	Approve Scope of Work Report	2509	80	15d	29/JUN/09	29/JUN/09	17/JUL/09	17/JUL/09
*	134	Prepare Plans for Plan-In-Hand	2509	4	95d	20/JUL/09	20/JUL/09	03/DEC/09	03/DEC/09
164	Prepare Traffic Plans for Plan-In-Hand	2509	4	41d	20/JUL/09	05/OCT/09	15/SEP/09	03/DEC/09	
172	Final Hydraulics Report	2509	4	36d	20/JUL/09	13/OCT/09	08/SEP/09	03/DEC/09	
136	Preliminary Structure Plans for Plan-In-	2509	4	16d	20/JUL/09	10/NOV/09	10/AUG/09	03/DEC/09	
138	Preliminary R/W Plan for Plan-In-Hand	2509	4	10d	20/JUL/09	19/NOV/09	31/JUL/09	03/DEC/09	
115	Utility Conflicts for Plan-in-Hand	2509	0	6d	20/JUL/09	25/NOV/09	27/JUL/09	03/DEC/09	
130	Final Geotech & Materials Report	2509	4	4d	20/JUL/09	30/NOV/09	23/JUL/09	03/DEC/09	
166	Utility Plans	2509	4	2d	20/JUL/09	02/DEC/09	21/JUL/09	03/DEC/09	
*	785	Environmental Review for Plan-In-Han	2705	40	10d	04/DEC/09	04/DEC/09	17/DEC/09	17/DEC/09
*	268	Roadway Design Review	2509	175	10d	04/DEC/09	11/DEC/09	24/DEC/09	24/DEC/09
436	Traffic Review for Plan-In-Hand	7102	40	10d	04/DEC/09	11/DEC/09	17/DEC/09	24/DEC/09	
872	R/W Plan Review	6100	40	10d	04/DEC/09	11/DEC/09	17/DEC/09	24/DEC/09	
877	Review Design Utility Conflict Review	6606	20	10d	04/DEC/09	11/DEC/09	17/DEC/09	24/DEC/09	
352	Review Final Hydraulics Report	3405	40	10d	09/SEP/09	11/DEC/09	22/SEP/09	24/DEC/09	
588	Preliminary Structure Review	5005	40	10d	11/AUG/09	11/DEC/09	24/AUG/09	24/DEC/09	
442	Geotech & Materials Report Review	4105	40	10d	24/JUL/09	11/DEC/09	06/AUG/09	24/DEC/09	
112	Preliminary Traffic Report	2509	4	33d	19/JUN/09	06/NOV/09	04/AUG/09	24/DEC/09	
*	140	Plan-In-Hand	2509	4	6d	28/DEC/09	28/DEC/09	05/JAN/10	05/JAN/10
*	270	Plan-In-Hand Approval	2509	60	10d	06/JAN/10	06/JAN/10	19/JAN/10	19/JAN/10
882	Utility Plan Review	6601	40	10d	22/JUL/09	22/JAN/10	04/AUG/09	04/FEB/10	
190	Utility Plan Revisions	2509	4	1d	05/AUG/09	05/FEB/10	05/AUG/09	05/FEB/10	
*	148	Final Environmental Matters & Draft P	2509	4	16d	20/JAN/10	20/JAN/10	10/FEB/10	10/FEB/10
142	R/W Plans	2509	4	13d	20/JAN/10	25/JAN/10	05/FEB/10	10/FEB/10	
*	786	Final Environmental Matters & Draft Pe	2705	40	10d	11/FEB/10	11/FEB/10	24/FEB/10	24/FEB/10
874	R/W Plans Check	6100	40	15d	08/FEB/10	11/FEB/10	26/FEB/10	03/MAR/10	
144	R/W Plan Revision	2509	4	2d	01/MAR/10	04/MAR/10	02/MAR/10	05/MAR/10	
815	Access Control Resolution	3300	4	1d	20/JAN/10	05/MAR/10	20/JAN/10	05/MAR/10	
875	R/W Authorization	6100	40	10d	03/MAR/10	08/MAR/10	16/MAR/10	19/MAR/10	
146	Structure Design	2509	4	35d	20/JAN/10	01/FEB/10	09/MAR/10	19/MAR/10	
152	Final Plan Preparation	2509	4	13d	20/JAN/10	03/MAR/10	09/MAR/10	19/MAR/10	
174	Final Hydraulics Updates, Permits & R	2509	4	7d	20/JAN/10	11/MAR/10	28/JAN/10	19/MAR/10	
158	Materials and Geotech Revisions	2509	4	3d	20/JAN/10	17/MAR/10	22/JAN/10	19/MAR/10	
150	Appraise R/W by Consultant	2509	4	1d	17/MAR/10	22/MAR/10	17/MAR/10	22/MAR/10	
272	Final Road Plan Review	2509	240	10d	10/MAR/10	22/MAR/10	23/MAR/10	02/APR/10	
438	Traffic Review for Final Plans	7102	40	10d	10/MAR/10	22/MAR/10	23/MAR/10	02/APR/10	
590	Structure Review	5005	40	10d	10/MAR/10	22/MAR/10	23/MAR/10	02/APR/10	
624	Design Follow-Up	5200	40	10d	10/MAR/10	22/MAR/10	23/MAR/10	02/APR/10	
366	Final Hydraulics Updates, Permits & R	3405	40	10d	29/JAN/10	22/MAR/10	11/FEB/10	02/APR/10	
444	Materials and Geotech Final Review	4105	40	10d	25/JAN/10	22/MAR/10	05/FEB/10	02/APR/10	
834	Appraisal Review	6800	40	10d	17/MAR/10	23/MAR/10	31/MAR/10	05/APR/10	
154	Conduct & Complete Acquisition	2509	4	3d	01/APR/10	06/APR/10	05/APR/10	08/APR/10	
160	Process for Condemnation	2509	4	1d	01/APR/10	08/APR/10	01/APR/10	08/APR/10	
822	Provide & Complete Relocation Assist	6300	4	1d	01/APR/10	08/APR/10	01/APR/10	08/APR/10	
147	Final Bridge Plans	2509	4	13d	24/MAR/10	05/APR/10	09/APR/10	21/APR/10	
165	Final Traffic Design	2509	4	10d	24/MAR/10	08/APR/10	06/APR/10	21/APR/10	
175	Final Plan Review	2509	4	4d	24/MAR/10	16/APR/10	29/MAR/10	21/APR/10	
*	799	Environmental Outside Agency Approv	2705	0	45d	25/FEB/10	25/FEB/10	28/APR/10	28/APR/10
827	Condemnation	6506	4	1d	26/APR/10	30/APR/10	26/APR/10	30/APR/10	

Montana Department of Transportation
S I N G L E P R O J E C T S C H E D U L E

Run Date: 28/MAY/09
 Run Time: 12:29

Cr	Name	Description	FM	Manhrs	Duration	Earliest Start	Latest Start	Earliest Finish	Latest Finish
	814	Neogiate for Utility Agreements	6606	50	60d	06/AUG/09	08/FEB/10	30/OCT/09	30/APR/10
*	273	Final Plan Review Approval	2509	40	10d	30/MAR/10	22/APR/10	05/MAY/10	05/MAY/10
	826	Process Parcels For Condemnation	6500	4	1d	06/APR/10	09/APR/10	06/APR/10	05/MAY/10
	592	Final Bridge Plans Review	5005	40	10d	12/APR/10	22/APR/10	23/APR/10	05/MAY/10
	627	Bridge Design Follow-Up	5200	40	10d	12/APR/10	22/APR/10	23/APR/10	05/MAY/10
	439	Final Traffic Design Review	7102	40	10d	07/APR/10	22/APR/10	20/APR/10	05/MAY/10
	876	Request/Review R/W Plans (Blue She	6100	40	10d	17/MAR/10	22/APR/10	30/MAR/10	05/MAY/10
	156	R/W Plan Revisions After Authorization	2509	4	3d	17/MAR/10	03/MAY/10	19/MAR/10	05/MAY/10
*	162	Final Plan Revisions	2509	4	18d	06/MAY/10	06/MAY/10	31/MAY/10	31/MAY/10
	846	Relocate Utilities	6705	100	30d	27/APR/10	03/MAY/10	07/JUN/10	11/JUN/10
*	295	Transmit to Contract Plans	2511	40	10d	01/JUN/10	01/JUN/10	14/JUN/10	14/JUN/10

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: W.O. 04-12—Alkali Creek Road Slope Stability, Professional Services Contract with Kadrmas, Lee & Jackson, Inc.—Amendment No. 7

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings and Kadrmas, Lee & Jackson, Inc. (KLJ) agreed to a Professional Services Contract on April 26, 2004, to cover the design of reconstruction of Alkali Creek Road between Senators Blvd. and Airport Road. Subsequent amendments were passed to encompass different phases of the project (W.O. 04-12). The City is recommending an amendment to the original contract to cover the Professional Services fees for hopefully the final phase of W.O. 04-12, the relocation of the Alkali Creek stream channel from the BBWA Canal siphon crossing to a point approximately 1,350 feet to the east (between Morningside Lane and Aronson Avenue) and the corresponding slope work required due to existing slope stability problems.

ALTERNATIVES ANALYZED:

- Approve Amendment 7 to the Professional Services Agreement with Kadrmas, Lee & Jackson for the relocation of the Alkali Creek stream channel and associated slope work.
- Do not approve Amendment 7 to the Professional Services Agreement with Kadrmas, Lee & Jackson, do not relocate the stream channel or improve slope stability problems, and gamble that no further erosion will occur that could potentially result in any or all of the following: wash out parts of Alkali Creek Road, wash out the existing guard rail, undermine the existing water main.

FINANCIAL IMPACT: The project is being funded by Arterial fees and Storm Water funds. Amendment No. 7 represents an increase in the amount of the contract by \$197,424.00. There are funds available to cover the increase. Construction will be additionally financed by ARRA (American Recovery & Reinvestment Act, i.e. Federal stimulus) funds.

Approved Dollar Amount:

Arterial Road Improvements (account #845-3186-431-9310): \$ 1,100,000.00

Storm Water Funds (account #840-3184-431-9310):	\$ 141,000.00
<u>Amount being requested:</u>	\$ (197,424.00)
Remaining Funding:	\$ 1,043,576.00

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 7 to the Professional Services Contract with Kadrmas, Lee & Jackson, Inc., in the amount of \$197,424.00.

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

ATTACHMENT

Attachment 'A': Contract Amendment No. 7 (12 pages)

INTRODUCTION

The City of Billings and Kadrmas, Lee & Jackson, Inc. (KLJ) agreed to a Professional Services Contract on April 26, 2004, to cover the design of reconstruction of Alkali Creek Road between Senators Blvd. and Airport Road. Subsequent amendments were passed to encompass different phases of the project (W.O. 04-12). The City is recommending an amendment to the original contract to cover the Professional Services fees for hopefully the final phase of W.O. 04-12, the relocation of the Alkali Creek stream channel from the BBWA Canal siphon crossing to a point approximately 1,350 feet to the east (between Morningside Lane and Aronson Avenue) and the corresponding slope work required due to existing slope stability problems.

The Consultant(s) for these types of projects are selected on a basis of qualifications criteria. A notice of Request For Proposal (RFP) is published or sent to various firms that do work similar to what is needed for a specific project. All firms that submit proposals are evaluated and/or interviewed by a selection committee. After a firm is selected, a fee is negotiated for their services. If a reasonable fee cannot be agreed upon with the selected firm, negotiations then start with the second highest ranked firm. This continues until a contract is agreed upon or the City decides to cancel or modify the project.

After a fee is agreed to, a contract is drafted and executed by both parties. Most professional services contracts include a table showing the fees charged by various positions within the firm. These fees are typically those recommended for additional services above and beyond the original scope of work in the contract. Additional services must be approved by a contract amendment, which is also negotiated to a reasonable cost.

The current budget for phase 3 of W.O. 04-12—Alkali Creek Road Slope Stability is \$1,241,000. KLJ's proposed cost of \$197,424 is reasonable for the scope of services being provided and leaves ample funds available for construction, which will also utilize funds from ARRA (American Recovery & Reinvestment Act). Therefore, Staff recommends approval of Amendment No. 7.

BACKGROUND

The original plan for W.O 04-12 was to reconstruct Alkali Creek Road between Senators Blvd. and Airport Road. In addition to a reconstructed street section, the project was also to include storm drainage, water and sewer mains, a multi-use path, sidewalk and curb & gutter improvements. The first two phases of the project were started in the summer of 2005 and completed in the summer of 2006. These phases encompassed the stretch between Senators and the BBWA Canal siphon crossing near Black Pine Street. The multi-use path constructed during these phases stretches from Alkali Creek Elementary School to Black Pine Street.

During a preliminary design field review in July 2007 for phase 3 (Black Pine to Airport Rd.), a major slope failure was discovered. This failure was quickly corrected, but the failure caused Staff to re-examine the conclusion of a previous geotechnical report done for the affected area.

A “second opinion” was received from a different geotechnical firm. The second report, dated December 17, 2007, determined that 385 linear feet of actual failed slopes exist along this stretch of road (classified as “extremely critical”), which represents over one-fourth of the total stretch of approximately 1,350 linear feet. Subsequent investigations have shown the remaining areas to also be susceptible to failure and classified as “critical”. The recommendation was to fix the “extremely critical” areas as soon as possible and the “critical” areas soon thereafter.

Amendment No. 5, approved February 18, 2008, included the preliminary engineering tasks needed to evaluate potential slope stability options and present recommended alternatives to the City. Soldier piles with lagging was the recommended option of providing the necessary slope stability. Amendment No. 6, approved July 28, 2008, included the final design and bidding services to implement this option. The construction of the soldier piles with lagging was bid October 28, 2008, for only the four “extremely critical” areas. The low bid received was more than \$800,000 over the available budget, so all bids were rejected December 15, 2008. Since that time, the City has worked with KLJ to further investigate all options to improve the slope stability problems. It has been determined that relocating the stream channel is a feasible option that should be able to be accomplished within the revised project budget.

Amendment No. 7 includes providing Professional Services to complete engineering and environmental documentation needed to relocate the Alkali Creek stream channel, construct new slopes from the roadway to the stream channel, evaluate the existing roadway, and establish a future multi-use path on the north side of the road. This work will be performed between Black Pine Street and Aronson Avenue. Tasks include, but are not limited to:

- Coordination with adjacent property owners, outside agencies (Army Corps of Engineers, MT Fish, Wildlife & Parks, DNRC, DEQ, etc.), and others;
- Prepare materials for and facilitate public meetings as necessary;
- Engineering and survey (geotechnical engineering, floodplain & hydraulic survey, multi-use path study and design, existing roadway evaluation, conduct wetland delineation);
- Stream Channel design;
- Structural design, including design of new guardrail;
- Erosion control design (temporary and permanent);
- Plan for reestablishing vegetation;
- Traffic control;
- Obtaining necessary permits and temporary construction easements;
- Preparation of plans and specifications (bid package), including cost estimates;
- Bidding services.

Amendment No. 7 does NOT provide construction administration services or post-construction monitoring of the revegetation as required by Army Corps of Engineers. These services will be negotiated and included in another forthcoming amendment. In addition to the attached draft, a copy of Amendment No. 7 is on file in the City Clerk’s office.

ALTERNATIVES ANALYSIS

In addition to the original preferred alternative of soldier piles with lagging and the current preferred alternative of relocating the stream channel, a third alternative is constructing rock buttress walls. The original alternative proved to be too costly, so it has not been pursued since the bids were rejected in December, 2008. The other two alternatives have relatively similar cost estimates. The following summarizes these other two alternatives:

Rock Buttress Walls

Advantages:

- Widening the shoulders of the road is possible.
- Provides erosion protection.
- Able to conceal foundation shifts.
- Rockfill and riprap material available from the Airport Road project can be used.

Disadvantages:

- Foundation will be established on a varying bedrock plane. This could lead to potentially more construction change orders due to unknown field conditions.
- The existing water main would have to be relocated.
- Major dewatering and shoring of the existing stream channel.
- Full road closure required during construction, potentially 6-8 weeks in duration.
- Future road widening would be very challenging.
- A portion of MDU's recently relocated gas main would have to be relocated again—this time at the City's expense.
- Constructing a multi-use path within the right-of-way would be challenging.

Alkali Creek Stream Channel Relocation

Advantages:

- Construction could result in a lesser disruption to traffic.
- The existing water main would not have to be relocated.
- Significant road reconstruction would not be required.
- Road widening could be accommodated now or in the future.
- Rockfill and riprap material available from the Airport Road project can be used.

Disadvantages:

- There are impacts to adjacent private property, which will require coordination with and approval from property owners. However, the areas impacted are only common areas with no structures or individual homes affected.
- Coordination and approval required from multiple agencies (Army Corps of Engineers, MT Fish, Wildlife & Parks, Montana DNRC, etc.).
- Impacts to vegetation and the time required for re-establishment.
- Additional extensive survey and floodplain analysis would be required.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 7 to the Professional Services Contract with Kadrmas, Lee & Jackson, Inc., in the amount of \$197,424.00.

ATTACHMENT

Attachment 'A': Contract Amendment No. 7 (12 pages)

ATTACHMENT 'A'

AMENDMENT NO. 7

TO

CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES

CITY OF BILLINGS WORK ORDER 04-12,

Alkali Creek Road – Senators Blvd. To Airport Road

THIS AGREEMENT, made and entered into on _____, 2009, by and between the following:

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

and

Kadrmas, Lee & Jackson, Inc.
PO Box 80303
Billings, Montana 59108
Hereinafter designated the Contractor

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated April 26, 2004, for Contractor to provide engineering services to the City for Work Order 04-12, Alkali Creek Road – Senators Blvd. To Airport Road, and;

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

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

WHEREAS, the Contractor represents that he is qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

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

Appendix A, Section 3 is amended as follows:

The attached scope of work (x pages) for Amendment No. 7 engineering services, plus attachments, is hereby made a part of this contract.

Appendix B, Section 1, Part A, second paragraph, is amended as follows:

For Design Engineering from Appendix A, as amended:

Previous total contract amount for Phases 1, 2, and 3 design (including Amendments 1-6)	\$516,376.57
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plus,

Alkali Creek channel realignment engineering and environmental documentation tasks as per the scope of work attached to and made a part of this Amendment No. 7	\$xxxxxxxxxx
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Total Engineering	\$ xxxxxxxxxxx
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All other terms and conditions of the contract to which this amendment applies shall remain in full effect.

CONSULTANT

NAME: Kadrmas, Lee & Jackson, Inc.

BY: _____

TITLE: Practice Area Leader

DATE: _____

CITY OF BILLINGS, MONTANA

BY: _____

TITLE: _____

DATE: _____

KADRMAS, LEE & JACKSON, INC.
SCOPE OF WORK
AMENDMENT NO. SEVEN (7) TO WORK ORDER #04-12,
PROJECT DESIGN FOR PHASE 3 OF THE
ALKALI CREEK ROAD RECONSTRUCTION PROJECT

BLACK PINE STREET TO
APPROXIMATELY 450 FEET EAST OF MORNINGSIDE LANE

June 9, 2009

I. PROJECT DESCRIPTION

This is an amendment to the existing Alkali Creek Road Reconstruction Contract, hereinafter referred to as "Project."

Phase 3 of the Project begins near the BBWA Canal siphon crossing and extends easterly along Alkali Creek Road approximately 1,350 feet to its east terminus. During preliminary engineering for road reconstruction, it was determined that embankment slopes on the north side of Alkali Creek Road require unforeseen improvements due to recent isolated slope failures and potential for additional slope instability. As such, the scope of Phase 3 has changed to address slope stability improvements.

The purpose of Amendment No. Seven (7) is to complete engineering and environmental documentation required for relocating the Alkali Creek stream channel. To distinguish Amendment No. 7 services from previous contract amendments the task numbers have been changed from 3-digit numbers to 4-digit numbers, with the first digit corresponding to the amendment number (7XXX)

II. SERVICES TO BE PERFORMED

7100 PROJECT MANAGEMENT

Project management is crucial to the success of all projects; specifically it is crucial to this project. KL&J has identified the project manager as, Carl Jackson, for the Alkali Creek Road project. Project management is the discipline of planning, organizing, and managing resources to successfully meet this project's objectives and goals.

Project management addresses and allocates resources on a wide range of activities from conception to completion of a project, including: developing a project plan and a project team; defining project goals and objectives; specifying tasks and resources; and creating budgets and timelines. The project manager handles all day to day activities and coordination for all actions throughout the duration of the project. One of the most critical components of project management is communication between the client and to

the project team. Essentially, the project manager is the liaison between the external and the KL&J team.

It is the project manager's responsibility to notify the client of any issues, problems, or concerns regarding the project; the delegation of all activities to the project team; and handling all subconsultant coordination. In addition, if any items arise during the duration of the project that are outside this scope of work, the project manager will address them with the City. Ultimately, the project manager is accountable for delivering a successful project.

7101 Work Plan

Prepare a revised work plan and provide to Kadrmas, Lee & Jackson, SK Geotechnical, and City of Billings project team members. The work plan includes communication protocol, scope of work, time entry guidelines, schedules, and other guidelines and standards used by the project team.

7102 Coordination

Coordinate with the City Kadrmas, Lee & Jackson team members, utility owners, Riverside Contracting, and other interested parties.

7103 Schedule and Budget

Manage the timeline and budget, prepare invoices and progress reports according to City requirements

7104 City Staff Presentation

Attend and prepare materials for use at a staff presentation to City Council.

7105 Unscheduled Meetings and Field Reviews

Attend unscheduled meetings and field reviews with the City or other stakeholders. Five (5) unscheduled meetings and field reviews are anticipated.

7200 PUBLIC INVOLVEMENT

7201 Landowner Coordination

In coordination with the City, compile and provide a list of landowners adjacent to the proposed project area. KL&J will meet privately with the landowners immediately adjacent to the project to discuss issues, probable impacts, and other project specifics as needed. A record of conversation will be provided to each landowner and will also be placed in the project record. It is estimated that ten (10) one-on-one landowner meetings will happen with key landowners adjacent to the project.

7202 Landowner Presentation Materials

Prepare materials requested by the City for presentation to landowners. This scope of work and related fee anticipates that conceptual exhibits and renderings will be provided up to a maximum of two (2) iterations.

7203 Public Meeting

Prepare materials for and facilitate a public meeting upon request by the City. One (1) public meeting is included in this scope of work and related fee.

7300 PRELIMINARY ENGINEERING AND SURVEY

7301 Preliminary Design Concept

Based on information already gathered, complete a conceptual design of alternatives for

presentation to landowners. Design concepts will be used to obtain approval of design approach, prior to moving forward with 50% design engineering and reviews tasks identified below.

7302 Geotechnical Engineering

A sub-consultant agreement with SK Geotechnical will be executed to complete earth slope construction recommendations and construction material recommendations. Additional field and laboratory work is anticipated to determine quality of embankment sources. This task includes related traffic control, laboratory analysis, testing, and geotechnical design consultation, report preparation and plan review.

7303 Floodplain/Hydraulic Survey

Conduct field survey to create a one-foot interval contour map, including area within the 100-year floodplain and up to an elevation one foot above the floodplain. Survey limits will extend from east of Black Pine Street to approximately 300 feet beyond the project terminus. Locate existing utilities and improvements (buildings, fences, swimming pools, etc.) within the survey limits. Map the existing stream channel, including the left and right banks at approximately 25-foot intervals and stream cross sections at approximately 100 foot intervals.

7304 Multi-Use Path Survey

Extend survey to the east as needed to design a multi-use path, which will ultimately connect to other multi-use paths near Aronson Avenue.

7305 Embankment Source Quantity Surveys

Complete up to two (2) surveys of embankment sources to verify amount of embankment available for construction.

7306 Temporary Construction Easements

Prepare exhibits and descriptions for the City's use when obtaining construction easements from property owners.

7400 ENVIRONMENTAL DOCUMENTATION AND PERMITTING

The following tasks are intended to address reviewing existing reports, studies, or other documentation, completing a wetland delineation and report, and coordination with resource agencies. Based on initial conversations with resource agency officials it is anticipated that permits will be approved with the initial submittal and re-submittal will not be required; as such, time for re-submittals or related work due to no fault by KL&J is not included. This scope of work and related fee is predicated on the USACE completing an environmental assessment internally, and therefore, completion of an environmental assessment is not included.

7401 Permitting

Complete the Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies. At this time, it is anticipated that an Individual 404 Permit from the US Army Corps of Engineers (USACE), a 310 Permit from the Montana Department of Natural Resources and Conservation local district, a Montana Stream Protection Act (SPA 124) permit application from MT Fish, Wildlife, & Parks, and a Non-Building Floodplain Development Permit from the Billings Floodplain Administrator will be acquired through the joint application. KL&J will complete the joint application for these permits and provide drawings and figures, as appropriate.

7402 Agency Coordination

Coordinate with federal, state, and local agencies that have either a regulatory or resource management interest in the proposed project. Up to two (2) agency coordination meetings are planned.

7403 Wetland Delineation

A field wetlands delineation will be conducted in accordance with the 1987 USACE (United States Army Corps of Engineers) Federal Jurisdictional Wetlands Delineation Manual and associated Great Plains Interim Regional Supplement. Data will be recorded on USACE Wetland Determination Data Forms. Delineated wetland boundaries will be recorded using GPS data collection. A Wetland Delineation Report will be compiled upon completion of the delineation. This report will include delineation results and will identify other water resources located within both the existing Alkali Creek channel, as well as the proposed realignment area.

7404 Post-Construction Monitoring

USACE required post-construction monitoring of re-vegetation and permanent erosion control measures is anticipated for a period of three years. Monitoring will consist of semi-annual reviews and reporting to USACE. Additional design and construction administration related to poor vegetation establishment or erosion control features is not included in this scope of work. If required, these services would be considered extra work and would be negotiated at a later date.

7500 50% DESIGN ENGINEERING AND REVIEWS

It is anticipated that 50% design engineering and reviews tasks will not commence until after a design concept is approved.

7501 Stream Hydraulic Analysis

Review the overall plan view of Alkali Creek upstream to estimate meander configurations. Define a stream channel meander configuration that approximates the natural channel. Complete HEC-RAS analysis of the existing channel and floodplain and a detailed analysis of the proposed channel and floodplain. Verify that the proposed channel and floodplain do not change the 100-year floodplain elevations. Incorporate a low flow channel to provide for efficient sediment movement during normal flow conditions.

7502 Stream Channel Design Drawings

Create preliminary drawings depicting the channel alignment, cross section, and profile.

7503 Storm Drain and Culvert Design

This task is limited to analysis and design necessary for replacing the existing storm drain, existing culverts, and existing outlet structures.

7504 Permanent Erosion Control Analysis and Design

Provide protection of the channel banks from erosive forces. Hydraulic design will include computation of the tractive forces acting on the banks and bottom and the potential for various erosion protection mechanisms to resist those forces.

Evaluate culverts, storm drain structures, road surface, and multi-use path for permanent erosion control measures.

7505 Re-Vegetation Design

Evaluate the disturbed area for recommended re-vegetation, and provide drawings and specifications required for construction. Coordinate with City staff and property owners to

determine final re-vegetation plan.

7506 Road Widening Design

Complete analysis and design for widening the roadway to accommodate wider shoulders and a multi-use path behind the guardrail.

7507 Multi-Use Path Design

Complete design and plan preparation of a multi-use path to be located directly behind the guardrail. **[or]** Complete design and plan preparation of a multi-use path to be located partially down the in slope to the north of Alkali Creek Road. The multi-use path will be designed to connect to the existing route at Black Pine Street and extend to planned multi-use paths near Aronson Avenue. Design signage, pavement markings, and railings along the multi-use path.

7508 Guardrail Design

Design metal guardrail to accommodate the proposed improvements and future Alkali Creek Road pavement overlay.

7509 Traffic Control Plans

Develop plans for permanent traffic control signs and pavement markings.

7510 Road Plan & Profile Drawings

Create plan & profile drawings showing the road improvements defined herein.

7511 Typical Sections and Cross Section Drawings

Create typical section and cross section drawings of the stream channel improvements and road improvements.

7512 Detail Drawings

Create detail drawings of supplemental design information required for construction.

7513 Construction Traffic Control Plans

Complete the construction traffic control plan based on comments received from the City Traffic Engineer and based on final analysis of the construction traffic control measures necessary to accommodate final design and anticipated construction sequences.

7514 Special Provisions

Prepare draft special provisions for review prior to preparing the final project manual.

7515 Quantities and Opinion of Cost

Complete quantity take-offs and opinion of probable construction cost and provide with the 50% completion submittal.

7516 Preliminary Construction Documents Submittal (50% Completion)

Submit construction drawings, special provisions, and opinion of probable cost to the City for review and comment, prior to commencing with additional design.

7517 Preliminary Construction Documents Review Meeting

Attend one (1) meeting to review the City's comments of the preliminary construction documents.

7600 90% DESIGN ENGINEERING AND REVIEWS

It is anticipated that 90% design engineering and reviews tasks will not commence until the preliminary construction documents review meeting is complete, and comments are received from the City accordingly.

7601 Stream Channel Design Drawings

Refine drawings depicting the channel alignment, cross section, and profile.

7602 Storm Drain and Culvert Design

Refine drawings for replacing the existing storm drain, existing culverts, and existing outlet structures.

7603 Temporary Erosion Control Analysis and Construction Measures

Evaluate the proposed improvements and construction activities for temporary erosion control measures. Incorporate recommended practices in a temporary erosion control plan.

7604 Permanent Erosion Control Analysis and Design

Refine previously-indicated plans for permanent erosion control measures.

7605 Re-Vegetation Design

Refine drawings and specifications required for construction.

7606 Road Widening Design

Refine design for widening the roadway to accommodate wider shoulders and a multi-use path behind the guardrail.

7607 Multi-Use Path Design

Refine design and plan preparation of a multi-use path to be located directly behind the guardrail. **[or]** Refine design and plan preparation of a multi-use path to be located partially down the in slope to the north of Alkali Creek Road.

7608 Guardrail Design

Refine guardrail design and construction drawings.

7609 Traffic Control Plans

Refine plans for permanent traffic control signs and pavement markings.

7610 Road Plan & Profile Drawings

Refine plan & profile drawings showing the road improvements defined herein.

7611 Typical Sections and Cross Section Drawings

Refine typical section and cross section drawings of the stream channel improvements and road improvements.

7612 Detail Drawings

Refine detail drawings of supplemental design information required for construction.

7613 Construction Traffic Control Plans

Refine the construction traffic control plan based on comments received from the City Traffic Engineer.

7614 Specifications and Project Manual

Complete the project manual, technical specifications, and special provisions based on the required information to proceed with bidding and construction.

7615 Quantities and Opinion of Cost

Update quantity take-offs and opinion of probable construction cost and provide with the 90% completion submittal.

7616 Quality Assurance Review

Conduct internal quality assurance review according to the Kadrmas, Lee & Jackson quality assurance and quality control procedures.

7617 Construction Documents Submittal (90% Completion)

Submit construction drawings, special provisions, and opinion of probable cost to the City for review and comment, prior to commencing with preparation of bid documents.

7618 Construction Documents Review Meeting

Attend one (1) meeting to review the City's comments of the final construction documents.

7700 BIDDING

7701 Final Drawings, Specifications, and Project Manual Revisions

Address comments from 90% completion review. Prepare, review, and seal final bid documents.

7702 Final Quantities and Opinion of Construction Cost

After completing final changes to drawings and specifications, and prior to bidding, update the quantity take-offs and opinion of probable construction cost.

7703 Prepare Bid Documents

Assemble bid documents and coordinate with the City and other entities required for the advertisement and bidding periods.

7704 Address RFIs and Issue Addenda

Answer contractor questions and issue addenda as needed.

7705 Conduct Pre-Bid Meeting

Facilitate the pre-bid meeting and respond to questions as needed.

7706 Attend Bid Opening

Attend the bid opening and collect copies of the bids.

7707 Prepare Bid Tabulation and Award Recommendation

Review the bids received, prepare a tabulation of bids, and based on conformance with the contract requirements prepare a Notice of Award recommendation to the City.

7708 Prepare and Circulate Contract Documents

Upon dissemination of the Notice of Award assemble, distribute, and coordinate execution of the contract documents.

7709 Issue Conformed Drawings and Project Manual

Produce the appropriate number of conformed drawings and project manual copies requested by the City and contractor.

7800 RIGHT-OF-WAY

Right-of-way acquisition is not anticipated. The objective of this project is to relocate the stream channel that already exists within private property, to another location within the same property.

Right-of-way acquisition services are not included in this scope of work. This includes all title work, appraisals, exhibits, legal descriptions and other acquisition services. If required, these services would be considered extra work and would be negotiated at a later date.

7900 CONSTRUCTION ADMINISTRATION

Construction administration services are not included in this scope of work. The parties agree that these services will be negotiated at a later date and included in a future contract amendment.

III. DELIVERABLES

The following deliverables will ultimately be provided by Kadrmas, Lee & Jackson.

- Meeting minutes and other appropriate documentation
- Geotechnical report
- Wetland delineation report
- Renderings and meeting display materials
- Copies of permits
- 50%, 90% and final drawings and specifications
- Temporary construction easement descriptions and exhibits
- Quantities and opinion of costs (3 iterations)
- Bid tabulation and award recommendation
- Contract documents
- Conformed drawings and specifications
- Post-construction monitoring reports

IV. EXCLUSIONS

This scope of work contains specific information regarding design tasks, number of iterations, and deliverables included in the Agreement. Additional work beyond this scope of work is extra and will be negotiated as a separate amendment. The following list summarizes exclusions from Amendment No. 7 tasks. This list is not intended to be exclusive.

- Water distribution system analysis and design
- Storm drain system analysis and design beyond the tasks described herein
- Sanitary sewer collection system analysis and design
- Geometric road design (plan, profile, typical sections, etc.) beyond the tasks described herein
- Rock excavation analysis and design related to road design
- Street lighting design
- Traffic signal design
- Right-of-way acquisition
- Archaeology/Cultural/Historic/etc. studies and impacts

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
City of Billings, Montana
Monday, May 26, 2009

TITLE: City of Billings Mountview Cemetery Fee Increase

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Lee Stadtmiller, Cemetery Superintendent

PROBLEM/ISSUE STATEMENT: A fee increase of approximately 5% in the Cemetery will raise approximately \$5,000 in additional funds generated per year based on the 2008 Cemetery use. Cemetery fees were last increased on March 10, 2008. The PRPL Board approved the FY10 Cemetery fee request at the April 8, 2009 board meeting. A presentation on the proposed increase was made to the City Council at the April 20, 2009, Work Session. The proposed fee increase is intended to start with the new fiscal year on July 1, 2009.

ALTERNATIVES ANALYZED: This is the first reading of this resolution. Council approval will increase Mountview Cemetery fees.

1. Approve the Resolution (Recommended)
2. Disapprove the Resolution

FINANCIAL IMPACT: This proposal will raise general fund revenue approximately \$5,000.

RECOMMENDATION

Staff recommends that Council approve the proposed fee increase.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A: Cemetery Fee Revision – (3 pages)

RESOLUTION NO.

A RESOLUTION DIRECTING REVISION OF FEES FOR PURCHASE OF GRAVESITES, NICHES AND SETUP OF SERVICES AND EXPLANATION OF FEES IN THE CITY OF BILLINGS MOUNTVIEW CEMETERY. REPEALS RESOLUTION NO. 08-18692.

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

WHEREAS, all graves and niches sale price shall include a thirty per cent (30%) perpetual care cost. The prices for graves and niches in the Cemetery are:

a. Full size traditional grave	\$660.00	<u>\$690.00</u>
b. Cremation section grave	\$365.00	<u>\$385.00</u>
c. Baby section grave	\$240.00	<u>\$250.00</u>
d. Landmark Columbarium		
(1) Row D single niche	\$950.00	<u>\$1,000.00</u>
(2) Row C single niche	\$900.00	<u>\$950.00</u>
(3) Row B single niche	\$850.00	<u>\$900.00</u>
(4) Row A single niche	\$800.00	<u>\$850.00</u>
e. Urn Columbaria North and South		
(1) Rows A & N single niche	\$465.00	<u>\$510.00</u>
(2) Rows B & M single niche	\$480.00	<u>\$525.00</u>
(3) Rows C & L single niche	\$495.00	<u>\$545.00</u>
(4) Rows D & K single niche	\$515.00	<u>\$565.00</u>
(5) Rows E thru J single niche	\$550.00	<u>\$600.00</u>
(6) Rows B & M companion	\$735.00	<u>\$800.00</u>
(7) Rows C & L companion	\$790.00	<u>\$865.00</u>
(8) Rows D & K companion	\$850.00	<u>\$900.00</u>
(9) Rows E thru J companion	\$880.00	<u>\$950.00</u>
f. Simplicity Columbarium		
(1) Row A single niche	\$905.00	<u>\$950.00</u>
(2) Row A companion niche	\$1100.00	<u>\$1155.00</u>
(3) Row B single niche	\$880.00	<u>\$925.00</u>
(4) Row B companion niche	\$990.00	<u>\$1,040.00</u>
(5) Row C single niche	\$880.00	<u>\$925.00</u>
(6) Row D single niche	\$795.00	<u>\$875.00</u>

(7) Row E single niche ~~\$770.00~~ \$845.00

WHEREAS, opening, closing and setup for a full size traditional grave shall include a lowering device and tent. A discount shall be issued, except in the mausoleum, when a tent is impractical to set up for all ground burials. The opening, closing and setup for cremations and infant burials do not include a lowering device, but do include artificial turf, tent and a stand for either the baby casket or urn. The fees for opening, closing and setups during normal business hours are:

a. Full size traditional setup ~~\$425.00~~ \$445.00

b. Cremation burial setup ~~\$310.00~~ \$325.00

c. Infant burial setup ~~\$255.00~~ \$265.00

d. Columbarium setup \$120.00 \$125.00

WHEREAS, the normal cemetery business hours for burial services are from 9:00 AM to 4:00 PM, Monday through Friday. For burial services that start after 4:00 PM on Monday through Friday or after 11:00 AM on Saturday, a late overtime fee will be charged. The late overtime fee will be charged in ten (10) minute intervals at the rate of \$50.00 per ten-minute interval. The minimum late overtime charge is \$50.00 and the maximum late overtime charge is \$300.00. A Saturday morning overtime fee will be charged for burials scheduled between 9:00 AM and 11:00 AM and they are:

a. Saturday traditional setup ~~\$630.00~~ \$660.00

b. Saturday cremation burial setup ~~\$430.00~~ \$450.00

c. Saturday infant burial setup ~~\$350.00~~ \$370.00

d. Saturday columbarium setup ~~\$155.00~~ \$165.00

WHEREAS, the Veteran Sections of the cemetery are special purpose areas. For that reason the city does not make a charge for the grave or niche space, but other charges are issued to compensate for opening, closing, setup, tent, curbing, engraving of the columbarium and flower container. A veteran's cremains may not be buried in a traditional full size veteran grave unless that said grave could not be used for a traditional burial with casket. The fees for burial or inurnment in the veteran section are:

- a. Traditional veteran burial setup \$640.00 \$660.00
- b. Saturday traditional veteran burial \$845.00 \$875.00
- c. Veteran Columbarium setup \$480.00
- d. Saturday Veteran Columbarium setup \$520.00

WHEREAS, other charges made for services provided by the cemetery are:

- a. Requested tent setup \$120.00
- b. Discount of tent for traditional setup \$45.00
- c. Flower Container \$30.00
- d. Disinterment of casket and vault \$1,000.00 \$1,050.00
- e. Disinterment from mausoleum \$500.00 \$525.00
- f. Disinterment of buried urn \$425.00 \$445.00
- g. Disinterment of infant grave \$425.00 \$445.00

APPROVED this _____ day of _____, 2009

THE CITY OF BILLINGS

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____

Cari Martin

CITY CLERK

**AGENDA ITEM:**

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Reporter Big Sky Office Street Closure Request

DEPARTMENT: Public Works/Engineering

PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Reporter Big Sky Office requests the temporary closure of North 14th between 1st and 2nd Avenue North for additional parking for the Relay for Life Car & Motorcycle Show. The closure will be from 9:00 a.m. until 3:00 p.m. on Saturday June 20th.

Recommended conditions of approval include Reporter Big Sky Office:

1. Contacting all businesses and making them aware of the event.
2. Cleaning the area being used.
3. Provide and install adequate traffic barricades directing motorists around closure.
4. Providing certificate of insurance naming City of Billings as additional insured.
5. A minimum 10' wide clear and unobstructed lane shall be provided on the closed street for emergency vehicle access.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings. Traffic control and litter removal are to be paid for by the event sponsors.

RECOMMENDATION

Staff recommends that Council approve the closure named above for the Relay for Life Car & Motorcycle Show.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Right of Way Special Activity Permit Application.
- B. Map showing closure.
- C. Certificate of insurance.
- D. BID Event Kit.

05/08/2009 09:55 4062450621
05/07/2009 12:05 4062376291

REPORTER BIG SKY
CITY OF BILLINGS

PAGE 02
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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 Linda Rosin

ORGANIZATION MAKING APPLICATION Reporter Big SKY Office

PHONE 248-7881

ADDRESS 1331 1st Ave. N. Billings, MT 59101

EMAIL ADDRESS lindar@reporterbigskyoffice.com

APPROXIMATE TIME EVENT WILL:

Assemble 9:00 A.M. Start 10:00 A.M. Disband 3:00 P.M.

DATE OF EVENT Saturday June 20, 2009

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

And annual Relay for life car show.

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

BLOCK PARTY STREET LOCATION (IF APPLICABLE): Street closure
No. 14th St between 1st & 2nd Ave. N.

CLEAN UP IMPLEMENTATION: (Company contracted or services you will provide)
We will be responsible for cleanup.

05/08/2009 09:55 4062450621
05/07/2009 12:05 4062375291

REPORTER BIG SKY
CITY OF BILLINGS

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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.

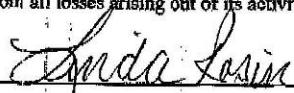
COORDINATOR OF EVENTS AT WHICH ALCOHOL WILL BE CONSUMED IN PUBLIC RIGHT-OF-WAY
ARE REQUIRED TO OBTAIN AN OPEN CONTAINER PERMIT FROM THE POLICE DEPARTMENT

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

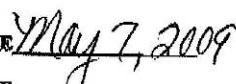
In consideration for permission to conduct its activity as requested, applicant agrees to indemnify, defend and hold harmless the City of Billings, its officers, agents, employees and volunteers from damage to property and for injury to or death of any person and from all liability claims, actions or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



DATE



APPLICATION APPROVED

DATE

APPLICATION DENIED

DATE

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

FOR CITY USE ONLY

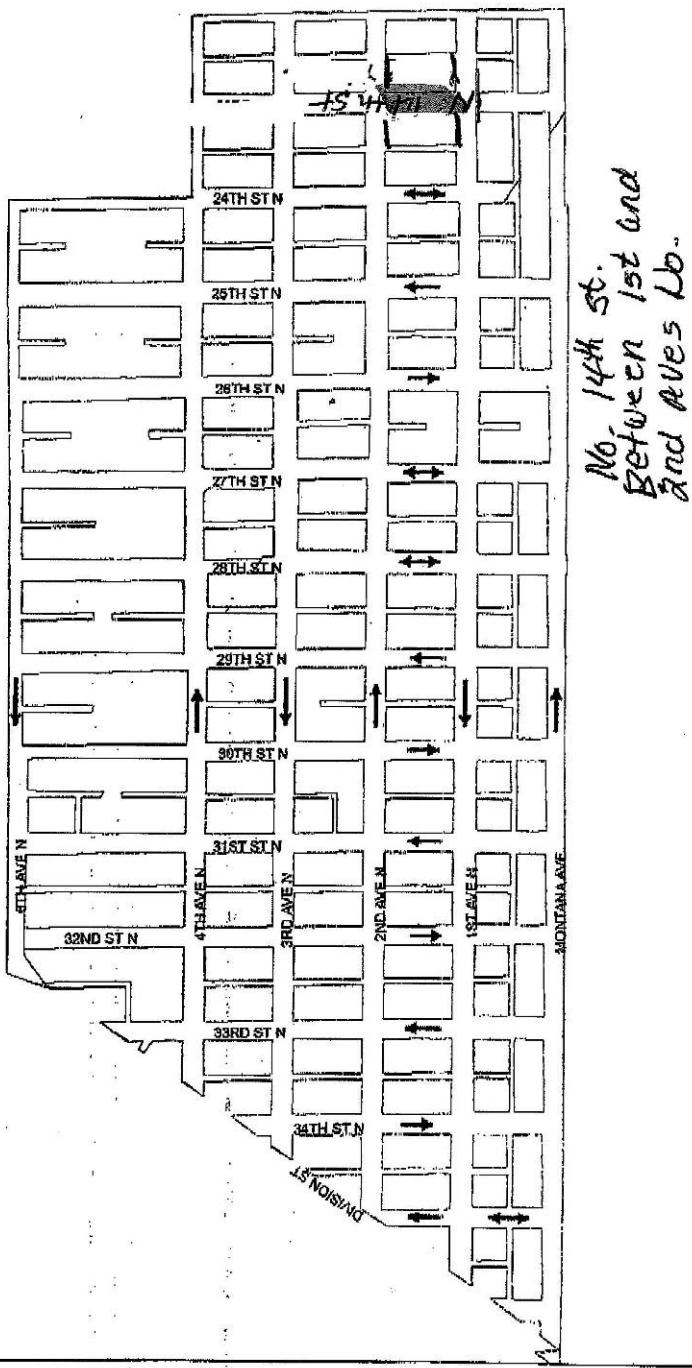
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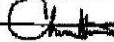
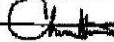
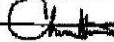
APPLICANT NOTIFIED BY:

DATE:

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

Downtown Billings Street Direction Map



Client# 2460		REPORTER		DATE (MM/DD/YYYY) 5/07/2009																																																																																																																																																																			
PRODUCER Hofness LaBar Insurance A Member of Payne Financial Group P.O. Box 30638 Billings, MT 59107-0638		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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AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p> <table border="1"> <thead> <tr> <th>INSURANCE TYPE</th> <th>POLICY NUMBER</th> <th>POLICY EFFECTIVE DATE (MM/DD/YY)</th> <th>POLICY EXPIRATION DATE (MM/DD/YY)</th> <th colspan="2">LIMITS</th> </tr> </thead> <tbody> <tr> <td> <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR </td> <td>1680463P3547IND08</td> <td>07/01/08</td> <td>07/01/09</td> <td>EACH OCCURRENCE</td> <td>\$1,000,000</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>DAVAGE TO RENTED PREMISES (Per occurrence)</td> <td>\$300,000</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>MED EXP (Any one person)</td> <td>\$5,000</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>PERSONAL & ADV INJURY</td> <td>\$1,000,000</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>GENERAL AGGREGATE</td> <td>\$2,000,000</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>PRODUCTS - COMP/OP AGG</td> <td>\$2,000,000</td> </tr> <tr> <td> <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" 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 </td> <td>B4463P35470SEL</td> <td>07/01/08</td> <td>07/01/09</td> <td>COMBINED SINGLE LIMIT (Ex. 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AUTHORIZED REPRESENTATIVE  </td> </tr> <tr> <td colspan="2">ACORD 28 (2001/08) 1 of 3</td> <td colspan="4">#S379424/M336046 JC1 © ACORD CORPORATION 1988</td> </tr> </tbody> </table>						INSURANCE TYPE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	1680463P3547IND08	07/01/08	07/01/09	EACH OCCURRENCE	\$1,000,000					DAVAGE TO RENTED PREMISES (Per 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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" 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	B4463P35470SEL	07/01/08	07/01/09	COMBINED SINGLE LIMIT (Ex. 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CERTIFICATE HOLDER City of Billings P.O. Box 1178 Billings, MT 59101		CANCELLATION 10 Days for Non-Payment SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE WHEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> 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 																																																																																																																																																																					
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05/08/2009 09:55 4062450621
05/08/2009 12:05 4062376291
JUL-22-2009 (TUE) 14:00 DOWNTOWN BILLINGS MSA PARTNERSHIP

REPORTER BIG SKY
CITY OF BILLINGS
(701) 248-2340

PAGE 03
PAGE 10/17
R. 000/000



**Downtown Business Improvement District (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 separate street closure permission and provide your own liability insurance AS WELL AS PROVIDE THE B.I.D. WITH AN INSURANCE BINDER NAMING THE B.I.D. AS CO-INSURED UNDER YOUR POLICY.

STEP 1: Make sure you have a PLAN AND that your block neighbors are "on board" with the idea...or, at least, do not object to your plan.

-Date(s) of Event: June 20, 2009

-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 AND to the B.I.D. showing coverage and co-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: No. 14th between 1st. and 2nd. Ave. No

Briefly Describe Your Event Activity/Participants:

Relay for life car show

Specify the exact date and TIME the blocks noted above will be CLOSED: 9:00 AM REOPENED: 3:00 PM
Indicate your traffic re-route plan: SEE SEP/C/PIC...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. 25th & southbound traffic on N. 28th would be diverted east at 2nd Ave. North then resume southbound at N. 27th) Traffic traveling no. & 50- on No. 14th would be diverted to. No. 13 or No. 15

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

BUSINESS NAME	ADDRESS	SIGNATURE
1. LAZY KT Motel	1403 - 1st Ave No. 14	Tom Stuck
2. Shipton's Big R	216 No. 14	J. Craig Brown
3. Mr. Thrifty Sales	201 No. 14	Kathy Mathew
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Use an additional sheet if needed

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Billings Clinic's Classic Street Party Street Closure
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Billings Clinic requests the temporary closure of North Broadway between 3rd and 4th Avenues North from midnight, August 28, 2009, through 5:00 p.m., August 30, 2009; the North 27/28th alley between 3rd and 4th Avenues North from 9:00 p.m., August 28, 2009, through 5:00 a.m., August 30, 2009; and North 28th/29th alley between 3rd and 4th Avenues North from 6:00 a.m., August 29, 2009, through 2:00 a.m., August 30, 2009, for the annual Classic Street Party.

Recommended conditions of approval include Billings Clinic:

1. Obtain proper permit for alcohol consumption in the right of way
2. Obtain proper open container and noise permits from Police Department
3. Contact all businesses and make them aware of the event
4. Provide security for event
5. Clean area to be used and provide waste cans for the event
6. Notify all emergency facilities, bus lines, and media in advance of the event
7. Provide a certificate of insurance with required liability amounts naming City of Billings as additional insured
8. Provide and install adequate traffic barricades and signs directing motorists around closure
9. The alleys to the east and west of Broadway must remain open. Vehicles shall not be permanently parked in the alleys.
10. Fire Department Connections (FDC) for nearby buildings shall not be obstructed.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT:

There are no costs to the City of Billings other than administrative time to process application. Police, traffic control and litter removal are to be paid for the by the Billings Clinic.

RECOMMENDATION

Staff recommends that Council approve the temporary closures named above for the annual Billings Clinic Classic Street Party.

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

ATTACHMENTS

- A. Letter from Billings Clinic outlining events
- B. Right of Way Permit Application
- C. Course map
- D. Certificate of insurance
- E. BID Event Kit Packet

May 7, 2009, 2009

Downtown Billings Association, Inc.
2815 2nd Avenue North
Billings, Mt. 59101

Subject: Street Closure, Billings Clinic Foundation Classic

Billings Clinic is underway with our planning for the 2009 Classic Street Party. As you may know, over the last several years Billings Clinic has utilized north Broadway between 3rd & 4th Avenues North, together with US bank parking lot, to host this event. And, it would be our desire to do so again this year. This year's event is scheduled for Saturday August 29.

As with the last five(6) years, we would like to be able to close the street late Thursday night (i.e. midnight) and leave it closed through Sunday afternoon. To be clear, the request is then for all day Friday, all day Saturday and through 5:00 p.m. Sunday (8/28, 8/29 and 8/30). This allows adequate time to fully set up tents, stages, chairs, etc. and then to remove them after the party.

Also, as we did the last four (5) years, we would also request the ability to close North 27th / North 28th Alley between 3rd and 4th Avenue North (i.e. alley east of / behind the US Bank building). We would request that we be allowed to close this alley beginning at 9:00 p.m. Friday, August 28 through 5:00 a.m. Sunday, August 30. This closure provides for alley access through the business day on Friday. But, for Saturday, this closure provides for use and use by our beverage and ice trucks, additional solid waste dumpsters, site access by our outdoor bands, etc.

And, as we have done over the last four(5) years, we would also request the ability to close the N.28th / N.29th Alley between 3rd and 4th Avenue North (i.e. the alley west of/behind the Alberta Bair Theater). We would request that we be allowed to close this alley beginning at 6:00 a.m. Saturday, August 29 through 2:00 a.m. Sunday, August 30. This closure provides for alley access through the business day on Friday. For Saturday, this closure provides for use of the alley by refrigerated food service truck as well as tour bus associated with the Saturday night performance in the Alberta Bair Theater.

In past years, I know that the Fire Department has reviewed the layout of the party and the features(i.e. tents, tables, stages, etc.) that are placed in the street and the bank parking lot. After that review, they felt that the adjoining building could be accessed by emergency response personnel in the case of a fire or other emergency event.

Attached you will find a Right-of-Way Activity Permit Application, a copy of our certificate of insurance, and a map of the party area.

Billings Clinic has made initial contact with each of the fronting property owners (US Bank, Travel Café, Alberta Bair Theatre and 1st United Methodist Church) and discussed our plans with them. All are supportive of the plans, including the all-day closure on Friday. As with past years, we will make arrangements with them to accommodate any special needs that they have during this closure.

We have traditionally made provisions for patrons of the Farmer's Market to be able to access the market through our party set-up, and would continue to do so this year.

As with past years, we would also contact the City Engineer's office directly to coordinate the street closure and to process a traffic control plan. Billings Construction Supply will once again be our traffic control contractor.

And, as with past years, we would be intending to serve beer and wine as part of the event. We do provide security personnel to insure that only ticketed guest are allowed inside the party venue and to limit removal of alcoholic beverages. We will contact the State of Montana for the necessary beverage license and the Billings Police Department to process the necessary Open Container Form.

In regards to clean-up: Billings Clinic uses a cadre of volunteers from the organization and the community at large to stage this event. A specific team will be assigned to the post-party clean-up. Initial clean-up is done immediately following the party. This includes garbage/litter patrol, removal of some tents, and removal of most decorative elements. At least one tent remains in place for use by First United Methodist Church to conduct an outdoor morning worship service. Following their services, we complete the removal of tents, decorative items, tables, chairs, etc. This is followed by another round of detailed garbage/litter patrol. Our food waste is removed in a volunteer provided trash trailer. We also coordinate with the Solid Waste Division to manage dumpsters before and after the event.

For your information, the beneficiary of this year's classic funds will be for the Billings Clinic Family Birth Services and Newborn Services.

I believe that this should provide you with the basic information that you need to begin processing our block party/street closure request. However, should you need further information, please contact me at 657-4035 or canderson3@billingsclinic.org

Please advise of the date of the City council meeting on this item so that a Billings Clinic representative can plan to attend.

Sincerely,


Cody Anderson
Billings Clinic

MAY-20-2009(WED) 08:43

DOWNTOWN BILLINGS PARTNERSHIP

(FAX)406 294 5061

P. 006/011



**CITY OF BILLINGS
RIGHT-OF-WAY ACTIVITY
PERMIT**

Please check the type of activity you are applying for:

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

Submit this application with attachments to either the: Public Works office, 2234 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 Cody Anderson

ORGANIZATION MAKING APPLICATION Billings Clinic

PHONE 406-657-4035

ADDRESS 2800 10th Ave North, Billings, MT 59106

CITY Billings STATE MT ZIP 59106

EMAIL ADDRESS canderson3@billingsclinic.org

APPROXIMATE TIME EVENT WILL:

Assemble See Below Start Disband

DATE OF EVENT August 29, 2009

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

2009 Billings Clinic Classic Street Party

Street Closure Request - 12:00a.m. midnight, 8/28/09 through 5:00 p.m. 8/30/09

Alley closure Request - 9:00 p.m. 8/29/09 through 5:00 a.m. 8/30/09

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

Closure of North Broadway between 3rd and 4th Ave North.

North 27th / 28th Alley between 3rd and 4th Ave North.

North 28th / 29th Alley between 3rd and 4th Ave North.

See Attached Map and cover letter.

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

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

As with past years, street and right away clean up will be conducted by Billings Clinic Volunteers.

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 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 *Lily Abd* **DATE** 5/07/09

APPLICATION APPROVED _____ **DATE** _____

APPLICATION DENIED _____ **DATE** _____

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

FOR CITY USE ONLY

FEES: _____

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

ACORD - CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) 06/23/2008																																																	
<p>PRODUCER: Aon Risk Services Central, Inc. fka Aon Risk Services, Inc. of Illinois 200 East Randolph Chicago IL 60601 USA</p> <p>PHONE: (866) 283-7122 FAX: (847) 953-5390</p> <p>INSURED: Billings Clinic 2800 30th Avenue North Billings MT 59101 USA</p>																																																					
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<p>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS Certificate Holder is named as additional insured with respect to the Billings Clinic Foundation Classic being held on August 21-23, 2008.</p>																																																					
<p>CERTIFICATE HOLDER: City of Billings Dept. of Parks, Rec. and Public Lands 390 N. 23rd Street Billings MT 59103 USA </p>		<p>CANCELLATION: <small>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE, THE INSURER SHALL ADVISE THE INSURED IN WRITING AND MAILED WITHIN 10 DAYS WITH A NOTICE TO THE CERTIFICATE HOLDER, WHICH MUST BE RECEIVED BY THE INSURED. IF THE INSURER FAILS TO DO SO, THE INSURER IS NOT LIABLE FOR ANY LOSS UPON THE INSURED, ITS AGENTS OR REPRESENTATIVES.</small> </p>																																																			
<p>AUTHORIZED REPRESENTATIVE: <i>Ann Real Services Central Inc.</i></p>																																																					
<p>ACORD 25 (2001/08) ACORD CORPORATION 1988</p>																																																					

Holder Identifier:

Certificate No.: 57002315939

ACORD

CERTIFICATE OF LIABILITY INSURANCE

PRODUCER		DATE OF ISSUE/RENEWAL/EXTENSION 05/23/2008	
Montana Healthcare Indemnity LLC P.O. Box 510 Billings, MT 59104		THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERES NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED	INSURERS AFFORDING COVERAGE	NAIC #	
Billings Clinic/Billings Clinic Foundation P.O. Box 37000 Billings, MT 59107	INSURER A: Montana Healthcare Indemnity LLC INSURER B: INSURER C: INSURER D:		
COVERAGES			
<small>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAME ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TESTIMONY, CONTRACT, OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR ISSUED, THE INSURANCE AFFORDED BY THE POLICIES LISTED BELOW IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAY CLAIMS.</small>			
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	LIQUOR LIABILITY		
	GENERAL LIABILITY LIMIT APPLIED FOR: <input checked="" type="checkbox"/> POLY <input type="checkbox"/> SOC <input type="checkbox"/> LOC		
	AUTOMOBILE LIABILITY		
	ANY AUTO ALL OWNED AUTOS SQUADROD AUTOS Hired Autos Non-Owned Autos		
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIM MADE <input type="checkbox"/> REDUCTIBLE REFERENCE: 3		
	HIGHER COMMERCIAL LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE CITY/CHAMBER EXECUTIVE SPECIAL PROTECTION SHOW OTHER LIQUOR LIABILITY		
	DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS / ADDENDUM / SPECIAL PROVISIONS The City of Billings is added as an Additional Insured to this policy for the Billings Clinic Classic on the dates of August 21/22/23, 2008 this includes Liquor Liability as listed above.		
	CERTIFICATE HOLDER		CANCELLATION
City of Billings Department of Parks, Rec, and Public Lands 300 North 23rd Street Billings, MT 59103		<small>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <input type="checkbox"/> 0 DAY 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.</small>	

ACORD 26 (2001/08) *[Signature]* ©ACORD CORPORATION 1998



**Downtown Business Improvement District (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 B.I.D.'s "Kit of Parts." You must obtain separate street closure permission and provide your own liability insurance AS WELL AS PROVIDE THE B.I.D. WITH AN INSURANCE BINDER NAMING THE B.I.D. AS CO-INSURED UNDER YOUR POLICY.

STEP 1: Make sure your have a PLAN AND that your block neighbors are "on board" with the idea...or, at least, do not object to your plan.

-Date(s) of Event: Saturday August 29th is the Street Party. Setup starts August 28th and Clean Up is August 30th

-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 AND to the B.I.D. showing coverage and co-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: Please see the attached cover letter

Briefly Describe Your Event Activity/Participants: Please see the attached cover letter

-Specify the exact date and TIME the blocks noted above will be CLOSED: August 28th at 12:00 a.m.
REOPENED: August 30th at 5:00 p.m.

Indicate your traffic re-route plan: **BE SPECIFIC...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)

Please see the attached traffic control plan

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

BUSINESS NAME:	ADDRESS:	SIGNATURE:
1. U.S. Bank	303 N. Broadway	<i>Michael Zwicker</i>
2. Travel Cafe	313 N. Broadway	<i>Frankie</i>
3. Alberta Bair Theater	2801 3 rd Ave. North	<i>Will R. Reed</i>
4. Drug Enforcement Administration	303 N. Broadway #302	<i>They Have Relocated</i>
5. First United Methodist Church	2800 4 th Ave N.	<i>Susan C. Hunter</i>
6.		
7.		
8.		
9.		
10.		

Use an additional sheet if needed

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Chase Hawks Association Burn the Point Parade and Street Dance

DEPARTMENT: Public Works/Engineering

PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Chase Hawks Association requests temporary street closures for a parade and street dance on Friday, September 4, 2009. Event times and locations are as follows:

Parade: Established car parade route will assemble at 3:00 pm the parade will start at 7:00 pm.
Street Dance: Street closure will be located on North 28th Street at 2nd Ave. to 1st Ave. North starting at 4:30 pm until 1:00 am.

Recommended conditions of approval include Chase Hawks Association:

1. Contact all businesses and make them aware of the event
2. Clean the area to be used and provide waste cans during the event
3. Provide a certificate of insurance naming the City of Billings as additional insured.
4. Provide and install adequate traffic barricades and signs directing motorists around closure.
5. A minimum 10' wide clear and unobstructed lane shall be provided on the closed street for emergency vehicle access.

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve closures for the parade and street dance on Friday September 4, 2009.

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

ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Bid Event Kit Packet
- C. Course map
- D. Certificate of insurance



**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, 510 N. Broadway, 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 Paulette Bentz /Sylvia Gusick

ORGANIZATION MAKING APPLICATION Chase Hawks

PHONE 406-238-1948 259-2396

ADDRESS 1323 2nd Ave N. Billings, MT 59101

STATE MT ZIP

EMAIL ADDRESS pbentz@plgwrd.com

APPROXIMATE TIME EVENT WILL:

Assemble 3:00 pm Start 7:00 pm Disband 11:00pm

DATE OF EVENT Friday September 4, 2009

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

Burn the Point Parade- 500+ cars will follow the established parade route Weston 3rd Ave N - turn S on 30th St N. & East on 2nd Ave N back to N 26th St. the parade usually takes 1 1/2 - 2 hours + the vehicles will move in single file

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

See above

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

26th & 2nd Avenue to 5th Ave N. blocked off for street dance
Start 4:30 to 1 AM

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

members of the Burn the Point committee + other recruited volunteers.

MAY-20-2009 (WED) 08:35 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 003/013

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

APPLICANT SIGNATURE Dee Gual DATE 5-26-09

APPLICATION APPROVED _____ DATE _____

APPLICATION DENIED _____ DATE _____

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

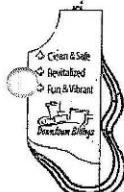
FOR CITY USE ONLY

FEES: _____

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



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 you have a PLAN AND that your block neighbors are "on board" with the idea...or, at least, do not object to your plan.

-Date(s) of Event:

-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:

Briefly Describe Your Event Activity/Participants:

Specify the exact date and TIME the blocks noted above will be CLOSED: 9/4/09 - 4:30 pm
 Specify the exact date and TIME the blocks noted above will be REOPENED: 9/4/09 - 12:00 midnight
 Indicate your traffic re-route plan: BE SPECIFIC...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. 26th would be diverted east at 2nd Ave. North then resume southbound at N. 27th)

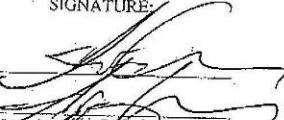
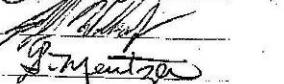
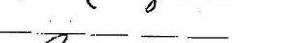
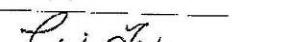
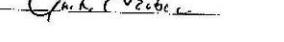
-List All of the Businesses impacted by the closure and have them "sign off" on the event:

BUSINESS NAME:	ADDRESS:	SIGNATURE:
1. Rock Creek Coffee Roasters	124 N. 28 th	<i>Bob Miller</i>
2. Vacant	130 N. 28 th	
3. Vacant	118 N. 28 th	
4. Vacant	114 N. 28 th	
5. MSUB	112 N. 28 th	<i>Jill Haacke</i>
6. In Step	108 N. 28 th	<i>J. Janal</i>
7. The Soup Place	104 N. 28 th	<i>J. Gray</i>
8. Ruche Gear/Marcuse	102 N. 28 th	<i>Carlynn Thunke</i>
9. Crystal	101 N. 28 th	<i>Priscilla Fields</i>
10. Vacant	103 N. Broadway	
11. Advertising Design	105 N. 28 th	<i>K. W. Hill</i>

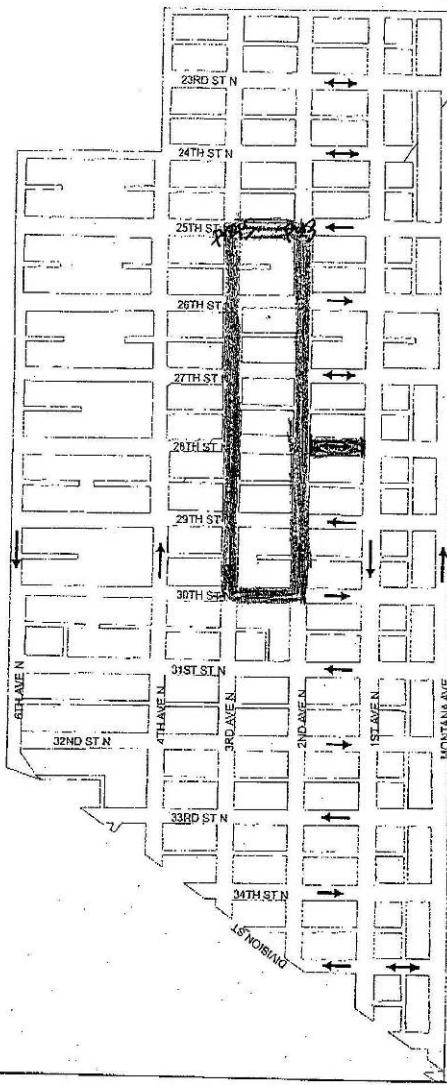
BUSINESS NAME:

ADDRESS

SIGNATURE:

12.	<u>Neatligers</u>	107-109 N. 28th	
13.	<u>Montana BrewPub</u>	113 N. 28th	
14.	<u>Homewre Designs</u>	117 N. 28th	
15.	<u>BIN 119</u>	119 N. 28th	
16.	<u>MT-Landes</u>	121 N. 28th	
17.	<u>Lou Tauberts</u>	123 N. 28th	
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Downtown Billings Street Direction Map



May-20-2009 (WED) 08:36 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 P.004/013

MAY-20-2009(WED) 08:37 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061
 Apr 15 09 11:40a Tim Beeter Ins 406 259 9271

P.007/013

p.2

Commercial Certificate of Insurance

FARMERS

Agency	FARMERS INSURANCE GROUP				
Name	• TIM BEETER				
&	• 2860 GRAND AVE				
Address	• BILLINGS, MT 59102				
St. 70	Dist. 05	Agent 09	Issue Date (MM/DD/YY) 04/13/09		
Insured Name • CSKT CORP & MONTANA BREWING/HOOLIGANS Address • 113 N BROADWAY • BILLINGS, MT 59101					
Coverages This is to certify that 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. Limits shown may have been reduced by paid claims.					
Co. Ltr.	Type of Insurance	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	Policy Limits
A <input checked="" type="checkbox"/>	General Liability Commercial General Liability - Occurrence Version Contractual - Incidental Only Owners & Contractors Prop.	065934922	10/19/08	10/19/09	General Aggregate \$ 2,000,000 Products-Comp/OPS Aggregate \$ 1,000,000 Personal & Advertising Injury \$ 1,000,000 Each Occurrence \$ 1,000,000 Fire Damage (Any one fire) \$ 75,000 Medical Expense (Any one person) \$ 5,000
	Automobile Liability All Owned Commercial Autos Scheduled Autos Hired Autos Non-Owned Autos Garage Liability				Combined Single Limit \$ Bodily Injury (Per person) \$ Bodily Injury (Per accident) \$ Property Damage \$ Garage Aggregate \$
A <input checked="" type="checkbox"/>	Umbrella Liability	065934930	10/19/08	10/19/09	Limit \$ 1,000,000
	Workers' Compensation and Employers' Liability				Statutory \$ Each Accident \$ Disease - Each Employee \$ Disease - Policy Limit \$
Description of Operations/Vehicles/Restrictions/Special Items: POLICY INCLUDES \$1,000,000 LIQUOR LIABILITY COVERAGE					
Certificate Holder Name • CITY OF BILLINGS & P.O. BOX 1178 Address • BILLINGS, MT 59103			Cancellation Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.		
Signature <i>[Signature]</i> Authorized Representative					

66-2492 4-94

Copy Distribution: Service Center Copy and Agent's Copy

114

MAY-20-2009 (WED) 08:38 DOWNTOWN BILLINGS PARTNERSHIP (FAX) 406 294 5061 P. 010/013
BUSINESS LIABILITY INSURANCE 1 406 245 9887 P. 01/02
Client# 6090 QUARTERLY

ACORD CERTIFICATE OF LIABILITY INSURANCE

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.

AUTHORIZED REPRESENTATIVE
Stan Shultz

ORD 25 (2001/08) 1 of 2

MAY-20-2009(WED) 08:37 DOWNTOWN BILLINGS PARTNERSHIP (FAX)406 294 5061 P. 008/013
1400 240 3887 P.01/04

ACORD - CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/04/2009

PRODUCER Payne Financial Group P.O. Box 3327 5 West Front Street Billings, MT 59106-0638	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.
INSURED Chase Hawks Memorial Association, Inc. P.O. Box 31333 Billings, MT 59107	INSURERS AFFORDING COVERAGE INSURER A: Great American Insurance INSURER B: INSURER C: INSURER D: INSURER E:
NAIC #	

COVERS

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 PERMIT, THE COVERAGE PROVIDED 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.

INSURANCE LINES L1	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE/INSURANCE DATE/NUMBER/TYPE	POLICY EXPIRATION DATE/NUMBER/TYPE	LIMITS	
					EACH OCCURRENCE	\$1,000,000
A	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	PAC0000592889904	12/01/08	12/01/08	DAMAGE TO RENTED PREMISES (EA occurrence)	\$300,000
					MEET EXP (Any one person)	\$15,000
					PERSONAL & ADV INJURY	\$1,000,000
					GENERAL AGGREGATE	\$
					PRODUCTS - COMMODITY ACC	\$15,000,000
	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	\$
A	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE	EXC0000925569702	12/01/08	12/01/09	OTHER THAN AUTO ONLY: EA ACC ACC	\$
					EACH OCCURRENCE	\$1,000,000
					AGGREGATE	\$1,000,000
					\$	\$
					IN-STATUE STORY LIMITS OTHER	\$
					EL EACH ACCIDENT	\$
					EL DISEASE - EA EMPLOYEE	\$
					EL DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is listed as Additional Insured with regards to Burn the Point Car Parade, Dance and Car Show on 09/05/09-09/06/09.

CERTIFICATE HOLDER

CANCELLATION 10 Days for Non-Payment

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

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

HL1

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ACORD 25 (2001/08) 1 - 02

#S377661/M377526



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 8, 2009

TITLE: SILMD 307 – Resolution of Intent to Create a Special Improvement Lighting Maintenance District for Shiloh Road from Rimrock Road to Pierce Parkway and set a Public Hearing for Creation of the District at the July 13th Council Meeting

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: With the expansion of Shiloh Road from Rimrock Road to Pierce Parkway, street lighting is proposed to provide for driver and pedestrian safety. In order to pay the energy and maintenance costs for lighting it is necessary to create a Special Improvement Lighting Maintenance District (SILMD), based on the lineal frontage method, to assess the energy and maintenance costs to abutting property owners.

At the May 11, 2009, City Council meeting, a Resolution of Intent to Create SILMD 307 was passed by Council under Resolution No. 09-18813. Due to new information about right-of-way that was purchased by the State for the Shiloh Road Project, Resolution No. 09-18813 and all exhibits of that resolution needed to be rescinded to accurately reflect right-of-way changes. At the May 26, 2009, City Council meeting, Council passed Resolution No. 09-18818, which rescinded Resolution No. 09-18813, so that staff could present this revised resolution. Passage of this Resolution of Intent is the first step in the legal process of creating a SILMD. Passage of this Resolution will trigger the mailing of legal notices to the affected property owners and set a public hearing for the July 13, 2009, City Council meeting, where action will be taken for creation of this SILMD.

ALTERNATIVES ANALYZED:

1. Create the SILMD to provide a source of funding for operation and maintenance of the streetlights and set a public hearing for July 13, 2009.
2. Do not create an SILMD nor set a public hearing date.

FINANCIAL IMPACT: All maintenance and energy costs for this proposed light district will be paid for by assessments against properties within the district. A number of City parks and City owned property lie within the district. The total estimated assessments for the City owned properties are \$7,912.74, or 13%.

RECOMMENDATION

Staff recommends that Council pass this Resolution of Intent to Create SILMD 307 and set a public hearing date for July 13, 2009, where action will be taken for creation of this SILMD.

Approved By: _____ City Administrator _____ City Attorney _____

ATTACHMENTS

- A. District Boundary Map
- B. Resolution of Intent to Create SILMD 307

INTRODUCTION

With the expansion of Shiloh Road from Rimrock Road to Pierce Parkway, street lighting is proposed to provide for driver and pedestrian safety. In order to pay the energy and maintenance costs for lighting it is necessary to create a Special Improvement Lighting Maintenance District (SILMD), based on the lineal frontage method, to assess the energy and maintenance costs to abutting property owners.

At the May 11, 2009, City Council meeting, a Resolution of Intent to Create SILMD 307 was passed by Council under Resolution No. 09-18813. Due to new information about right-of-way that was purchased by the State for the Shiloh Road Project, Resolution No. 09-18813 and all exhibits of that resolution needed to be rescinded to accurately reflect right-of-way changes. At the May 26, 2009, City Council meeting, Council passed Resolution No. 09-18818, which rescinded Resolution No. 09-18813, so that staff could present this revised resolution. Passage of the Resolution of Intent is the first step in the legal process of creating a SILMD. Passage of this Resolution will trigger the mailing of legal notices to the affected property owners and set a public hearing for the July 13, 2009, City Council meeting, where action will be taken for creation of this SILMD.

PROCEDURAL HISTORY BACKGROUND

1. May 11th, Resolution No. 09-18813 passed by Council
2. May 26th, Resolution No. 09-18818 rescinding Resolution No. 09-18813 passed by Council
3. June 8th (this meeting), Resolution of Intent to Create SILMD 307 passed by Council
4. June 11th, legal notices mailed to all affected property owners, 15-day protest period begins
5. June 11th and June 18th, legal notices published in the *Billings Times*
6. June 26th, 15-day protest period ends
7. July 13th Council meeting, Public hearing and creation of SILMD 307
8. November 2009, initial assessments appear on tax statements

BACKGROUND

The streetlights in the proposed district will be installed by the Montana Department of Transportation with the various phases of the Shiloh Road Project, but will be owned and operated by the City of Billings. Therefore, it is necessary to create a SILMD to pay for the energy and maintenance for the lighting. The monthly energy fees paid for street lighting are established by the Montana Public Service Commission and are subject to change in the future. It was determined that the best assessment method for this particular SILMD would be the frontage method where only properties abutting or sharing a boundary with Shiloh Road would be assessed their proportionate share of the SILMD.

Due to the varying nature of the properties located along Shiloh Road, estimated assessments differ

greatly from property to property. The estimated annual assessments in this district will range from \$5.59 for individual condo owners, \$103.37 for individual residential property owners, \$3,375.61 for farm land, and \$3,501.35 for large commercial developments. The proportionate share to the City is \$7,912.74 or 13% of the overall district assessment, which primarily consists of the Shiloh Drain frontage and will be continuously paid for by the City for the life of the District.

ALTERNATIVES ANALYSIS

1. Create the SILMD to provide a source of funding for operation and maintenance of the streetlights. This is the standard method of paying the cost of energy and maintenance for all street lighting in Billings.
2. Do not create an SILMD. In the case of Shiloh Road, a potential safety hazard would be created if the lights were not installed because of the raised median, roundabouts and anticipated number of pedestrians.
3. Development of some other source of funding to pay for street light energy and maintenance. Council has previously entertained discussions of creating a City-Wide arterial lighting district several times, but has directed staff not to pursue this option.

RECOMMENDATION

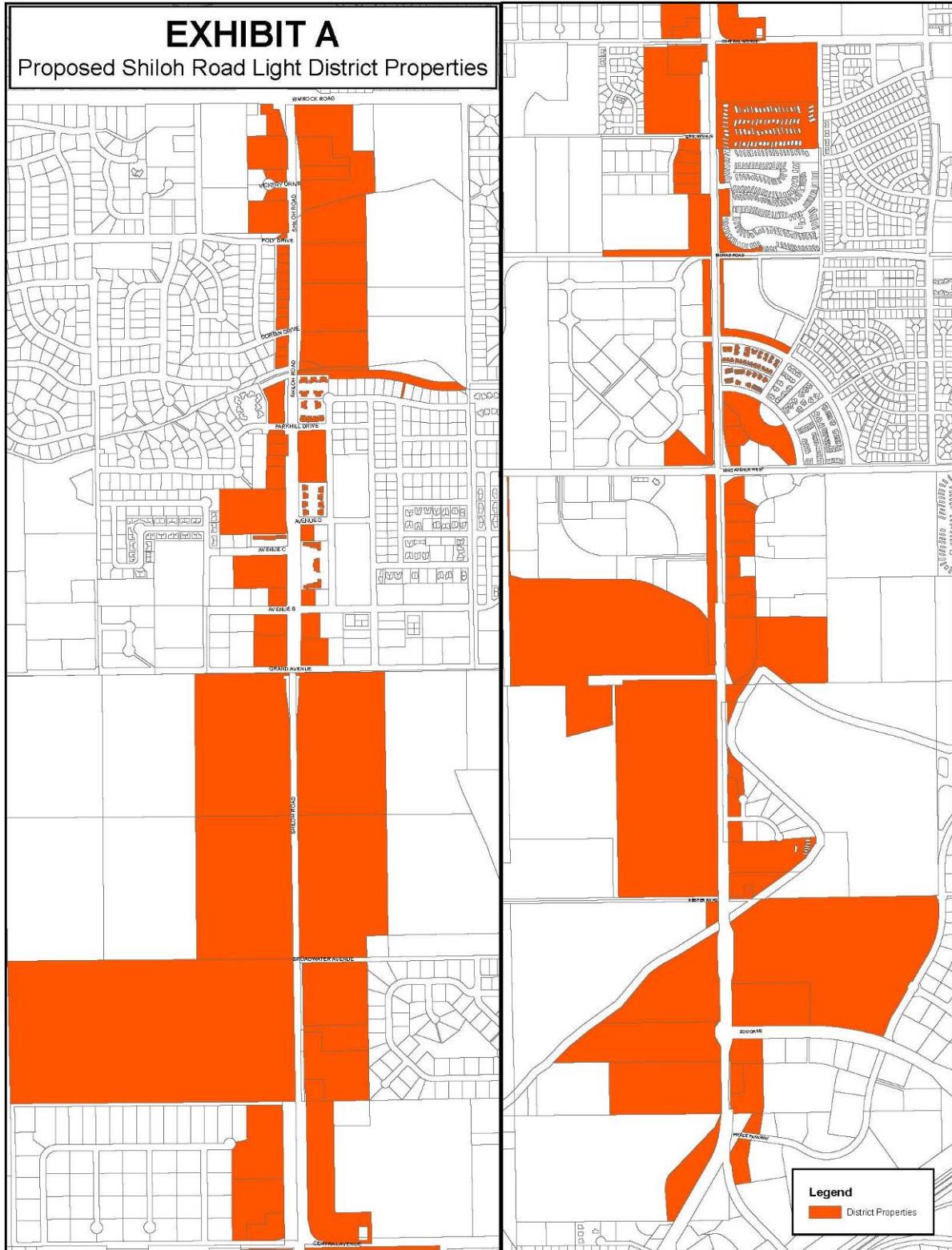
Staff recommends that Council pass this Resolution of Intent to Create SILMD 307 and set a public hearing date for July 13, 2009, where action will be taken for the creation of this SILMD.

ATTACHMENTS

- A. District Boundary Map
- B. Resolution of Intent to Create SILMD 307

EXHIBIT A

Proposed Shiloh Road Light District Properties



SILMD 307

RESOLUTION NO. 09-_____

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 307 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

WHEREAS, the City Council of Billings, Montana, has determined that the public interest, safety, and convenience require the creation of a Special Improvement Lighting Maintenance District as hereinafter provided;

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

BILLINGS, MONTANA:

SECTION 1:

That it is the intention to create Special Improvement Lighting Maintenance District (SILMD) 307. That safety, public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new streetlights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 307" hereinafter called the District, and the boundaries of the District are hereby declared to include: All lots, parcels and pieces of land abutting or sharing a property boundary with Shiloh Road from Rimrock Road to Pierce Parkway, as shown on the map designated as Exhibit "A" available for viewing at the office of the City Clerk, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto.

SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated within the boundaries of the District, will be especially benefited and affected by said improvements, and that all of the property included within the District is hereby declared to be the property to be assessed for the cost and expense of obtaining the electrical energy for and maintenance of said streetlights.

SECTION 4:

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of approximately two-hundred and two (202) 250-watt high-pressure sodium (HPS) fixtures mounted on steel, mast arm style poles and served by underground wiring, fourteen (14) 70-watt metal halide (MH) fixtures mounted within the pedestrian crossing, two (2) 150-watt high-pressure sodium fixtures mounted on steel, mast arm style poles and served by underground wiring,

and three (3) 400-watt high-pressure sodium fixtures mounted on steel, mast arm style poles and served by underground wiring. As this District is being created prior to the streetlights being installed, the number of lights described above is based off of plan quantities and may or may not reflect actual installed quantities. The City of Billings shall own and operate the streetlights and all associated appurtenant structures and materials.

SECTION 5:

The City of Billings intends to establish the contract rate for supplying electrical energy in accordance with the rate schedule approved by the Montana Public Service Commission. Said rate is currently estimated at \$6.12 per 150-watt HPS unit, \$10.27 per 250-watt HPS unit, \$15.26 per 400-watt HPS unit, \$7.23 per 70-watt MH unit, per month, and that NorthWestern Energy Company shall provide energy to the lighting fixtures. As the cost to supply energy and maintenance may change from year to year, assessments may vary from year to year to reflect these changes. That the City of Billings shall provide normal maintenance to lighting fixtures, poles, cables and other incidental equipment, and shall at all times own said lighting fixtures, poles, cables and other incidental equipment.

SECTION 6:

The estimate of the cost of the District per year, including City administrative costs, is the sum of \$60,466.65; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its' assessable abutting or bordering property boundary bears to the assessable boundary of the entire District, exclusive of streets, avenues, alleys and other similar

public places. The estimated cost of the District per year for property owners is on the basis of approximately \$1.29 per lineal foot of abutting or bordering property boundary.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt this resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 307 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefore.

SECTION 8:

That on the 13th day of July, 2009, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 307 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in “The Billings Times”, a weekly newspaper published and circulated in the City of Billings, Montana, and to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 307. Said notice is to be published in the June 11, 2009 and June 18, 2009 issue of “The Billings Time” and notices shall be mailed to all affected property owners on June 11, 2009.

PASSED by the City Council and APPROVED this 8th day of June 2009.

CITY OF BILLINGS

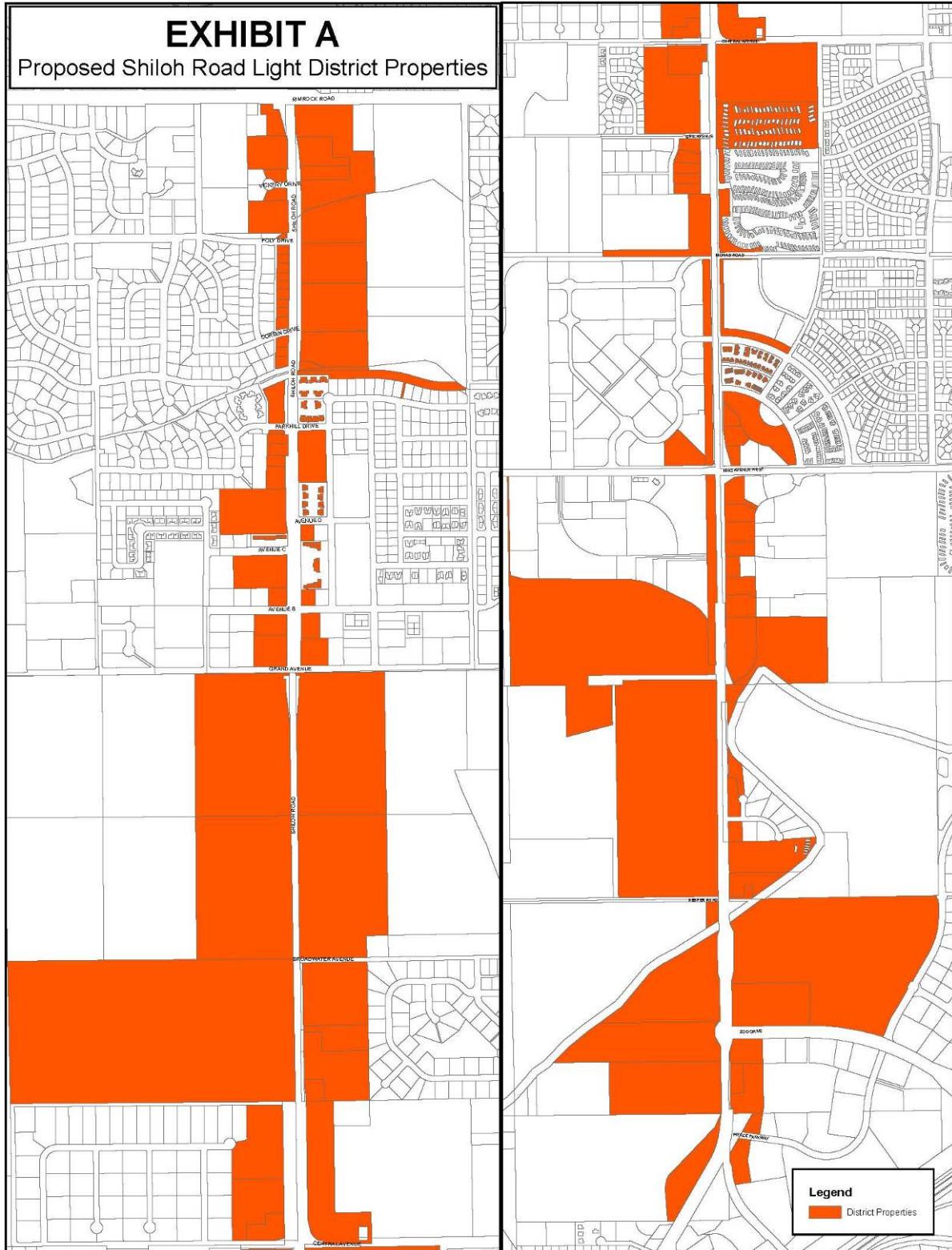
By _____
Ron Tussing Mayor

ATTEST:

By _____
Cari Martin City Clerk

EXHIBIT A

Proposed Shiloh Road Light District Properties



SILMD 307- Exhibit B

TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment Based on Frontage	
A26424	SOCD DEVELOPMENT &	GRAND AVE	252.75 \$	325.60	
A26424B	MONTANA DEVELOPMENT CO	1511 SHILOH RD	234.63 \$	303.18	
A26473	POTTERER, JIMMIE R & DONNIE M	3990 AVENUE D	147.95 \$	191.18	
A26475A	STERNAK, JAY A	1655 SHILOH RD A	22.49 \$	29.06	
A26475B	SMITH, EDWIN K & DEBORAH J	1655 SHILOH RD B	26.99 \$	34.87	
A26475C	QD ENTERPRISES LLC	1655 SHILOH RD C	31.49 \$	40.69	
A26475D	GALARNEAU, GORDON D JR & RINDA	1655 SHILOH RD D	35.99 \$	46.50	
A26475E	FIRST INTERSTATE BANK	1655 SHILOH RD E	49.48 \$	63.94	
A26475F	GARY & JULIE ROBINSON 1995 LIVING TRUST	1575 SHILOH RD	22.49 \$	29.06	
A26475G	GARY & JULIE ROBINSON 1995 LIVING TRUST	1575 SHILOH RD B	26.99 \$	34.87	
A26475H	TUCKSTER LLC	1575 SHILOH RD H	31.49 \$	40.69	
A26475I	TUCKSTER LLC	1575 SHILOH RD H	35.99 \$	46.50	
A26475J	HOMETOWN DEVELOPMENT LLC	1575 SHILOH RD J	49.48 \$	63.94	
A26475K	HOMETOWN DEVELOPMENT LLC	1605 SHILOH RD A	116.95 \$	151.12	
A26482	BROWN, KEE	SHILOH RD	147.965 \$	191.20	
A26486	HIGHGATE BILLINGS LLC	3980 PARKHILL DR	476.78 \$	616.08	
A26490A	TAYLOR, PRISCILLA J	3981 AVENUE D UNIT 1	19.73 \$	25.50	
A26490B	FULLER, BRADLEY D	3981 AVENUE D 2	19.73 \$	25.50	
A26490C	CONNER, BILLIE CARLENE TRUSTEE	3981 AVENUE D 5	19.73 \$	25.50	
A26490D	MURRAY, SHARON K	3981 AVENUE D 7	19.73 \$	25.50	
A26490E	KILLENECK, JO	3981 AVENUE D 9	19.73 \$	25.50	
A26490F	MURRAY, TONI C & GEORGE MAX	3981 AVENUE D 11	19.73 \$	25.50	
A26490G	HART, ELIZABETH S	3981 AVENUE D 13	19.73 \$	25.50	
A26490H	FOOS, KENNETH A & MARILEE	3981 AVENUE D 15	19.73 \$	25.50	
A26490I	BLACKMAN, MARION F	3981 AVENUE D 16	19.73 \$	25.50	
A26490J	RIDER, LINDA O	3981 AVENUE D 14	19.73 \$	25.50	
A26490K	WEST, MARILYN &	3981 AVENUE D 12	19.73 \$	25.50	
A26490L	SNOOZY, JO ELLEN	3981 AVENUE D 10	19.73 \$	25.50	
A26490M	KILIAN, DENNIS D & BARBARA A	3981 AVENUE D 8	19.73 \$	25.50	
A26490N	TANZ, WILLIAM G	3981 AVENUE D 6	19.73 \$	25.50	
A26490O	ROSSIGNOL, RICHARD & JULIA	3981 AVENUE D 4	19.73 \$	25.50	
A26490P	MURRAY PROPERTIES LLC	3981 AVENUE D 2	19.73 \$	25.50	
A26626	CITY OF BILLINGS		20 \$	25.84	
A27989	B & P LEASING	625 S 38TH ST W UNIT 1	4.32 \$	5.59	
A27990	HAMAN, ALICE M	625 S 38TH ST W UNIT 2	4.32 \$	5.59	
A27991	BENNETT, MARLENE V	626 S 38TH ST W 3	4.32 \$	5.59	
A27992	PARIS, ROSE ELLEN & GREGORY DON	626 S 38TH ST W 4	4.32 \$	5.59	
A27993	OAKLAND, SHARON M	625 S 38TH ST W 5	4.32 \$	5.59	
A27994	PROPP, MANDIE	625 S 38TH ST W 6	4.32 \$	5.59	
A27995	B & P LEASING	625 S 38TH ST W 7	4.32 \$	5.59	
A27996	KUHN, EDNALA	625 S 38TH ST W 8	4.32 \$	5.59	
A27997	LANG, MILTON H J	625 S 38TH ST W 9	4.32 \$	5.59	
A27998	RONNING, ROBERT	625 S 38TH ST W 10	4.32 \$	5.59	
A27999	SNELLING, ANDREW D	625 S 38TH ST W 11	4.32 \$	5.59	
A28000	FORSETH, EIVIND B & JUDITH L	626 S 38TH ST W 12	4.32 \$	5.59	
A28001	PARKER, KOLEEN F	626 S 38TH ST W 13	4.32 \$	5.59	
A28002	KERNER, RHONDA L	625 S 38TH ST W 14	4.32 \$	5.59	
A28003	KING, JUSTIN J	625 S 38TH ST W 15	4.32 \$	5.59	
A28004	OAKLAND, RICH	625 S 38TH ST W 16	4.32 \$	5.59	
A28005	KING, JAMES M TRUSTEE	625 S 38TH ST W 17	4.32 \$	5.59	
A28006	PREVOST, ANDREA	625 S 38TH ST W 18	4.32 \$	5.59	
A28007	GUTHRIE, RAYMOND F & VIRGINIA A	626 S 38TH ST W 19	4.32 \$	5.59	
A28008	CLARK, JOHN W	625 S 38TH ST W 20	4.32 \$	5.59	
A28009	DAVIS, WILLIAM K	626 S 38TH ST W 21	4.32 \$	5.59	
A28010	LIPPERT, CHAD A	625 S 38TH ST W 22	4.32 \$	5.59	
A28011	CARLSON, DEON L	625 S 38TH ST W 23	4.32 \$	5.59	
A28012	JOKI, MARGARET RAE & KENNETH M	625 S 38TH ST W 24	4.32 \$	5.59	
A28013	ECHEVERRI, NORA I &	625 S 38TH ST W 25	4.32 \$	5.59	
A28014	B & P LEASING	625 S 38TH ST W 26	4.32 \$	5.59	
A28015	BOYER PROPERTIES LLC	626 S 38TH ST W 27	4.32 \$	5.59	
A28016	KORBER, JOHN E	626 S 38TH ST W 28	4.32 \$	5.59	
A28017	LONE ANTELOPE PROPERTIES LLC	625 S 38TH ST W 29	4.32 \$	5.59	
A28018	SEBORG, MYRNA	625 S 38TH ST W 30	4.32 \$	5.59	
A28019	BOYER PROPERTIES LLC	626 S 38TH ST W 31	4.32 \$	5.59	
A28020	DUNNING, KEE A	625 S 38TH ST W 32	4.32 \$	5.59	
A28021	B & P LEASING	625 S 38TH ST W 33	4.32 \$	5.59	
A28022	TEMME, LOWELL TRUSTEE	625 S 38TH ST W 34	4.32 \$	5.59	

SILMD 307- Exhibit B

TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment Based on Frontage
A28023	BOYER PROPERTIES LLC	626 S 38TH ST W 35	4.32 \$	5.59
A28024	RALPH, WILLIAM M	626 S 38TH ST W 36	4.32 \$	5.59
A28025	YELVINGTON, TAMARIA	626 S 38TH ST W 37	4.32 \$	5.59
A28026	LARSON, CARL L	626 S 38TH ST W 38	4.32 \$	5.59
A28027	HAMMEL, MARILYN K	625 S 38TH ST W 39	4.32 \$	5.59
A28028	PAIGE, PATRICK K	625 S 38TH ST W 40	4.32 \$	5.59
A28029	BOWLES, PATRICK D & BARBARA	626 S 38TH ST W 41	4.32 \$	5.59
A28030	BRUHAUG, EDWARD O &	625 S 38TH ST W 42	4.32 \$	5.59
A28031	BOEHS BARBARA	626 S 38TH ST W 43	4.32 \$	5.59
A28032	HEMMER, DOROTHY M	625 S 38TH ST W 44	4.32 \$	5.59
A28033	CHARETTE, FRED A	625 S 38TH ST W 45	4.32 \$	5.59
A28034	HICKEL ROSALIE A	626 S 38TH ST W 46	4.32 \$	5.59
A28035	RHEA, ERIC M	625 S 38TH ST W 47	4.32 \$	5.59
A28036	CUCCIARDI, MICHAEL L & CHERYL	625 S 38TH ST W 48	4.32 \$	5.59
A28037	BLUM, BLANCHE E	625 S 38TH ST W 49	4.32 \$	5.59
A28038	WORTHINGTON, BETTY L	625 S 38TH ST W 50	4.32 \$	5.59
A28039	LICH, VAL	625 S 38TH ST W 52	4.32 \$	5.59
A28040	LOOS, DONNA &	625 S 38TH ST W 54	4.32 \$	5.59
A28041	SMILEY, CHERYL K	625 S 38TH ST W 56	4.32 \$	5.59
A28042	KLUSMANN, DULCIE O	625 S 38TH ST W 3920	4.32 \$	5.59
A28043	TAYLOR, WANELTA	625 S 38TH ST W 3922	4.32 \$	5.59
A28514	ROCKY MOUNTAIN OIL INC	4041 GRAND	291 \$	376.02
A28515	STOCKMAN BANK OF MONTANA	1450 SHILOH RD	190.42 \$	246.06
A28526	GOODMAN INC	4007 AVENUE B	163.46 \$	211.22
A28527A	SHILOH-GRAND CENTER LLC		17.67 \$	22.83
A28527B	SHILOH-GRAND CENTER LLC		17.75 \$	22.94
A28527C	SHILOH-GRAND CENTER LLC		22.47 \$	29.04
A28527D	SHILOH-GRAND CENTER LLC		22.47 \$	29.04
A28527E	SHILOH-GRAND CENTER LLC		7.48 \$	9.67
A28527F	SHILOH-GRAND CENTER LLC		10.27 \$	13.27
A28527G	SHILOH-GRAND CENTER LLC		17.67 \$	22.83
A28799A	EKANGER, MARY L TRUSTEE	2010 SWANSON LN	19.03 \$	24.59
A28799B	BILLMAN, TANA M	2012 SWANSON LN	19.03 \$	24.59
A28799C	WEIDINGER, RICHARD J & SHERI L	2014 SWANSON LN	19.03 \$	24.59
A28799D	FRANK, CYNTHIA	2016 SWANSON LN	19.03 \$	24.59
A28799E	DUNCAN, DAVID F & TIFFANY A	2018 SWANSON LN	19.03 \$	24.59
A28799F	BARTHEL, LAWRENCE J & RITA J	2020 SWANSON LN	19.03 \$	24.59
A28799G	HOTCHKISS, CONNIE & JANICE L TRUSTEES	2022 SWANSON LN	19.03 \$	24.59
A28799H	BENTS, STEVEN V & JOANNE LOUISE &	2024 SWANSON LN	19.03 \$	24.59
A28799I	TROST, DANIEL	2026 SWANSON LN	19.03 \$	24.59
A28799J	BEHN, DONALD D	2028 SWANSON LN	19.03 \$	24.59
A28799K	WOLFF, DENNIS D	2030 SWANSON LN	19.03 \$	24.59
A28799L	DAHLSEIDE, BLAINE D	2032 SWANSON LN	19.03 \$	24.59
A28817	CITY OF BILLINGS		36.22 \$	46.80
A28826	DENOWH, AGNES E	3955 OLYMPIC BLVD UNIT 1	5.96 \$	7.70
A28827	KNUDSEN, MILES & RHONDA	3955 OLYMPIC BLVD UNIT 2	5.96 \$	7.70
A28828	LONE ANTELOPE PROPERTIES, LLC	3955 OLYMPIC BLVD 3	5.96 \$	7.70
A28829	C & L PROPERTY MANAGEMENT LLC	3955 OLYMPIC BLVD 4	5.96 \$	7.70
A28830	FASCHING, MICHAEL L	3955 OLYMPIC BLVD 5	5.96 \$	7.70
A28831	O'NEIL, MARTIN & JUDY	3955 OLYMPIC BLVD 6	5.96 \$	7.70
A28832	MOSELEY, BRENDA L	3955 OLYMPIC BLVD 7	5.96 \$	7.70
A28833	BOYER PROPERTIES LLC	3955 OLYMPIC BLVD 8	5.96 \$	7.70
A28834	WEST, DANIEL	3955 OLYMPIC BLVD 9	5.96 \$	7.70
A28835	VINCENT, THERESA M	3955 OLYMPIC BLVD 10	5.96 \$	7.70
A28836	PRATT, CHARLES F & MARILYN I	3955 OLYMPIC BLVD 11	5.96 \$	7.70
A28837	BLACK KERRI	3955 OLYMPIC BLVD 12	5.96 \$	7.70
A28838	GUM, NOLAN BARRY	3955 OLYMPIC BLVD 13	5.96 \$	7.70
A28839	GOLT, ANTHONY J	3955 OLYMPIC BLVD 15	5.96 \$	7.70
A28840	CHILDERS FAMILY TRUST	3955 OLYMPIC BLVD 15	5.96 \$	7.70
A28841	PIPER, PENNY L	3955 OLYMPIC BLVD 16	5.96 \$	7.70
A28842	BOYERS PROPERTIES LLC	3955 OLYMPIC BLVD 17	5.96 \$	7.70
A28843	BLACKBURN LINDSAY S	3955 OLYMPIC BLVD 18	5.96 \$	7.70
A28844	KOLSTAD, JON C	3955 OLYMPIC BLVD 19	5.96 \$	7.70
A28845	TAYLOR, TAMMY M	3955 OLYMPIC BLVD 20	5.96 \$	7.70
A28846	BEVERLEY, JONATHAN C	3955 OLYMPIC BLVD 21	5.96 \$	7.70
A28847	WOO SUN, NANCY M	3955 OLYMPIC BLVD 22	5.96 \$	7.70
A28848	SORUM, KRISTINA A	3955 OLYMPIC BLVD 23	5.96 \$	7.70

SILMD 307- Exhibit B

TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment Based on Frontage
A28849	THOGERSEN, TIMOTHY L & LONI	3955 OLYMPIC BLVD 24	5.96 \$	7.70
A28850	B & P LEASING LLC	3955 OLYMPIC BLVD 25	5.96 \$	7.70
A28851	JONES-AUSTIN, T	3955 OLYMPIC BLVD 26	5.96 \$	7.70
A28852	LAI, NGAI HOI &	3955 OLYMPIC BLVD 27	5.96 \$	7.70
A28853	PATES, SHERI G	3955 OLYMPIC BLVD 28	5.96 \$	7.70
A28854	BEERY, BUFFY JO	3955 OLYMPIC BLVD 29	5.96 \$	7.70
A28855	RIEGER, ANDREA & CODY	3955 OLYMPIC BLVD 30	5.96 \$	7.70
A28856	REED, KATE A	3955 OLYMPIC BLVD 31	5.96 \$	7.70
A28857	HICKS, JONATHAN M	3955 OLYMPIC BLVD 32	5.96 \$	7.70
A28862	WOOD, STEPHEN & JANICE A	3955 OLYMPIC BLVD 33	5.96 \$	7.70
A28863	DEVRIES, BRENDA C	3955 OLYMPIC BLVD 34	5.96 \$	7.70
A28864	CARPENTER, KINSEY T	3955 OLYMPIC BLVD 35	5.96 \$	7.70
A28865	LEATHERBERRY, THOMAS	3955 OLYMPIC BLVD 36	5.96 \$	7.70
A28866	KREMER, CLARINDA DAWN	3955 OLYMPIC BLVD 37	5.96 \$	7.70
A28867	KNUDSEN, RHONDA & MILES	3955 OLYMPIC BLVD 38	5.96 \$	7.70
A28868	MILLER, KENNETH C & EMRIE A TRSTES	3955 OLYMPIC BLVD 39	5.96 \$	7.70
A28869	MILLER, WALTER D & PATRICIA K	3955 OLYMPIC BLVD 40	5.96 \$	7.70
A29193	DONOHOE, PAUL S TRUSTEE	2070 SWANSON LN	21.9 \$	28.30
A29194	THOMPSON, SHARON & LOREN L	2072 SWANSON LN	21.9 \$	28.30
A29195	WALTERS, WILLIAM D & BONNIE K	2074 SWANSON LN	21.9 \$	28.30
A29196	KELLISON, BONNIE K &	2076 SWANSON LN	21.9 \$	28.30
A29197	OBENAUER, MICHAEL E & BARBARA L	2078 SWANSON LN	21.9 \$	28.30
A29198	FRANK, JANIS J	2080 SWANSON LN	21.9 \$	28.30
A29199	ERWIN W & COLLEEN M SMITH REV TRUST	2082 SWANSON LN	21.9 \$	28.30
A29200	POUSH, DONALD K & NANCY G	2084 SWANSON LN	21.9 \$	28.30
A29201	SCHANCK, NORMA J	2086 SWANSON LN	21.9 \$	28.30
A29202	NUNLEY, JOANN	2088 SWANSON LN	21.9 \$	28.30
A29258	KONS SOOPER INC		262.46 \$	339.15
A29261	KONS SOOPER INC	747 SHILOH RD	247.7 \$	320.07
A29262	KONS SOOPER INC	727 SHILOH RD	319.3 \$	412.59
A29966	CITY OF BILLINGS	SHILOH RD	86.24 \$	111.44
A29967	ST JOHN'S LUTHERAN MINISTRIES INC	2511 SHILOH RD	649.57 \$	839.36
A29970	SISTERS OF CHARITY OF LEAVENWORTH	2223 SHILOH RD	688.25 \$	889.34
A30733	BILLINGS URBAN FIRE SERV AREA DIST	1910 SHILOH RD	200 \$	258.44
A31919	SISTERS OF CHARITY OF LEAVENWORTH	715 SAINT VINCENT WAY	54.06 \$	69.86
A34025	SHILOH CROSSING, LLC	1101 SHILOH CROSSING BLVD	26.85 \$	34.69
A34026	CMR PROPERTIES, LLC	1006 SHILOH CROSSING BLVD	248.31 \$	320.86
A34026B	SHILOH CROSSING, LLC	1010 SHILOH CROSSING BLVD	189.23 \$	244.52
A34026C	SHILOH CROSSING, LLC	1020 SHILOH CROSSING BLVD	277.35 \$	358.39
A34026D	SHILOH CROSSING, LLC	1100 SHILOH CROSSING BLVD	814.11 \$	1,051.98
A34027	SHILOH CROSSING, LLC	910 SHILOH CROSSING BLVD	177.94 \$	229.93
A34027A	SHILOH CROSSING, LLC	856 SHILOH CROSSING BLVD	248.61 \$	321.25
A34027B	SHILOH CROSSING, LLC	840 SHILOH CROSSING BLVD	218.9 \$	282.86
A34027C	FIRST INTERSTATE BANK	830 SHILOH CROSSING BLVD	405.29 \$	523.71
C01754D	CITY OF BILLINGS	SHILOH RD	302.53 \$	390.92
C01755	KINCAID LAND LLC	2724 SHILOH RD	295.98 \$	382.46
C01756	NICK, JOHN M & BETTY J	4007 VICKERY DR	115.27 \$	148.94
C01756C	HELEN P HALL REVOCABLE TRUST	4008 VICKERY DR	115.43 \$	149.15
C01757	KINCAID LAND LLC	2512 SHILOH RD	295.00 \$	381.19
C02218	STRUCKMAN, TRAVIS & ASHLEY	2416 SHILOH RD	90 \$	116.30
C02219	COLEMAN, RALPH L & NANCY L	2410 SHILOH RD	80 \$	103.37
C02220	KOSTER, CHARLES R & TRUDY S	2404 SHILOH RD	80 \$	103.37
C02221	COONFARE, ALAN B & APRIL L	2322 SHILOH RD	80 \$	103.37
C02222	FRANKS CARL L	2316 SHILOH RD	80 \$	103.37
C02223	KUMETAT, STEVEN L	2310 SHILOH RD	80 \$	103.37
C02224	ALLEN, DARREN W & KRISTEN H	2304 SHILOH RD	85 \$	109.84
C02225	ERICKSON, MERLAND B & CAROL ANN	2208 SHILOH RD	90 \$	116.30
C02226	KELLEY, FRANCIS J & RUTH K	2205 SHILOH RD	95.7 \$	123.66
C02236	REDFIELD, RONALD L & PEARL R SCOTT	2122 SHILOH RD	116.53 \$	150.58
C02236A	LEHFELDT, CHRIS A & HOLLY A	2114 SHILOH RD	90 \$	116.30
C02236B	PAPPAS, GEORGE J SR & KAREN V	2105 SHILOH RD	80 \$	103.37
C02239	RK DEVELOPMENT LLC	4003 PARKHILL DR	395.85 \$	511.51
C02240A	RK DEVELOPMENT LLC	2012 SHILOH RD	99.95 \$	129.15
C02241	RK DEVELOPMENT LLC	2004 SHILOH RD	99.95 \$	129.15
C02241C	CITY OF BILLINGS	PARKHILL DR	54.27 \$	70.13
C02242	BILLINGS URBAN FIRE SERVICE AREA	1918 SHILOH RD	101.11 \$	130.65
C07679	YELLOWSTONE COUNTY (PARK)	WELLS PL	719.55 \$	929.79

SILMD 307- Exhibit B

TaxID	OwnerName	PhysicalAddress	Frontage	Estimated SILMD Assessment Based on Frontage
C08659	EGGEBRECHT FAMILY LIMITED PTNRSHP		717.38 \$	926.98
C08661C	EGGEBRECHT FAMILY LIMITED PTNRSHP		436.65 \$	564.23
C09419	MATHESON, RONALD W & NANCY L	3961 TEMPLE PL	468.21 \$	605.01
C09421	RING, KEVIN L	3949 ESTATE PL	411.79 \$	532.11
C09429	NEW LIFE ASSEMBLY	3950 TEMPLE PL	247.855 \$	320.27
C10239	SHILOH GLEN LLC	3900 OLYMPIC BLVD	101.47 \$	131.12
C10240	CITY OF BILLINGS (PARKS)		954.61 \$	1,233.53
C11980	JTL GROUP INC	SHILOH RD	2709.65 \$	3,501.35
C11984	YELLOWSTONE COUNTY		83.79 \$	108.27
C13909	JENSEN, TYLER J JR & TARA M	215 S 41ST ST W	194.87 \$	251.81
C13911	LEWIS, DAVID G & LISA	225 S 41ST ST W	116.84 \$	150.98
C13912	JUDSON, AL & DIANNA	235 S 41ST ST W	116.84 \$	150.98
C13913	FRANK, MERLE B & MITZI L	265 S 41ST ST W	128.52 \$	166.07
C13914	HANKEL, GARY L & KATHY A	285 S 41ST ST W	128.18 \$	165.63
C13938	SHILOH 47 LLP	3954 ZOO DR	309.82 \$	400.34
C13939	SHILOH 47 LLP	2043 SHILOH RD	364.32 \$	470.77
C13940	SHILOH 47 LLP	2085 SHILOH RD	252.81 \$	326.68
C13944	SHILO 47 LLP	3979 PIERCE PKWY	262.7 \$	339.46
C13950A	SHILO 47 LLP	3979 PIERCE PKWY	606.26 \$	783.40
D00321	INTERNATIONAL CHURCH OF THE	3906 BROADWATER AVE	547.89 \$	707.97
D00323	YELLOWSTONE VETERINARY PROPERTIES LLP	345 SHILOH RD	204.86 \$	264.72
D00325	KEYSTONE INC	3933 CENTRAL AVE	1269.87 \$	1,640.90
D00348	DEACONESS BILLINGS CLINIC	616 SHILOH RD	1319.51 \$	1,705.04
D00487	MWSH BILLINGS LLC		584.80 \$	755.67
D00502	FIRST SOUTHERN BAPTIST CHURCH	SHILOH RD	768.48 \$	993.01
D00506	CETRONE, VICTOR EUGENE AKA	4028 CENTRAL AVE	361 \$	466.48
D00517	EGGEBRECHT FAMILY LIMITED PTNRSHP		709.24 \$	916.46
D00517A	EGGEBRECHT FAMILY LIMITED PTNRSHP	3808 SHILOH RD	570.45 \$	737.12
D00609B	INDUSTRIAL PLANNING ASSOCIATES LP	HESPER RD	291.3 \$	376.41
D00609C	INDUSTRIAL PLANNING ASSOCIATES LP	HESPER RD	216.96 \$	280.35
D00611	YELLOWSTONE BAPTIST COLLEGE		384.77 \$	497.19
D00612	LESTER, SHIRLEY I		524.93 \$	678.30
D00797	LONG FAMILY LIMITED PARTNERSHIP	SHILOH RD	1136.27 \$	1,468.26
D00797A	LARSON FAMILY PROPERTIES LLC	SHILOH RD	515.15 \$	665.67
D00798	JTL GROUP INC	SHILOH RD	236.71 \$	305.87
D00799A	LARSON FAMILY PROPERTIES LLC	SHILOH RD	648.97 \$	838.58
D00835A	MONTANA DEPT OF HIGHWAYS	SHILOH RD	1458.92 \$	1,885.18
D04710	LUTHERAN RETIREMENT HOME INC	2621 SHILOH RD	1018.74 \$	1,316.39
D04719	SQUIRES, GARY M & DAWN	2504 SHILOH RD	62.22 \$	80.40
D04746	SHILOH UNITED METHODIST CHURCH INC		450.22 \$	581.76
D04746A	LEHENBAUER REAL ESTATE LP	1720 SHILOH RD	294.96 \$	381.14
D11401	ZEHLAH FARM LLC	1122 SHILOH RD	1316.39 \$	1,701.01
D11403	ZEHLAH FARM LLC	SHILOH RD	1295.95 \$	1,674.60
D11775	INTERNATL CHURCH OF THE FOURSQUARE	517 SHILOH RD	59.98 \$	77.50
D11776	INT'L CHURCH OF THE FOURSQUARE	321 SHILOH RD	435.94 \$	563.31
D11872	YEGEN GRAND AVE FARMS INC		1245.95 \$	1,609.99
D11873	YEGEN GRAND AVE FARMS INC		1264.88 \$	1,634.45
D11891	WELLS, LELAND J & LORRAINE W	16 SHILOH RD	229.66 \$	296.76
D11892	IWATA, AMY TRUSTEE	CENTRAL AVE	283.3 \$	366.07
D12486	REGER, JAMES R & DEBORAH C	ZOO DR	500.53 \$	646.77
1.00000	Shiloh Drain Right-of-Way		2378.91 \$	3,073.98
A31922	Ann Ross Park		2290.79 \$	2,960.11
D12710	REGER, JAMES R & DEBORAH C (2/3) &	ZOO DR	780.86 \$	1,009.01
			46,794.37 \$	60,466.65
	Total of City's Contribution			\$ 7,912.74
	Total City Percentage			13%

2023 Silmd Assessment Rollup - City of Billings, MT

SILMD 307 - Exhibit C

Shiloh Road from Rimrock Road to Pierce Parkway
Legal Description of Properties with District

Tracts of land situated in Yellowstone County, Montana, more particularly described as:

Lot 5A, Blue Meadows Acreage Tracts Subdivision Amended, Recorded June 2, 2005 at Yellowstone County under Document No. 3335101;

Lot 2A, Blue Meadows Acreage Tracts Subdivision Amended, Recorded November 9, 2004 at Yellowstone County under Document No. 3311200;

Lots 3A and 3D, Blue Meadows Acreage Tracts Subdivision Amended, Recorded April 30, 1980 at Yellowstone County under Document No. 1163930;

Lot 4, Blue Meadow Acreage Tracts, Recorded November 28, 1958 at Yellowstone County under Document No. 611654;

Tract 1, Certificate of Survey No. 1188, Recorded May 4, 1971 at Yellowstone County under Document No. 881509;

Lots 1-9, Block 1, Rush Subdivision 1st Filing, Recorded September 4, 1959 at Yellowstone County under Document No. 627690;

Lots 1-3, Block 5, Rush Subdivision 1st Filing, Recorded September 4, 1959 at Yellowstone County under Document No. 627690;

Lot 1A, Block 6, Rush Subdivision 2nd Filing Amended, Recorded May 27, 2004 at Yellowstone County under Document No. 3289776;

Lot 4, Dedicated Park, Rush Subdivision 7th Filing, Recorded January 25, 2001 at Yellowstone County under Document No. 3116043;

Lots 5 and 6, Block 6, Rush Subdivision 2nd Filing, Recorded December 13, 1957 at Yellowstone County under Document No. 593612;

Tracts 1A and 1B, Rush Acreage Tracts Subdivision Amended, Recorded April 17, 2003 at Yellowstone County under Document No. 3225706;

Tract 1B, Certificate of Survey No. 2563 Amended, Recorded January 28, 2004 at Yellowstone County under Document No. 3273188 and Tract 1, Certificate of Survey No. 2050, Recorded February 23, 1981 at Yellowstone County under Document No. 1190528;

Lot 1A, Block 3, Goodman Subdivision 2nd Filing Amended, Recorded October 20, 2004 at Yellowstone County under Document No. 3308901;

Tract 1A-1, Certificate of Survey No. 1876 Amended, Recorded March 29, 1990 at Yellowstone County under Document No. 1554510;

Lot 1, Block 2, Goodman Subdivision, 3rd Filing, Recorded April 8, 2004 at Yellowstone County under Document No. 3282393;

Lots 1A and 2A, Block 1, Goodman Subdivision 2nd Filing Amended, Recorded December 1, 1995 at Yellowstone County under Document No. 1808590;

Tracts 3A and 4A, Certificate of Survey No. 2315 Amended, Recorded May 16, 1989 at Yellowstone County under Document No. 1522378;

A lot being owned by the Billings Clinic situated in the N 1/2 of the SE 1/4 of Section 3, Township 1, Range 25, less dedicated right-of-way;

Clydesdale Park, Shiloh Estates Subdivision, Recorded September 24, 1974 at Yellowstone County under Document No. 972425;

Lots 22A and 1A, Certificate of Survey No. 2727-M Amended, Recorded February 7, 1997 at Yellowstone County under Document No. 1862477;

Tracts 3 and 4, Certificate of Survey No. 862, Recorded March 7, 1961 at Yellowstone County under Document No. 658437;

Tract 1A, Certificate of Survey No. 1648 Amended, Recorded January 23, 2008 at Yellowstone County under Document No. 3452331;

Lots 1-5, Block 1, Bell Estates Subdivision, 3rd Filing, Recorded January 7, 2002 at Yellowstone County under Document No. 3159267;

Tract 2, Certificate of Survey No. 33558, Recorded June 13, 2008 at Yellowstone County under Document No. 3469097;

Shiloh Drain abutting The Village Subdivision (Ann Ross Park) located from Monad Road (or equivalent street right-of-way) to Lot 6, Block 2, The Village Subdivision;

Lot 6, Block 2, The Village Subdivision, Recorded March 4, 2005 at Yellowstone County under Document No. 3324330;

Shiloh Drain abutting Lot 9A, Block 1, Montana Sapphire Subdivision, Recorded November 16, 2006 at Yellowstone County under Document No. 3400745;

Shiloh Drain abutting Lots 5-8, Block 1, Montana Sapphire Subdivision, Recorded April 25, 2002 at Yellowstone County under Document No. 3173821;

Shiloh Drain abutting Lot 5, Block 1, Long Subdivision, up to the Shiloh Drain Crossing under Shiloh Road;

Lot 1 and Lot 5, Block 1, Long Subdivision, Recorded August 30, 1994 at Yellowstone County under Document No. 1755400;

Tract 1B, Certificate of Survey No. 1100 Amended, Recorded March 14, 1980 at Yellowstone County under Document No. 1159479;

Tract C and D, Certificate of Survey No. 1100 Amended, Recorded October 24, 1984 at Yellowstone County under Document No. 1327683;

Tract 2B, Certificate of Survey No. 1100 Amended, Recorded February 18, 1983 at Yellowstone County under Document No. 1255328;

Tract 2, Certificate of Survey No. 2659, Recorded December 30, 1991 at Yellowstone County under Document No. 1619073;

Lot 3A, Block 2, William D. Pierce Subdivision, Recorded December 1, 2008 at Yellowstone County under Document No. 3487938;

Lot 1, Block 1, William D. Pierce Subdivision, Recorded February 13, 2002 at Yellowstone County under Document No. 3164351;

Lots 6-8, Block 2, Shiloh Business Park Subdivision, Recorded February 13, 2002 at Yellowstone County under Document No. 3164356;

Tract 1A-1A and 1B-1B, Certificate of Survey No. 3077 Amended, Recorded May 14, 2008 at Yellowstone County under Document No. 3465453;

Certificate of Survey No. 640, Recorded March 1, 1954 at Yellowstone County under Document No. 520128 excluding Tracts 2 and 3 of Certificate of Survey No. 3329, Recorded August 14, 2007 at Yellowstone County under Document No. 3434176 and Temple Estates Subdivision, Recorded January 19, 1978 at Yellowstone County under Document No. 1077050 and all amendments thereof;

Lot 1, Block 2, Temple Estates Subdivision, Recorded January 19, 1978 at Yellowstone County under Document No. 1077050;

Lots 1B-1 and 1D-1, Temple Estates Subdivision Amended, Recorded November 23, 1993 at Yellowstone County under Document No. 1714287;

Tract 3, Certificate of Survey No. 3329, Recorded August 14, 2007 at Yellowstone County under Document No. 3434176;

Lot 3A, Block 1, Shiloh Crossing Subdivision Amended, Recorded November 14, 2008 at Yellowstone County under Document No. 3486350;

Lots 4A, 4C, 4D, and 4E, Block 1, Shiloh Crossing Subdivision Amended, Recorded July 18, 2008 at Yellowstone County under Document No. 3473361;

Lots 5A-5D, Block 1, Shiloh Crossing Subdivision Amended, Recorded April 22, 2008 at Yellowstone County under Document No. 3462531;

Lots 1B-1, 1B-4, 1B-5, Block 20, Olympic Park Subdivision Amended, Recorded October 15, 1998 at Yellowstone County under Document No. 3022968;

Lot 1A, Block 20, Olympic Park Subdivision Amended, Recorded June 17, 1993 at Yellowstone County under Document No. 1689703;

Lots 1-21, Block 17, Olympic Park Subdivision, inclusive of the 30' park, Recorded August 28, 1979 at Yellowstone County under Document No. 1140076;

Park strip located within Olympic Park Subdivision from Monad Road to Decathlon Parkway, Recorded August 28, 1979 at Yellowstone County under Document No. 1140076;

Private Park #1 located within Block 8 of Shiloh Village Subdivision, 1st Filing, Recorded July 13, 1976 at Yellowstone County under Document No. 1023283;

Private Park #3 located within Block 8 of Shiloh Village Subdivision, 3rd Filing, Recorded April 22, 1981 at Yellowstone County under Document No. 1195964;

Tracts 1B-1A and 1B-1B, Certificate of Survey No. 1492 Amended, Recorded May 8, 1986 at Yellowstone County under Document No. 1392379;

Tract 1B-1, Certificate of Survey No. 2277 Amended, Recorded June 6, 2006 at Yellowstone County under Document No. 3380133;

Tract 1 and 2, Certificate of Survey No. 3230, Recorded April 8, 2005 at Yellowstone County under Document No. 3328400;

Tracts 1 and 2, Certificate of Survey No. 3106, Recorded March 14, 2002 at Yellowstone County under Document No. 3168313;

Tracts 4 and 5, Certificate of Survey No. 2702, Recorded July 7, 1992 at Yellowstone County under Document No. 1642566;

Lot 1A, Block 1, Circle Fifty Subdivision Amended, Recorded July 24, 1996 at Yellowstone County under Document No. 1838465;

Lot 1C-1, Block 1, Circle Fifty Subdivision Amended, Recorded February 1, 2002 at Yellowstone County under Document No. 3163174;

Lots 1, 3-8, 10, Block 5, Circle Fifty Subdivision Amended, Recorded February 6, 1985 at Yellowstone County under Document No. 1339215;

Lots 7 and 8, Block 6, Circle Fifty Subdivision, Recorded February 6, 1985 at Yellowstone County under Document No. 1339215;

Lots 5 and 6, Block 6, Circle Fifty Subdivision, Recorded February 6, 1985 at Yellowstone County under Document No. 1339215 and Lots 4A, Block 6, Circle 50 Subdivision, Recorded December 13, 1996 at Yellowstone County under Document No. 1856650;

Lot 1A-1 and 3A-1, Block 14, Circle Fifty Subdivision Amended, Recorded December 29, 1997 at Yellowstone County under Document No. 1904144;

Park located within Circle Fifty Subdivision Amended, Recorded December 13, 1996 at Yellowstone County under Document No. 1856650;

Lots 2, Block 19, Circle Fifty Subdivision Amended, Recorded February 6, 1985 at Yellowstone County under Document No. 1339215;

Park located at southern boundary of Missions United Subdivision, Recorded June 27, 2001 at Yellowstone County under Document No. 3135018;

Lot 3A, Block 1, Missions United Subdivision Amended, Recorded June 2, 2005 at Yellowstone County under Document No. 3335137 and Lot 4, Block 1, Missions United Subdivision, Recorded June 27, 2001 at Yellowstone County under Document No. 3135018;

Lot 1, Block 1, Missions United Subdivision, Recorded June 27, 2001 at Yellowstone County under Document No. 3135018 and Lot 2A, Block 1, Missions United Subdivision Amended, Recorded June 2, 2005 at Yellowstone County under Document No. 3335137;

Tracts A-4, A-1-A and A-2-A, Certificate of Survey No. 369 5th Amended, Recorded December 1, 2004 at Yellowstone County under Document No. 3313774.

N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Final Plat of Whitetail Square Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, AICP, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Whitetail Square Subdivision is being presented to Council for approval. On November 24, 2008, the City Council conditionally approved 5 lots on approximately 14 acres for multi-family residential development. The plat was previously known as "Housing Authority of Billings Subdivision" but the subdivider have requested to change the name to Whitetail Square prior to final plat approval and recording. The subject property is located on the west side of Lake Elmo Drive, south of Wicks Lane, and north of Uinta Park Drive. The vacant property is zoned Residential Multi-Family, and has been in the City limits since 1984. It will be developed in two phases. The owner and subdivider is the Housing Authority of Billings, and the representing agent is Sanderson Stewart. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Whitetail Square Subdivision.

Approved By: City Administrator City Attorney

ATTACHMENT

A: Final Plat

01

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, June 8, 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 \$1,080,445.30 audited and are presented for your approval for payment. A complete listing of the claims dated May 08, 2009, in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

02

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 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 \$818,095.15 audited and are presented for your approval for payment. A complete listing of the claims dated May 15, 2009, in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Public Hearing on the Energy Efficiency & Conservation Block Grant Application and Energy Efficiency & Conservation Strategy

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Director

PROBLEM/ISSUE STATEMENT: The American Recovery and Reinvestment Act of 2009 (ARRA), appropriated funding for formula-based grants to local governments under the Energy Efficiency & Conservation Block Grant (EECBG) Program. Under this program, the City of Billings is eligible for \$1,003,000. The purpose of this grant is to assist eligible entities in creating and implementing strategies to reduce fossil fuel emissions, reduce the total energy use of eligible entities, and improve the energy efficiency in the building, transportation and other appropriate sectors. The City must also submit an Energy Efficiency & Conservation Strategy (EECS) with the application or within 120 days after the effective date of the award of the grant. The final draft of the ECBG application and the EECS will be presented to Council for its action on June 22, 2009.

ALTERNATIVES ANALYZED: The City Council may choose to:

1. Approve the application with the projects recommended by staff, along with the proposed EECS;
2. Modify the application and change the projects recommended by staff, along with the proposed EECS;
3. Approve the application with the projects recommended by staff and delay submitting the EECS until after the grant is awarded; or
4. Modify the application and change the projects recommended by staff and delay submitting the EECS until after the grant is awarded.

FINANCIAL IMPACT: The City could realize up to \$1,003,000 in funding for energy efficient and conservation projects, which includes up to 10% of the total funding for administering those projects.

RECOMMENDATION

Staff recommends that Council hold a public hearing to take testimony on the Energy Efficiency & Conservation Block Grant application and the Energy Efficiency & Conservation Strategy. No action is recommended at this time.

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

ATTACHMENTS

- A. List of Eligible Activities
- B. City of Billings Energy Efficiency and Conservation Strategy - DRAFT

INTRODUCTION

The Energy Efficiency & Conservation Block Grant (EECBG) Program was authorized under the American Recovery and Reinvestment Act of 2009 (ARRA). The City of Billings is authorized to receive up to \$1,003,000 for eligible projects. The projects must meet the intent of the program and must be listed as part of an Energy Efficiency & Conservation Strategy (EECS) adopted by the City.

PROCEDURAL HISTORY

- Energy Efficiency and Conservation Block Grant Program initial announcement issued on March 26, 2009 – DE-FOA-0000013
- The public hearing was legally advertised on May 21 and May 28, 2009 in the Billings Times
- The public hearing before the City Council to receive testimony on the EECBG application and the EECS will be held on June 8, 2009
- City Council will take action on the EECBG application and the EECS on June 22, 2009
- The EECBG application is due on June 25, 2009

BACKGROUND

The purposes of the ARRA are to stimulate the economy and to create or retain jobs. The Act gives preference to activities that can be started and completed expeditiously. The EECBG program, authorized by the ARRA and administered by the Department of Energy (DOE), is focused on reducing fossil fuel emissions, reducing the total energy use of the eligible entities, and improving energy efficiency in the building, transportation and other appropriate sectors. The desired outcomes of the EECBG Program include:

- Increased energy efficiency, reduced energy consumption and reduced energy costs through efficiency improvements in the building, transportation and other appropriate sectors;
- New jobs and increased productivity to spur economic growth and community development;
- Accelerated deployment of market-ready distributed renewable energy technologies, including wind, solar, geothermal, hydropower, biomass and hydrogen technologies;
- Improved air quality and related environmental and health indicators associated with the reduction of fossil fuel emissions;
- Improved coordination of energy-related policies and programs across jurisdictional levels of governance and with other local and community level programs in order to maximize the impact of this program on long-term local priorities;
- Increased security, resilience, and reliability of energy generation and transmission infrastructure;
- Leveraging of the resources of federal, state and local governments, utilities and utility regulators, private sector and non-profit organizations to maximize the resulting energy, economic and environmental benefits; and
- Widespread use of innovative financial mechanisms that transform markets.

As a guide, the DOE has issued a list of eligible activities shown in Attachment A.

City Departments were asked for their input for potential eligible projects. The initial list of projects was reviewed and revised by a Committee composed of staff representing Administration, Public Works, Planning, Library, and Police. The Committee developed a revised list of projects and forwarded it to the Mayor's Commission on Energy and Conservation for review and comment. The projects on the draft list included:

- 2009 INTERNATIONAL ENERGY CONSERVATION CODE PROGRAM DEVELOPMENT - \$100,000
- SWORDS PARK TRAIL II - \$400,000
- ENERGY PERFORMANCE CONTRACT FOR CITY-OWNED FACILITIES - \$100,000
- PARKING GARAGE LIGHT RETROFIT - \$100,000
- FIRE STATION HEATING SYSTEM UPGRADES - \$30,000
- HYBRID BOOKMOBILE - \$300,000

After much discussion, the Energy Commission, with no formal action taken, settled on removing the Parking Garage Light Retrofit and the Fire Station Heating System Upgrades, and adding a program to implement the City Energy Star Challenge. The Parking Garage and Fire Station projects were eliminated because these projects would most likely be identified in the Energy Performance Contract and these improvements may then be funded by energy bonds. The City Energy Star Challenge was added because of its potential for long range energy savings for the City and participating entities.

Staff is recommending, with the concurrence of the Energy Commission, five projects for funding through the EECBG program:

1. 2009 INTERNATIONAL ENERGY CONSERVATION CODE PROGRAM DEVELOPMENT - \$100,000

The City of Billings' Building Division proposes to adopt the 2009 International Energy Conservation Code (IECC). Currently, the City enforces the 2003 IECC, but limits its inspections to insulation values. Under this proposal, the City would train and certify one inspector to act as the local expert on the IECC. Additional personnel will also be trained and certified as energy code inspectors and plan reviewers. The City would also take on the task of conducting local workshops to inform the local building community of the new requirements found in the 2009 IECC. When certification and training is complete, one or more inspections would be required to verify compliance with the 2009 IECC as part of the permit process. This would include inspection of both Residential and Commercial projects, and would also include review and inspection of the building envelope as well as applicable Mechanical, Electrical, and Plumbing installations. Items in need of correction would be brought to the owner or contractors' attention and would be re-inspected once the corrections are made. The timeline to develop and implement the program is one year at a total cost of \$120,000. The grant funded cost of this activity is \$100,000.

2. SWORDS PARK TRAIL II - \$400,000

This phase of the Swords Park Trail will consist of engineering and construction of a ten foot-wide, one mile-long, hard-surfaced bicycle and pedestrian path. The trail will connect with the existing Swords Park Trail, follow the Black Otter Trail to the existing underpass at Airport Road and connect with the Aronson Boulevard bike trail. This trail section will complete an important 4-mile bicycle commuting route from the Billings Heights neighborhood to downtown Billings. The total estimated cost of this project is \$469,749. This project has already received \$62,120 in Community Transportation Enhancement Program funds and \$34,629 has been committed from the City's Park and Trails General Obligation Bond and from the BikeNet organization. The trail is expected to be completed within 18 months after the \$400,000 in EECBG funds is awarded.

3. ENERGY PERFORMANCE CONTRACT FOR CITY-OWNED FACILITIES - \$100,000

The City of Billings (City) has determined that feasible energy savings projects exist throughout its facilities. This was determined through a preliminary energy audit and the City concluded the best vehicle to implement these projects is through a performance contracting project. The next phase in that process is a Technical Audit to identify and quantify those projects for implementation. The Technical Audit costs approximately \$100,000 and the City will have no return on this phase. The future cost of the energy saving projects will be funded through the guaranteed savings by the current operating expense reductions of the various Divisions within the City. Examples of the energy conservation opportunities include: convert T12 lights to T8; convert high bay metal halide fixtures to high bay fluorescents; install occupancy and/or daylighting controls; convert exit signs to LED; complete conversion of any remaining incandescent lighting to CFL's; investigate installation of LED lighting for the Airport runway; convert metal halide or HPS lighting in parking garages and audit controls change opportunities; identify lighting redesign opportunities; install or change of mechanical controls; identify mechanical projects involving Variable Frequency Drives (VFD), higher or premium efficiency motors, or gravity feed technologies where applicable, boiler changes, thermostat and other control upgrades in various locations; identifying pump performance testing and program opportunities; evaluate replacement of methane generation equipment with more efficient equipment and containment removal of methane fuel at wastewater facility; replace and or addition of exterior panels and insulation at Airport location; convert some heating distribution from steam to hot water; identify opportunities for exhaust air heat recovery; look for delamping opportunities to reduce connected load; evaluate and quantify changes in roof color to overall energy improvement; and identify any potential renewable energy opportunities for use in City facilities. Although this list is not all inclusive, it represents the opportunities identified in a preliminary walk-through of some of the major City facilities. This Technical Audit will identify these opportunities and position the City of Billings to move forward in its energy conservation strategies within the next three years.

4. ENERGY STAR CHALLENGE - \$53,000

The City of Billings proposes to join the ranks of local governments participating in the Environmental Protection Agency's Energy Star Challenge. The City will implement the Energy Star Challenge through the following four activities:

- a. Establish the Energy Star program, including initial data input into Portfolio Manager and working with other constituencies to build public awareness
- b. Develop a website link from the City's homepage that focuses on the Energy Star Challenge and relevant public information, including:
 - government and private sources for rebates, tax credits, etc. to help fund energy efficiency upgrades
 - examples of what a household or small business can do to save energy
 - updates about activities underway in Billings that support the objectives of the Energy Star Challenge
- c. Develop and implement a public education/social marketing campaign for the community about the Energy Star Challenge and the ways in which people can become involved.
- d. Assess public awareness of Energy Star Challenge.

\$53,000 in grant funding for this project will go towards website design, data entry, public service announcements and other educational materials.

5. HYBRID BOOKMOBILE - \$350,000

The project will replace the City of Billings existing Bookmobile, a 1995 Thomas built powered by a Cummins 5.9 liter diesel engine with a new bookmobile equipped with the integration of an Electric Hybrid Drive System and a Cummins, 2010 EPA compliant diesel engine. The proposed Hybrid system is a Parallel Hybrid System which uses both the diesel engine and an electric motor to power the vehicle. The electric motor/generator is mounted between the transmission and the engine. Braking generates electric power which is stored in the hybrid batteries. The vehicle uses this stored energy to add power back into the transmission when the throttle is depressed. The vehicle is more fuel efficient, quieter, and has longer brake life than a normal diesel driven vehicle. Fossil fuel emissions are reduced because the engine is more fuel efficient and would meet the 2010 EPA emission standards. The 2010 EPA compliant diesel engine is equipped with Selective Catalytic Reduction technology producing near-zero emissions. Tailpipe nitrogen oxide emissions are reduced by treating the exhaust stream with a spray of Diesel Exhaust Fluid (DEF). DEF, along with the heat of the exhaust and a catalyst, converts NOx in to nitrogen and water vapor, which are clean, harmless and present in the air we breathe every day. The grant fund portion of this purchase is \$350,000. The remainder will be funded through the Library's Equipment Replacement fund.

ENERGY EFFICIENCY & CONSERVATION STRATEGY

The EECBG program requires the City submit an EECS at the time of application, or within 120 days of the effective date of the grant award. If the latter option is chosen, grant funding may be used for the development of this Strategy. Instead of using grant funds to develop the Strategy, staff has opted for submitting it at the time of submittal. The format of the Strategy is provided in the application form. A draft of the Strategy is included in Attachment B.

The proposed Strategy consists of six sections as prescribed in the grant:

1. Goals and objectives

2. Proposed implementation and use of EECBG Program funds
3. Address neighboring jurisdiction use of grant funds
4. Coordination with State
5. How plan will ensure sustained benefits
6. Monitoring procedures to ensure EECBG Program funds are used as authorized

RECOMMENDATION

Staff recommends that Council hold a public hearing to take testimony on the Energy Efficiency & Conservation Block Grant application and the Energy Efficiency & Conservation Strategy. No action is recommended at this time.

ATTACHMENTS

- A. List of Eligible Activities
- B. City of Billings Energy Efficiency and Conservation Strategy - DRAFT

ATTACHMENT A
List of Eligible Activities for EECBG Program

1. **Development of an Energy Efficiency and Conservation Strategy:** Entities may use a grant received under this part to develop and/or implement a strategy for energy efficiency and conservation and to carry out activities to achieve the purposes of the program. All entities receiving direct formula grants from the DOE are required to submit a proposed strategy for approval.
2. **Technical Consultant Services:** Entities may retain technical consultant services to assist the eligible entity in the development of such a strategy, including formulation of energy efficiency, energy conservation, and energy usage goals; identification of strategies to achieve those goals through efforts to increase energy efficiency, reduce fossil fuel emissions or reduce energy consumption through investments or by encouraging behavioral changes. Entities may develop methods to measure progress in achieving the goals. Entities may develop and publish annual reports to the population served by the eligible entity describing the strategies and goals and the progress made in achieving them during the preceding calendar year.
3. **Residential and Commercial Building Energy Audits:** Entities may support the conduct of residential and commercial building energy audits.
4. **Financial Incentive Programs:** Entities may establish financial incentive programs and mechanisms for energy efficiency improvements such as energy saving performance contracting, on-bill financing, and revolving loan funds.
5. **Energy Efficiency Retrofits:** Grants may be made to nonprofit organizations and governmental agencies for the purpose of retrofitting existing facilities to improve energy efficiency.
6. **Energy Efficiency and Conservation Programs for Buildings and Facilities:** Entities may develop and implement energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the entity. The range of activities includes the design and operation of the programs; the identification of the most effective methods for achieving maximum participation and efficiency rates; public education; measurement and verification protocols; and identification of energy efficient technologies.
7. **Development and Implementation of Transportation Programs:** Entities may develop and implement programs to conserve energy used in transportation, including but not limited to:
 - Employee flex time programs;
 - Promoting use of satellite work centers;
 - Development and promotion of zoning guidelines or requirements that promote energy efficient development;
 - Development of infrastructure such as bike lanes and pathways and pedestrian walkways;
 - Synchronization of traffic signals;
 - State/locals/regional integrated planning activities (i.e. transportation, housing, environmental, energy, land use) with the goal of reducing greenhouse gas emissions and

- vehicle miles traveled;
- Incentive programs to reduce commutes by single occupancy vehicles;
- Improvements in operational and system efficiency of the transportation system such as implementation of intelligent transportation system (ITS) strategies;
- Idle-reduction technologies and/or facilities to conserve energy, reduce harmful air pollutants, and greenhouse gas emissions from freight movement; and
- Installation of solar panels on interstate rights-of-way to conserve energy in highway operations and maintenance activities.

8. **Building Codes and Inspections:** Entities may develop and implement building codes and inspection services to promote building energy efficiency.

9. **Energy Distribution:** Entities may implement distributed energy resource technologies that significantly increase energy efficiency, including:

- District heating and cooling systems
- Combined heat and power systems
- Cogeneration systems
- Energy Storage systems
- Absorption chillers
- Desiccant humidifiers
- Micro turbines
- Ground source heat pumps

10. **Material Conservation Programs:** Entities may implement activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency.

11. **Reduction and Capture of Methane and Greenhouse Gases:** Entities may use grant funds to purchase and implement technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar waste-related sources, such as wastewater treatment plants, operations producing food waste, dairy farms and other animal operations.

12. **Traffic Signals and Street Lighting:** Entities may use grant funds to replace traffic signals and street lighting with energy efficient lighting technologies, including light emitting diodes; and any other technology of equal or greater energy efficiency.

13. **Renewable Energy Technologies on Government Buildings:** Entities may use grant funds to develop, implement, and install on or in any government building of the eligible entity onsite renewable energy technology that generates electricity from renewable resources, including solar energy; wind energy; fuel cells; and biomass.

14. **Any Other Appropriate Activity:** Entities may submit any other appropriate activity for approval in the Energy Efficiency and Conservation Strategy.

ATTACHMENT B

Energy Efficiency & Conservation Strategy for the City of Billings

1. Describe your government's proposed Energy Efficiency and Conservation Strategy. Provide a concise summary of your measureable goals and objectives, which should be aligned with the defined purposes and eligible activities of the EECBG Program. These goals and objectives should be comprehensive and maximize benefits community-wide. Provide a schedule or timetable for major milestones. If your government has an existing energy, climate, or other related strategy please describe how these strategies relate to each other.

The City of Billings, Montana has adopted a comprehensive Energy Efficiency and Conservation Strategy that will provide long term, community-wide benefits aimed at reducing the total energy use and fossil fuel consumption in the building, transportation, and utility sectors. The three measurable goals of the City are: 1) Establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels by 15% by 2015 (Goal 1: 15 by 15); 2) Reduce the total amount of fossil fuel consumed by adding 10 miles of multi-purpose pathways, bike lanes, and sidewalks, and increasing transit ridership by 10% in 10 years (Goal 2: 10 in 10); Replace 25% of internal combustible engines in City-owned equipment and vehicles with energy efficient alternatives by 2025 (Goal 3: 25 by 25). Goals and objectives to implement these goals include the following activities:

Goal 1: 15 by 15: *Establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels by 15% by 2015.*

Objectives:

- Develop baseline energy use database
- Upgrade, retrofit, or install energy efficient improvements
- Monitor energy consumption

Strategies:

- Conduct a City facility Energy Audit to establish energy use benchmarks and identify projects that will result in energy savings.
- Utilize metrics from the Energy Audit to establish baseline energy data that will allow monitoring of energy savings through the City Energy Star Challenge Program.
- Adopt and implement the 2009 International Energy Conservation Code through the Building Permit process.

Goal 2: 10 in 10: *Reduce the total amount of fossil fuel consumed by adding 10 miles of multi-purpose pathways, bike lanes, and sidewalks, and increasing transit ridership by 10% in*

10 years.

Objectives:

- Encourage non-motorized modes of transportation.
- Reduce overall vehicle miles traveled.
- Reduce CO2 emissions.
- Promote healthy lifestyle alternatives.

Strategies:

- Continue to construct multi-purpose pathways and stripe bicycle lanes along routes recommended in the 2006 City of Billings Heritage Trail Plan.
- Promote transit use and partner with major employers to incent workforce ridership.
- Partner with public health organizations and agencies to develop educational materials to encourage non-motorized transportation alternatives.

Goal 3: 25 by 25: *Replace 25% of internal combustible engines in City-owned equipment and vehicles with energy efficient alternatives by 2025.*

Objectives:

- Reduce greenhouse gas emissions.
- Set community example to encourage private sector fleet replacement.

Strategies:

- Identify and replace equipment and vehicles as they become eligible in the City's Equipment Replacement Plan with high efficiency hybrid or alternative fuel options.
- Advertise clean-air benefits on fuel efficient City-owned vehicles.

2. Describe your government's proposed implementation plan for the use of EECBG Program funds to assist you in achieving the goals and objectives outlined in the strategy describe in question #1. Your description should include a summary of the activities submitted on your activity worksheets, and how each activity supports one or more of your strategy's goals/objectives.

The City of Billings adopted an Energy Efficient & Conservation Strategy that established three goals. Each of the five projects proposed addresses one of the three goals.

1. **2009 INTERNATIONAL ENERGY CONSERVATION CODE PROGRAM DEVELOPMENT**
 - **Goal 1: 15 by 15:** *Establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels by 15% by 2015.*

The City of Billings' Building Division proposes to adopt the 2009 International Energy Conservation Code (IECC). Currently, the City enforces the 2003 IECC, but limits its inspections to insulation values. Under this proposal, the City would train and certify one inspector to act as the local expert on the IECC. Additional personnel will also be trained and certified as energy code inspectors and plan reviewers. The City would also take on the task of conducting local workshops to inform the local building community of the new requirements found in the 2009 IECC. When certification and training is complete, one or more inspections would be required to verify compliance with the 2009 IECC as part of the permit process. This would include inspection of both Residential and Commercial projects, and would also include review and inspection of the building envelope as well as applicable Mechanical, Electrical, and Plumbing installations. Items in need of correction would be brought to the owner or contractors' attention and would be re-inspected once the corrections are made. The timeline to develop and implement the program is one year at a total cost of \$120,000. The grant funded cost of this activity is \$100,000.

2. SWORDS PARK TRAIL II

- **Goal 2: 10 in 10:** *Reduce the total amount of fossil fuel consumed by adding 10 miles of multi-purpose pathways, bike lanes, and sidewalks, and increasing transit ridership by 10% in 10 years.*

This phase of the Swords Park Trail will consist of engineering and construction of a ten foot-wide, one mile-long, hard-surfaced bicycle and pedestrian path. The trail will connect with the existing Swords Park Trail, follow the Black Otter Trail to the existing underpass at Airport Road and connect with the Aronson Boulevard bike trail. This trail section will complete an important 4-mile bicycle commuting route from the Billings Heights neighborhood to downtown Billings. The total estimated cost of this project is \$469,749. This project has already received \$62,120 in Community Transportation Enhancement Program funds and \$34,629 has been committed from the City's Park and Trails General Obligation Bond and from the BikeNet organization. The trail is expected to be completed within 18 months after the \$400,000 in EECBG funds is awarded.

3. ENERGY PERFORMANCE CONTRACT FOR CITY-OWNED FACILITIES

- **Goal 1: 15 by 15:** *Establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels by 15% by 2015.*

The City of Billings has determined that feasible energy savings projects exist throughout its facilities. This was determined through a preliminary energy audit and the City concluded the best vehicle to implement these projects is through a performance contracting project. The next phase in that process is a Technical Audit to identify and quantify those projects for implementation. The Technical Audit costs approximately \$100,000 and the City will have no return on this phase. The future cost of the energy saving projects will be funded through the guaranteed savings by the current operating expense reductions of the various Divisions within the City. Examples of the energy conservation opportunities include: 1) Conversion of

T12 lights to T8 in 5 locations; 2) Convert high bay metal halide fixtures to high bay fluorescents, either T8 or T5, in at least 5 locations; 3) Install occupancy and/or daylighting controls in at least 8 locations, 4) Convert exit signs to LED in at least 5 locations; 5) Complete conversion of any remaining incandescent lighting to CFL's in at least 3 locations; 6) Investigate installation of LED lighting for the Airport runway; 7) Conversion of metal halide or HPS lighting in parking garages and audit controls change opportunities; 8) Identify lighting redesign opportunities; 9) Install or change of mechanical controls; 10) Identify mechanical projects involving Variable Frequency Drives (VFD), higher or premium efficiency motors, or gravity feed technologies where applicable, boiler changes, thermostat and other control upgrades in various locations; 10) Identifying pump performance testing and program opportunities; 11) Evaluate replacement of methane generation equipment with more efficient equipment and containment removal of methane fuel at wastewater facility; 12) Replace and or addition of exterior panels and insulation at Airport location; 13) Conversion of some heating distribution from steam to hot water at one or two locations; 14) Identify opportunities for exhaust air heat recovery in at least one location; 15) Look for delamping opportunities to reduce connected load; 16) Evaluate and quantify changes in roof color to overall energy improvement in at least two locations; and 17) Identify any potential renewable energy opportunities for use in City facilities. Although this list is not all inclusive, it represents the opportunities identified in a preliminary walk-through of some of the major City facilities. This Technical Audit will identify these opportunities and position the City of Billings to move forward in its energy conservation strategies within the next three years.

4. ENERGY STAR CHALLENGE

- **Goal 1: 15 by 15:** Establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels by 15% by 2015.

The City of Billings proposes to join the ranks of local governments participating in the Environmental Protection Agency's Energy Star Challenge. The City will implement the Energy Star Challenge through the following four activities:

- e. Establish the Energy Star program, including initial data input into Portfolio Manager and working with other constituencies to build public awareness
- f. Develop a website link from the City's homepage that focuses on the Energy Star Challenge and relevant public information, including:
 - government and private sources for rebates, tax credits, etc. to help fund energy efficiency upgrades
 - examples of what a household or small business can do to save energy
 - updates about activities underway in Billings that support the objectives of the Energy Star Challenge
- g. Develop and implement a public education/social marketing campaign for the community about the Energy Star Challenge and the ways in which people can become involved.
 - h. Assess public awareness of Energy Star Challenge.

\$50,000 in grant funding for this project will go towards website design, data entry, public service announcements and other educational materials.

5. HYBRID BOOKMOBILE

- **Goal 3: 25 by 25: Replace 25% of internal combustible engines in City-owned equipment and vehicles with energy efficient alternatives by 2025.**

The project will replace the City of Billings existing Bookmobile, a 1995 Thomas built powered by a Cummins 5.9 liter diesel engine with a new bookmobile equipped with the integration of an Electric Hybrid Drive System and a Cummins, 2010 EPA compliant diesel engine. The proposed Hybrid system is a Parallel Hybrid System which uses both the diesel engine and an electric motor to power the vehicle. The electric motor/generator is mounted between the transmission and the engine. Braking generates electric power which is stored in the hybrid batteries. The vehicle uses this stored energy to add power back into the transmission when the throttle is depressed. The vehicle is more fuel efficient, quieter, and has longer brake life than a normal diesel driven vehicle. Fossil fuel emissions are reduced because the engine is more fuel efficient and would meet the 2010 EPA emission standards. The 2010 EPA compliant diesel engine is equipped with Selective Catalytic Reduction technology producing near-zero emissions. Tailpipe nitrogen oxide emissions are reduced by treating the exhaust stream with a spray of Diesel Exhaust Fluid (DEF). DEF, along with the heat of the exhaust and a catalyst, converts NOx in to nitrogen and water vapor, which are clean, harmless and present in the air we breathe every day. The total cost of the vehicle is \$xxxxxxxx. The grant fund portion of this purchase is \$350,000. The remainder will be funded through the Library's Equipment Replacement fund.

3. Describe how your government is taking into account the proposed implementation plans and activities for use of funds by adjacent units of local government that are grant recipients under the Program (response not mandatory for Indian Tribes).

Yellowstone County, the adjacent unit of local government has chosen to apply for the EECBG grant to retrofit the lighting in a major recreational and performance facility with LED luminars within the next three years. This project is in alignment with the City of Billings' goal to establish baseline energy use information for all City facilities and participating private facilities, and reduce 2009 energy levels by 15% by 2015.

4. Describe how your government will coordinate and share information with the state in which you are located regarding activities carried out with grant funds to maximize energy efficiency and conservation benefits.

-THE STATE HAS NOT ISSUED A LIST OF ACTIVITIES CARRIED OUT WITH GRANT FUNDS. BY THE TIME OF THIS APPLICATION, WE WILL BE ABLE TO ADDRESS ONLY THE STATE GOALS FOR ENERGY EFFICIENCY AND CONSERVATION WHICH SHOULD BE AVAILABLE BY JUNE 22, 2009.-

5. Describe how this plan has been designed to ensure that it sustains benefits beyond the EECBG funding period.

The City of Billings Energy Efficiency and Conservation Strategy anticipates a planning horizon of 16 years. The energy efficiency and conservation strategies implemented as a

result of this plan shall have long lasting effects beyond this time period. This plan shall be continually monitored and reevaluated as the results of the strategies become known. It is the intention of the City to seek and maintain effective standards of energy efficiency and conservation for the benefit of the taxpayers, the health of the community, and the prosperity of the nation.

6. The President has made it clear that every taxpayer dollar spent on our economic recovery must be subject to unprecedeted levels of transparency and accountability. Describe the auditing or monitoring procedures currently in place or that will be in place (by what date), to ensure funds are used for authorized purposes and every step is taken to prevent instances of fraud, waste, error, and abuse.

The City of Billings is dedicated to the concept of unprecedeted levels of transparency and accountability for the funds received in this and all American Recovery and Reinvestment Act - funded programs conducted by the City of Billings. To that extent, the City has created a dedicated website that lists all activities funded by ARRA and will continue to report on a quarterly basis, the activity pursued, conducted and completed on a quarterly basis and post all expenditures and revenues for public viewing. The City Council has also required that staff present a quarterly progress report of these activities to be available for public viewing and comment at a regularly scheduled City Council business meeting.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Public Hearing and Resolution for Annexation Committee
Recommendations for Limits of Annexation Map Amendments

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: The City Council adopted the current Annexation Policy and Limits of Annexation Map on March 10, 2008. The Annexation Policy requires the City to update the associated map whenever the Capital Improvements Plan (CIP) is revised. Council adopted revisions to the FY2010-FY2014 CIP at the February 23, 2009, Council meeting. Following suit, the Annexation Committee completed its annual internal review of the Annexation Policy and Limits of Annexation Map and forwarded several recommendations to the Council at a Work Session on March 2, 2009, to receive direction from the Council. Based on the Council's direction provided at the Work Session, the Annexation Committee is forwarding four recommendations for Limits of Annexation Map amendments to the Council for this meeting. The two additional recommendations discussed at the Work Session will be brought back to the Council later this summer.

ALTERNATIVES ANALYZED: To evaluate proposed revisions, the committee took into account various policies and studies, including the 2006 Water and Wastewater Facilities Master Plan, the Draft 2010-2014 CIP, the 2008 Growth Policy, the City Council Strategic Planning Process, a density analysis of the current area identified in red on the Limits of Annexation Map, the financial condition of the City, and the effects of additional growth on the health and quality of life of City residents. The recommendations reflect these considerations and attempt not to favor one department's ability to provide service over another department's limitations.

FINANCIAL IMPACT: Annexation of property to the City of Billings will increase the City's tax base. At the same time, the City will bear the cost of additional service requirements. The Annexation Policy and the Limits of Annexation Map are management tools to help evaluate this cost-benefit ratio.

RECOMMENDATION

The Annexation Committee recommends that the City Council conduct a public hearing and approve a resolution to make the following amendments to the Limits of Annexation Map:

Make no changes to the Red Area on the Limits of Annexation Map for 2009

Eliminate the time line of the Orange Area and call it the “Long Range Urban Planning Area.”

Eliminate the Yellow Area from the Limits of Annexation Map

Make two adjustments to the Orange Area on the Limits of Annexation Map to reflect service limitations and address the impact of the proposed Inner Belt Loop.

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

ATTACHMENTS

- C. Draft Limits of Annexation Map Reflecting the Recommendations
- D. Table 1. Residential Development Density and Population Estimates for Red Area
- E. Resolution to amend the Limits of Annexation Map

INTRODUCTION

The Annexation Policy adopted in March 2008, requires the City to update the Limits of Annexation map whenever the Capital Improvements Plan (CIP) is revised. Council adopted revisions to the FY2010-FY2014 CIP at the February 23, 2009, Council meeting. Following suit, the Annexation Committee completed its internal review this year of the Annexation Policy and Limits of Annexation Map and forwarded several recommendations to the Council at a Work Session on March 2, 2009, to receive direction from the Council. Based on the Council's direction provided at the Work Session, the Annexation Committee is forwarding four recommendations for Limits of Annexation Map amendments to the Council for this meeting. Two additional recommendations will be brought back to the Council at a later date.

PROCEDURAL HISTORY 2009 ANNEXATION COMMITTEE REVIEW

- March 10, 2008, Amendments to the Annexation Policy and Limits of Annexation Map adopted by City Council
- October – November 2008, formal property owner requests could have been submitted to amend the Limits of Annexation Map for 2009. No requests were received
- December 2008 and January 2009, City Departments conducted public meetings and reviewed proposed changes to the CIP and updated the CIP to reflect the current status of all CIP projects and public input
- December 2008 through February 2009, the City Annexation Committee met three times to consider map and policy amendments, and formulate recommendations for amendments to the City Council
- February 23, 2009, Proposed FY2010 – FY2014 CIP amendments were presented to the City Council and approved
- March 10, 2009, Council Work Session, Annexation Committee presents recommendations to amend the Annexation Policy and Limits of Annexation Map
- The Annexation Committee met March 11 and April 30 to further discuss and refine its the recommendations to Council.
- June 8, City Council conducts public hearing and considers four recommended amendments to the Limits of Annexation map based on Annexation Committee recommendations.

BACKGROUND

The City of Billings has annexed more than nine square miles since 1999 (32.8 to 41.9 sq. mi.). Many of those annexations required a considerable outlay of City funds to ensure acceptable levels of service to the annexed properties and to maintain the levels of service within the existing City limits. As these properties developed, the cost of providing certain services exceeded the revenue generated by the development in most cases. For this reason, the City Council requested staff to draft an Annexation Policy that would recommend limiting annexations to areas that could be served without incurring significant, additional costs. The adopted policy, last amended in February 2007, established a map showing three limits of annexation. The map was last amended in March 2008, when the Lenhardt Square property was included the Red Area and was annexed into the City.

Since no new requests for expansion of the Red Area were received by the Committee in October or November 2008, the Committee agreed that an internal review of the Annexation Policy and Limits of Annexation Map should be done. The City Council's 2008 Strategic Planning process also identified several goals that aligned with annexation review and process. One goal specifically states that the City should "Identify areas that are favored for future growth." The Annexation Committee approached this goal with the notion that the existing Annexation Policy and Map are the best tools currently being used by the City for growth management and this goal might be addressed through these tools. The following provides the four proposed amendments to the Limits of Annexation Map to be considered by the Council at this meeting and background on how the Committee developed its recommendations:

1. Make no changes to the Red Area on the Limits of Annexation Map for 2009

The Annexation Committee unanimously agreed that there was no support for expanding the Red Area of the Limits of Annexation Map this year. The support for this recommendation is based on the following issues:

- The ongoing service challenges faced by all departments
- The City's financial uncertainty based on property tax reappraisal and the local, regional and national economic conditions
- The knowledge that many services in the City have no means to expand in the near future and some may shrink
- The estimate that as many as 24,000 people could reside in the existing Red Area under a full build-out scenario (See Table 1 Attached).

2. Eliminate the time line of the Orange Area and call it the "Long Range Urban Planning Area."

The Annexation Committee agreed that the Orange Area on the Limits of Annexation Map with its 10-year timeline does not really provide detail as to when this area might be serviceable by the City. The time period always moves away from the Red Area's five-year time horizon so the Orange Area is never reached. Further, it describes an area outside the City where nothing has been programmed and/or funded and so would not be considered by the City for annexation until programming takes place and funding is identified. The Committee thought that the Orange Area should be relabeled the "Long Range Urban Planning Area" and would better match long-range plans, studies and potential infrastructure projects the City has considered but is not expected to program or implement for at least five years (**See Attachment A**). For example, while the 2006 Water and Sewer Master Plan identifies a possible future need for a second water treatment plant near 48th Street West, and the CIP identifies plans to consider land acquisition in the next five years for such a plant, changes in water needs, development patterns, financial limitations and additional analysis will dictate when and if this project occurs as currently proposed. It clearly falls into a long range planning category.

3. Eliminate the Yellow Area from the Limits of Annexation Map

Action by the City Council in 2007 and 2008 to determine that the City has no plans to annex Lockwood led to removing it from the Yellow Area on the Limits of Annexation Map. The

Yellow Area is labeled as “Uncertain” on the Limits of Annexation Map and the Committee agreed that it provides no real information to the community on when the area might be annexed, if ever. Based on the time frames currently attached to the Red and Orange areas, the Yellow Area would not be up for annexation consideration until at least 2024, 15 years away. The Committee is recommending the Yellow Area be removed from the Map and that the focus for managing growth be directed by the Red Area, the immediate area for annexation and the area more closely tied to the CIP, and the Orange Area, the area tied to master planning documents and other long range planning studies (**See Attachment A**).

4. Make two adjustments to the Orange Area on the Limits of Annexation Map to reflect service limitations and address the impact of the proposed Inner Belt Loop.

The Annexation Committee discussed two potential amendments to the Orange Area. One adjustment would be to remove an area north of the Billings Heights and north of the intersection of Highway 312 and Highway 87 from the Orange Area (**See Attachment A**). This is an area that is already developed at large, lot residential densities with septic systems and a mix of Heights Water service and wells or cisterns. The City Public Works Department does not anticipate extending services to most of this area and given the developed nature of much of the property there are only a few areas that might eventually develop. After further discussion with City Council at the March 2 Work Session, the Committee has modified this area to more accurately reflect potential future development above the western portion of the Heights west of Highway 87 and south of Alexander Road. This northwestern area is within the future service area of the Water District of Billings Heights, is mostly vacant, and has a greater chance of being developed to urban densities and being included in the City in the future. The Committee also adjusted the boundary along the northeastern area north of the Billings Heights between Mary Street on the south and Highway 312 on the west, utilizing Five Mile Creek as the northern most extension of City services in this area in the future.

An area that the Committee is recommending be added to the Orange includes a possible influence area for the proposed Inner Belt Loop (**See Attachment A**). While the Inner Belt Loop project is still in the planning stages and the exact location has not been decided, the area around Alkali Creek Road and north of Rehberg Ranch Estates could be affected by the construction of the Inner Belt Loop and would need to be addressed in terms of long-range land use and infrastructure planning. Changing this area to Orange will provide the first step in guiding planning for this area and begin to align with the future construction of the Inner Belt Loop.

RECOMMENDATION

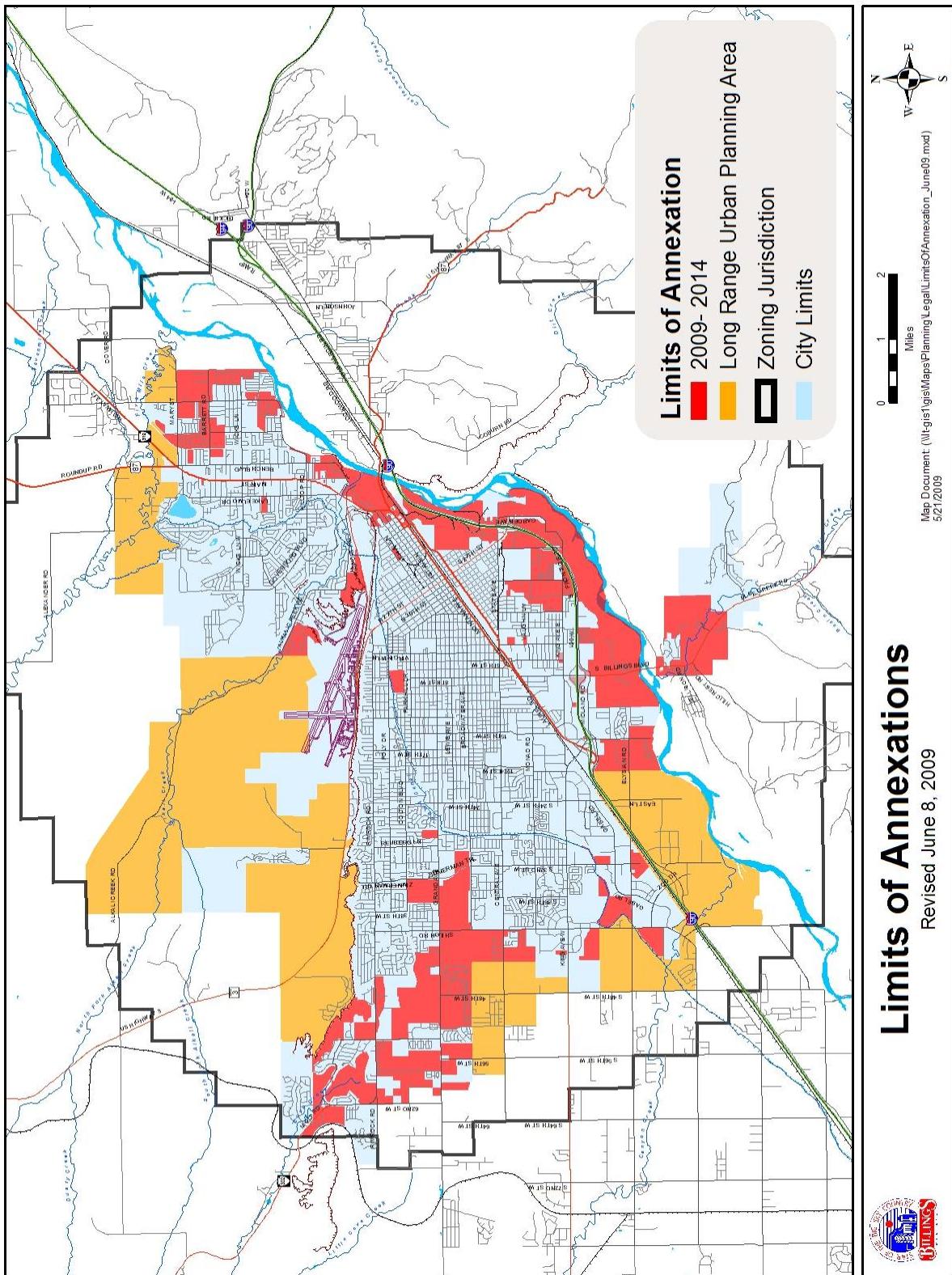
The Annexation Committee recommends that the City Council conduct a public hearing and approve a resolution to make the following amendments to the Limits of Annexation Map:

1. Make no changes to the Red Area on the Limits of Annexation Map for 2009
2. Eliminate the time line of the Orange Area and call it the “Long Range Urban Planning Area.”
3. Eliminate the Yellow Area from the Limits of Annexation Map

4. Make two adjustments to the Orange Area on the Limits of Annexation Map to reflect service limitations and address the impact of the proposed Inner Belt Loop.

ATTACHMENTS

- A. Draft Limits of Annexation Map Reflecting Recommendations
- B. Table 1. Residential Development Density and Population Estimates for Red Area
- C. Resolution to amend the Limits of Annexation Map



ATTACHMENT B

Zoning_FiveYrLimits_Query1

Residential Development Density and Population Estimates for 5-Year Limits of Annexation Area - January 2009

Zoning	Total Acres	Developable Acres	Use Allocation	Applied Zoning	Total Sq.Ft.	25% Infrastructure		Total Developable Area	Multi-Unit Total Units	Total Pop.	Some Assumptions
						Total	Developable Lot Area				
A1	2,153	1,875	1,125 Residential 60%	R-96	49,012,841	12,253,210	36,759,631			9,573	-25% of developable land is used for infrastructure.
		750 Commercial 40%	Commercial		32,675,227	8,198,607					
AS	164	64	51 Residential 80%	R-96		2,230,272	557,568	1,672,704		174	
		13 Commercial 20%	Commercial		557,568	139,392				436	
Commercial Zoning Districts (Buildable acres were not determined for commercial land)											
CC	53	53			2,296,952	573,988	1,721,984				
CI	444	444			19,326,379	4,831,570	14,494,709				
E+H	36	36			1,560,512	380,128	1,170,384				
ELI	1	1			36,519	8,760	26,359				
HC	162	162			7,063,006	1,763,416	5,280,429				
HI	236	295			12,874,050	3,218,713	9,656,138				
NC	21	21			914,670	228,688	686,003				
RP	39				1,698,981	424,773	1,274,318				
Total	1,051										
Residential Zoning Districts											
R150	1,088	580	R-96		25,264,800	6,316,200	18,948,600			1,974	
		580	R-70		25,264,800	6,316,200	18,948,600			2,707	
R50	22	22			93,354	234,339	703,016			141	
R60	2	2			97,747	24,388	73,156			12	
R70	832	429			18,665,60	4,666,385	13,989,05			3,000	
R96	759	359			15,636,040	3,909,510	11,728,530			1,222	
RMF	22	20			866,841	216,711	660,133			260	
RMFR	21	21			974,372	228,693	695,779			274	
RMH	108				679,536	169,884	509,632			85	
Total	1,445										212
Planned Development Districts											
PUD	3	3				114,014					
PZD	0	0				988					
Other											
No Zone Code*	58	58				2,525,806					
P	476	476				20,723,959					
Water	7	7									
Totals	6,774	4,931				241,928,724	54,641,242	138,999,129		9,971	24,927

* Mostly Railroad ROW

ATTACHMENT C

RESOLUTION NO. 09 - _____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA
PURSUANT TO ARTICLE II. CITY BOUNDARIES, MCA 7-1-
114(1)(a); ANNEXATION PROCEDURES, MCA 7-2-4201 ET
SEQ. AND SETTING FORTH AN ANNEXATION POLICY;

WHEREAS, the City Council adopted the City of Billings Annexation Policy and
Limits of Annexation Map by Resolution on April 10, 2006; and

WHEREAS, the Policy states that the Map shall be revised whenever the Capital
Improvements Plan is revised; and

WHEREAS, the City Council approved the FY2010-FY2014 Modifications to the
Capital Improvements Plan on February 23, 2009.

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

That the City Council now makes and adopts the following

LIMITS OF ANNEXATION MAP
Revised, June 8, 2009



0
1
2
Miles

Map Document: (\\rgis1\\gis\\Maps\\Planning\\Legal\\LimitsOfAnnexation_June09.mxd)
5/21/2009



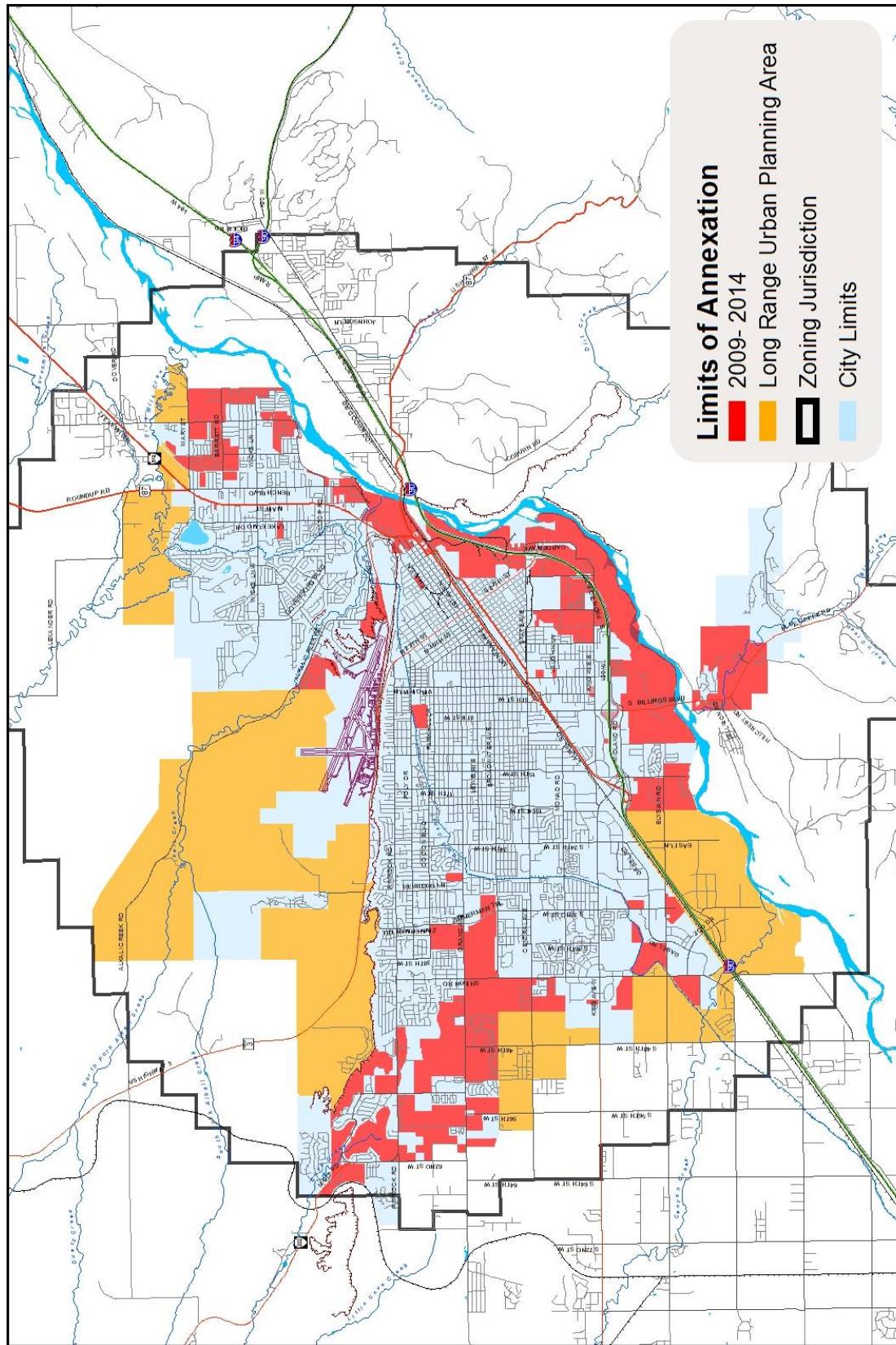
Limits of Annexations

Revised June 8, 2009

Limits of Annexation

2009- 2014
Long Range Urban Planning Area

Zoning Jurisdiction
City Limits



APPROVED AND PASSED by the City Council of the City of Billings, this 8th day of June, 2009.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin, City Clerk



ITEM:

CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, June 8, 2009**

TITLE: SID 1387 Zimmerman Trail Subdivision Sanitary Sewer Improvements
Public Hearing and Resolution Creating District

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Zimmerman Trail Subdivision, located off of Highway 3 just east of Zimmerman Trail, currently has a private sanitary sewer system which is starting to fail. The property owners within Zimmerman Trail Subdivision have requested to hook up to public sanitary sewer. SID 1387 will construct the necessary improvements to hook all of the properties within Zimmerman Trail Subdivision up to public sanitary sewer. The public hearing was set with the passage of the resolution of intent at the May 11, 2009, City Council meeting. The protest period ended on June 5, 2009.

ALTERNATIVES ANALYZED:

1. After holding a public hearing, approve Resolution Creating SID 1387; or
2. After holding a public hearing, do not approve Resolution Creating SID 1387.

FINANCIAL IMPACT: The total estimated costs of the Improvements, including bond costs, are \$167,000.00 which will be assessed to all of the property owners within the district.

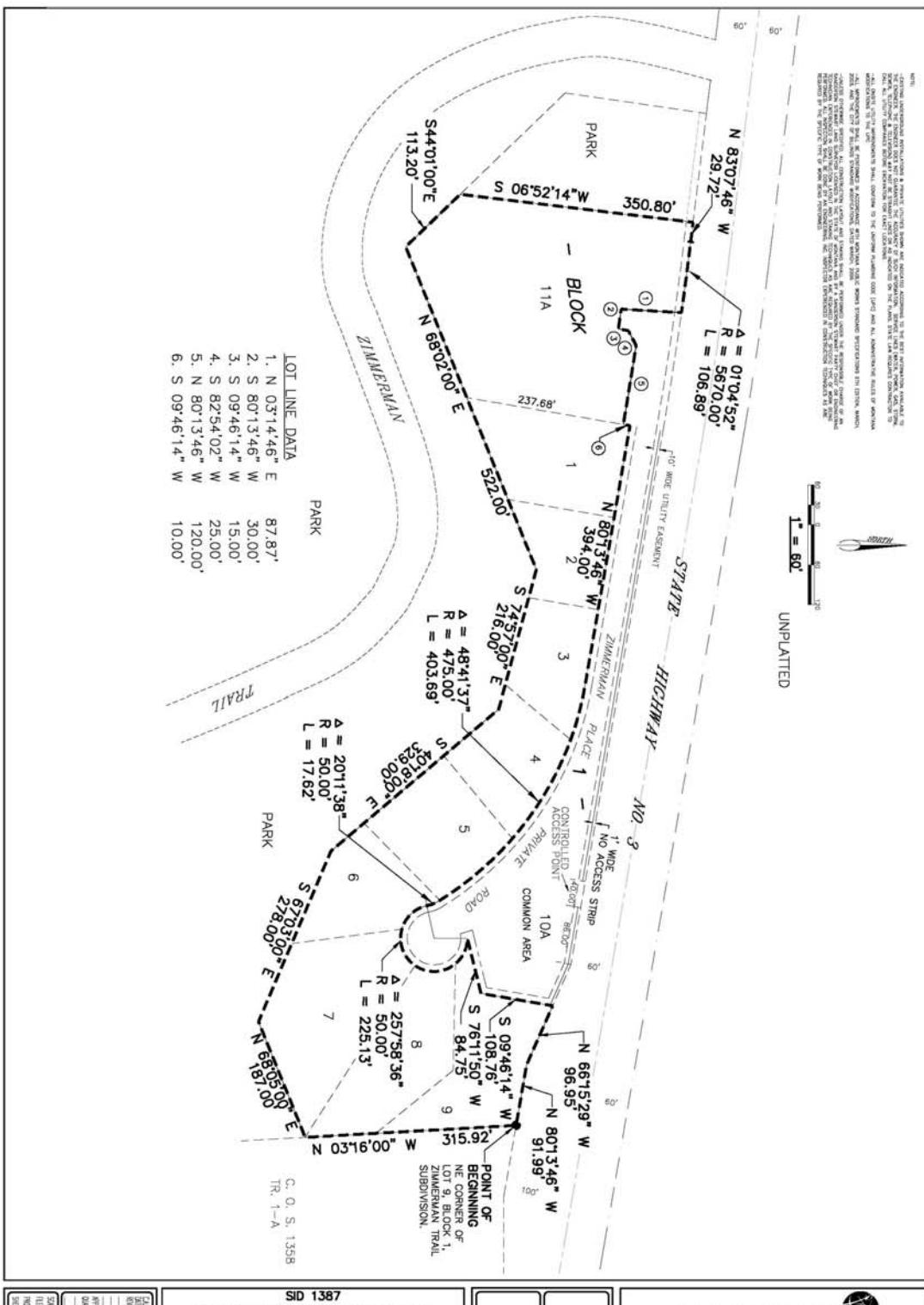
RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1387.

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

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1387 Zimmerman Trail Subdivision Sanitary Sewer Improvements Resolution Creating District



PROVIDING SANITARY SEWER IMPROVEMENTS TO PORTIONS OF
ZIMMERMAN TRAIL SUBDIVISION
BILLINGS, MONTANA

BOUNDARY EXHIBIT

BOUNDARY EXHIBIT

SANDERSON STEWART

www.sandersonstewart.com

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. 09-_____, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1387**; CREATING 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 AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **June 8, 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 Councilmembers voted in favor thereof: _____

_____; voted against the same: _____
_____; abstained from voting thereon: _____
_____; or were absent: _____

WITNESS my hand officially this _____ day of _____ .

Cari Martin

CITY CLERK

RESOLUTION NO. 09-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1387**; CREATING 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 AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intention. This Council, on **May 11, 2009**, adopted Resolution No. **08-18812** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1387** of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (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 creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **June 8, 2009**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

Section 3. Protests. Within the Protest Period, _____ protests were filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for _____% of the total costs of the Improvements or representing _____% of the area of the District to be assessed for the cost of the Improvements. **The protest represents _____% of the assessed cost.**

Section 4. Creation of the District; Insufficiency of Protests. The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

Section 5. Reimbursement Expenditures.

5.01. 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.

5.02. 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.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$167,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not 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.

5.05. 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 evidenced 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.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 8th Day of June, 2009.

THE CITY OF BILLINGS:

BY _____
Ron Tussing _____
MAYOR

ATTEST:

BY _____
Cari Martin _____
CITY CLERK

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Public Hearing for Site Development Ordinance Variance # CC-09-01
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Dan Marsich, property owner, developer, has requested a variance from Section 1208 (h) (5) of the site development ordinance pertaining to the number of curb cuts allowed by regulations. The developer is currently constructing a new apartment complex called Riverfront Pointe Cottages which consists of 31 units and is located along the north side of Frontier Drive. The units are addressed as 5437 – 5539 Frontier Drive, and are located on Lot 2, Block 1, of Riverfront Pointe Subdivision, situated in the Southwest ¼ of Section 17 T. 1 S., Range 26 East, P. M. M., Billings, Montana. The Cottage Complex is located approximately 400 feet east of Mullowney Lane. Three curb cuts are allowed by code across the frontage of project property with access onto Frontier Drive. The project proposes four curb cuts on Lot 2 and a fifth curb cut on Lot 3 that will require a reciprocal joint access agreement as the curb cut provides access to units on Lot 2. The owner is asking for approval of one additional curb cut onto Frontier Drive from Lot 2, Block 1, of Riverfront Pointe Subdivision (see Attachment B for approach locations).

ALTERNATIVES ANALYZED:

1. Approve the variance. Approval of this variance will allow one additional curb cut beyond those allowed by the City Code with no conditions or restrictions.
2. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign of the facility with a reduction in the number of curb cuts allowed by City Code.

FINANCIAL IMPACT: There is no direct financial impact to the City. Advertising costs for the public hearing are offset by the variance application fee.

RECOMMENDATION:

Staff recommends that Council approve the variance allowing the additional curb cut.

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

ATTACHMENTS

- A. Letter From Engineering requesting Approach Variance
- B. Proposed Final Site Plan Layout

INTRODUCTION

Dan Marsich, property owner, developer, has requested a variance from Section 1208 (h) (5) of the site development ordinance pertaining to the number of curb cuts allowed by regulations. The developer is currently constructing a new apartment complex called Riverfront Pointe Cottages which consists of 31 units and is located along the north side of Frontier Drive. The units are addressed as 5437 – 5539 Frontier Drive, and are located on Lot 2, Block 1, of Riverfront Pointe Subdivision, situated in the Southwest $\frac{1}{4}$ of Section 17 T. 1 S., Range 26 East, P. M. M., Billings, Montana. The Cottage Complex is located approximately 400 feet east of Mullowney Lane. Three curb cuts are allowed by code across the frontage of project property with access onto Frontier Drive. The project proposes four curb cuts on Lot 2 and a fifth curb cut on Lot 3 that will require a reciprocal joint access agreement as the curb cut provides access to units on Lot 2. The owner is asking for approval of one additional curb cut onto Frontier Drive from Lot 2, Block 1, of Riverfront Pointe Subdivision (see Attachment B for approach locations).

BACKGROUND

Sanderson Stewart is the Engineering Consultant for the design of the Riverfront Pointe Cottages and has provided a Proposed Final Site Plan Layout (Attachment B) for the variance showing the placement of the proposed curb cuts.

The number of allowable curb cuts for the proposed site in accordance with the city codes based on Section 6-1208 Curb Cut Regulations is two (2).

Section 6-1208 (h) Allowable curb cut widths:

(5) Frontages of sixty (60) feet or less shall be limited to one (1) driveway. Not more than two (2) driveways shall be provided to any single property tract or business establishment, except where the property frontage exceeds six-hundred (600) feet, there may be one (1) additional driveway for each additional three hundred (300) feet of frontage. In cases where parcels have more than one street frontage, each frontage shall be treated separately when determining the allowed number of driveways.

The new Riverfront Pointe Cottages being constructed on Lot 2 is being proposed with a total of 5 access curb cuts on to Frontier Drive and will provide access to a total of 31 units. Four (4) curb cuts are to be located on Lot 2 and fifth on Lot 3 which provides access to the units on Lot 2 (Attachment B). The fifth curb cut will require a recorded reciprocal joint access agreement document.

The frontage of Lot 2 along Frontier Drive is approximately 798 feet. In accordance with the Section 6-1208 Curb Cut Regulation, the developer currently would be allowed 2 curb cuts for the first 600 feet and an additional curb cut for the next 300 feet of frontage or a total of three curb cuts along the Frontier Drive frontage of Lot 2.

The current design does reduce the number of curb cuts that would be needed to service 31 units if these were individual lots.

Therefore, Sanderson Stewart on behalf of the developer of the property, Dan Marsich is requesting a variance City Codes Section 1208 (h) (5) for an increase in the number of allowable curb cuts.

Sanderson Stewart has provided a letter requesting a variance City Codes Section 1208 (h) (5) for an increase in the number of allowable curb cuts (Attachment B).

ALTERNATIVES ANALYSIS

1. Approve the variance. Approval of this variance will allow one additional curb cut beyond those allowed by the City Code with no conditions or restrictions.
2. Do not approve the variance. If this variance is denied, the owner's options to meet the requirements of the Site Development Ordinances will require redesign of the facility with a reduction in the number of curb cuts allowed by City Code.

SUMMARY

Property owner Dan Marsich is requesting a variance for an increase in the number of allowable curb cuts to four.

RECOMMENDATION

Staff recommends that Council approve the variance allowing the additional curb cut.

ATTACHMENTS

- A. Letter From Sanderson Stewart requesting Approach Variance
- B. Proposed Final Site Plan Layout

Riverfront Pointe Cottages**Variance # CC - 09 -01****Attachment "A"**

May 12, 2009

Mr. Wayne Ware
Senior Engineering Technician
City of Billings
2224 Montana Avenue
Billings, MT 59101

Reference: Riverfront Pointe Cottages
Variance Request for Number of Drive Approaches
Project No. 75052.59

Dear Mr. Ware:

On behalf of our client, we are requesting a variance for the number of drive approaches for the Riverfront Pointe Cottages on Frontier Drive. The development is located on Lot 2 and a portion of Lot 3, Block 1 of Riverfront Pointe Subdivision. The requested variance is to incorporate 4 drive approaches on Lot 2, Block 1 of Riverfront Pointe Subdivision, which is 2 more than allowed by the municipal code, but less than the number of approaches required for similar single-family residential lots on the south side of Frontier Drive. Attached is a site exhibit and fee of \$60.00 for the variance request.

As stated in the City of Billings Municipal Code (Article 6-1208(5)), not more than two (2) driveways shall be provided to any single property tract or business establishment, except where the property frontage exceeds six-hundred (600) feet, there may be one (1) additional driveway for each additional three hundred (300) feet of frontage.

The proposed development has 798 feet of frontage within Lot 2, which by code may contain 2 drive approaches. Because of the dimensions of the lot, the proposed layout was developed in order to maximize the beneficial use of the site by sharing common drive approaches with groups of dwelling units and minimizing the total number of approaches. Each proposed drive approach has a minimum of 6 dwelling units, with the exception of the approach on the far east of the site, which is intended to have 3 additional units upon future development phases and is located on Lot 3, Block 1.

The drive approaches are spaced a minimum of 178 feet apart within the site, while the single-family lots located along Frontier Drive to the south and east have a lot frontage of about 75 feet on

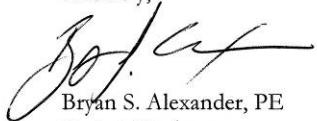
1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255
Fax 406.656.0967
www.sandersonstewart.com

Mr. Wayne Ware
May 12, 2009
Page 2

average, each having a drive approach. Therefore, the number of drive approaches proposed is minimal when compared to similar single-family lots in the area. Additionally, Frontier Drive is a residential street with a low speed limit and traffic flows that will be typical of other residential streets; therefore, impact of the proposed drive approaches should be minimal.

Please provide a variance application for the number of drive approaches for the Riverfront Pointe Cottages to the City Council. We understand the application will be determined at the June 8, 2009, City Council Meeting. Please feel free to contact me if you have any questions concerning this matter.

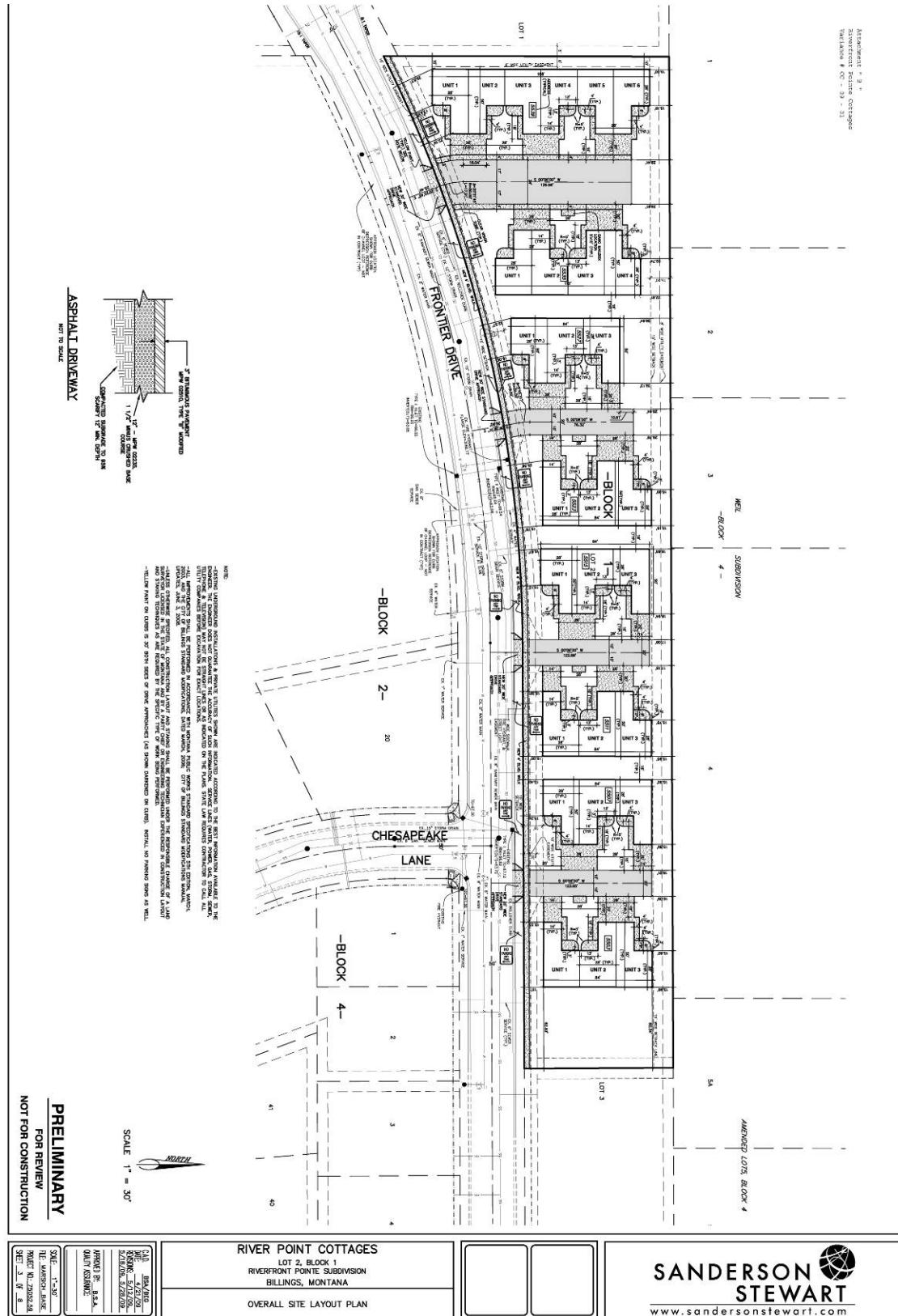
Sincerely,



Bryan S. Alexander, PE
Project Engineer

BSA
Enc.
c: Dan Marsich
P.Variance_Ltr_051209

Attachment # 2 -
Silverfront Pointe Cottages
Variance # CC - 39 - 51





CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Public Hearing and Resolution for Vacation of a Portion of Zimmerman Trail abutting Lot 5, Scott Subdivision

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The City of Billings recently platted Arlene Subdivision out of the parcels purchased for Zimmerman Trail just south of Poly Drive. The subdivision plat dedicated the necessary right of way for Zimmerman Trail and split the remaining land into three developable parcels. The final plat was approved at the June 26, 2006, City Council Meeting. The City purchased the land for \$0.82 per square foot. The city has offered to sell the parcels and any unnecessary right of way to adjacent land owners at the same price the land was purchased (\$0.82 per square foot). The city vacated portions of Zimmerman Trail abutting Lots 1, 2, 4, and 6, Scott Subdivision in 2006. The property owners, James and Jenica Bunker, of Lot 5, Scott Subdivision have requested to vacate a portion of Zimmerman Trail abutting Lot 5, Scott Subdivision. This will put the property back on the tax rolls and relieve the city of its maintenance. At the May 11, 2009, City Council Meeting, Council acknowledged receipt of petition and set a public hearing for June 8, 2009.

ALTERNATIVES ANALYZED:

1. After holding a public hearing approve the vacation of the above-mentioned right of way.
2. Do not approve the vacation of the right of way.

FINANCIAL IMPACT: The property owners of Lot 5, James and Jenica Bunker, are proposing to purchase 5,093 sf of right of way for \$4,176.26.

RECOMMENDATION

Staff recommends that Council approve the vacation of a portion of Zimmerman Trail abutting Lot 5, Scott Subdivision.

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

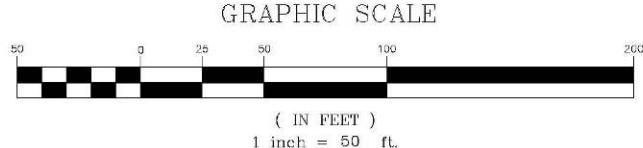
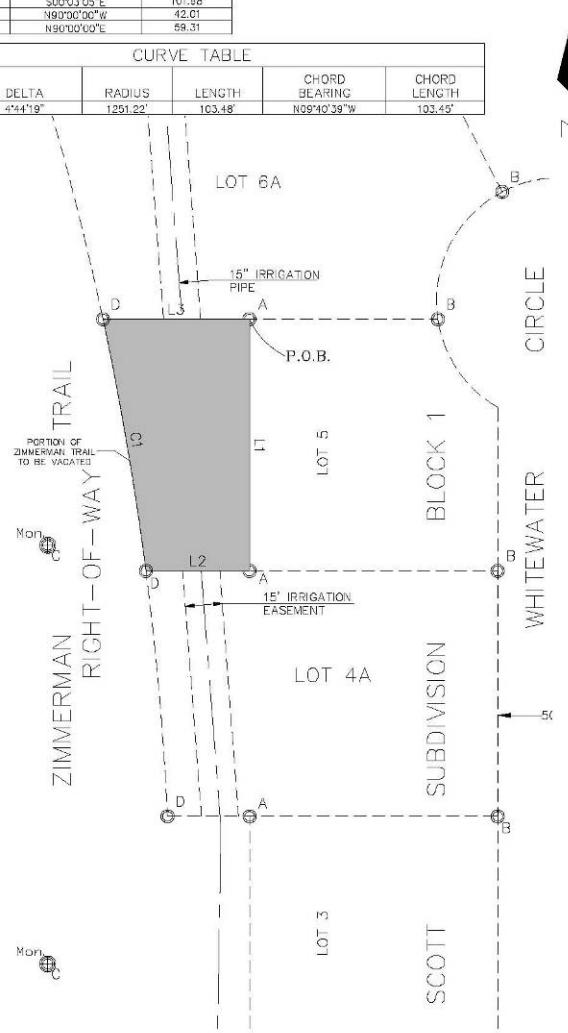
ATTACHMENT

- A. Map Depicting Area to be Vacated
- B. Resolution vacating a portion of Zimmerman Trail

EXHIBIT "A"

LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°03'05"E	101.88
L2	N90°03'06"W	42.01
L3	N90°00'00"E	59.31

CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD LENGTH
C1	4°44'19"	1251.22'	103.48'	N09°40'39"W	103.45'



C.

RESOLUTION NO. 09-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING portion of
Zimmerman Trail.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of portion of
Zimmerman Trail as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., portion of Zimmerman Trail more particularly described as follows:

A tract of land situated in the NE1/4 of Section 34, T.1N., R.25E., P.M.M., City of Billings, Yellowstone County, Montana, more particularly described as:

A portion of Zimmerman Trail Right-Of-Way adjacent to Lot 5, Block 1 Scott Subdivision, Recorded March 11, 1998, Under Document No. 1913900, Records of Yellowstone County, Montana, beginning at the northwest corner of said Lot 5, Block 1, of Scott Subdivision; thence S 00° 03' 05" E for a distance of 101.98 feet to the southwest corner of said Lot 5; thence N 90° 00' 00" W for a distance of 42.01 to the northwest corner of Lot 4A of Amended Lot 4, Block 1 of Scott Subdivision, Recorded June 20, 2007, Under Document No. 3427272, Records of Yellowstone County, Montana; thence on a curve to the left with a radius of 1251.22 feet and an arc length of 103.48 feet (chord bearing N09°40'39"W for a chord distance of 103.45 feet) to the southwest corner of Lot 6A of Amended Lot 6, Block 1, of Scott Subdivision, Recorded June 20, 2007, Under Document No. 3427264, Records of Yellowstone County, Montana; thence N90°00'00"E for a distance of 59.31 feet to the Point of Beginning.

Containing 5,093 square feet.

Is hereby discontinued, abandoned and vacated and reverted to Lot 5, Block 1, Scott Subdivision.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described portion of Zimmerman Trail is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 8th day of June 2009.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Cari Martin CITY CLERK

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Resolution Approving a Revised and Restated Interlocal Agreement for Montana Municipal Insurance Authority (MMIA) Membership

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Montana Municipal Insurance Authority (MMIA) is a membership risk retention pool, of which Billings is a founding member. The Authority recently changed its name and modified the Interlocal Agreement (IA) that formed it. All members must adopt the revised and restated IA for it to become effective. The program year is July 1 – June 30, so if Billings wishes to continue membership in the MMIA, it must adopt the IA before July 1, 2009.

ALTERNATIVES ANALYZED: Staff provided input to the MMIA board and staff as the IA was being revised. Staff did not consider alternatives to MMIA membership.

FINANCIAL IMPACT: Adopting the revised and restated IA will not have a direct financial impact. It is a prerequisite for membership in MMIA and for accessing any of the four (4) programs that it operates. MMIA has amended the program agreements for the two (2) programs that Billings participates in, Liability and Workers Compensation, and the costs for those programs will be discussed when those documents are presented to Council for approval.

RECOMMENDATION

Staff recommends that Council approve the Resolution that adopts the revised and restated MMIA Interlocal Agreement.

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

ATTACHMENTS

A: Resolution; Revised and Restated Interlocal Agreement

INTRODUCTION

The Montana Municipal Insurance Authority (MMIA) is a membership risk retention pool, of which Billings is a founding member. The Authority recently changed its name and modified the Interlocal Agreement (IA) that formed it. All members must adopt the revised and restated IA for it to become effective. The program year is July 1 – June 30, so if Billings wishes to continue membership in the MMIA, it must adopt the IA before July 1, 2009.

BACKGROUND

MMIA's structure is established by sections of the State Constitution and the State Code that permit local governments to contract for and jointly provide services that any one of the governments could provide. Those sections require all local governments that want to participate in the jointly provided service to adopt an Interlocal Agreement.

Montana cities and towns formed the MMIA in the mid 1980s and Billings was a founding member. It formed in response to unaffordable private insurance rates and insurance companies withdrawing from municipal markets nationally. Workers compensation and a broad casualty/liability program were developed first. Property protection was added in the late 1990s and an Employee Benefits (health) program was added in 2004. Billings participates in the workers compensation and liability programs. The City purchases commercial property insurance and has a self-insured health plan. A 15 member Board of Directors governs the organization. Seven members represent cities over 20,000 population and they are permanent board members; seven members represent cities of less than 20,000 population, and; one member is selected by the Board. Small city representatives are elected at the annual membership meeting that is held in conjunction with the League of Cities and Towns conference. The 15th member always represents a small city and traditionally comes from an area of the state that is geographically underrepresented by other Board members. Board members serve two year terms and the terms are staggered.

The MMIA is a shared risk retention pool. Each member contributes annual funding based on an actuarial analysis and the city's actual experience or losses modify the actuarial rate. MMIA is not an insurance company and the state's insurance commissioner does not regulate it. Despite that, the existing IA and program agreements regularly use the terms "insurance," "policy," and "premium" when describing coverage, exclusions and costs. The terms' presence was a determining factor in a recent adverse ruling in a District Court case in which a member city filed suit against the MMIA over a coverage determination. Replacing the terms with others, such as "coverage" and "assessment" is relatively easy and is now uniform in the new IA. The Board of Directors considered many options for renaming the Authority but eventually decided that the brand "MMIA" should remain, but it decided to eliminate the term "Insurance." The new name is the Montana Municipal Interlocal Authority, which accurately describes the organization's legal status but does not indicate its mission. However, the Board is comfortable with that omission because the MMIA and its mission are so well known among its members.

ALTERNATIVES ANALYSIS

Billings must adopt the new IA if it wants to continue participating in the Liability and Workers Compensation programs and to ensure that it has access to other MMIA programs in the future. Billings cannot unilaterally amend the agreement because all members must adopt an identical agreement. Not approving the IA will forfeit MMIA membership and the City will be required to self-insure or to seek insurance in the private market. There is insufficient time to secure insurance by July 1, so the City would self-insure until it could secure insurance or it could self-insure indefinitely. Billings is the only city in the MMIA pool that is large enough to be independently rated and it has substantial financial resources, but a catastrophic loss would jeopardize its stability. Staff would recommend seeking insurance even if the City were to self-insure at a high limit. Staff does not believe that the commercial insurance market will offer more beneficial coverage or rates than MMIA provides.

RECOMMENDATION

Staff recommends that Council approve the Resolution that adopts the revised and restated MMIA Interlocal Agreement.

ATTACHMENTS

A: Resolution; Revised and Restated Interlocal Agreement

ATTACHMENT A

**RESOLUTION APPROVING AND ADOPTING THE
MONTANA MUNICIPAL INTERLOCAL AUTHORITY
REVISED AND RESTATED
INTERLOCAL AGREEMENT**

WHEREAS, the City of Billings (Member Entity) is, duly organized under the laws of the State of Montana; and

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of any function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States; and

WHEREAS, Mont. Code Ann. Title 7, Chapter 11, Part 1, (the "Interlocal Cooperation Act") authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each of them is authorized by law to perform; and

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the State, separately or jointly with other subdivisions, to procure insurance to use a deductible or self-insurance plan, wholly or in part, and to establish a self-insurance or deductible reserve fund; and

WHEREAS, Mont. Code Ann. § 2-9-211 authorizes political subdivisions or a board created pursuant to an interlocal agreement, acting on behalf of such political subdivisions to issue and sell bonds or notes for the purposes of funding a self-insurance or deductible reserve fund; and

WHEREAS, Mont. Code Ann. § 2-18-702, authorizes cities and towns to enter into group hospitalization, medical, health, including long-term disability, accident or group life insurance contracts or plans for the benefit of their officers and employees and their dependents; and

WHEREAS, Mont. Code Ann. § 2-18-711, permits the establishment of group programs by local government entities to provide employee group benefits; and

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage; and

WHEREAS, the Montana Municipal Interlocal Authority (Authority) is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk

coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement; and

WHEREAS, the governing board of each Member Entity has determined that it is in its own best interest, and in the public interest that this Agreement be executed and that it participate as a member of the public entity created by this Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City of Billings hereby approves and adopts this Revised and Restated Interlocal Agreement.

Adopted this 26th day of May, 2009.

By _____
Ron Tussing, Mayor

ATTEST: _____
City Clerk

**REVISED AND RESTATED
INTERLOCAL AGREEMENT
GOVERNING THE
MONTANA MUNICIPAL
INTERLOCAL AUTHORITY**

EFFECTIVE AS OF July 1, 2009



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REVISED AND RESTATED INTERLOCAL AGREEMENT GOVERNING THE MONTANA MUNICIPAL INTERLOCAL AUTHORITY EFFECTIVE AS OF July 1, 2009

THIS AGREEMENT is made in the State of Montana by and among local political subdivisions organized and existing under the laws of the State of Montana (the State), hereinafter referred to as "Member Entities" which are parties signatory to the Agreement. Member Entity(ies) are sometimes referred to in this Agreement as "party(ies)."

RECITALS

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of a function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States; and

WHEREAS, Title 7, Chapter 11, Part 1, Montana Code Annotated ("Mont Code Ann.") authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each of them is authorized by law to perform; and

WHEREAS, Mont. Code Ann. § 2-9-211 authorizes political subdivisions of the state, separately or jointly with other subdivisions, to procure insurance to use a deductible or self-insurance plan, wholly or in part, and to establish a self-insurance or deductible reserve fund; and

WHEREAS, Mont. Code Ann. § 2-9-211 authorizes political subdivisions or a board created pursuant to an interlocal agreement, acting on behalf of such political subdivisions to issue and sell bonds or notes for the purposes of funding a self-insurance or deductible reserve fund; and

WHEREAS, Mont. Code Ann. § 2-18-702, authorizes cities and towns to enter into group hospitalization, medical, health, including long-term disability, accident or group life insurance contracts or plans for the benefit of their officers and employees and their dependents; and

WHEREAS, Mont. Code Ann. § 2-18-711, permits the establishment of group programs by local government entities to provide employee group benefits; and

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage; and

WHEREAS, the Member Entities executing this Agreement desire to join together for the purposes of:

1. Developing effective risk management programs to reduce the amount and frequency of their losses;
2. Sharing some portion, or all, of their losses;
3. Jointly purchasing other insurance, reinsurance, or excess insurance;
4. Jointly make deposits which may take the form of assessments to an account or surplus account and pay premiums for the purposes of participating in group or captive insurance, excess insurance or reinsurance programs, in whole or in part;
5. Jointly issuing bonds or notes to fund a self-insurance or deductible reserve;
6. Jointly purchasing administrative and other services when related to any of the other purposes; and
7. Jointly provide such other administrative services to political subdivisions of the State;

WHEREAS, the governing board of each Member Entity has determined that it is in its own best interest, and in the public interest that this Agreement be executed and that it participate as a member of the public entity created by this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits, promises and agreements set forth below, the parties hereby agree as follows:

Section 1: DEFINITIONS

Agreement or Revised Agreement shall mean this Revised and Restated Interlocal Agreement.

Assessment shall mean with respect to each Program the charges, fees and assessments made by the Authority for participation in a Program as the same may be set forth in the individual Program Agreements or other Program documents.

Authority shall mean the Montana Municipal Interlocal Authority created by this Agreement.

Board of Directors or Board shall mean the governing body of the Authority.

Bonds and Notes shall mean Bonds or Notes issued by the Authority pursuant to the Law or other enabling legislation as may hereafter be enacted on behalf of, and authorized by, Member Entities for the purpose of financing a Program.

Bond or Note Resolution shall mean the Bond or Note Resolution adopted by a Member Entity authorizing the Authority to issue Bonds or Notes on its behalf.

Bylaws shall mean the bylaws adopted by the Board prescribing the rules for the operations of the Authority.

Chair shall mean the Chair of the Board of Directors.

Claim shall mean a claim made against a Member Entity arising out of a Loss which is covered by a Program of the Authority in which the Member Entity is a participant.

Coverage Year shall mean, with the exception of the initial coverage period, for each Program of the Authority, that period of twelve months beginning and ending as set forth in the Program Agreement.

Deductible shall mean that portion of a Loss experienced by a Member Entity which is retained as a liability or potential liability of the Member Entity, and is not subject to payment by the Authority under an Agreement.

Director shall mean a member of the Board of Directors.

Excess Insurance shall mean one or more additional policies or programs of insurance or risk sharing purchased or participated in by the Authority as part of a Program to provide for the payment of Losses in excess of the types and amounts of coverage provided by the Authority directly in the primary Program Agreement(s) or applicable Memorandum of Coverage with respect to a Program.

Executive Committee shall mean the Executive Committee of the Board of Directors of the Authority.

Fiscal year shall mean that period of twelve months which is established by the Board of Directors as the Fiscal Year of the Authority.

Interlocal Cooperation Act shall mean Title 7, Chapter 11, Part 1, Mont. Code Ann. as amended.

Law shall mean those provisions of the Montana Constitution and Montana statutes, as amended, and such other laws of the state of Montana which authorize the Member Entities either jointly or severally to engage in activities in furtherance of the purposes for which this Authority was created.

Loss shall mean a liability or potential liability of a Member Entity, as the same may be more particularly defined in the Program Agreement or Memorandum of Coverage or other Program documents which relate to specific Programs of the Authority.

Member Entity(ies) shall mean any political subdivision which has executed this Agreement and has joined and is a member in good standing in one or more of the Programs established by the Authority.

Memorandum of Coverage shall mean the document or documents issued by the Authority with respect to each Program specifying the type and amount of coverages provided to the Member Entities by the Authority.

Mont. Code Ann. shall mean the Montana Code Annotated.

Open Meeting Law shall mean Title 2, Chapter 3, Parts 1 and 2, Mont. Code. Ann., as amended.

Policies and Procedures shall mean the Policies and Procedures manual(s) adopted by the Board specifying the policies and procedures to be followed by the Authority and Member Entities in the Programs of the Authority.

Program shall mean arrangements to provide coverage with respect to specific types of claims, losses, damages and liabilities of Member Entities, which may include, but not be limited to, liability, property, workers' compensation, employee health benefits, life, disability, vision and dental benefits.

Program Agreement shall mean the agreement or agreements by and between the Authority and the Member Entities which are participants in a Program setting forth the terms and conditions of each Program offered by the Authority.

Reinsurance shall mean either treaty reinsurance or facultative reinsurance purchased by the Authority, as part of a Program.

SECTION 2: PURPOSES

This Revised Agreement is entered into by the Member Entities for the following purposes:

1. To jointly develop and fund, as provided by applicable law, programs for:
 - A. workers' compensation and occupational disease coverage;
 - B. comprehensive liability coverage;
 - C. property coverage
 - D. employee health, dental, vision and life coverage
 - E. disability and group disability coverage;
 - F. other forms of coverage as the Member Entities or some of them may deem appropriate;
 - G. participation in group or captive insurance, excess insurance or reinsurance programs, in whole or in part.
2. To develop or procure, as the Board of Directors of the Authority may from time-to-time determine, administrative services in support of the Programs developed and funded by the Member Entities pursuant to this Agreement, including but not limited to:
 - A. risk management consulting;
 - B. loss prevention and control;
 - C. centralized loss reporting;
 - D. actuarial consulting;
 - E. claims adjusting;
 - F. general legal services and legal defense;
 - G. accounting and auditing services.
3. To provide such administrative services through the Authority to political subdivisions of the state on such terms and conditions as the Board of Directors of the Authority may establish, provided that the Authority must, at a minimum, recover the costs associated with each such service made available to such political subdivisions.

All such purposes shall be accomplished through a joint exercise of powers by Member Entities pursuant to this Agreement, to be administered by a separate legal entity, the Montana Municipal Interlocal Authority, as created herein.

SECTION 3: PARTIES TO AGREEMENT

Each Member Entity, as a party to this Revised Agreement, certifies that it intends to and does contract with, for the purposes and to the extent as herein provided, all other parties who are signatories of this Revised Agreement and, in addition, with such other political subdivision as may later be added as a party to, and signatory of, this Revised Agreement. Each party also certifies that the removal of any party from this Revised Agreement, pursuant to Section 18 or 19, shall not affect this Revised Agreement or the remaining parties' intent to contract as described above with the other parties to the Revised Agreement then remaining.

SECTION 4: TERM

This Revised Agreement shall become effective as of July 1, 2009 after it has been duly approved and executed by two-thirds of the Member Entities who are signatories to the Interlocal Cooperation Agreement first entered into as of August 1986, as the same may have from time-to-time been amended. This Revised Agreement shall continue in effect until terminated or amended as provided herein.

SECTION 5: CREATION AND CONTINUATION OF THE AUTHORITY

Pursuant to the Interlocal Cooperation Act, there has heretofore been created a public entity separate and apart from the Member Entities signatory hereto, which public entity shall continue in existence and as of the effective date of this Revised Agreement be known as the "Montana Municipal Interlocal Authority", with such powers as are hereinafter set forth.

SECTION 6: POWERS OF THE AUTHORITY

The Authority shall have all of the powers common to its Member Entities under the Law and the Interlocal Cooperation Act, and is hereby authorized to do all things necessary and proper for the exercise of said powers. Such powers include, but are not limited to, the following:

1. To make and enter into contracts.
2. To incur debts, liabilities, and obligations.
3. To issue Bonds and Notes on behalf of its Member Entities for authorized purposes when expressly authorized by Member Entities.
4. To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.

5. To sue and be sued in its own name, and to settle any claim against it.
6. To receive contributions and donations of property, funds, services and other forms of assistance from any source.
7. To receive and use contributions and advances from Member Entities, including contributions or advances of personnel, equipment, or property.
8. Employ agents and employees.
9. Receive, collect, and disburse monies.
10. To invest any money in its treasury that is not required for its immediate necessities, in the same manner and on the same conditions as Member Entities pursuant to law.
11. Jointly make deposits which may take the form of assessments or to an account or surplus account, and pay premiums for the purposes of participating in group or captive insurance, excess insurance or reinsurance programs, in whole or in part.
12. Jointly purchasing other insurance, reinsurance, or excess insurance.
13. To carry out all provisions of this Agreement.
14. To provide such administrative services through the Authority to political subdivisions of the state on such terms and conditions as the Board of Directors of the Authority may establish.

Said powers shall be exercised pursuant to the terms hereof and in the manner provided by law.

SECTION 7: MEMBER ENTITY RESPONSIBILITIES AND POWERS

7.01 Responsibilities. Each Member Entity participating in a Program shall have the following responsibilities:

- A. To provide the Authority with such statistical and loss experience data and other information as may be necessary or desirable for the Authority to carry out the purposes of this Agreement;
- B. To pay Assessments to the Authority when due;
- C. To cooperate fully with the Authority in determining the cause of Losses, and in the settlement of Claims;
- D. To cooperate with and assist the Authority and any insurer, claims adjuster, legal counsel or other service provider engaged or retained by the Authority, in all matters relating to this Agreement and a Program Agreement;

- E. To comply with and keep and perform its obligations under the Program Agreements, Notes and Note Resolutions to which each Member Entity is a party or signator thereto, the Bylaws, and all Policies and Procedures of the Authority not inconsistent with the provisions of this Agreement;
- F. To have an audit of its risk management activities as required by the Authority. Such audit shall be at the expense of each Member Entity but the charge for such audit may be included within the Assessments to be charged for a Program;
- G. To maintain its own Claims and Loss records in each Program of the Authority in which the Member Entity is a participant, and to provide copies of such records to the Authority or to such other committees as directed by the Board.

7.02 **Powers.** Member Entities shall have the following powers:

- A. To appoint, elect or remove members of the Board of Directors as set forth in Section 8;
- B. To expel Member Entities as set forth in Section 19;
- C. To approve amendments to this Agreement as set forth in Section 25.

SECTION 8: THE BOARD OF DIRECTORS

8.01 Membership of Board, Procedure for Electing and Term in Office.

- A. **Membership.** Subject to Section 8.01(B) of this Agreement below, the Board shall be composed of a minimum of 15 Directors, elected in the following manner:
 - (1) Each Member Entity participating in one or more of the Authority's programs and has a population in excess of 20,000 is entitled to appoint a Director; and
 - (2) An equal number of Directors to the number of those Directors appointed in Section 8.01(A)(1) above, shall be elected by and representing Member Entities participating in one or more of the Authority's Programs, and having a population of less than 20,000; and
 - (3) One (1) "At-large Director" from a Member Entity participating in one or more of the Authority's Programs appointed by the Directors selected in Sections 8.01(A)(1) and (2) above.
- B. **Automatic Expansion of the Board.** In the event that a Member Entity, during the time it is a participant in one or more of the Authority's Programs, has an increase in its population to a number in excess of 20,000 as determined in

subparagraph C herein, then such Member Entity shall be entitled to a seat on the Board, and the total number of Directors shall increase by two, one of whom shall be appointed by the Member Entity which has experienced the described increase in population, and one of whom shall be an additional representative elected by and representing Member Entities who have a population of less than 20,000. The expansion in the number of Directors shall occur at the next annual meeting of the Member Entities following the annual census that established said population.

C. **Procedure.** The nomination and election of Board of Directors will be conducted at the regular annual meeting of the Authority. Each Member Entity shall appoint and elect Directors for its respective category as herein provided. No Member Entity shall have more than one Director at any time. To be eligible to vote for the Board of Directors, a Member Entity must be a Member Entity in one or more of the Authority's Programs at the time of the annual meeting. For purposes of this Section, the population of the Member Entity shall be as determined by the most recent census statistics published by the United States Census Bureau.

D. **Terms.**

- (1) Directors shall serve a term of two (2) years from the date of the annual meeting at which their appointment under Section 8.01(A)(1) and (3) or their election under Section 8.01(A)(2) occurred.
- (2) A Director shall hold office until: (i) the expiration of his or her term of office or the Member Entity it represents no longer participates in a Program of the Authority and (ii) until a successor has been elected or appointed. In the event of a vacancy, the remaining Directors shall appoint a replacement Director who shall serve until the expiration of the predecessor's term or the next Annual Meeting, whichever occurs first.

8.02 Resignation of a Director. A Director may resign upon giving thirty (30) days' notice in writing to the Authority.

8.03 Removal of a Director. Any director may be removed from office at any time by a majority vote of the Board for neglect of duty or malfeasance in office. Notification of such removal or appointment of a successor shall be by instrument in writing by the Board and delivered to all Member Entities.

8.04 Compensation of Directors. The Directors shall receive no salary but may be compensated for any reasonable and necessary expenses incurred in connection with the performance of their duties.

8.05 Vacancies. Vacancies on the Board elected by Member Entities pursuant to Sections 8.01(A)(2) or (3) may be filled by a majority of the remaining Directors, and each Director so elected shall hold office until the next Annual Meeting of Member Entities and until that Director's successor has been elected and qualified. At the next Annual Meeting, Member Entities shall have the power to appoint

a Director to fill the remaining term of office. Vacancies on the Board for a Director appointed pursuant to Section 8.01(A)(1) shall be filled by the respective Member Entities which appointed the representative whose position is vacant.

SECTION 9: MEETINGS AND RECORDS

9.01 Member Entity Meetings. Member Entities shall hold at least one regular meeting each year which will be designated the “Annual Meeting”, and the Board shall fix the date, hour and place at which the Annual Meeting or other meetings of the Member Entities are to be held. Member Entities may vote by absentee ballots or by proxy according to rules established by the Bylaws of the Authority. The Chair shall preside at all meetings of the Member Entities. Special meetings may be called upon written request by the Chair, by one-third or more of the Directors, or by one-third or more of the Member Entities.

9.02 Member Entity Voting. Each Member Entity shall have one (1) vote on each matter presented to Member Entities, but in election of Directors, shall have one (1) vote for each Director to be elected and may not cumulate votes; provided however that in the event that the matter presented to the Member Entities for a vote involves a specific Program, then only those Member Entities which are participants in such Program may vote on such matter.

9.03 Board Meetings. The Board shall hold at least four (4) regular meetings each year. The Board shall provide by resolution or in the Bylaws, the time for holding regular meetings. The Board shall fix the place where each regular meeting is to be held. Special meetings may be called upon written request by the Chair or one-third or more of the Directors.

9.04 Meeting Minutes. The Board shall have minutes of all regular, adjourned regular, special and adjourned special meetings of the Member Entities, and of the Board kept and available for inspection at any reasonable time. As soon as possible after each meeting, a copy of the minutes of each Member Entity meeting and each Board meeting shall be made available to each member of the Board.

9.05 Open Meeting Law. All meetings of the Member Entities and the Board shall be called, noticed, held and conducted in accordance with the provisions of the Open Meeting Law.

9.06 Quorum and Conduct of Business. A majority of the authorized number of Directors constitutes a quorum. Member Entities representing a majority of the Member Entities constitutes a quorum. Every act done or decision made by a majority of Member Entities, present in person or by proxy at a Member Entity Meeting, or Directors present in person at a Board meeting duly held at which a quorum is present shall be the act of that body, unless a vote by a greater number is required by law, this Agreement, or the Bylaws. Provided, however, that any action required to be taken by the Board or the Member Entities, as the case may be, which is restricted in effect to one of the Authority’s Programs, as determined by the Chair of the Board, shall also require the affirmative vote of a majority of those Directors in person at a Board meeting, or Member Entities present in person or by proxy and voting at a Member Entity Meeting who represent or are Member Entities in that Program. No business may be transacted by the Board or by the Member Entities without a quorum of their respective members being present; provided however, less than a quorum may adjourn from time to time. Meetings of the Board and the Member Entities shall be conducted in accordance with Roberts Rules of Order, except when in conflict with applicable law, this Agreement or the Bylaws.

9.07 Bylaws and Policies and Procedure Manual. The Board shall cause Bylaws to govern the day-to-day operations of the Authority, and one or more Policies and Procedures Manual(s) to govern the day-to-day operations of the Programs to be developed, which shall not be inconsistent either with applicable law or with this Agreement. Each Director shall receive a copy of the Bylaws and Policies and Procedures Manual(s) developed under this Section. Each member Entity shall receive a copy of the Bylaws and Policies and Procedures Manual(s) developed under this Section upon request made to the Chief Executive Officer of the Authority. The Board may adopt additional Bylaws and Policies and Procedures or change existing ones so long as the additions or changes shall be, and remain consistent with both applicable law and with this Agreement. The Chief Executive Officer shall send, or cause to be sent, each Bylaw amendment and Policy and Procedure change to each Director promptly after its adoption by the Board. The Chief Executive Officer shall send, or cause to be sent, a summary of each such Bylaw amendment and Policy and Procedure change to each Member Entity in a timely manner.

SECTION 10: POWERS OF THE BOARD OF DIRECTORS

10.01 The Board of Directors shall have the following powers and functions:

- A. The Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation of authority to other bodies or persons unless otherwise prohibited elsewhere in this Agreement or by applicable law.
- B. The Board may form an Executive Committee from its membership, as provided in Section 12, and may delegate to that Committee such powers as it sees fit, provided that all powers of the Executive Committee shall be exercised under the direction of the Board.
- C. The Board shall form, as provided in Section 13, such other committees as it deems appropriate in conducting the business of the Authority. The membership of any such other committee may consist in whole or in part of non-Board members; provided that the Board may delegate its powers and duties only to a committee of the Board composed of a majority of Board members. Any committee which is not composed of a majority of Board members may function only in an advisory capacity.
- D. The Board shall elect the officers of the Authority, shall appoint the staff members designated in Section 14, and shall provide for the appointment of such other staff as may be necessary for the administration of the Authority, pursuant to that section.
- E. The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority.
- F. The Board shall develop, or cause to be developed, and shall review, modify as necessary, and adopt each Program of the Authority, including all provisions for reinsurance and administrative services necessary to carry out such Program.

- G. The Board shall provide for necessary services to the Authority and to Member Entities, by contract or otherwise, which may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, accounting and auditing services, and legal services.
- H. The Board shall provide general supervision and policy direction to the Chief Executive Officer, either directly or through the Executive Committee.
- I. The Board shall receive and act upon reports of the committees as established by the Board, and the Chief Executive Officer, either directly or through the Executive Committee.
- J. The Board shall act upon each claim involving liability of the Authority, either directly or by delegation of authority to the Executive Committee or other committee, body or person, provided that the Board shall establish monetary limits upon any delegation of claims settlement authority, beyond which a proposed settlement must be referred to the Board for approval.
- K. The Board may require that the Authority review, audit, report upon, and make recommendations with regard to the safety or claims administration functions of any Member Entity, insofar as those functions are affecting the liability or potential liability of the Authority. The Board may forward any or all such recommendations to the Member Entity with a request for compliance and a statement of potential consequences for noncompliance.
- L. The Board shall receive, review and act upon periodic reports and audits of the funds of the Authority, as required under Section 16 and 17 of this Agreement.
- M. The Board shall provide for the creation of positions through its budget process as may be necessary for the administration of the Authority. The Chief Executive Officer will recommend to the Board for its approval the necessary positions for the administration of the Authority.
- N. The Board shall have such other powers and functions as are provided for in this Agreement, in the Bylaws of the Authority, and in applicable law.

SECTION 11: OFFICERS

The Board of Directors shall elect from its membership a Chair, Vice Chair, Secretary and Treasurer, to serve for one-year terms.

The Chair, or in his or her absence, the Vice Chair, shall preside at and conduct all meetings of the Board, the Member Entities and shall chair the Executive Committee.

The Secretary shall have those duties normally associated with such office.

The Treasurer shall have those duties normally associated with such office.

SECTION 12: EXECUTIVE COMMITTEE

12.01 Composition. The Board of Directors may establish an Executive Committee of the Board which shall consist of five members: the Chair and Vice Chair of the Board, and three members elected by the Board from its membership.

12.02 Term. The Terms of office of the three non-officer members shall be as provided for in the Bylaws of the Authority.

12.03 Responsibility. If established, the Executive Committee shall conduct the business of the Authority between meetings of the Board, exercising such powers as are delegated to it by the Board, through the adoption of Board resolutions, under the direction of the Board.

12.04 Vacancy. A vacancy on the Executive Committee shall be filled as provided in the Bylaws.

SECTION 13: STANDING AND SPECIAL COMMITTEES

13.01 Standing Committees. The Board shall establish Standing Committees as it deems appropriate to conduct the business of the Authority consisting of at least five members. Members of the Standing Committees shall be appointed by the Chair with approval of the Board and such members of Standing Committees may include one or more individuals who are not Board Members, provided that they are representatives of a Member Entity. Employees of or consultants to the Authority may be designated as *ex officio* members of a Standing Committee. Members of Standing Committees shall serve two year terms, subject to reappointment by the Chair with the approval of the Board. The members of each Standing Committee shall annually select one of its members to chair the Committee.

13.02 Special Committees. The Board may also establish Special Committees, as it deems appropriate. Members of such Special Committees shall be appointed by Chair with the approval of the Board for terms as specified by the Board, and such members of Special Committees may include one or more individuals who are not Board Members, provided that they are representatives of a Member Entity. Employees of or consultants to the Authority may be designated as *ex officio* members of a Special Committee. The Chair of Special Committees shall be designated by the Chair of the Board.

13.03 Duties. Each committee shall have those duties as determined by the Board, or if so directed, by the Executive Committee, or as otherwise set forth in the Bylaws.

13.04 Meetings. Each Committee shall meet on the call of its Chair, and shall report to the Executive Committee and the Board as directed by the Board.

SECTION 14: STAFF

14.01 **Chief Executive Officer.** The Chief Executive Officer shall be appointed by and serve at the pleasure of the Board and shall administer the business and activities of the Authority, subject to the general supervision and policy direction of the Board or Executive Committee; shall be responsible along with the Secretary for all minutes, notices and records of the Authority; and shall perform such other duties as are assigned by the Board or Executive Committee.

14.02 **Chief Financial Officer.** The Chief Executive Officer shall appoint a Chief Financial Officer. The Chief Financial Officer shall be responsible for the financial, banking and investment activities of the Authority, and shall perform such other duties as are assigned by the Chief Executive Officer. Except for those independent duties that the Chief Financial Officer may owe to the Board or Finance Committee, the Chief Financial Officer shall report to the Chief Executive Officer.

14.03 **Other Staff.** There shall be such other staff positions created by action of the Board in approving the annual budget for the Authority or as may be otherwise directed by action of the Board in regular or special meeting in order to ensure the implementation of each Program of the Authority. The Chief Executive Officer shall hire each employee filling such staff positions.

SECTION 15: DEVELOPMENT, FUNDING, IMPLEMENTATION and JOINING PROGRAMS

15.01 **Program Coverage.** Programs of the Authority may provide coverages for one or more or any combination of the following:

- A. Workers' compensation;
- B. Comprehensive liability, including but not limited to general, automobile, personal injury, contractual, malpractice liability;
- C. Property;
- D. Employee health, vision and dental benefits;
- E. Life and disability; and
- F. Any other coverages authorized by the Board.

The Board shall determine, for each such Program, a minimum number of Member Entities required for Program implementation.

15.02 **Program and Authority Funding.** The Member Entities developing or participating in a Program shall fund all costs of that Program, including administrative costs as hereinafter provided, or as provided in the Program Agreement relating to that Program. Costs of staffing and supporting the Authority, hereinafter called Authority general expenses, shall be equitably allocated among the various Programs by the Board, and shall be funded by the Member Entities developing or participating in such Programs in accordance with such allocations, as hereinafter provided or as provided in the Program Agreements.

- A. **Development Charge.** Development costs of a Program may be funded by a development charge, as fixed by this Agreement or determined by the Board of Directors. The development charge shall be paid by each Member Entity which wishes to join in development of the Program, and thereby reserve the option to

participate in the Program following adoption by the Board. Development costs are those costs incurred by the Authority in developing a Program for review and adoption by the Board of Directors, including but not limited to: research, feasibility studies, information and liaison work among political subsidiaries, and preparation and consulting services. The development charge may also include a share of Authority general expense, as allocated to the Program development function by the Board.

The development charge shall be billed by the Authority to all Member Entities upon authorization of Program development by the Board and shall be payable within thirty (30) days of the billing date.

Upon the conclusion of Program development, any deficiency in development funds shall be billed to all Member Entities which have paid the development charge, on a pro-rata or other equitable basis, as determined by the Board; and any surplus in such funds shall be transferred into the loss reserve funds for the Program, or, if the Program is not implemented, into the Authority's general expense funds.

- B. **Inter-Program Loans.** Except to the extent otherwise prohibited by any Program Agreement, one Program may loan funds to be used to develop any new Program of the Authority, provided however, that any such loan shall be secured by the promise of one or more Member Entities to repay the amount of any such loan with interest, if any, as may be established by the Board to the Program lending the funds in the event that the new Program is not created or has inadequate funds to repay such loan.
- C. **Assessment.** Except as provided in Section 15.03 below, all post-development costs of a Program shall be funded by Assessments charged to the Member Entities in the Program each Policy Year, and by interest earnings on the funds so accumulated. Such Assessments shall be determined by the Board upon the basis of a cost allocation plan and rating formula developed by the Authority with the assistance of a casualty actuary, risk management consultant, or other qualified person and as set forth in the Program Agreement. The assessment for each participating entity may include that entity's share of expected program losses, program reinsurance costs, and program administrative costs for the year, that Member Entity's share of Authority general expense allocated to the Program by the Board, plus that Member Entity's share of any principal and interest that may become due in that year and a debt service reserve fund payment with respect to any notes or bonds issued by the Authority for such Program on behalf of that Member Entity, as authorized by such Member Entity.

Assessments shall be billed by the Authority at the beginning of each Coverage Year or as otherwise provided in the Program Agreement and shall be due and payable as provided in a Program Agreement. At the end of each Coverage Year, Program costs shall be audited by the Authority. Any deficiency or surplus in the Assessments paid by a Member Entity, as shown by such audit, may be adjusted by a corresponding increase or decrease in the Assessments charged to that

Member Entity for the next succeeding year, or as otherwise provided in the respective Program Agreements for each such Program, unless the Member Entity withdraws or is cancelled from a Program, in which case the provisions of the applicable Program Agreement and Sections 18 and 19 herein shall control.

D. **Assessment Adjustments.** The Authority may adjust Assessments as provided in the individual Program documents.

15.03 Program Implementation and Effective Date. Following development of a Program and upon its adoption by the Board, the Authority shall give each Member Entity which has paid the development charge, if such charge has been levied for the Program, a written notice of the Program, which shall include: a form of the Program Agreement, the minimum number of Member Entities required for the Program's implementation, and the estimated first year assessment to the Member Entities for Program participation. Each such Member Entity may elect to enter the Program by giving written notice of such election, in a form prescribed by the Authority, to the Chief Executive Officer within thirty (30) days of the date of the Authority's notice of the Program. Any Member Entity which has not paid the development charge as of the date of the Program notice may enter the Program only if it pays such charge and gives notice of such election within the above 30-day period and executes a Program Agreement.

When at least the minimum number of Member Entities required for program implementation shall have elected to enter a Program, the Authority shall determine the actual first-year Assessment for each participating Member Entity so electing and shall give each such Member Entity written notice thereof. If a Member Entity's actual first-year Assessment is more than that estimated by the Authority, the Member Entity may revoke its election to enter the Program by giving the Chief Executive Officer written notice of such decision within thirty (30) days of the date of the actual Assessment notice.

When the Authority determines that at least the minimum number of participating Member Entities required for Program implementation have entered in a Program, it shall give written notice to that effect to all Member Entities which have elected to enter, and the Program shall become effective on the date of such notice. All such participating Member Entities shall thereafter be considered Member Entities in the Program, except for any Member Entity which has revoked its entry into the Program under the terms and within the time period above provided.

15.04 Late Entry into Program. A Member Entity which does not elect to enter a Program upon its implementation, pursuant to Section 15.03 above, or a political subdivision which becomes a Member Entity and a party to this Agreement following implementation of a Program, may petition the Board for entry into the Program. Such request may be granted, if authorized in the Program Agreement, upon a vote of a majority of all Directors present and voting, upon satisfaction of requirements set forth in the Program Agreement, provided that the applicant meets the various underwriting criteria of the individual Program.

As a condition of late entry, the Member Entity shall pay the development charge for a Program, if required by the Board, as adjusted at the conclusion of the development period, but not subject to further adjustment, and also any costs incurred by the Authority in analyzing the Member Entity's loss data and determining its annual Assessment as of the time of entry.

SECTION 16: ACCOUNTS AND RECORDS

16.01 Annual Budget. The Authority shall annually adopt an operating budget pursuant to Section 10 of this Agreement, which shall include a separate budget for each Program under development or adopted and implemented by the Authority.

16.02 Funds and Accounts. The Chief Financial Officer of the Authority, under the direction of the Board of Directors, shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board. Separate accounts shall be established and maintained for each Program under development or adopted and implemented by the Authority. Books and records of the Authority shall be open to inspection at all reasonable times by authorized representatives of Member Entities.

The Authority shall adhere to the standard of strict accountability of public funds.

16.03 Annual Report. The Authority, within one hundred and eighty (180) days after the close of each fiscal year, shall give a complete written report of all financial activities for such Fiscal Year to the Board and to each Member Entity.

16.04 Annual Audit. The Authority shall either make or contract with a certified public accountant or the Audit Division of the Department of Commerce pursuant to Title 2, Chapter 7, Part 5, Mont. Code Ann. to make an annual fiscal year audit of all accounts and records of the Authority. A report of the audit shall be filed as a public record with each Member Entity within six months of the end of the fiscal year under examination. Costs of the audit shall be considered a general expense of the Authority chargeable to each Program of the Authority as the Board may determine.

SECTION 17: RESPONSIBILITIES FOR FUNDS AND PROPERTY

Custody of Funds. The Chief Financial Officer, under the direction of the Board of Directors, shall have the custody of and disburse the Authority's funds.

17.01 Duties of the Chief Financial Officer. The Chief Financial Officer shall:

- A. Receive and acknowledge receipt for all funds of the Authority and place them in the treasury to the credit of the Authority.
- B. Be responsible upon his or her official bond for the safekeeping and disbursement of all Authority funds so held by him or her.
- C. Pay any sums due from the Authority, as approved for payment by the Board or by any entity or person to whom the Board has delegated approval authority, making such payments from Authority funds.
- D. Verify and report in writing to the Authority and to Member Entities, as of the first day of each quarter of the fiscal year, the amount of money then held for the

Authority, the amount of receipt since the last year, and the amount paid out since the last report.

17.02 Property of the Authority. The Chief Executive Officer, the Chief Financial Officer and such other persons as the Board of Directors may designate shall have charge of, handle, and have access to the property of the Authority.

17.03 Fidelity Bonds. The Authority shall secure and pay for a fidelity bond or bonds, and/or crime and fidelity coverage, in an amount or amounts and in the form specified by the Board of Directors, covering all officers and staff of the Authority who are authorized to hold or disburse funds of the Authority, and all officers and staff who are authorized to have charge of, handle, and have access to property of the Authority.

SECTION 18: WITHDRAWAL

18.01 Withdrawal Prior to Becoming a Member Entity. A Member Entity may withdraw as a party to this Agreement upon thirty (30) days' advance written notice to the Authority if it has never become a Member Entity in any Program pursuant to Section 15, or if it has withdrawn from all Programs in which it was a Member Entity, pursuant to 18.02 below.

18.02 Withdrawal Subsequent to Becoming a Member Entity. After becoming a Member Entity in any Program pursuant to Section 15, a Member Entity may withdraw from that Program only as provided in the applicable Program Agreement.

SECTION 19: CANCELLATION

19.01 Cancellation by the Board. Notwithstanding the provisions of Section 21, but subject to the terms of the Program Agreements, the Board of Directors may:

- A. Cancel any Member Entity from this Agreement and membership in the Authority, upon a vote of a majority of the Directors present and voting. Such action shall have the effect of canceling the Member Entity's participation in all programs of the Authority as of the date that all membership is cancelled.
- B. Cancel any Member Entity's participation in a Program, without canceling the Member Entity's membership in the Authority or participation in other Programs, upon a vote of a majority of the Directors present and voting .

19.02 Automatic Cancellation.

- A. A Member Entity that does not enter one or more Programs within the Member Entity's first year (a period of twelve months) as a member of the Authority shall be considered to have withdrawn as a party to this Agreement at the end of such period, and its membership in the Authority shall be automatically cancelled as of that time, without action of the Board.

B. A Member Entity which withdraws from all Programs in which it was a Member Entity and does not enter any other Program for a period of six (6) months thereafter shall be considered to have withdrawn as a party to this Agreement at the end of such period, and its membership in the Authority shall be automatically cancelled as of that time, without action of the Board.

SECTION 20: WITHDRAWAL OR CANCELLATION OF PARTICIPATION IN A PROGRAM

21.01 The effect of withdrawal or cancellation of participation in a Program and the terms and conditions governing such withdrawal shall be as set forth in each of the Program Agreements.

SECTION 21: TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS

21.01 **Termination of Agreement.** This Agreement may be terminated at any time upon the election to terminate of three-fourths of the Member Entities, acting through their governing bodies; provided, however, that this Agreement and the Authority shall continue to exist after such election for the purpose of retiring any debt, disposing of all claims, distributing all assets, and performing all other functions necessary to conclude the affairs of the Authority and any program.

21.02 **Distribution of Assets.** Upon termination of this Agreement, all assets of the Authority in each Program shall be distributed among Member Members as provided in the respective Program Agreements.

21.03 **Future Assessments.** Following termination of this Agreement, any Member Entity in a Program may be required to pay an additional amount of Assessment, determined by the Board in accordance with the terms of the Program Agreement, which may be necessary to enable final disposition of all Claims arising from Losses under that Program during the Member Entity's period of participation.

SECTION 22: LIABILITY OF BOARD OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

22.01 **Standard of Care.** The Directors, Officers and committee members of the Authority shall use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest.

22.02 **Not Liable for Action of Others.** No Director, Officer or committee member shall be responsible for any action taken or omitted by any other Director, Officer or committee member. No Director, Officer or committee member shall be required to give a bond or other security to guarantee the faithful performance of their duties pursuant to this Agreement.

22.03 Indemnification. Any person who at any time shall serve, or shall have served as a Director, Committee Member, or Officer of the Authority, shall be indemnified, held harmless and defended by the Authority against all costs and expenses (including but not limited to attorney's fees of an attorney approved by the Authority), amounts of judgments, and settlements reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, in which he, she, or they may be involved by virtue of such person's being or having been a Director, Committee Member, or Officer; provided however, that such indemnity shall not be operative with respect to: (1) the Director, Committee Member, or Officer gaining any personal profit or advantage in his or her capacity as Director, Committee Member, or Officer, (2) the dishonesty of a Director, Committee, or Officer, (3) a Director's, Committee Member's, or Officer's conflict of interest, (4) willful violation of a statute or ordinance committed by a Director, Committee Member, or Officer or with the Director's, Committee Member's, or Officer's knowledge or consent, or (5) any matter as to which the Director, Committee Member, or Officer shall have been finally adjudged in such action, suit or proceeding to be liable for misconduct in the performance of his or her duties as Director, Committee Member, or Officer. The indemnification will not be operative for any settlement unless the settlement is approved by a majority of the Directors.

SECTION 23: BYLAWS

23.01 The Bylaws of the Authority, or any subsequent amendment thereto, shall be in conformity with the provisions of this Agreement.

SECTION 24: NOTICES

24.01 The Authority shall address notices, billings and other communications to a Member Entity at the address and to the attention of the individual set forth on each Member Entities' signature page hereto or as otherwise directed by the Member Entity. Member Entities shall address notices and other communications to the Authority to the Chief Executive Officer of the Authority, at the office address of the Authority which shall be, until otherwise notified, PO Box 6669, Helena MT 59604-6669.

SECTION 25: AMENDMENT

25.01 This Agreement may be amended at any time by approval of any amendments by two-thirds of the Member Entities, acting through their governing bodies, either at a meeting in person, by proxy, or by mail ballot: provided however, that no amendment may be made which would have the effect of altering or amending any Program Agreement or altering or limiting any obligations of the Authority or Member Entities thereunder.

SECTION 26: PROHIBITION AGAINST ASSIGNMENT

26.01 No Member Entity may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member Entity shall have any right, claim or title to any part, share, interest, fund, assessment or asset of the Authority.

SECTION 27: AGREEMENT COMPLETE

27.01 The foregoing constitutes the full and complete Agreement of the parties with respect to the Authority. There are no oral understandings or agreements not set forth in writing herein, provided, however, that participation in any program of the Authority is subject to the terms and conditions of separate Program Agreements not inconsistent herewith.

SECTION 28: EFFECTIVE DATE OF AMENDMENTS

28.01 Any amendment of this Agreement shall become effective upon the Authority receiving notice of the approval of any Amended Agreement by the Governing bodies of two-thirds of the Member ted.

SECTION 29: FILING WITH SECRETARY OF STATE ANDCOUNTY CLERK AND RECORDERS

29.01 Within thirty (30) days after the approval of any amendment, the Chief Executive Officer of the Authority shall file a copy of this Agreement with the Secretary of State and the county clerk and recorder of each county in which Member Entities are located.

SECTION 30: EXECUTION

30.01 This Revised Agreement shall be executed on behalf of the Member Entity by such person as may be duly authorized by the governing body of each Member Entity and attested by the Clerk. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

**REVISED AND RESTATED
INTERLOCAL AGREEMENT
GOVERNING THE MONTANA MUNICIPAL
INTERLOCAL AUTHORITY
EFFECTIVE AS OF JULY 1, 2009**

Signature Page

IN WITNESS WHEREOF, the undersigned parties hereto have executed this agreement on the date indicated below.

City of _____

Address _____

By _____

Its _____

Date Signed _____

Attest: _____
Clerk

Notices required to be mailed to the City/Town under the foregoing Agreement shall be mailed to:

City/Town of _____

Attention: _____

**ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 8, 2009**

TITLE: Resolution Approving and Adopting the Montana Municipal Interlocal Authority Amended and Restated Liability Coverage Program Agreement

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City is a member of the Montana Municipal Interlocal Authority (MMIA) and participates in the Liability program. The contract that obligates MMIA to cover the City for liability claims is contained in the Program Agreement. MMIA issued a revised Liability Program Agreement that the City of Billings must adopt by July 1, 2009 in order for the City to continue with this coverage.

ALTERNATIVES ANALYZED: Adopting the Program Agreement is the only option if the City is going to continue participating in the Liability program. Staff provided input as the MMIA was revising the agreement.

FINANCIAL IMPACT: The annual assessment varies each year, but the City of Billings budgets approximately \$1 million per year for the MMIA assessment, plus \$250,000 or more to pay the self insured retention (deductible) of up to \$50,000/claim. The liability coverage cost is redistributed to each department or Fund based on the number of employees and on prior year losses in that department.

RECOMMENDATION

Staff recommends that Council approve the resolution approving and adopting the MMIA amended and restated liability coverage program agreement.

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

ATTACHMENTS

A: Resolution and Liability Program Agreement (Memorandum of Liability Coverage is on file and available in the City Clerk's office)

INTRODUCTION

The City is a member of the Montana Municipal Interlocal Authority (MMIA) and participates in the Liability program. The contract that obligates MMIA to cover the City for liability claims is contained in the Program Agreement. MMIA issued a revised Liability Program Agreement that the City of Billings must adopt by July 1, 2009 in order for the City to continue with this coverage.

BACKGROUND

Montana cities and towns formed the MMIA in the mid 1980s and Billings was a founding member. The MMIA is a membership owned and operated shared risk retention pool whose members are approximately 120 Montana cities and towns. It formed in response to unaffordable private insurance rates and insurance companies withdrawing from municipal markets nationally. Workers compensation and a broad casualty/liability program were developed first. Property protection was added in the late 1990s and an Employee Benefits (health) program was added in 2004. Billings participates in the workers compensation and liability programs. The City purchases commercial property insurance and has a self-insured health plan.

The MMIA regularly reviews and revises the Program Agreements and Memoranda of Coverage (MOC). The liability program agreement was last reviewed/revised in 2002. The agreement and MOC have several general changes and two primary changes; removing references and limitations related to the bond issue that capitalized the initial loss payment pool and providing coverage for certain events for which there was previously no coverage.

The general changes include things like: 1) removing references to “insurance” and “premiums” as reflected in the MMIA’s new name – Montana Municipal Interlocal Authority; 2) specifying the methods and time periods for MMIA to collect member underpayments and for members to collect overpayments; 3) specifying withdrawal, expulsion and admission to membership; and 4) more accurately describing the different accounts that MMIA maintains and from which it pays claims.

When the MMIA formed in 1986, it had no capital or reserves from which it could pay defense costs and claims. It purchased excess coverage that protected the organization from large losses, but excess insurance did not protect against the cumulative cost of the much more common and numerous small claims. The six large cities agreed to lend their credit worthiness to the MMIA and participated in issuing bonds that capitalized the MMIA loss payments for the first several years of existence. Because the large cities backed the bonds, there were substantial financial penalties for withdrawing from MMIA membership. The bond issue was retired in 2007, so the penalties and all other references to the bond issue are eliminated from the new program agreement.

The final change is to expand coverage in several areas. Claims involving non-monetary damages and employee benefits are not covered in the current program agreement, but will be covered in the new one with limits of \$100,000/claim. With non-monetary claims, that means

that the entire sub-limit would be used for defense costs, while it could be used for defense and judgments in employee benefit claims. Defense costs for employment practices and land use issues are covered but indemnity (judgments or settlements) are not covered in the present agreement. The new agreement will continue to cover defense but will establish a \$500,000/claim limit for indemnity in both areas. MMIA is seeking excess coverage for Billings but costs have not yet been determined. Accompanying these coverage changes, the MMIA has more specifically identified financial responsibilities in settlement negotiations by making it clear that MMIA has sole settlement authority (in consultation with the member). If a member refuses a settlement or demands unreasonable non-monetary concessions, the member may be liable for costs that exceed what would have been its settlement responsibility.

ALTERNATIVES ANALYSIS

The City has been a member of MMIA for over 20 years, including a period when commercial insurance was unavailable and expensive, and it has been a fruitful relationship. Broad form commercial insurance coverage is available but is still expensive. MMIA membership gives the City ownership and management roles in the organization that are not available with commercial insurance. The current year coverage expires on June 30, 2009 and there isn't enough time to secure commercial insurance before that date. The Council could direct staff to secure commercial insurance instead of approving the new program agreement but the City would be without insurance coverage for several weeks or months until it could secure a new policy.

RECOMMENDATION

Staff recommends that Council approve the resolution approving and adopting the MMIA amended and restated liability coverage program agreement.

ATTACHMENTS

A: Resolution and Liability Program Agreement

ATTACHMENT A

**RESOLUTION APPROVING AND ADOPTING THE
MONTANA MUNICIPAL INTERLOCAL AUTHORITY AMENDED AND RESTATED
LIABILITY COVERAGE PROGRAM AGREEMENT**

WHEREAS, the City/Town of _____ (Member Entity) is duly organized under the laws of the State of Montana; and

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of any function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States; and

WHEREAS, Mont. Code Ann. Title 7, Chapter 11, Part 1, (the "Interlocal Cooperation Act") authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each such political subdivision unit is authorized by law to perform; and

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the State to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part; and

WHEREAS, the Montana Municipal Interlocal Authority (Authority) is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement; and

WHEREAS, by executing this Revised and Restated Liability Program Agreement the Member Entity signatory hereto has heretofore determined and does hereby confirm that the Assessments and other charges required by the Liability Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

NOW, THEREFORE, BE IT RESOLVED THAT the City/Town of _____ hereby approves and adopts this Amended and Restated Liability Coverage Program Agreement.

Adopted this _____ day of _____ 2009.

By _____

Its _____

ATTEST:

City Clerk

**AMENDED AND RESTATED
LIABILITY COVERAGE**

PROGRAM AGREEMENT

Dated as of July 1, 2009

Between the

**MONTANA MUNICIPAL INTERLOCAL AUTHORITY
as Authority**

and

The City/Town of _____



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AMENDED AND RESTATED

LIABILITY COVERAGE PROGRAM AGREEMENT

This AMENDED AND RESTATED LIABILITY COVERAGE PROGRAM AGREEMENT, dated as of July 1, 2009, by and among the MONTANA MUNICIPAL INTERLOCAL AUTHORITY, a joint exercise of powers entity duly organized and existing under the laws of the State of Montana, (the "Authority"), and the City or Town of _____, and such other political subdivisions that may hereafter become party hereto as provided herein, each a political subdivision duly organized and existing under the Constitution and laws of said State, (each a "Member Entity" and collectively the "Member Entities");

RECITALS

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of any function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States; and

WHEREAS, Mont. Code Ann. Title 7, Chapter 11, Part 1, (the "Interlocal Cooperation Act") authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each such political subdivision unit is authorized by law to perform; and

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the State to procure insurance separately or jointly with other subdivisions, and to use a deductible or self- insurance plan, wholly or in part; and

WHEREAS, Mont. Code. Ann. § 2-9-211, authorizes political subdivisions or a board created pursuant to an interlocal agreement acting on their behalf to issue and sell bonds or notes for the purposes of funding a self-insurance or deductible reserve fund; and

WHEREAS, each Member Entity has determined it to be in its best interest to join with other Member Entities in forming and creating the Authority through the Interlocal Cooperation Act for the purposes of:

1. Developing effective risk management programs to reduce the amount and frequency of their losses;
2. Sharing some portion, or all, of their losses;
3. Jointly purchasing or otherwise acquiring insurance, excess insurance or reinsurance;
4. Jointly issuing bonds or notes to fund a self -insurance or deductible reserve;
5. Jointly purchasing administrative and other services when related to any of the other purposes;
6. Jointly make deposits which may take the form of assessments to an

account or surplus account and pay premiums for the purposes of participating in group or captive insurance, excess insurance or reinsurance programs, in whole or in part; and

WHEREAS, the Authority is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement; and

WHEREAS, the Authority and each Member Entity have heretofore determined following investigation that either general liability insurance, excess insurance or reinsurance is not available to the Member Entity from commercial insurers or from any other source or that such insurance, excess insurance or reinsurance is not available at a commercially reasonable cost, or general liability coverage may be available through the Authority at a cost which is advantageous to the Member Entity; and

WHEREAS, the Authority and each Member Entity have further determined that the periodic unwillingness or inability of the commercial insurance market to provide primary or excess liability insurance or reinsurance to local governments at reasonable rates or, in certain cases, at any rate, mandates that the Member Entities seek a long-term permanent solution to this problem which will free them from exposure to the vagaries of commercial insurance cycles; and

WHEREAS, the Authority and the Member Entities, in consultation with independent professional consultants, have formulated the Liability Coverage Program the terms and conditions of which are set forth in this Agreement to be administered by the Authority to meet the general liability coverage needs of the Member Entities which will provide the following advantages, among others, to each Member Entity:

(a) the funding of a Program Operations Fund for the purposes of paying claims and facilitating access to the reinsurance market, as well as paying operational costs of the Program.

(b) spread and moderate the cost of liability losses to each Member Entity by mutual agreement of the Member Entities to pay annual Assessments on both a prospective and a retrospective basis calculated actuarially;

(c) relief from the burden of paying premiums to commercial insurers at levels reflecting the insurers' high costs of underwriting, administration and brokerage fees since the Authority's costs will be limited to reasonable administrative costs,

(d) access to the reinsurance market when reinsurance is available at rates deemed favorable by the Member Entities,

(e) access to group coverage, excess insurance, reinsurance or other coverage programs which may provide such coverage at reasonable rates and on advantageous terms and conditions, and

(f) assessment payments calculated to provide amounts necessary to maintain the Program Operations Fund at a sound level and therefore sufficient to reserve against the incurred losses of the Member Entity; and

WHEREAS, in consideration of the factors recited above, the Authority has established and has offered to its Member Entities a Liability Program since August 1986, and which Liability Program has remained in operation since that time; and,

WHEREAS, by executing this Amended and Restated Liability Program Agreement the Member Entity signatory hereto has heretofore determined and does hereby confirm that the Assessments and other charges required by the Liability Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

WHEREAS, it is the intent of the Member Entity that in executing this Amended and Restated Liability Program Agreement that the Liability Program should remain in full force and effect and that continuity of the Liability Program should be and is maintained with the execution of this Amended and Restated Liability Program Agreement; and,

WHEREAS, the governing body of each Member Entity has authorized the execution of this Agreement for the purpose of providing Coverage for such Member Entity for the benefit of the Member Entity's residents and taxpayers and for the health and safety of the public who interact with the Member Entity; and

WHEREAS, it is a matter for the governing board of the Member Entity to determine whether the amount of assessments which the Member Entity pays for coverage is reasonable and advantageous and to the public benefit of the citizens of such Member Entity ; and

WHEREAS, each Member Entity has heretofore determined and does hereby confirm that the assessments to be required hereunder are reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has knowingly and willingly entered into this Agreement;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

SECTION 1: DEFINITIONS,

1.1. Definitions and Rules of Construction. Unless the context otherwise requires, the capitalized terms and the additional terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified.

Administrative Costs means those ordinary and necessary costs incurred in providing administrative services to the Program, including but not limited to the following:

- a. General administrative services
- b. Loss prevention and risk assessment
- c. Investment services
- d. Legal services
- e. Accounting services
- f. Actuarial services
- g. Risk management consulting

h. Brokerage services.

Agreement means this Amended and Restated Liability Coverage Program Agreement, dated as of July 1, 2009, by and among the Authority and the political subdivisions signatory hereto, as Member Entities.

Assessment means Risk Assessment and Risk Assessment Adjustments and Special Assessments payable on the Assessment Payment Date for any Coverage Year.

Assessment Payment Date means July 15 of each Coverage Year for Risk Assessments or such other date as the Board may specify for Risk Assessment Adjustments or Special Assessments.

Claim means a demand, action or suit against a Member Entity to recover for losses or damages within or alleged to be within the scope of Coverage set forth in the Memorandum.

Consultant means a consultant qualified in the area of political subdivision liability coverage or actuarial science, as the Authority deems appropriate.

Coverage means the coverage, excess insurance, reinsurance, and other services provided pursuant to and in accordance with and on the terms set forth in this Agreement and in the Memorandum provided to each Member Entity, or in such other agreements between the Authority and a Member Entity related to other Coverage options, including, but not limited to, rights to payment of Settlements and Judgments from funds on deposit in the Program Operations Fund under the terms of this Agreement.

Coverage Year shall mean the period beginning each July 1 and the twelve (12) consecutive months thereafter during which this Agreement and the Memorandum shall be in effect for each Member Entity, unless the Board of Directors designates such other period of twelve (12) consecutive months as the period during which this Agreement and the Memorandum may be in effect. In the case of a Member Entity which joins the Program during a Coverage Year, the Coverage Year shall be the remaining portion of the Coverage Year from the effective date of Coverage until the end of such Coverage Year.

Interlocal Agreement means that Interlocal Cooperation Agreement establishing the Montana Municipal Interlocal Authority pursuant to Title 7, Chapter 11, Part 1, Mont. Code Ann.

Judgment means a final judgment entered in a court of competent jurisdiction or by an administrative tribunal after all appeals have been exhausted with respect to a Claim for which Coverage is provided under this Program. The amount of any Judgment may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Loss Reserve means amounts in the Program Operations Fund required to be designated as reserves for payment of Settlements and Judgments pursuant to Section 3.5 hereof in accordance with prudent practice as determined by the Qualified Claims Administrator, including additional reserves established because of changed circumstances subsequent to the year any such Claim is filed and including the amount determined by a Qualified Consultant for loss development of claims and unallocated loss adjustment expenses.

Memorandum shall mean the Memorandum of Liability Coverage, as the same may from time-to-time be amended setting forth the terms and conditions for which Coverage is

provided under the Liability Program.

Program means the Liability Coverage Program, the terms and conditions of which are set forth herein.

Program Documents means this Agreement, the Interlocal Agreement, the Memorandum, the Bylaws of the Authority, and such policies and procedures as may be adopted by the Authority related to the Program, and all exhibits pertaining to such documents .

Program Operations Fund means the fund established to carry out the operations of the Liability Program, including but not limited to payment of Claims, payment of Administrative Costs, other insurance, excess insurance or reinsurance, loss reserves and unencumbered reserves.

Qualified Claims Administrator means an individual or an organization experienced in the handling of public entity liability claims, appointed by the Authority, or the Authority itself provided the Authority employs individuals who have such experience in the handling of public entity liability claims.

Settlement means the Settlement by the Authority or Member Entity in accordance with the Memorandum of a Claim against such Member Entity. The amount of any Settlement may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Term of the Agreement means the time during which the Agreement is in effect, or provided in Section 4.1 of this Agreement.

Termination Assessment means the amount required to be paid by a Member Entity to voluntarily terminate Coverage as set forth in Section 9.1 of this Agreement.

Unencumbered Reserves means the amount in the Program Operations Fund in excess of the total amount that has been designated by the Authority as Loss Reserve and amounts required for operations.

1.2 Other Terms. Such other terms as may appear in this Agreement which are not defined in this Section 1 shall have such definitions as may be contained in the remainder of this Agreement.

SECTION 2: REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1. Representations, Covenants and Warranties of the Member Entities. Each Member Entity represents, covenants and warrants to the Authority as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence. Such Member Entity is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.

(c) Authorization; Enforceability. The Constitution and laws of the State authorize the Member Entity to enter into, execute, approve and issue, as the case may be, and to enter into the transactions contemplated by and to carry out its obligations under all of the Program

Documents, and the Member Entity has duly authorized and executed all of the applicable Program Documents. The Program Documents constitute the legal, valid, binding and enforceable obligations of such Member Entity in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principals affecting the rights of creditors generally and except as to the limitations on remedies against public agencies generally.

(d) No violations. Neither the execution and delivery of the Program Documents, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which such Member Entity is now a party or by which the Member Entity is bound, or constitute a default under any of the foregoing.

(e) Risk Management Guidelines. The Member Entity covenants to implement and follow risk management programs, guidelines and policies as adopted by the Authority from time to time.

(f) Payment of Assessments and Acceptance of Coverage. The Member Entity agrees to pay when due Assessment for and accept the Coverage as described herein and the Memorandum of Coverage upon the terms and conditions set forth herein.

(g) Observance of Laws and Regulations by the Member Entity. The Member Entity agrees to keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of Montana, or by an officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Member Entity, including its right to exist and carry on business as a municipal corporation or other local government agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

2.2. Representations, Covenants and Warranties of the Authority. The Authority represents, covenants, and warrants to each Member Entity as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence; Enforceability. The Authority is a legal entity created pursuant to the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, Montana Code Annotated, duly organized, existing and in good standing under and by virtue of the laws of the State of Montana; has the power to enter into this Agreement and possesses by virtue of the Interlocal Agreement full power to provide Coverage to parties signatory to the Interlocal Agreement and this Agreement. This Agreement and the other Program Documents constitute the legal, valid, binding and enforceable obligations of the Authority in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Encumbrances. The Authority will not pledge the Assessments or its rights under this Agreement except as provided under the terms of this Agreement .

(d) Equitable Exercise of Responsibilities. The Authority will exercise all rights and responsibilities hereunder reasonably and equitably for the benefit of all Member

Entities without preference or discrimination among Member Entities.

(e) No Violations. Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions or provisions of the Bylaws of the Authority or any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(f) Agreement to Provide Coverage. The Authority agrees to provide the Coverage to the Member Entity described herein and in the Memorandum of Coverage and upon the terms and conditions set forth in this Agreement.

SECTION 3: ESTABLISHMENT OF ACCOUNTS; COVERAGE; PAYMENT OF SETTLEMENTS AND OTHER PROGRAM COSTS; PURCHASE OR ACQUISITION OF OTHER INSURANCE, EXCESS INSURANCE OR REINSURANCE

3.1. Program Funds and Accounts. The Authority hereby creates the following Funds and Accounts as set forth herein:

(a) Program Operations Fund. The Authority shall deposit in the Program Operations Fund all Assessments, investment income, and other funds or revenues allocated to the Program. This fund shall be used to pay all claims, excess insurance, reinsurance, and administrative costs of the Program. These funds may also be expended for investment, contribution or assessment for participation in a group or captive insurance program or pool as provided in Section 3.6.

(b) The Program Operations Fund shall have the following accounts:

- (i) one or more Program Checking Accounts into which assessments and other revenue items shall be deposited and from which shall be paid Program costs and expenses;
- (ii) Program Investment accounts. The Liability Program shall maintain various investment accounts in compliance with MMIA's Investment Policy.

3.2. Coverage. The Authority hereby agrees to provide the Coverage to each Member Entity for the Coverage Year, and each Member Entity hereby agrees to accept the Coverage, upon the terms and conditions set forth in this Agreement, the Memorandum, or in such other agreements between the Authority and a Member Entity related to other Coverage options; provided, however, that the Authority may revise the Coverage during the Coverage Year by issuing endorsements to the Memorandum provided that such revisions during the Coverage Year do not result in an overall reduction of the Coverage.

3.3. Payment of Claims, Settlements, Judgments and Administrative Costs. Settlements and Judgments which the Authority is obligated to pay under the terms of this Program Agreement and the Memorandum, or in such other agreements between the Authority and a Member Entity related to other Coverage options shall be paid on behalf of the Member Entities from the

Program Operations Fund directly to the Claimants or designees. An amount representing the Administrative Costs incurred by the Authority with respect to the Program shall be paid to the Authority.

If the Program Operations Fund are insufficient to pay Settlements and Judgments as may be required, the Authority shall individually assess each Member Entity to the extent necessary to pay the award, and the assessment charged each Member Entity shall be determined on a proportionate basis as may be determined by the Board of Directors with the advice of its Consultant (“Special Assessment”). Any such Special Assessment shall be a contractual obligation of the Member Entity.

3.4. **Subrogation.** Each Member Entity agrees that in the event of the payment of any loss by the Program under this Agreement, the Program shall be subrogated to the extent of such payment to all the rights of the Member Entity against any person or other entity legally responsible for damages for said loss, and in such event the Member Entity hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

3.5 **Loss Reserves.** The Authority shall employ or retain a Qualified Claims Administrator for the purpose of adjusting Claims and submitting a report to the Authority and each Member Entity setting forth (a) the amount of Loss Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Year(s), and (b) any adjustments (whether increase or decrease) necessary to be made in the amount of each Loss Reserve previously established pursuant to this Section and to make supplemental reports from time to time throughout each year as needed in accordance with prudent practice. In determining the amount of Loss Reserves necessary to be established or adjusted as described above, the Qualified Claims Administrator shall consider such facts and circumstances occurring during the period covered by such report as it, in its independent judgment, deems necessary in accordance with prudent practice. Notwithstanding the foregoing, the Qualified Claims Administrator shall take into account Settlements of Claims in accordance with the criteria set forth in this Section.

The Authority shall adjust Loss Reserves in the Program Operations Fund annually, and additionally from time to time throughout each year as needed in accordance with prudent practice. In the event that any such adjustment to Loss Reserves results in the Unencumbered Reserves being reduced to zero, the Authority shall provide prompt written notice of such fact to the Member Entities and the Authority shall have the discretion to impose, and the Member Entities shall be obligated to pay, any Special Assessment which the Board of Directors may determine is necessary in order to fund the Unencumbered Reserves at a prudent level with the advice of a qualified actuary or other person knowledgeable about public entity liability programs.

3.6. **Other Insurance, Excess Insurance or Reinsurance.** The Authority may provide Coverage, or a portion of Coverage, to the Member Entities, by purchase of liability insurance, excess insurance or reinsurance from a commercial insurer, excess insurer or reinsurer upon the approval of the Board of Directors of the Authority; by purchase of liability insurance, excess insurance or reinsurance from a group or captive insurance program or pool; or by participation in a group or captive insurance program or pool for the purposes of acquiring liability insurance, excess insurance or reinsurance. The Authority may use Unencumbered Reserves to purchase or make payments to acquire such insurance, excess insurance or reinsurance, or participate in such pool or program; provided, however, that the Authority may use Loss Reserves to purchase or otherwise acquire such insurance, excess insurance or reinsurance if the policy of commercial insurance, excess insurance or reinsurance to be purchased or otherwise acquired covers the claim for which such Loss Reserves were established. In the event of a dispute between the Authority

and any Member Entity and any insurer, excess insurer or reinsurer as to payment of a Settlement or Judgment, the failure by either to pay such Settlement or Judgment shall not result in a default by the Authority under the terms of this Agreement. .

In a Coverage Year for which the Authority has purchased or otherwise acquired insurance, excess insurance or reinsurance on behalf of a Member Entity, each such Member Entity shall be obligated to pay a proportion of the costs of such insurance, excess insurance or reinsurance, and Risk Assessment Adjustments.

SECTION 4: TERM OF AGREEMENT; ASSESSMENT

4.1. Term of Agreement; Termination of a Participant's Obligations to Pay Assessment. The Term of this Agreement shall commence on the date of its execution and shall, continue until the Member Entity's participation in the Program terminates as provided in Section 6 of this Agreement.

The obligation of any Member Entity to pay Assessments under this Agreement will terminate upon the terms and conditions set forth in Section 6 herein.

4.2. Budget and Appropriation of Assessment Payments. The Authority shall calculate the Assessments to be paid by each Member Entity for the next succeeding Coverage Year and provide a preliminary bill no later than April 15th of each year during the term of the Agreement. The Authority will deliver a final bill no later than June 1st of each year to Member Entities. Each Member Entity covenants to take such action as may be necessary to include Assessment payments payable hereunder in its annual budget, to levy ad valorem taxes outside its permitted mill levy limitation, if necessary, on all property within its jurisdiction to fund such Assessment payments and to make the necessary annual appropriations for all such Assessment payments. The covenants on the part of the Member Entity herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Member Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member Entity to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by such Member Entity.

4.3. Obligation to Pay Assessments.

(a) No Withholding. Notwithstanding any dispute between the Authority and a Participant, including a dispute as to the scope or nature of Coverage provided by the Authority or the availability of amounts in the Program Operations Fund to pay Claims made against any Participant, or for any other reason (other than the termination of the obligation to pay Assessment pursuant to Section 4.1 hereof), the Member Entity shall appropriate funds sufficient to pay and shall make all Assessment payments when due and shall not withhold any Assessment payments pending the final resolution of such dispute.

(b) Rate on overdue Payments. In the event a Member Entity fails to make any of the payments required in this Section, the payment in default shall continue as an obligation of the Member Entity until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member Entity agrees to pay the same with

interest or penalty thereon, at a rate or rates to be established by the Authority, from the date such amount was originally payable.

- (c) Abatement. There shall be no abatement of Assessment payments.

4.4. Assessments.

(a) Assessment. The entire amount of Assessment is due on the Assessment Payment Date.

- (b) Risk Assessment.

- (1) Total Risk Assessments

With respect to each Coverage Year, the Authority shall retain a Consultant to determine and prepare a report by March 1 preceding the beginning of such Coverage Year setting forth the total amount of Risk Assessments payable in the aggregate by all Member Entities for such Coverage Year ("Total Risk Assessment"). Total Risk Assessment shall be that amount which the Consultant estimates is required to be deposited into the Program Operations Fund at a confidence level of no less than fifty percent (50%), to maintain sufficient Loss Reserves to pay all Settlements and Judgments for all Member Entities, all Administrative Costs incurred during the Coverage Year, costs of other insurance, excess insurance, or reinsurance, and such other reasonable and necessary costs as may be incurred in the operation of the Program as may be determined by the Board of Directors of the Authority. The Total Risk Assessment may be increased by the Authority if, upon advice of the Consultant, the Board of Directors determines that a higher confidence level should be maintained. The Consultant shall utilize such methodology as adopted from time to time by the Authority upon notice to the Member Entities and shall certify that such methodology was used. The Authority shall collect from all Member Entities an amount equal to the Total Risk Assessment determined by the Consultant to maintain the designated confidence level in the Program. The amount collected from all Member Entities may include funds obtained from Assessments, investment income and Unencumbered Reserves, as the Board of Directors may in the exercise of its discretion deem appropriate with respect to each Coverage Year.

(2) Calculation of an Individual Member Entity's Risk Assessment. Based upon the Total Risk Assessment requirement for each Coverage Year, the Board of Directors shall set Risk Assessment rates for the individual Member Entities utilizing an appropriate methodology consistent with commonly accepted actuarial principles. The Risk Assessment rates shall then be applied to each Member Entity's estimated payroll by deductible category and further adjusted by an experience rating modification which shall be determined by the Board of Directors on the advice of an actuarial consultant utilizing commonly accepted actuarial principles.

(3) Assessment Audits. The Authority may at its discretion audit each member entity to determine the accuracy of the basis used for the assessment calculations. An audit will be limited to the two Coverage Years prior to the Coverage Year during which the audit takes place. Refunds for overpayment or billing for underpayment will be limited to the same period.

(4) Member Identified Errors. If an individual Member finds errors in the amount of Assessments paid for prior periods, and submits documentation deemed adequate by the Authority (e.g. an independent audit or authorized change to reports submitted to some other

government entity), a refund may be requested or additional Assessments paid in accordance with the time limits identified above for Assessment audits.

4.5. Risk Assessment Adjustment;

(a) Risk Assessment Adjustment.

(1) For purposes of the Risk Assessment Adjustment Computation, "Incurred Losses" for each Member Entity shall mean the amount by which Loss Reserves for all Claims of each Member Entity are to be established or increased during each Coverage Year covered by the annual report which is submitted by the Qualified Claims Administrator pursuant to Section 3.5 hereof, exclusive of the most recently completed preceding full Coverage Year, netting out any decrease in Loss Reserves for Claims of each such Member Entity during such period.

(2) Risk Assessment Adjustment Computation. On or before March 31 of each year, the Authority shall compute the Risk Assessment Adjustment for each Member Entity. The Risk Assessment Adjustment, which may be an additional Assessment or a refund of a previous Assessment, shall be the sum of Incurred Losses, loss expenses, and administrative costs less Risk Assessments, inclusive of prior Risk Assessment Adjustments. The methodology and limitations of additional assessment or refund shall be determined by the Authority based on the recommendation of the Consultant.

Notwithstanding the foregoing, the Authority is authorized to compute the Risk Assessment Adjustment more frequently than annually and/or inclusive of the most recently completed preceding full Coverage Year when the Board of Directors with due regard for the financial condition of the Program deems it prudent and necessary to do so.

(3) Overriding Clause. In the event Section 4.5(a) conflicts with any other section, provision, or definition in the Liability Coverage Program Agreement, this section shall govern and supersede the same.

(4) Prompt Notice of Risk Assessment Adjustments. The Authority shall give each Member Entity prompt notice of the determination of Risk Assessment Adjustments.

(5) Obligation of Pay Risk Assessment Adjustments. The obligation of Member Entities to pay Risk Assessment Adjustments with respect to Coverage Years in which they were Member Entities determined subsequent to the date of withdrawal shall in no event be discharged by expulsion or withdrawal from the Program.

SECTION 5: INDIVIDUAL MEMBER ACCOUNTS; ACCOUNT SETTLEMENT UPON WITHDRAWAL OR TERMINATION

5.1. Individual Member Accounts. An Individual Member Account in the name of each Member Entity will be established; and in the case of Member Entities who are Member Entities in the Program as of the effective date of this Agreement, the balance in their respective Individual Member Accounts will be continued. Such Individual Member Account will be used to identify the current financial condition of each Member Entity's participation in the Program. The Individual Member Accounts will represent each Member Entity's share of Assessments less

Claims, Judgments, Administrative Costs and other expenses which have been made against the Program.

The Individual Member Accounts are for the purpose of determining each Member Entity's share of funds which:

- (a) may be credited against future Assessments or payable as dividends;
- (b) may be payable to each Member Entity who withdraws from the Program;
- (c) may be payable to each Member Entity on termination of the Program.

5.2. Annual Computation. Within 180 days of the end of each Coverage Year, the Individual Member Account of each Member Entity shall be computed by computing for the Program as a whole and by allocating to each Member Entity its proportionate share of the Assessments collected plus the investment income and other revenues of the Program at the end of the Coverage Year less the Claims (including claims paid, claims incurred, and claims incurred-but-not-reported), Judgments, loss development, Administrative Costs, and other operating costs for such Coverage Year.

Provided, however, that no Member Entity shall be entitled to receive any money or credit on account of having a positive balance in its Individual Member Account unless the Unencumbered Reserves of the Program Operations Fund has an adequate fund balance as determined by the Board in consultation with the program actuary, and in such event the individual Member Entity shall be entitled to a proportionate share of the assets in the Unencumbered Reserves in satisfaction of its Individual Member Account as provided in this Agreement.

5.3. Termination of Program. Upon termination of all obligations to pay Assessments and termination of this Agreement, the Authority will distribute (i) all Risk Assessment Adjustment refunds to the Member Entities, and (ii) all Unencumbered Reserves held by it to the then-participating Member Entities according to the balance in each Member Entity's Individual Member Account.

5.4. Settlement of Individual Member Account upon Withdrawal of Member Entity. In the event a Member Entity withdraws from the Program in good standing as provided in Section 6.4, the withdrawing Member Entity's Individual Member Account will be calculated as of that date and 10% of the amount due the withdrawing Member Entity based upon the status of its Individual Member Account and subject to the provisions contained in Sections 5.1 and 5.2 will be paid to the Member Entity at that time. At the end of each of the next three years, the Individual Member's Account will be recomputed based upon changes in incurred losses and investment income during the year and the amount then due and payable the withdrawing Member Entity shall be determined as provided in Section 5.2 (the Annual Recomputed Amount). At the end of the first year, twenty-five percent (25%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account will be paid to the Member Entity plus interest on that amount for one year and computed at the then rate of one - year U.S. Treasury Notes. At the end of the second year, the Member Entity shall be paid fifty percent (50%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account plus interest on that amount for two years and computed for each of those two years at the rate of one-year U.S. Treasury Notes at the end of each such year. At the end of the third year, the Member Entity shall be paid fifteen percent (15%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account plus interest on that balance for three years computed for each of those three years at the rate of one-year U.S. Treasury Notes at the end of such year.

During the three-year period, the right of a withdrawing Member Entity to receive a settlement of its Individual Member's Account is subject to the availability of funds in the Unencumbered Reserve s as provided in Section 5.2. Provided, however, that this schedule for disbursements is subject to the limitation imposed by Section 6.4(d) of this Agreement.

5.5. Settlement of Individual Member Account upon Termination. In connection with expulsion or suspension of a Member Entity pursuant to Section 6.5 herein, the Authority shall determine the Individual Member Account of such Member Entity. The amount of the Individual Member Account otherwise due to the Member Entity being expelled or suspended shall be applied to the obligations due from such Member Entity under the terms of this Agreement. Any remaining balance in the terminated Member Entity's Individual Member Account ("the Excess Individual Member Account Balance") shall be held by the Authority and any interest thereon in a segregated account for the benefit of such Member Entity. The Authority will transfer to such Member Entity its Excess Individual Member Account Balance, if any, on the earliest practicable date when the Member Entity is no longer subject to any Assessments for any obligations under the terms of this Agreement, which will be the date when all Claims, including claims incurred during any Coverage Period prior to expulsion or suspension of such Member Entity, and Judgments have been finally determined and/or paid, and then pursuant to the schedule of payments set forth in Section 5.4 herein applicable to a Member Entity who withdraws in good standing, subject to the availability of funds in the Unencumbered Reserve s as provided in Sections 5.2 and 5.4 and subject further to the limitation as provided in Section 6.4(d).

SECTION 6: ADMISSION TO, WITHDRAWAL FROM AND EXPULSION FROM THE POOLED COVERAGE PROGRAM

6.1. Conditions for Providing Coverage to a New Member Entity.

Applications for memberships in the Program shall be submitted on an approved form to the Chief Executive Officer. The Board of Directors will consider and act upon each application. Concurrence by a majority of the Board is required in order for an applicant to be admitted as a Member. The Authority may provide Coverage to a new Member Entity in the Program, subject to the following conditions:

- (a) such new Member Entity shall be a member of the Authority.
- (b) at least 30 days prior to the commencement of Coverage under the Program, such new Member Entity shall be signatory to the Interlocal Agreement and this Program Agreement;
- (c) at least 30 days prior to the commencement of Coverage under the Program, such new Member Entity shall have submitted a completed application for admission to the Program as may be required by the Board of Directors .

The minimum time requirements for execution and submission of documents as provided in subparagraphs (b) and (c) hereinabove may be waived by the Board of Directors at their discretion.

Coverage of such new Member Entity shall be effective the day designated by the Authority succeeding the approval of the new Participant's application by the Authority and the execution of the documents as provided herein.

6.2. Requirements for Participation in the Program.

Each Member Entity who participates in the Program shall execute this Agreement. Each Member Entity hereby acknowledges and agrees that, commencing with the effective date of its participation in the Program, the Member Entity shall be obligated to pay Assessments as computed pursuant to this Agreement.

6.3. Capital Assessment of New Member Entity to Program Operations Fund.

(a) If the Program Operations Fund is not adequately funded, the new Member Entity may be assessed a non-refundable amount to be deposited into the Program Operations Fund as determined by the Authority (“Capital Assessment”). Such new Member Entity shall pay all components of the Risk Assessment in addition to this Capital Assessment.

(b) If the Program Operations Fund is adequately funded as determined by a Consultant, no initial capital assessment will be required of the Member Entity.

6.4. Conditions to Permitting Withdrawal of a Member Entity from Coverage. The Authority shall permit a Member Entity to withdraw from Coverage under this Agreement, provided that the following are satisfied:

(a) such Member Entity shall not be in default of any of its obligations to pay assessments hereunder;

(b) at least 60 days preceding the effective date of such withdrawal, such Member Entity shall have provided written notice to the Authority of its intent to withdraw;

(c) such Member Entity shall have paid or there shall have been applied on its behalf certain moneys as described in Section 5.2 hereof the full amount of the Termination Assessment pursuant to Section 9 of this Agreement.

(d) Provided, however, if the Authority shall have received a certificate from a Consultant that such withdrawal will materially reduce the actuarial soundness of the Program, the Authority may, in its sole discretion and upon the advice of the Consultant, in order to minimize the financial, actuarial and economic impacts on the Program, extend the terms of the repayment of amounts due the withdrawing Member Entity of the Member Entity's Individual Member Account as otherwise provided in Sections 5.2 and 5.4 of this Agreement.

(e) In no event shall withdrawal from Coverage release a Member Entity from its obligation to pay damages resulting from default under the terms of this Agreement which is not remedied by payment of Termination Assessment or from its obligation to pay Assessments determined subsequent to the date of the withdrawal. The Authority shall continue to pay Settlements and Judgments of covered Claims relating to the withdrawn Member Entity which arose prior to withdrawal as provided herein, unless the Member Entity defaults in the payment of its continuing obligations described in the preceding sentence. Notice to withdraw shall be revocable by the Member Entity only with the consent of the Authority.

6.5. Conditions of Membership Review, Suspension and Termination Procedure.

(a) The Authority may suspend or expel a Member Entity from the Program (i) if the Member Entity is in default under the terms of this Agreement or (ii) when, in the determination of the Chief Executive Officer, a Member Entity has engaged in conduct, other than a default under this Agreement that warrants expulsion from membership in the Program. Suspension, termination or expulsion is subject to the conditions provided in Section 6.6 herein.

(b) The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall have the same meaning whenever they are used in this Agreement with respect to a Member Entity:

(1) failure by such Member Entity to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to such Member Entity by the Authority, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Member Entity within the applicable period and diligently pursued until the default is corrected; or

(2) the filing by such Member Entity of a case in bankruptcy, or the subject of any right or interest of such Member Entity under this Agreement to any execution, garnishment or attachment, or, adjudication of such Member Entity as a bankrupt, or assignment by such Member Entity for the benefit of creditors, or the entry by such Member Entity into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member Entity in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

(c) When a Member Entity has been determined by the Authority to be in default under the terms of the Agreement, the Member Entity shall be given written notice of such default and shall be required to cure such default within ten (10) calendar days of receipt of such notice. If such default is not cured within the time prescribed herein, said Member Entity will be suspended from the Program and Coverage of Claims under the Program shall be terminated during the period of suspension, which shall be effective, without the need for a meeting of the Board of the Authority, at 12:01 a.m. on the 30th day after notice of termination has been received by the Member Entity. Such period of suspension shall continue until the conditions of termination or expulsion stated in Section 6.6 of this Agreement have been met, at which time the defaulting Member Entity's participation in the Program shall be immediately terminated without a meeting.

(d) In the event the Chief Executive Officer has determined that the Member Entity has engaged in conduct that warrants expulsion other than a default under this Agreement, the Chief Executive Officer shall file a written report with the Board of Directors. Said report shall contain a summary of the facts and the recommendations regarding continued membership status. A copy of the report shall be served by mail to the Member Entity along with a Notice of Meeting of the Board of Directors. Said Notice of Meeting shall include the place, date and time of the meeting. At its discretion, the Board of Directors may submit written questions to the Member Entity, written answers to which must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the date of the meeting. A Member Entity objecting to the report and recommendations of the Chief Executive Officer shall submit a written statement to the Board of Directors setting out in detail the basis for the objection and any other information the Member Entity desires to submit. Said statement must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the meeting. The Board of

Directors shall meet at the time and place designated in the Notice of Meeting. The Member Entity shall be entitled to be represented at the meeting and present an oral statement and other information. Following the meeting, the Board of Directors shall affirm, modify, or reject the recommendation of the Chief Executive Officer. The Board of Directors shall have the authority: (i) to place a Member Entity on probation, the terms and duration of which it shall determine; (ii) to suspend a Member Entity from Coverage; or (iii) to expel a Member Entity from the Program. A copy of the Board of Directors' decision shall be served by mail on the Member Entity. In the event that the Board of Directors votes to suspend or terminate membership, such suspension or termination shall not take place for at least thirty (30) days after the Member Entity has received notice of the suspension or termination. The duration of the notice period shall be determined by the Board.

In no event shall involuntary termination or expulsion release a Member Entity of its obligation to pay damages resulting from default under the terms of this Agreement which is not remedied by payment of the Termination Assessment, or from its obligation to pay Risk Assessment Adjustments.

6.6. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity, including, but not limited to, the right by mandamus or other suit or proceeding at law or in equity to enforce his rights against the Member Entity and to compel the Member Entity to perform and carry out its duties under this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

6.7. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party awarded to the nondefaulting party by a court of competent jurisdiction.

6.8. No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7: INDEMNIFICATION AND RELEASE; DISCLAIMER

7.1. Release and Indemnification Covenants. Each Member Entity shall and hereby agree to indemnify and save the Authority and all other Member Entities harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) its breach or default in the performance of any of its obligations under this Agreement or (ii) its act or negligence or that of any of its agents, contractors, servants, employees or licensees with respect to the Coverage. No indemnification is made under this Section or elsewhere in this Agreement for claims, losses or damages, including legal fees and expenses arising out of the

willful misconduct, negligence, or breach of duty under this Agreement by the Authority, its officers, agents, employees, successors or assigns.

7.2. Disclaimer. THE AUTHORITY MAKES NO WARRANTY OR

REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF THE MEMBER ENTITIES.

SECTION 8: ASSIGNMENT AND AMENDMENT

8.1. No Assignment by the Member Entities. This Agreement may not be assigned by any Member Entity.

8.2. Amendment. This Agreement may be amended by a written instrument duly authorized and executed by the Authority and a majority of the Member Entities. It is expressly agreed and understood that approval of any amendment by a majority of the Member Entities who are signatories to this Agreement at the time of such amendment shall operate to bind each Member Entity to such amendment. All costs and expenses incurred in connection with any amendment to this Agreement shall be borne pro rata by the Member Entities.

SECTION 9: TERMINATION ASSESSMENT

9.1. Termination Assessment.

A Member Entity may withdraw from Coverage pursuant to Section 6.4 hereof or be expelled from Coverage pursuant to Section 6.5 hereof when provision has been made for payment of the Termination Assessment as herein provided. The Termination Assessment for a Member Entity shall be equal to the difference between the sum of the total amount of Risk Assessment Adjustments that would be assessed against such Member Entity in all subsequent Coverage Years (with respect to Coverage Periods prior to such withdrawal or expulsion) if such Member Entity were to continue to participate in the Program and its Allocable Share of the Unencumbered Reserves of the Program Operations Fund as it would be restored as a result of the assessment of such Risk Assessment Adjustments.

9.2. Continuing Assessment Obligations. A Member Entity shall remain liable in each Coverage period to pay Risk Assessment Adjustments.

SECTION 10: MISCELLANEOUS

10.1. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed to have been received five business days after deposit in the United States mail in certified form, postage prepaid.

If to the Member Entity

The City or Town Clerk
At the address of the City or Town
as maintained in the official records of the Authority

If to the Authority:

Montana Municipal Interlocal Authority
PO Box
6669
Helena, MT 59604-

6669

The Authority and the Member Entities, by notice given hereunder, may designate different addresses to which subsequent notices, bonds or other communications will be sent.

10.2. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Authority and the Member Entities and their respective successors and assigns.

10.3. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10.4. **Further Assurances and Corrective Instruments.** The Authority and the Member Entities agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments

as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of this Agreement.

10.5. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.6. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

10.7 **Effect of Revised Agreement.** This Agreement amends and supersedes each prior Liability Program Agreement, and this Agreement shall effect a continuation of the Program for all purposes with respect to the continuity of Coverage, expenses, accounts, contracts, and other agreements related to the operation of the Program .

**MONTANA MUNICIPAL INTERLOCAL AUTHORITY AMENDED AND RESTATED
LIABILITY COVERAGE PROGRAM AGREEMENT Dated as of JULY 1, 2009**

Signature Page

IN WITNESS WHEREOF, THE Authority has caused this AMENDED AND RESTATED LIABILITY COVERAGE PROGRAM AGREEMENT to be executed in its name by its duly authorized officers;

MONTANA MUNICIPAL INTERLOCAL
AUTHORITY, as Authority

By _____
Chief Executive
Officer

Date signed _____

and the Member Entity has caused this Agreement to be executed in its name by their duly authorized officers:

City of _____
As Member
Entity

Address _____

By _____

Its _____

Date Signed _____

ATTEST:

City Clerk

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Resolution Approving and Adopting the Montana Municipal Interlocal Authority Amended and Restated Workers' Compensation Coverage Program Agreement

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The City is a member of the Montana Municipal Interlocal Authority (MMIA) and participates in the Workers' Compensation (WC) program. The contract that obligates MMIA to cover the City for employee injury claims is contained in the Program Agreement. MMIA issued a revised WC Program Agreement that has an effective date of September 1, 2010. Coverage under the present program agreement will remain in place until that date. MMIA issued the new agreement at this time because it was revising the interlocal agreement and all other program agreements.

ALTERNATIVES ANALYZED: The City will have WC program coverage through August, 2010 under the existing program agreement. The program year is July 1 – June 30, so adopting the Program Agreement now is a convenience to the MMIA and member cities. Staff provided input as the MMIA was revising the agreement. Staff is also working with the MMIA staff to review operating policies and processes with the goal of reducing the City's costs while giving its employees the compensation and medical care that they deserve under workers' compensation laws.

FINANCIAL IMPACT: Each broad classification of City employees has a standard rate per \$100 of payroll and the total assessment is modified based on loss history. The annual cost varies because the total payroll amount changes each year and the modification factor may change. In FY 2009, the City of Billings expects to pay approximately \$1,300,000 for the coverage. Each department or fund is assessed its proportional share of the total.

RECOMMENDATION

Staff recommends that Council approve the resolution approving and adopting the MMIA amended and restated workers' compensation program agreement.

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

ATTACHMENTS

A: **Resolution and Workers' Compensation Program Agreement**

INTRODUCTION

The City is a member of the Montana Municipal Interlocal Authority (MMIA) and participates in the Workers' Compensation (WC) program. The contract that obligates MMIA to cover the City for employee injury claims is contained in the Program Agreement. MMIA issued a revised WC Program Agreement that has an effective date of September 1, 2010. Coverage under the present program agreement will remain in place until that date. MMIA issued the new agreement at this time because it was revising the interlocal agreement and all other program agreements.

BACKGROUND

Montana cities and towns formed the MMIA in the mid 1980s and Billings was a founding member. The MMIA is a membership owned and operated shared risk retention pool whose members are approximately 120 Montana cities and towns. It formed in response to unaffordable private insurance rates and insurance companies withdrawing from municipal markets nationally. Workers compensation and a broad casualty/liability program were developed first. Property protection was added in the late 1990s and an Employee Benefits (health) program was added in 2004. Billings participates in the workers compensation and liability programs. The City purchases commercial property insurance and has a self-insured health plan.

The MMIA regularly reviews and revises the Program Agreements and is requesting that all members approve the revised and restated WC program agreement. The general changes include things like: 1) removing references to "insurance" and "premiums" as reflected in the MMIA's new name – Montana Municipal Interlocal Authority; 2) specifying the methods and time periods for MMIA to collect member underpayments and for members to collect overpayments; 3) specifying withdrawal, expulsion and admission to membership; and 4) more accurately describing the different accounts that MMIA maintains and from which it pays claims.

When the MMIA formed in 1986, it had no capital or reserves from which it could pay claims for employee lost wages or medical costs. The six large cities agreed to lend their credit worthiness to the MMIA and participated in issuing bonds that capitalized the MMIA loss payments for the first several years of existence. Because the large cities backed the bonds, there were substantial financial penalties for withdrawing from MMIA membership. The bond issue will be retired in August, 2010, so the penalties and all other references to the bond issue are eliminated from the new program agreement that will take effect on September 1, 2010.

ALTERNATIVES ANALYSIS

The City has been a member of MMIA for over 20 years, including a period when commercial insurance was unavailable and expensive, and it has been a fruitful relationship. WC coverage is available from a number of private sector insurers and from the Montana State Fund. MMIA membership gives the City ownership and management roles in the organization that are not available with commercial insurance or the state fund. The City will remain in the WC program for the 2009-2010 program year but after retiring the bonds, the City could consider withdrawing from membership if directed by the City Council. The City Council could delay approving the new agreement because the existing agreement will remain in place for the entire coverage year.

RECOMMENDATION

Staff recommends that Council approve the resolution approving and adopting the MMIA amended and restated workers' compensation program agreement.

ATTACHMENTS

A: Resolution and Workers' Compensation Program Agreement

ATTACHMENT A

RESOLUTION APPROVING AND ADOPTING THE MONTANA MUNICIPAL INTERLOCAL AUTHORITY REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT

WHEREAS, the City/Town of _____ (Member Entity) is duly organized under the laws of the State of Montana; and

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of any function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, the state or the United States; and

WHEREAS, Mont. Code Ann. Title 7, Chapter 11, Part 1, (the Interlocal Cooperation Act) authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each such political subdivision unit is authorized by law to perform; and

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the State to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part; and

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Montana Municipal Interlocal Authority (Authority) is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement;

WHEREAS, by executing this Revised and Restated Workers' Compensation Program Agreement, the Member Entity signatory hereto has heretofore determined and does hereby confirm that the Assessments and other charges required by the Workers' Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

NOW THEREFORE, BE IT RESOLVED THAT the City/Town of _____ hereby approves and adopts this Revised and Restated Workers' Compensation Program Agreement with a delayed effective date of September 1, 2010.

Adopted this _____ day of _____ 2009.

By _____

Its _____

ATTEST:

City Clerk

REVISED AND RESTATED

WORKERS' COMPENSATION

PROGRAM AGREEMENT

between the

MONTANA MUNICIPAL INTERLOCAL AUTHORITY
as Authority

and

The City/Town of _____

Effective: September 1, 2010



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REVISED AND RESTATED
WORKERS' COMPENSATION PROGRAM AGREEMENT

This REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT, by and between the MONTANA MUNICIPAL INTERLOCAL AUTHORITY, an interlocal agency duly organized and existing under the laws of the State of Montana, (the "Authority"), and the CITY (TOWN) OF _____, a political subdivision duly organized and existing under the Constitution and laws of the State of Montana, and such other political subdivisions that may hereafter become party hereto as provided herein, each a political subdivision duly organized and existing under the Constitution and laws of said State, (each a "Member Entity" and collectively the "Member Entities");

W I T N E S S E T H:

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may (a) cooperate in the exercise of any function, power, or responsibility with, (b) share the services of any officer or facilities with, and (c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States;

WHEREAS, Title 7, Chapter 11, Part 1, Montana Code Annotated (Mont. Code Ann.),(the Interlocal Cooperation Act) authorizes political subdivisions to create interlocal agreements to perform jointly any undertaking that each such political subdivision unit is authorized by law to perform;

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the state to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part;

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Authority has been created pursuant to the Interlocal Cooperation Act for the purpose of providing, among other things, workers' compensation coverage pursuant to such statutes to Montana political subdivisions becoming members of the Authority and executing the necessary program documents for such coverage;

WHEREAS, the Member Entity has determined it to be in its best interest to join with other Member Entities in forming and creating the Authority through the Interlocal Cooperation Act for the purposes of:

1. developing effective risk management programs to reduce the amount and frequency of their losses;
2. sharing some portion, or all, of their losses;
3. jointly purchasing or otherwise acquiring insurance, excess insurance or reinsurance through a group program;
4. jointly issuing bonds or notes to fund a self-insurance or deductible reserve;
5. jointly purchasing administrative and other services through a group program when related to any of the other purposes;
6. jointly make deposits which may take the form of assessments to an account or surplus account and pay premiums for the purposes of participating in a group or captive insurance, excess insurance, or reinsurance programs, in whole or in part; and

WHEREAS, the Authority is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement;

WHEREAS, the Authority and each Member Entity, in consultation with independent professional consultants, have formulated a Workers' Compensation Program, administered by the Authority to meet the workers' compensation needs of each Member Entity, and which provides for joint and several liability of each Member Entity along with all other Member Entities for the full amount of any and all known or unknown claims of each Member Entity arising during the Member Entity's participation in the Program, and which will provide the following advantages, among others, to each Member Entity:

- (a) spread and moderate the cost of claims loss to each Member Entity by paying annual Assessments on an experience-rated basis calculated actuarially;
- (b) relief from the burden of paying premiums to insurers at levels reflecting the insurers' high costs of underwriting, administration and brokerage fees since the Authority's Program costs are limited to reasonable administrative costs;
- (c) relief from commercial insurers' rights under excess liability policies to force claim settlements which are payable primarily in each case from the Member Entity's self-insurance funds,

(d) access to group insurance, excess insurance, reinsurance or other insurance programs which may provide such insurance at reasonable rates and on advantageous terms and conditions;

(e) actuarially determined Assessments calculated to provide amounts in each year necessary to maintain the Workers' Compensation Program at an actuarially sound level and therefore sufficient to reserve against the losses of the Member Entities;

WHEREAS, the Authority has established and offered to its members since January 1, 1986 the Program which has been approved annually as a duly authorized and existing workers' compensation program by the regulatory agency authorized by statute to review and approve such programs;

WHEREAS, by executing this Revised and Restated Workers' Compensation Program Agreement, the Member Entity signatory hereto has heretofore determined and does hereby confirm that the Assessments and other charges required by the Workers Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

WHEREAS, it is the intent of the Member Entity that in executing this Revised and Restated Workers Compensation Program Agreement that the Workers' Compensation Program should remain in full force and effect and that continuity of the Workers' Compensation Program should be and is maintained with the execution of this Revised and Restated Workers' Compensation Program Agreement; and,

WHEREAS, the governing body of each Member Entity has authorized the execution of this Agreement for the purpose of providing Coverage for such Member Entity for the benefit of the Member Entity's employees, residents and taxpayers and for the health and safety of the public who interact with the Member Entity; and

WHEREAS, it is a matter for the governing board of the Member Entity to determine whether the amount of Assessments which the Member Entity pays for coverage is reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has heretofore determined and does hereby confirm that the Assessments to be required hereunder are reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has knowingly and willingly entered into this Agreement

NOW THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

SECTION I: DEFINITIONS

1.1 Definitions and Rules of Construction. Unless the context shall require otherwise, the terms defined below shall, for all purposes of this Revised and Restated Workers' Compensation Program Agreement, have the meanings herein specified.

Administrative Costs means those ordinary and necessary costs incurred in providing administrative services to the Program, including but not limited to, the following:

- a. General administrative services
- b. Loss prevention and risk assessment
- c. Investment services
- d. Legal services
- e. Accounting services
- f. Actuarial services
- g. Risk management consulting
- h. Brokerage services.

Agreement or Revised Agreement means this Revised and Restated Workers' Compensation Program Agreement, effective September 1, 2010, by and among the Authority and the political subdivisions signatory hereto, as Member Entities.

Annual Recomputed Amount means the re-computation of an Individual Member Entity's Account as provided in Section 5.2 of this Revised Agreement.

Assessment means Risk Assessments and Special Assessments payable for any Coverage Year.

Authority means the Montana Municipal Interlocal Authority, an interlocal agency, duly organized and existing under the Constitution and laws of Montana, its successors and assigns.

Board means the Board of Directors or its successor or governing body of the Authority.

Claim means a demand, action or suit against one or more Member Entity(ies) or the Authority to recover for losses or damages within or alleged to be within the scope of Coverage.

Consultant means a consultant qualified in the area of political subdivision workers' compensation coverage or actuarial science, as the Authority deems appropriate.

Coverage means the coverage, excess insurance, reinsurance, and other services provided pursuant to and in accordance with and on the terms set forth in this Agreement and in the Memorandum provided to each Member Entity, including, but not limited to, rights to payment of Settlements and Judgments from funds on deposit in the Program Operations Fund under the terms of this Agreement

Coverage Year shall mean the period beginning each July 1 and the twelve (12) consecutive months thereafter during which this Agreement and the Memorandum shall be in effect for each Member Entity, unless the Board of Directors designates such other period of twelve (12) consecutive months as the period during which this Agreement and the Memorandum may be in effect. In the case of a Member Entity which joins the Program during a Coverage Year, the Coverage Year shall be the remaining portion of the Coverage Year from the effective date of Coverage until the end of such Coverage Year.

Interlocal Agreement means that Interlocal Cooperation Agreement establishing the Montana Municipal Interlocal Authority pursuant to Title 7, Chapter 11, Part 1, Mont. Code Ann.

Judgment means a final judgment entered in a court of competent jurisdiction or by an administrative tribunal after all appeals have been exhausted with respect to a Claim for which Coverage is provided under this Program. The amount of any Judgment may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Loss Reserve means amounts in the Program Operations Fund required to be designated as reserves for payment of Settlements and Judgments pursuant to Section 3.3 hereof in accordance with prudent practice as determined by the Qualified Claims Administrator, including additional reserves established because of changed circumstances subsequent to the year any such Claim is filed and including the amount determined by a Qualified Consultant for loss development of claims and unallocated loss adjustment expenses.

Member Entity means that political subdivision of the State of Montana duly organized and existing under the Constitution and laws of the State of Montana and which has complied with the terms and conditions of this Revised Program Agreement for participation in the Workers' Compensation Program.

Memorandum of Coverage means the Memorandum of Workers Compensation and Occupational Disease Coverage, as the same may from time-to-time be amended, setting forth the terms and conditions for which Coverage is provided under the Workers' Compensation Program.

Program means the Workers' Compensation Program established by the Authority and in effect as of the effective date of this Revised Program Agreement.

Program Operations Fund means the fund established to carry out the operations of the Program, including but not limited to payment of Claims, payment of Administrative Costs, other insurance, excess insurance or reinsurance, loss reserves and unencumbered reserves.

Qualified Claims Administrator means an individual or an organization experienced in the handling of public entity workers' compensation claims, appointed by the Authority, or the Authority itself provided the Authority employs individuals who have such experience in the handling of public entity workers' compensation claims.

Settlement means the Settlement by the Authority or Member Entity in accordance with the Memorandum of a Claim against such Member Entity. The amount of any Settlement may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Unencumbered Reserves means the amount in the Program Operations Fund in excess of the total amount that has been designated by the Authority as Loss Reserve and amounts required for operations.

1.2 Other Terms. Such other terms as may appear in this Agreement which are not defined in this Section 1 shall have such definitions as may be contained in the remainder of this Agreement.

SECTION 2: REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the Member Entity. The Member Entity represents, covenants and warrants to the Authority as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence. Such Member Entity is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.

(c) Authorization; Enforceability. The Constitution and laws of the State authorize the Member Entity to enter into, execute, approve and issue, as the case may be, and to enter into the transactions contemplated by and to carry out its obligations under all of the Program Documents, and the Member Entity has duly authorized and executed all of the applicable Program Documents. The Program Documents constitute the legal, valid, binding and enforceable obligations of such Member Entity in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principals affecting the rights of creditors generally and except as to the limitations on remedies against public agencies generally.

(d) No Violations. Neither the execution and delivery of this Revised Agreement or the Interlocal Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which such Member Entity is now a party or by which the Member Entity is bound, or constitutes a default under any of the foregoing.

(e) Risk Management Guidelines. The Member Entity covenants to implement and follow risk management programs, guidelines and policies as adopted by the Authority for the Revised Program from time to time.

(f) Payment of Assessments and Acceptance of Coverage. The Member Entity agrees to pay when due Assessment for and accept the Coverage as described herein and the Memorandum of Coverage upon the terms and conditions set forth herein.

(g) Observance of Laws and Regulations by the Member Entity. The Member Entity agrees to keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of Montana, or by an officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Member Entity, including its right to exist and carry on business as a municipal corporation or other local government agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

2.2 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to each Member Entity as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence; Enforceability.

The Authority is a legal entity created pursuant to the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, Montana Code Annotated, duly organized, existing and in good standing under and by virtue of the laws of the State of Montana; has the power to enter into this Agreement and possesses by virtue of the Interlocal Agreement full power to provide coverage to parties signatory to the Interlocal Agreement and this Agreement. This Agreement and the other Program Documents constitute the legal, valid, binding and enforceable obligations of the Authority in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Encumbrances. The Authority will not pledge the Assessments or its rights under this Revised Agreement except as provided under the terms of this Revised Agreement.

(d) Equitable Exercise of Responsibilities. The Authority will exercise all rights and responsibilities hereunder reasonably and equitably for the benefit of all Member Entities without preference or discrimination among Member Entities.

(e) No Violations. Neither the execution and delivery of this Revised Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of the Bylaws of the Authority or any restriction on any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(f) Covenant to Comply with Regulations. The Authority covenants that it will comply with the regulations concerning self-insurance and group self-insurance for workers' compensation coverage duly and lawfully promulgated by the Employment Relations Division of the Montana Department of Labor and Industry, and its successors.

(g) Agreement to Provide Coverage. The Authority agrees to provide the Coverage to the Member Entity described herein and in the Memorandum of Coverage and upon the terms and conditions set forth in this Revised Agreement.

SECTION 3: ESTABLISHMENT OF ACCOUNTS; COVERAGE; PAYMENT OF CLAIMS AND OTHER PROGRAM COSTS; PURCHASE OR ACQUISITION OF OTHER INSURANCE, EXCESS INSURANCE OR REINSURANCE

3.1 Program Funds and Accounts. The Authority hereby creates the following Funds and Accounts as set forth herein:

(a) Program Operations Fund. The Authority shall deposit in the Program Operations Fund all Assessments, investment income, and other funds or revenues allocated to the Program. This fund shall be used to pay all claims as well as the administrative costs of the Program. These funds may also be expended for investments, contribution or assessment for participation in a group or captive insurance program or pool as provided in Section 3.6.

(b) The Program Operations Fund shall have the following accounts:

- (i) one or more Program Checking Accounts into which assessments and other revenue items shall be deposited and from which shall be paid Program costs and expenses;
- (ii) Program Investment accounts. The Program shall maintain various investment accounts in compliance with MMIA's Investment Policy.

3.2 Coverage. The Authority through its Workers' Compensation Program hereby provides the Coverage to the Member Entity, and the Member Entity hereby agrees to accept the Coverage, upon the terms and conditions set forth in this Revised Agreement and the Memorandum of Coverage attached hereto as Exhibit A.

3.3 Payment of Claims, Settlements, Judgments and Administrative Costs.

(a) Settlements and Judgments which the Authority is obligated to pay under the terms of this Program Agreement and the Memorandum shall be paid on behalf of the Member Entities from the Program Operations Fund directly to the claimants or designees. An amount representing the Administrative Costs incurred by the Authority with respect to the Program shall be paid to the Authority.

(b) If the Program Operations Fund is insufficient to pay the award, the Authority shall individually assess each Member Entity to the extent necessary to pay the award, and the assessment charged each Member Entity shall be determined on a proportionate basis as may be determined by the Board of Directors with the advice of its Consultant ("Special Assessment"). Any such Special Assessment shall be a contractual obligation of the Member Entity.

(c) Any lawful award entered against a Member Entity shall be a liability of the Program and a joint and several liability of each Member Entity as provided in this Revised Agreement.

3.4 Subrogation. Each Member Entity agrees that in the event of the payment of any loss by the Program under this Agreement, the Program shall be subrogated to the extent of such payment to all the rights of the Member Entity against any person or other entity legally responsible for damages for said loss, and in such event the Member Entity hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

3.5 Loss Reserves. The Authority shall employ or retain a Qualified Claims Administrator for the purpose of adjusting Claims and submitting a report to the Authority and each Member Entity setting forth (a) the amount of Loss Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Year(s), and (b) any adjustments (whether increases or decreases) necessary to be made in the amount of each Loss Reserve previously established pursuant to this Section and to make supplemental reports from time to time throughout each year as needed in accordance with prudent practice. In determining the amount of Loss Reserves necessary to be established or adjusted as described above, the Qualified Claims Administrator shall consider such facts and circumstances occurring during the period covered by such report as it, in its independent judgment, deems necessary in accordance with prudent practice. Notwithstanding the foregoing, the Qualified Claims Administrator shall take into account Settlements of Claims in accordance with the criteria set forth in this Section.

The Authority shall adjust Loss Reserves in the Program Operations Fund annually, and additionally from time to time throughout each year as needed in accordance with

prudent practice. In the event that any such adjustment to Loss Reserves results in the Unencumbered Reserves being reduced to zero, the Authority shall provide prompt written notice of such fact to the Member Entities and the Authority shall have the discretion to impose, and the Member Entities shall be obligated to pay, any Special Assessment which the Board of Directors may determine is necessary in order to fund the Unencumbered Reserves at a prudent level with the advice of a qualified actuary or other person knowledgeable about public entity workers' compensation programs.

3.6 Other Insurance, Excess Insurance or Reinsurance. The Authority may provide Coverage, or a portion of Coverage, to the Member Entities by purchase of specific and/or aggregate workers' compensation insurance, excess insurance, or reinsurance with such self-insurance attachment points as at the time are in the best interests of the Program and the Member Entities as determined by the Board; by purchase of workers' compensation insurance, excess insurance or reinsurance from a group or captive insurance program or pool; or by participation in a group or captive insurance program or pool for the purposes of acquiring workers' compensation insurance, excess insurance or reinsurance. The Authority may use Unencumbered Reserves to purchase or make payments to acquire such insurance, excess insurance or reinsurance, or participate in such pool or program; provided, however, that the Authority may use Loss Reserves to purchase or otherwise acquire such insurance, excess insurance or reinsurance if the policy of commercial insurance, excess insurance or reinsurance to be purchased or otherwise acquired covers the claim for which such Loss Reserves were established. In the event of a dispute between the Authority and any Member Entity and any insurer, excess insurer or reinsurer as to payment of a Claim, the failure by either to pay such Claim shall not result in a default by the Authority under the terms of this Agreement.

In a Coverage Year for which the Authority has purchased or otherwise acquired insurance, excess insurance or reinsurance on behalf of a Member Entity, each such Member Entity shall be obligated to pay a proportion of the costs of such insurance, excess insurance or reinsurance, and Risk Assessment Adjustments.

Section 4: TERM OF AGREEMENT; ASSESSMENT; COMMINGLING OF FUNDS PROHIBITED

4.1 Term of Agreement; Termination of a Participant's Obligations to Pay Assessment. The Term of this Agreement shall commence on the date of its execution and shall continue until the Member Entity terminates the agreement as provided in Section 6 of this Agreement.

The obligation of any Member Entity to pay Assessments under this Agreement will terminate upon the terms and conditions set forth in Section 6 herein.

4.2 Budget and Appropriation of Assessment Payments. The Authority shall calculate the class code rates for Assessments to be paid by each Member Entity for the next

succeeding Coverage Year as provided in Section 4.4 herein and provide preliminary class code rate information no later than April 15th of each year. During the term of the Agreement, Assessment invoices will be sent to Member Entities quarterly in arrears with payment being due by the 15th of the month following the end of the quarter being assessed. Each Member Entity covenants to take such action as may be necessary to include Assessment payments payable hereunder in its annual budget, to levy ad valorem taxes outside its permitted mill levy limitation, if necessary, on all property within its jurisdiction to fund such Assessment payments and to make the necessary annual appropriations for all such Assessment payments. The covenants on the part of the Member Entity herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Member Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member Entity to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by such Member Entity.

4.3 Obligation to Pay Assessments.

(a) No Withholding. Notwithstanding any dispute between the Authority and a Member Entity, including a dispute as to the scope or nature of Coverage provided by the Authority or the availability of amounts in the Program Operations Fund to pay Claims made against any Member Entity, or for any other reason (other than the termination of the obligation to pay Assessment pursuant to Section 4.1 hereof), the Member Entity shall appropriate funds sufficient to pay and shall make all Assessment payments when due and shall not withhold any Assessment payments pending the final resolution of such dispute.

(b) Rate on overdue Payments. In the event a Member Entity fails to make any of the payments required in this Section, the payment in default shall continue as an obligation of the Member Entity until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member Entity agrees to pay the same with interest or penalty thereon, at a rate or rates to be established by the Authority, from the date such amount was originally payable.

(c) Abatement. There shall be no abatement of Assessment payments.

4.4 Assessments

(a) Total Risk Assessments. With respect to each Coverage Year, the Authority shall retain a Consultant to determine and prepare a report by March 1 preceding the beginning of such Coverage Year setting forth the total amount of Risk Assessments payable in the aggregate by all Member Entities for such Coverage Year ("Total Risk Assessment"). The Total Risk Assessment shall be that amount which the Consultant estimates is required to be deposited into the Program Operations Fund at a confidence level of no less than fifty percent (50%), to maintain sufficient Loss Reserves to pay all Settlements and Judgments for all Member Entities, all Administrative Costs incurred during the Coverage Year, costs of other insurance, excess

insurance, or reinsurance, and such other reasonable and necessary costs as may be incurred in the operation of the Program as may be determined by the Board of Directors of the Authority. The Total Risk Assessment may be increased by the Authority if, upon advice of the Consultant, the Board of Directors determines that a higher confidence level should be maintained. The Consultant shall utilize such methodology as adopted from time to time by the Authority upon notice to the Member Entities and shall certify that such methodology was used. The Authority shall collect from all Member Entities an amount equal to the Total Risk Assessment determined by the Consultant to maintain the designated confidence level in the Program. The amount collected from all Members may include funds obtained from Assessments, investment income and Unencumbered Reserves, as the Board of Directors may in the exercise of its discretion deem appropriate with respect to each Coverage Year.

(b) Calculation of Individual Member Entity Risk Assessment. The Risk Assessment rates established as provided in Section 4.4(a) shall then be applied to each Member Entity's estimated payroll by rating classification and further adjusted by an experience rating modification which shall be determined by the Board of Directors on the advice of an actuarial consultant utilizing commonly accepted actuarial principles. The amount so allocated to each Member Entity shall be the Risk Assessment due and owing by the Member Entity to the Program for such period.

(c) The aggregate Assessment and the Risk Assessment due and owing by each Member Entity shall be computed and adopted by the Board of Directors on a Coverage Year basis to be effective July 1, provided that the Board of Directors may make such mid-term adjustments to Risk Assessment rates as appropriate and in the best interests of the Program and the Member Entities to accomplish the goals of the Program in accordance with the Workers' Compensation and Occupational Disease Acts of Montana.

4.5 Assessments In The Event of Losses and Expenses In Excess of the Program Funds. In the event the Program losses and expenses for the Coverage Year exceed Risk Assessments, Loss Reserves, and interest income for that Coverage Year, the difference shall be charged to the Unencumbered Reserves, if funds are available. If funds are not available, the Board of Directors, in the exercise of its discretion and upon the advice of a qualified actuary may impose a Special Assessment.

Should funds be obtained by the Program from borrowing or from any other appropriate source in lieu of a Special Assessment, then such funds shall be used to pay Claims. In the event of such borrowing of funds by the Program, the Authority shall advise the Employment Relations Division of the Montana Department of Labor and Industry, or its successor responsible for the regulation of the Program.

Any sums expended by the Member Entity in the interim to pay Claims covered by the Program shall be reimbursed, if they would otherwise be covered by the Program.

Provided that nothing in this Section 4.5 shall be construed to limit the joint and several liability of individual Member Entities.

4.6 Commingling of Funds Prohibited. Assessments, Special Assessments, Loss Reserves, Unencumbered Reserves, investment income, or other income paid to or derived from the Program shall not be commingled with the funds of any other program which is or may be sponsored, operated, or controlled by the Authority. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of the Program for any purpose other than as set forth in this Revised Agreement. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of any other risk retention or other program which is or may be sponsored, operated, or controlled by the Authority for purposes of satisfying any obligation, debt, or covenant arising from or related to this Revised Agreement.

This prohibition on commingling of funds does not apply to the Montana Municipal Interlocal Authority Workers' Compensation Program's proportionate share of the total amounts of any Assessment Deposits or Assessments received by Government Entities Mutual (GEM) from all participants of GEM, or held in any account or surplus account by GEM.

4.7 Assessment Audits. The Authority may at its discretion audit each member entity to determine the accuracy of the basis used for the Assessment calculations. An audit will be limited to the two Coverage Years prior to the Coverage Year during which the audit takes place. Refunds for overpayment or billing for underpayment will be limited to the same period.

4.8 Member Identified Errors. If an individual Member Entity finds errors in the amount of Assessments paid for prior periods, and submits documentation deemed adequate by the Authority (e.g. an independent audit or authorized change to reports submitted to some other government entity), a refund may be requested or additional Assessments paid in accordance with the time limits identified above for Assessment audits.

SECTION 5: INDIVIDUAL MEMBER ENTITY ACCOUNTS; ACCOUNT SETTLEMENT UPON WITHDRAWAL OR TERMINATION

5.1 Individual Member Entity Accounts. An Individual Member Entity Account in the name of each Member Entity will be established; and in the case of Member Entities who are Member Entities in the Program as of the effective date of this Agreement, the balance in their respective Individual Member Entity Accounts will be continued. Such Individual Member Entity Account will be used to identify the current financial condition of each Member Entity's participation in the Program. The Individual Member Entity Accounts will represent each Member Entity's share of Assessments less Claims, Judgments, Administrative Costs and other expenses which have been made against the Program.

The Individual Member Entity Accounts are for the purpose of determining each Member Entity's share of funds which:

- (a) may be credited against future Assessments or payable as dividends;
- (b) may be payable to each Member Entity who withdraws from the Program;
- (c) may be payable to each Member Entity on termination of the Program.

5.2 Annual Computation. Within 180 days of the end of each Coverage Year, the Individual Member Account of each Member Entity shall be computed by computing for the Program as a whole and by allocating to each Member Entity its proportionate share of the Assessments collected plus the investment income and other revenues of the Program at the end of the Coverage Year less the Claims (including claims paid, claims incurred, and claims incurred-but-not-reported), Judgments, loss development, Administrative Costs, and other operating costs for such Coverage Year.

Provided, however, that no Member Entity shall be entitled to receive any money or credit on account of having a positive balance in its Individual Member Entity Account unless the Unencumbered Reserves of the Program Operations Fund has an adequate fund balance, as determined by the Board in consultation with the programs actuary, and in such event the individual Member Entity shall be entitled to a proportionate share of the assets in the Unencumbered Reserves in satisfaction of its Individual Member Entity Account as provided in this Agreement.

5.3 Settlement of Individual Member Entity Account upon Withdrawal. In the event a Member Entity withdraws from the Program in good standing as provided in Section 6.5, the withdrawing Member Entity's Individual Member Entity Account will be calculated as of that date and 10% of the amount due the withdrawing Member Entity based upon the status of its Individual Member Entity Account and subject to the provisions contained in Sections 5.1 and 5.2 will be paid to the Member Entity at that time. At the end of each of the next three years, the Individual Member Entity's Account will be recomputed based upon changes in incurred losses and investment income during the year and the amount then due and payable the withdrawing Member Entity shall be determined as provided in Section 5.2. At the end of the first year, twenty-five percent (25%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account will be paid to the Member Entity plus interest on that amount for one year and computed at the then rate of one-year U.S. Treasury Notes. At the end of the second year, the Member Entity shall be paid fifty percent (50%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account plus interest on that amount for two years and computed for each of those two years at the rate of one-year U.S. Treasury Notes at the end of each such year. At the end of the third year, the Member Entity shall be paid fifteen percent (15%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account plus interest on that balance for three years computed for each of those three years at the rate of one-year U.S. Treasury Notes at the end of

such year. During the three-year period, the right of a withdrawing Member Entity to receive a settlement of its Individual Member Entity's Account is subject to the availability of funds in the Unencumbered Reserves as provided in Section 5.2, provided however, that this schedule for disbursements is subject to the limitation imposed by Section 6.5(c) of this Agreement.

5.4 Settlement of Individual Member Entity Account upon Termination. In connection with expulsion or suspension of a Member Entity pursuant to Section 6.5 herein, the Authority shall determine the Individual Member Entity Account of such Member Entity. The amount of the Individual Member Entity Account otherwise due to the Member Entity being expelled or suspended shall be applied to the obligations due from such Member Entity under the terms of this Agreement. Any remaining balance in the terminated Member's Individual Member Entity Account ("the Excess Individual Member Entity Account Balance") shall be held by the Authority and any interest thereon in a segregated account for the benefit of such Member Entity. The Authority will transfer to such Member Entity its Excess Individual Member Entity Account Balance, if any, on the earliest practicable date when the Member is no longer subject to any Assessments for any obligations under the terms of this Agreement, which will be the date when all Claims, including claims incurred during any Coverage Period prior to expulsion or suspension of such Member Entity, and Judgments have been finally determined and/or paid, and then pursuant to the schedule of payments set forth in Section 5.3 herein applicable to a Member Entity who withdraws in good standing, subject to the availability of funds in the Unencumbered Reserves as provided in Sections 5.2 and 5.3 and subject further to the limitation as provided in Section 6.5 (c).

SECTION 6: ADMISSION TO, WITHDRAWAL FROM AND EXPULSION FROM THE WORKERS' COMPENSATION RISK RETENTION PROGRAM

6.1 Transition Period. This Revised Agreement shall be effective September 1, 2010. Members of the Workers' Compensation Program who execute this Revised Agreement prior to the effective date shall continue to be covered under the terms and conditions of the Program Agreement then in existence until the effective date of this Agreement. The effective date for those Member Entities of the Workers' Compensation Program who execute this Revised Agreement after September 1, 2010, will be retroactive to September 1, 2010.

6.2 Conditions for Providing Coverage to a New Member Entity. Applications for memberships in the Revised Program shall be submitted on an approved form to the Chief Executive Officer. The Board of Directors will consider and act upon each application. Concurrence by a majority of the Board and the Authority's excess insurance carrier is required in order for an applicant to be admitted as a Member Entity. The Authority may provide Coverage to a new Member Entity of the Program that is not currently a Member Entity under this Agreement, subject to the following conditions:

- (a) such new Member shall be a political subdivision of the state;

(b) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall be signatory to the Interlocal Agreement and a member of the Authority;

(c) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall have submitted a completed application for admission to the Revised Program as may be required by the Board of Directors; and

The minimum time requirements for execution and submission of documents as provided in subparagraphs (b) and (c) hereinabove may be waived by the Board of Directors at their discretion.

Coverage of such new Member Entity shall be effective on the first day of the quarter next succeeding the approval of the new Member's application by the Authority, unless determined otherwise by the Board of Directors, and the execution of the documents as provided herein.

6.3 Requirements for Participation in the Program.

Each Member Entity who participates in the Program shall execute this Agreement. Each Member Entity hereby acknowledges and agrees that, commencing with the effective date of its participation in the Program, the Member shall be obligated to pay Assessments as computed pursuant to this Agreement

6.4 Capital Assessment of New Member Entity to Program Operations Fund.

(a) If the Program Operations Fund is not adequately funded, the new Member Entity may be assessed a non-refundable amount to be deposited into the Program Operations Fund as determined by the Authority ("Capital Assessment"). Such new Member Entity shall pay all components of the Risk Assessment in addition to this Capital Assessment.

(b) If the Program Operations Fund is adequately funded as determined by a Consultant, no initial capital assessment will be required of the Member Entity.

6.5 Conditions for Permitting Withdrawal of a Member Entity from Coverage. The Authority shall permit a Member Entity to withdraw from Coverage under this Agreement, provided that the following are satisfied:

(a) such Member Entity shall not be in default as to payment of any Assessments then or theretofore due;

(b) at least 60 days preceding the effective date of such withdrawal, such Member Entity shall have provided written notice to the Authority of its intent to withdraw;

(c) Provided, however, if the Authority shall have received a certificate from a Consultant that such withdrawal will materially reduce the actuarial soundness of the Program, the Authority may, in its sole discretion and upon the advice of the Consultant, in order to minimize the financial, actuarial and economic impacts on the Program, extend the terms of the repayment of amounts due the withdrawing Member of the Member's Individual Member Entity Account as otherwise provided in Sections 5.2 and 5.3 of this Agreement.

(d) In no event shall withdrawal from Coverage or termination of a Member Entity's participation in the Program release a Member Entity from its obligation to pay damages resulting from default under the terms of this Revised Agreement, nor shall such withdrawal or termination release a Member Entity from its obligation to pay Assessments as provided herein. The Authority shall continue to pay covered Claims relating to the withdrawn Member Entity which arose prior to withdrawal as provided herein, unless the Member Entity defaults in the payment of its continuing obligations described in the preceding sentence. Notice of withdrawal shall be revocable by the Member Entity only with the consent of the Authority.

6.6 Conditions of Membership Review, Suspension and Termination Procedure.

(a) The Authority may suspend or expel a Member Entity from the Revised Program (i) if the Member Entity is in default under the terms of this Revised Agreement or (ii) when, in the determination of the Chief Executive Officer, a Member Entity has engaged in conduct, other than a default under this Revised Agreement, that warrants expulsion from membership in the Program. Suspension, termination or expulsion is subject to the conditions provided in Section 6.6 herein.

(b) The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall have the same meaning whenever they are used in this Agreement with respect to a Member Entity:

- (i) failure by such Member Entity to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to such Member Entity by the Authority, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Member Entity within the applicable period and diligently pursued until the default is corrected; or
- (ii) the filing by such Member Entity of a case in bankruptcy, or the subject of any right or interest of such Member Entity under this Agreement to any execution, garnishment or attachment, or, adjudication of such Member Entity as a bankrupt, or assignment by such Member Entity for the benefit of creditors, or the entry by such Member Entity into an agreement of

composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member Entity in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

(c) When a Member Entity has been determined by the Authority to be in default under the terms of the Revised Agreement, the Member Entity shall be given written notice of such default and shall be required to cure such default within ten (10) calendar days of receipt of such notice. If such default is not cured within the time prescribed herein, said Member Entity will be suspended from the Program and Coverage of Claims under the Program shall be terminated during the period of suspension, which shall be effective, without the need for a meeting of the Board of the Authority, at 12:01 a.m. on the 30th day after notice of termination has been received by the Member Entity. Such period of suspension shall continue until the conditions of termination or expulsion stated in Section 5.4 of this Program Agreement have been met, at which time the defaulting Member Entity's participation in the Program shall be immediately terminated without a meeting.

(d) In the event the Chief Executive Officer has determined that the Member Entity has engaged in conduct that warrants expulsion other than a default under this Revised Agreement, the Chief Executive Officer shall file a written report with the Board of Directors. Said report shall contain a summary of the facts and the recommendations regarding continued membership status. A copy of the report shall be served by mail to the Member Entity along with a Notice of Meeting of the Board of Directors. Said Notice of Meeting shall include the place, date and time of the meeting. At its discretion, the Board of Directors may submit written questions to the Member Entity, written answers to which must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the date of the meeting. A Member Entity objecting to the report and recommendations of the Chief Executive Officer shall submit a written statement to the Board of Directors setting out in detail the basis for the objection and any other information the Member Entity desires to submit. Said statement must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the meeting. The Board of Directors shall meet at the time and place designated in the Notice of Meeting. The Member Entity shall be entitled to be represented at the meeting and present an oral statement and other information. Following the meeting, the Board of Directors shall affirm, modify, or reject the recommendation of the Chief Executive Officer. The Board of Directors shall have the authority: (i) to place a Member Entity on probation, the terms and duration of which it shall determine; (ii) to suspend a Member Entity from Coverage of Claims; or (iii) to expel a Member Entity from the Program. A copy of the Board of Directors' decision shall be served by mail on the Member Entity. In the event that the Board of Directors votes to suspend or terminate membership, such suspension or termination shall not take place for at least thirty (30) days after the Member Entity has received notice of the suspension or termination. The duration of the notice period shall be determined by the Board.

6.7 In no event shall involuntary termination or expulsion from the Revised Program release a Member Entity from its obligation to pay Assessments or comply with the other terms

or conditions of this Revised Agreement, nor shall involuntary termination or expulsion release a Member from its obligation to pay damages resulting from a default under the terms of this Revised Agreement.

6.8 **Obligation to Notify Employment Relations Division upon Withdrawal or Termination.** Upon withdrawal or termination of a Member Entity, the Authority and the Member Entity shall promptly notify the Employment Relations Division of the Montana Department of Labor and Industry or its successor.

6.9. **No Remedy Exclusive.** No remedy conferred herein upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity, including, but not limited to the right by mandamus or other suit or proceeding at law or in equity to enforce his rights against the Member Entity and to compel the Member Entity to perform and carry out its duties under this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

6.10 **Agreement to Pay Attorneys' Fees and Expenses.** In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party awarded to the nondefaulting party by a court of competent jurisdiction.

6.11 **No Additional Waiver Implied by One Waiver.** In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7: JOINT AND SEVERAL LIABILITY

7.1 **Guarantee to Pay Claims.** The Member Entity agrees to assume and guarantee to pay, or otherwise discharge promptly, any and all the liabilities and obligations which the Program may incur for Claims for which Coverage has been provided pursuant to the terms of this Revised Agreement and the Workers' Compensation and Occupational Disease Acts of the State of Montana.

7.2 **Joint and Several Liability.** This Revised Agreement represents a direct financial guarantee to the employees of all Member Entities of the Program and dependents of the deceased employees of all Member Entities of the Program for the full amount of any and all liabilities or obligations for which Coverage has been provided pursuant to the terms of this Revised Agreement and any predecessor Agreement with respect to this Program in amounts not limited to this Member Entity's "pro rata" share. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amount of any and all known and unknown Claims incurred and incurred-but-not-reported during the Member Entity's participation in the Original Program and for the full amount of any and all known and unknown claims incurred and incurred-but-not-reported during the membership of the Member Entity in the Program.

7.3 **Other Insurance Excluded.** This Revised Agreement shall not cover or extend to any workers' compensation or occupational disease liabilities which are expressly insured by a carrier duly authorized to write Montana workers' compensation and occupational disease insurance, provided that the liabilities assumed by an excess insurance or reinsurance provider shall also remain the primary liabilities of the Program and its Member Entities.

7.4 **Enforcement of Guarantee.** In the event the Program shall fail to pay compensation, as compensation is defined in the Montana Workers' Compensation and Occupational Disease Acts, when due, the Member Entity will pay the same, and the payment may be enforced against the Member Entity to the same extent as if said payment was its sole liability. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amounts of any and all known or unknown Claims of the Program arising during the membership of the Member Entity in the Program.

SECTION 8: INSPECTION OF FACILITIES AND EQUIPMENT; SAFETY CONSIDERATIONS AND NOTIFICATION OF ACCIDENT

8.1 **Inspection of Facilities, Equipment and Records.** The Board of Directors and any of their agents, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery and appliances covered by this Revised Agreement and shall be permitted at all reasonable times to examine Member Entity's payroll, personnel, injury and accident records, and Member Entity's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the Assessments which are payable under the terms hereof. This right to inspect or examine shall continue after termination of membership with respect to all claims or matters arising during or relating to membership status.

8.2 **Safety Considerations.** Each Member Entity must follow the safety recommendations of the Board of Directors and the service company or any other agent of the Authority in order to provide safe and sanitary working conditions.

8.3 Notification of Accident and Reimbursement to Authority for Penalty. Each Member Entity must give immediate notification to the Qualified Claims Administrator on the prescribed forms of any accident and reported Claim for any benefits whatsoever payable under the Workers' Compensation and Occupational Disease Acts.

Any penalty levied for failure to pay compensation benefits, medical expenses or travel allowances resulting from a Member Entity's failure to give timely notice to the claims adjuster of an accident or claim for any benefits as heretofore described may, by a vote of a majority of the Board of Directors, be assessed against the Member Entity.

SECTION 9: PROHIBITION OF UNAUTHORIZED PAYMENTS; PENALTY FOR EMPLOYMENT WITHOUT WORKERS' COMPENSATION COVERAGE

9.1 Prohibition of Unauthorized Payments by Member Entities. No Member Entity shall make voluntary payment of weekly benefits or medical expenses or enter into any agreement with any employee or his agent committing payment or admitting liability for any workers' compensation benefits as provided in the Workers' Compensation and Occupational Disease Acts without the prior approval of the Board of Directors or the Qualified Claims Administrator. Any Member Entity making such voluntary payments or entering into such an agreement may, by a vote of a majority of the Board of Directors, be held individually and separately liable for reimbursement to the Program for all benefits and medical expenses paid or committed.

9.2 Penalty for Employment of Persons without Workers' Compensation Coverage. No Member Entity shall contract with any person, including contractors, or subcontractors, who has not produced evidence of current workers' compensation insurance according to the provisions of the Workers' Compensation and Occupational Disease Acts. Any Member Entity who contracts with any person who does not have current workers' compensation insurance will be charged an additional non-discounted Assessment based upon the full amount of the contract.

SECTION 10: AGREEMENT WITH SERVICE PROVIDERS

10.1 Agreements with Service Providers. The Board of Directors may enter into agreements with various service companies or employ individuals to provide the following services:

(a) Assist the Authority in securing specific and aggregate excess insurance or reinsurance.

(b) Inspect the work places, operations, machinery and equipment owned or operated by the participating Member Entities of the Program.

(c) Compile and file notices and reports required under the Workers' Compensation and Occupational Disease Acts upon receipt of initial report from either the Authority or any participating Member Entity; conduct any necessary investigation in order to determine the liability of the participating Member Entity under the Workers' Compensation and Occupational Disease Acts; and, process any and all lawful claims under rules established pursuant to applicable law and by such additional rules as may be promulgated.

(d) Furnish the Authority and participating Member Entities in the Program with periodic reports of all accidents and occupational disease, and of all payments made and reserves set up for benefits and expenses on account of liability and/or reasonably anticipated liability for accidental injuries and occupational diseases sustained by employees.

(e) Adjust the Assessments payable by participating Member Entities in the Revised Program by allowing for favorable or unfavorable experience so as to determine and assign Assessment modifications for each Member Entity in the Program annually in accordance with policies established by the Board of Directors.

(f) Bill for and maintain records of all Assessment payments to the Program in accordance with such rules as the Board of Directors adopt.

(g) Make payroll audits of participating Member Entities in the Program.

(h) Prepare on behalf of the Authority and the participating Member Entities in the Program for all scheduled hearings and generally administer all other details pertaining to each participating Member Entity's obligations to its employees under the Workers' Compensation and Occupational Disease Acts.

(i) Perform such other related services as may be reasonably necessary for the operation of the Program.

SECTION 11: INDEMNIFICATION AND RELEASE; DISCLAIMER

11.1 Release and Indemnification Covenants. Each Member Entity shall and hereby agrees to indemnify and save the Authority and all other Member Entities harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) its breach or default in the performance of any of its obligations under this Agreement or (ii) its act or negligence or that of any of its agents, contractors, servants, employees or licensees with respect to the Coverage. No indemnification is made under this Section or elsewhere in this Agreement for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Agreement by the Authority, its officers, agents, employees, successors or assigns.

11.2 Disclaimer. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF THE MEMBER ENTITIES.

11.3 Savings Clause for Joint and Several Liability. Nothing herein in this Section 11 shall be construed to limit or eliminate the obligation of the Member Entities with respect to their joint and several liability for Claims as provided in Section 7 of this Agreement.

SECTION 12: ASSIGNMENT AND AMENDMENT

12.1 No Assignment by the Member Entities. This Revised Agreement may not be assigned by any Member Entity.

12.2 Amendment. This Agreement may be amended by a written instrument duly authorized and executed by the Authority and a majority of the Member Entities. It is expressly agreed and understood that approval of any amendment by a majority of the Member Entities who are signatories to this Agreement at the time of such amendment shall operate to bind each Member Entity to such amendment. All costs and expenses incurred in connection with any amendment to this Agreement shall be borne pro rata by the Member Entities.

SECTION 13: MISCELLANEOUS

13.1 Notices. All notices, bonds or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) business days after deposit in the United States mail, certified, postage prepaid, to the Member Entities, the Authority at the following addresses:

If to the Member Entity

To the City or Town Clerk
At the address of the City or Town
as maintained in the official records of the Authority

If to the Authority:

Montana Municipal Interlocal Authority
Attn: Workers' Compensation Program
PO Box 6669
Helena, Montana 59604-6669

The Authority and Member Entity, by notice given hereunder, may designate different addresses to which subsequent notices, bonds or other communications will be sent.

13.2 Binding Effect. This Revised Agreement shall inure to the benefit of and shall be binding upon the Authority and the Member Entities and their respective successors and assigns.

13.3 Enforceability. This Revised Agreement is enforceable by the Authority, Member Entities of the Revised Program, the employees of such Member Entities, and/or the Employment Relations Division of the Montana Department of Labor and Industry or its successor. The parties to this Revised Agreement are held and firmly bound for the payment of all legal fees and costs incurred by the State of Montana in any actions taken to enforce this Revised Agreement.

13.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13.5 Further Assurances and Corrective Instruments. The Authority and the Member Entities agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of this Revised Agreement.

13.6 Waiver of Notice as to Current Condition of Authority. The Member Entity waives any notices as to the current condition of said Authority, the Program, any changes therein, and the manner of conducting the Program. The Undersigned also waives, in the event of non-compliance by the Authority, any demand or notice in respect thereof and any requirement of legal or equitable proceedings or otherwise on the part of the Employment Relations Division of the Montana Department of Labor and Industry or its successor against the Authority as a condition precedent to enforcing the obligations of the Member Entities hereunder.

13.7 Execution in Counterparts. This Revised and Restated Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.8 Applicable Law. This Revised and Restated Agreement shall be governed by and interpreted in accordance with the laws of the State of Montana.

13.9 Effect of Revised Agreement. This Revised Agreement amends and supersedes each prior Workers Compensation Program Agreement, and this Revised Agreement shall effect a continuation of the Program for all purposes with respect to the continuity of Coverage, expenses, accounts, contracts, and other agreements related to the operation of the Program.

**MONTANA MUNICIPAL INTERLOCAL AUTHORITY
REVISED AND RESTATED
WORKERS' COMPENSATION
PROGRAM AGREEMENT**

Signature Page

IN WITNESS WHEREOF, The Authority has caused this Revised and Restated Workers' Compensation Risk Retention Program Agreement to be executed in its name by its duly authorized officers;

MONTANA MUNICIPAL INTERLOCAL
UTHORITY,
as Authority

By _____
Chief Executive Officer

Date Signed _____

and the Member Entity has caused this Revised Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

City of _____
As Member

Address _____

By _____

Its _____

Date Signed _____

ATTEST:

City Clerk

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Public Hearing and Resolution Assessing Residential/Commercial Collection, Disposal, and Landfill Fees

DEPARTMENT: Public Works Department

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

PROBLEM/ISSUE STATEMENT: Section 21-229 of the Billings Montana City Code requires that the City Council adopt the annual Solid Waste collection and disposal charges by resolution. The existing solid waste rates and fees are no longer adequate to provide for the operation and maintenance and capital investment necessary to continue providing service at the current level. The proposed rate and fee adjustments include increases for all collection and disposal rates and fees. The proposed rates also include a 10% surcharge on landfill fees for all Yellowstone County residents who are not residents of the City of Billings and a 20% surcharge on landfill fees for all landfill users outside of Yellowstone County. The attached resolution specifies the rates and fees for fiscal years 2010, 2011, and 2012 and will set the landfill fee and collection rates for FY 2010.

FINANCIAL IMPACT: The proposed rate and fee adjustments are recommended to take place over the next three years with the first adjustment being implemented July 1, 2009. The estimated increase in revenue from the rate and fee increases is \$994,500 for FY 2010.

RECOMMENDATION

Staff recommends that Council approve the proposed resolution specifying the solid waste rate and fee schedule for fiscal years 2010, 2011, and 2012 and assessing collection, disposal, and landfill fees for FY 2010.

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

ATTACHMENTS :

Attachment A – A resolution levying and assessing residential and commercial collection and disposal fees and landfill use fees. (6 pages)

RESOLUTION 09- _____

**A RESOLUTION LEVYING AND ASSESSING RESIDENTIAL AND
COMMERCIAL COLLECTION AND DISPOSAL FEES AND LANDFILL
USE FEES IN ACCORDANCE WITH RESOLUTION NO. 86-15491**

WHEREAS, it has become necessary in the operation of City services to assess the fees for collection and disposal of refuse; and

WHEREAS, said fees are established and should apply until changed by subsequent resolution;

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

1. That the following schedule of rates, fees, and charges are found to be just, reasonable, and necessary for the continued sound operation of the Solid Waste Division and that the proposed rates, fees, and charges are approved and adopted as the rates, fees, and charges of the City of Billings, Montana Solid Waste Division for fiscal years 2010, 2011, and 2012.
2. That the commercial and residential collection and disposal rates and the landfill fees are hereby assessed effective July 1, 2009 according to the following schedules.

Schedule I

RESIDENTIAL AND MOBILE HOME COLLECTION AND DISPOSAL FEES

<u>Fees Per Annum (for unit occupied by 1 family)</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Residential	\$ 86	\$ 94	\$ 103
Mobile home located in mobile park	\$ 79	\$ 87	\$ 95
Residential carry out service	\$ 172	\$ 188	\$ 206
Residential landfill fees for newly annexed property not yet receiving City collection service	\$ 20	\$ 22	\$ 24

Schedule II

LANDFILL FEES

All landfill use fees that are not covered by other agreements or assessments will be based on net weight, unless the landfill scale is inoperable then volume fees will apply. A minimum charge of \$5.00 will apply to all transactions.

A. Pickup/Small Trailer

Pickups or equivalent sized trailers hauling any material except those with special fees - \$5.00

Vehicles with *side boards* over one (1) foot high or loaded with heavier materials will be charged at the per ton rate in Schedule II, Paragraph B unless the landfill scales are inoperable; then the vehicle will be charged by the cubic yard rated on the capacity of the vehicle.

B. Compactible Material

Compactible material such as demolition, wood, household debris, tree removal refuse, and all other refuse not covered by special fees or special use agreements:

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2012</u>
Per ton charge	\$ 12.50	\$ 14.00	\$ 16.00
Loose garbage (per cubic yard)	\$ 1.60	\$ 1.80	\$ 2.00
Compacted (per cubic yard)	\$ 4.25	\$ 4.75	\$ 5.25

C. Non-Compactible Material

Asphalt, rocks, concrete, dirt, gravel, timbers, and other non-Compactible material:

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY2012</u>
Per ton	\$ 12.50	\$ 14.00	\$ 16.00
Per cubic yard of rated capacity	\$ 17.50	\$ 19.50	\$ 22.25

D. Special Waste

Special Waste such as contaminated soil, sludges, and treated timbers will be accepted on a case-by-case basis dependent upon testing and approval. If accepted, landfill fees will be \$32 per ton or \$45 per cubic yard based on the capacity of the vehicle.

E. Special Fees

1. Dead animals:
Horse \$ 75.00/each

Cow	\$ 50.00/each
Colt, Sheep, Pig, etc.	\$ 20.00/each
Large quantities	\$ 75.00/ton
2. <u>Tires:</u>	
Car or Light Truck (up to 17")	\$ 3.00/each
Large Truck (17" to 24")	\$7.00/each
Equipment Tire (grader size)	\$25.00/each
Large Amounts	\$105.00/ton or \$25/cubic yd
Cut Tires	\$16.00/ton or \$2.00/cubic yd
3. <u>Asbestos:</u>	
Per ton	\$ 80.00
Per yard	\$ 40.00
Per bag	\$ 10.00
Minimum charge	\$120.00
4. <u>Barrels:</u>	
One end off	\$7.00
Both ends cut off	Assessed per Schedule II, paragraph A or B
All barrels that contained pesticides or herbicides must be triple rinsed.	
5. <u>Refrigeration units:</u>	
A \$20.00 Freon recovery fee will be charged for all residential refrigeration units unless accompanied by written certification that the Freon has been recovered.	
Commercial units must have certification that the Freon has been removed.	
F.	City of Billings <i>residents hauling non-business waste</i> in a vehicle no larger than a 3/4 ton pickup truck, or equivalent sized trailer, will not be charged. All commercial waste not charged through other assessments will be charged per the above paragraphs.
G.	There will be a 10% surcharge assessed on all landfill rates and fees for all Yellowstone County residents who are not residents of the City of Billings.
H.	There will be a 20% surcharge assessed on all landfill rates and fees for all landfill users residing outside of Yellowstone County.

Schedule III

COMMERCIAL COLLECTION AND DISPOSAL FEES

Commercial collection service is available subject to Solid Waste Division approval of container type, size, placement, and serviceability.

FY 2010 Fees per Annum for Customer Owned Containers

Container Size	PER WEEK FREQUENCY OF COLLECTION						
	1	2	3	4	5	6	Saturday*
Hand load/loose	\$ 260 per annum for each minute of special service per pickup. (In addition to can or container service.)						
90 Gallon Barrel	\$ 168						
300 Gallon Barrel	\$ 374						
30 Gallon Can	\$ 66	\$ 132	\$ 198	\$ 264	\$ 330	\$ 410	\$ 132
1 Yard	\$ 306	\$ 612	\$ 918	\$1,224	\$1,530	\$1903	\$ 612
2 Yards	\$ 355	\$ 710	\$1,065	\$1,420	\$1,775	\$2,207	\$ 710
3 Yards	\$ 405	\$ 810	\$1,215	\$1,620	\$2,025	\$2,518	\$ 810
4 Yards	\$ 456	\$ 912	\$1,368	\$1,824	\$2,280	\$2,835	\$ 912
6 Yards	\$ 554	\$1,108	\$1,662	\$2,216	\$2,770	\$3,445	\$1,108
8 Yards	\$ 653	\$1,306	\$1,959	\$2,612	\$3,265	\$4,060	\$1,306

FY 2011 Fees per Annum for Customer Owned Containers

Container Size	PER WEEK FREQUENCY OF COLLECTION						
	1	2	3	4	5	6	Saturday*
Hand load/loose	\$ 285 per annum for each minute of special service per pickup. (In addition to can or container service.)						
90 Gallon Barrel	\$ 183						
300 Gallon Barrel	\$ 408						
30 Gallon Can	\$ 72	\$ 144	\$ 216	\$ 288	\$ 360	\$ 448	\$ 144
1 Yard	\$ 334	\$ 668	\$ 1,002	\$1,336	\$ 1,670	\$2,077	\$ 668
2 Yards	\$ 387	\$ 774	\$ 1,161	\$1,548	\$ 1,935	\$2,406	\$ 774
3 Yards	\$ 441	\$ 882	\$ 1,323	\$1,764	\$ 2,205	\$2,742	\$ 882
4 Yards	\$ 497	\$ 994	\$ 1,491	\$1,988	\$ 2,485	\$3,090	\$ 994
6 Yards	\$ 604	\$1,208	\$ 1,812	\$2,416	\$ 3,020	\$3,755	\$ 1,208
8 Yards	\$ 712	\$1,424	\$ 2,136	\$2,848	\$ 3,560	\$4,427	\$ 1,424

FY 2012 Fees per Annum for Customer Owned Containers

Container Size	PER WEEK FREQUENCY OF COLLECTION						
	1	2	3	4	5	6	Saturday*
Hand load/loose	\$ 312 per annum for each minute of special service per pickup. (In addition to can or container service.)						
90 Gallon Barrel	\$ 201						
300 Gallon Barrel	\$ 449						
30 Gallon Can	\$ 79	\$ 158	\$ 237	\$ 316	\$ 395	\$ 491	\$ 158
1 Yard	\$ 367	\$ 734	\$1,101	\$1,468	\$1,835	\$2,282	\$ 734
2 Yards	\$ 426	\$ 852	\$1,278	\$1,704	\$2,130	\$2,649	\$ 852
3 Yards	\$ 485	\$ 970	\$1,455	\$1,940	\$2,425	\$3,016	\$ 970
4 Yards	\$ 547	\$1,094	\$1,641	\$2,188	\$2,735	\$3,401	\$1,094
6 Yards	\$ 664	\$1,328	\$1,992	\$2,656	\$3,320	\$4,128	\$1,328
8 Yards	\$ 783	\$1,566	\$2,349	\$3,132	\$3,915	\$4,868	\$1,566

Compactor containers will be assessed at 2.5 times the above rates.

Saturday service without 6 times per week pick-up will be assessed double the 1 time per week rate. This service is not available in all areas.

The above fees are for customer-owned containers. For City-owned containers, in addition to the above fees, annual container lease rates will be charged as follows:

<u>Container Size</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
< 6 yards	\$ 192	\$ 216	\$ 240
6 or 8 yards	\$ 264	\$ 288	\$ 312

Commercial customers will be provided 2 courtesy pickups over and above their current scheduled service each fiscal year. Any additional service will be billed at the hourly rates as follows (minimum 1 hour):

	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
Compacter truck, 1 person	\$ 80	\$ 90	\$ 100
Compacter truck, 2 people	\$ 115	\$ 125	\$ 140

Tax supported funds, which include the General Fund, Public Safety, Library and Transit Funds, will not be charged for garbage.

Drop Box/Roll Off

<u>Customer Owned Container</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
Per pull plus disposal	\$100.00	\$110.00	\$120.00

Disposal rates are charged per Schedule II, Paragraph B.

In addition to the above rates, City-owned Containers will also be charged a lease fee if applicable.

30 cubic yards-cash only/1 time	<u>FY2010</u> \$180.00	<u>FY2011</u> \$200.00	<u>FY2012</u> \$215.00
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Commercial landfill fees for newly annexed property not receiving City collection service will be assessed at the current disposal rate times the size and frequency of their service.

PASSED by the City Council and APPROVED this _____ day of _____ 2009.

CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 8, 2009

TITLE: Public Hearing and Resolution Setting Mill Levy Rates
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This resolution establishes the city property tax mill levy rates for General, Transit, Library, and Public Safety I for fiscal year 2010. These mill levy rates have remained the same since 2001.

The mill levy rates for general obligation debt service funds for PRPL and Streets, Ballpark, and Public Safety II will be established when the City has received the certified taxable valuation information from the Montana Department of Revenue.

RECOMMENDATION

Staff recommends that the City Council approve the resolution setting the mill levy rates for fiscal year 2010.

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

ATTACHMENT

A- Resolution

Attachment A

RESOLUTION NO.09 _____

A RESOLUTION MAKING THE ANNUAL ALL-PURPOSE MILL LEVY AND MILL LEVIES FOR LIBRARY OPERATING, TRANSIT OPERATING, AND PUBLIC SAFETY FUNDS FOR THE FISCAL YEAR 2009-2010.

WHEREAS, pursuant to law, the City of Billings is required to make annual mill levies.

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

1. That an All-Purpose Annual Mill Levy in the amount of 74 Mills is hereby imposed on all taxable property within the City of Billings, Montana, for the Fiscal Year **July 1, 2009 through June 30, 2010.**

2. **That additional Mill Levies in the amounts stated are hereby imposed on all taxable property within the City of Billings, Montana, to provide payment for the following:**

- A. 10.00 Transit Operating Fund
- B. 5.00 Library Operating Fund
- C. 20.00 Public Safety Fund

3. That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED by the City Council this 8th day of June, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 8, 2009

SUBJECT: Public Hearing and Resolutions Setting Annual Assessments for Fiscal Year 2010

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following annual assessment resolutions have been completed by the Finance Division and the assessments are ready to spread on the tax files.

Park Maintenance District

Light Maintenance District

Fire Hydrant Maintenance

Street Maintenance

Storm Sewer

Arterial Construction

Business Improvement District

Tourism Business Improvement District

Park maintenance districts and light maintenance districts rates are calculated by estimating the expenses for maintenance and recovering actual expenditures. Street maintenance, Storm Sewer, and Arterial rates remain the same for FY 10. The Fire Hydrant Maintenance will remain the same. On February 19, 2009 the TBID Board voted to change the rate from \$.75 per rented room per night to \$1.00.

RECOMMENDATION

Staff recommends that a public hearing be held and that the City Council approve the resolutions on June 8, 2009.

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

ATTACHMENTS

A-Park Maintenance Annual Assessment Resolution

B-Light Maintenance District Annual Assessment Resolution and Exhibit A

C-Fire Hydrant Maintenance Annual Assessment Resolution

D-Street Maintenance Annual Assessment Resolution
E-Storm Sewer Annual Assessment Resolution and Exhibit A
F-Arterial Construction and Exhibit A
G-Business Improvement District Annual Assessment and Exhibit A
H-Tourism Business Improvement District

Attachment A

RESOLUTION 09 _____

A RESOLUTION LEVYING AND ASSESSING ALL PROPERTY WITHIN PARK MAINTENANCE DISTRICTS AN AMOUNT EQUAL TO THE COST OF MAINTAINING THE IMPROVEMENTS IN SAID PARK MAINTENANCE DISTRICTS WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND FINAL ADOPTION.

WHEREAS, certain Park Maintenance Districts within the City have been created and constructed, and

WHEREAS, certain improvements within those Park Maintenance Districts require maintenance, and

WHEREAS, M.C.A. Section 7-12-4162 provides that the City may levy and assess the costs of maintenance against said districts.

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

1. MAINTENANCE OF IMPROVEMENTS. Certain improvements including trees, shrubs, grass and care thereof require maintenance with certain Park Maintenance Districts.

2. MAINTENANCE DISTRICT BOUNDARIES. The boundaries of the park maintenance districts are established by resolution and are on file in the City Clerk's office.

3. ASSESSMENT METHOD. The entire maintenance costs shall be assessed against the entire district, each lot or parcel of land within said district to be assessed for that part of the whole costs which its area bears to the area of the entire district exclusive of streets, avenues, alleys and public places all as provided in M.C.A. Section 7-12-4162.

4. COST OF MAINTENANCE. The City Council estimates that the cost of maintenance for the fiscal year 2010 for the following Park Maintenance Districts is:

<u>PMD Name</u>	<u>Number</u>	<u>FY10 Ass. Rate</u>
Harvest	684001	.029958 sq/ft
Olympic	684002	.019744 sq/ft
Parkland West	684003	.007820 sq/ft
Kiwanis/Durland	684004	.013117 sq/ft
High Sierra	684005	.004051 sq/ft
Forest Park	684006	.003486 sq/ft
Woodland Estates	684007	.007064 sq/ft
Terra West	684008	.014597 sq/ft
Aspen Grove	684009	.009634 sq/ft

Lakeview Drain	684010	.001670 sq/ft
Montana Avenue	684011	.070464 sq/ft
Country Manor (Village West-Circle 50)	684012	.005103 sq/ft
Broadway/City Hall	684013	.058637 sq/ft
Rush/Shiloh Point	684014	.006131 sq/ft
Howard heights	684015	.003993 sq/ft
Mission United (West end Bike Trail)	684016	.002925 sq/ft
South Gate	684017	.005502 sq/ft
Frances Park	684018	\$60.12 per lot
Rolling Hills (Silver Spur Trail)	684019	\$212.90 per lot
Dokken (Town and Country)	684020	\$460.00 per lot
Lutheran Park	684022	\$87.50 per lot
Rimrock West	684023	\$143.00 per lot
Walden Grove	684024	.021729 sq/ft
Rehberg Ranch	684025	.010623 sq/ft
Uinta and Twin Oaks	684026	\$70.35 per lot
Ironwood	684027	.009361 sq/ft
Vintage Estates	684028	\$17.50 per lot
Cottonwood	684029	.001830 sq/ft
Kings Green	684030	\$209.00 per lot
Copper Ridge	684031	\$398.09 per lot
Riverfront Pointe	684032	\$28.38 per lot
Falcon Ridge	684033	\$120.00 per lot
Josephine Crossing	684036	.003352 sq/ft
Terra West Entrance	684038	\$75.00 per lot

5. DISPOSITION OF COLLECTIONS. The monies collected from the tax shall be paid into the respective Park Maintenance Funds.

6. NOTICE OF HEARING. On Monday, June 8, 2009 at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

7. EFFECTIVE DATE. This Resolution shall be effective upon adoption.

The foregoing Resolution No. - _____ was ADOPTED by the City Council and APPROVED on the 8th day of June, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Attachment B

RESOLUTION 09 _____

A RESOLUTION LEVYING AND ASSESSING ALL PROPERTY IN CERTAIN LIGHTING MAINTENANCE DISTRICTS WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, certain lighting maintenance districts have been created within the City of Billings, and

WHEREAS, State Law provides for assessment for maintenance costs annually, and

WHEREAS, M.C.A. 7-12-4332 provides that the City shall pass a resolution levying and assessing maintenance costs.

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

1. DISTRICTS AND ASSESSMENTS. The lighting maintenance districts and assessments to defray one hundred percent (100%) of all the costs of maintenance and lighting are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. PERIOD OF ASSESSMENT. That said assessment is to defray costs for the fiscal year 2009.

3. DISPOSITION OF COLLECTIONS. That the assessments as collected shall be placed in the respective lighting maintenance funds and shall be used to defray the costs of maintenance and lighting as provided by law.

4. NOTICE OF HEARING. On Monday, June 8, 2009, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

The foregoing Resolution No. _____ was ADOPTED by the City Council and APPROVED on the 8th day of June 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

District Number	FY 10 Assessment
8	6,900
9	7,940
10	20,385
13	210,000
14	82,500
17	16,000
18	4,300
95	15,000
97	172,000
99	20,300
100	31,500
107	21,800
109	53,700
113	8,500
114	11,500
115	2,900
116	7,300
117	40,000
118	2,600
119	1,700
121	30,600
122	2,210
123	4,300
124	12,100
125	5,000
126	2,300
127	9,100
128	6,500
129	4,200
130	1,700
131	11,000
133	2,850
134	7,100
135	6,400
136	5,500
137	5,400
138	9,100
139	3,100
143	7,400
144	300
145	6,000
146	4,300

147	5,800
149	27,700
150	9,700
151	8,000
152	52,000
153	7,000
154	15,900
155	6,400
157	12,200
158	10,300
159	13,800
160	8,500
161	13,200
162	700
163	23,600
164	4,900
165	11,300
167	3,000
171	7,300
172	6,900
173	15,000
174	12,300
175	3,900
176	530
178	3,400
179	6,700
180	4,550
181	20,700
182	7,800
183	15,500
184	4,600
185	1,700
186	20,000
187	2,900
188	3,600
189	2,900
190	16,000
191	4,800
192	3,900
193	9,400
194	8,000
195	6,500
196	2,700
197	1,800
198	1,600
200	3,100

201	6,500
202	17,200
203	440
204	12,500
205	460
206	3,800
207	4,900
208	12,300
209	7,200
210	3,500
211	2,280
212	2,280
213	1,500
214	5,900
216	1,800
217	9,000
220	7,100
221	100
222	2,800
223	2,700
224	23,400
225	11,200
226	8,100
227	18,900
228	9,800
229	5,100
230	12,600
231	7,200
232	30,500
233	18,900
234	9,500
235	12,000
236	4,320
237	5,100
238	200
239	1,300
240	6,300
241	7,500
242	1,100
244	1,500
245	1,100
246	4,100
247	14,000
248	28,500
249	33,000
250	4,200

251	48,500
252	6,800
253	23,500
254	5,550
255	4,050
257	17,200
258	36,000
259	29,000
261	6,600
262	37,000
263	15,000
264	3,500
265	3,700
266	700
269	800
270	12,300
271	9,500
272	33,000
273	2,200
274	1,470
276	8,050
277	9,600
278	5,200
279	700
280	16,000
281	4,000
283	8,500
285	3,500
286	2,700
287	2,500
288	6,000
289	4,000
290	1,400
292	7,050
293	2,750
294	5,300
295	1,300
296	13,000
297	2,450
298	2,200
299	3,800
300	3,800
301	18,000
302	5,500
305	22,000
306	8,500

320	2,400
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Attachment C

RESOLUTION 09-_____

A RESOLUTION LEVYING AND ASSESSING PROPERTIES
WITHIN THE CITY OF BILLINGS THE PROPERTY SAFETY
WATER SUPPLY SERVICE CHARGE, PROVIDING FOR
NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for property safety water supply service charge annually; and

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. **SERVICE CHARGE FOR FISCAL YEAR 2010.** The Property Safety Water Supply Service Charge for the fiscal year 2010 is hereby fixed, levied and assessed against each and every parcel of real and personal property within the City. Each parcel shall pay to the City that portion of the total Property Safety Water Supply Service Charge imposed annually as hereinafter provided, as the total taxable value of each parcel bears to the total taxable value within the City. The assessment is **\$0.0127104** per taxable value dollar, provided, however:

- (a) Parcels of real property which have no taxable value shall pay an annual charge of \$20.00 per parcel.
- (b) All parcels having taxable value shall pay at least a minimum annual charge of \$1.00 per parcel.

2. **NOTICE OF HEARING.** On Monday, June 8th, 2009 at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

3. **EFFECTIVE DATE.** This resolution shall be effective upon adoption.
ADOPTED and APPROVED by the City Council on the 8th day of June, 2009.

CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

Cari Martin,

CITY CLERK

Attachment D

RESOLUTION 09-_____

A RESOLUTION DETERMINING AND FIXING THE METHODS OF ASSESSMENT IN EACH DISTRICT, FIXING THE RATE OF ASSESSMENT FOR COSTS OF STREET MAINTENANCE WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION

WHEREAS, the City, by Resolution, has defined the boundaries and established street maintenance districts as provided by State Law, and

WHEREAS, it is necessary to determine, levy and assess the properties within the districts.

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

1. **METHOD OF ASSESSMENT.** The City hereby determines that each lot or parcel of land within both Street Maintenance Districts One (1) and Two (2) shall be assessed for that portion of the whole cost which each lot or parcel of land in the respective district bears to the total area of the respective district exclusive of streets, avenues, alleys and public places.

2. **ASSESSMENT DISTRICT ONE (1).** Each lot or parcel within portions of the Central Business District, being District One (1), is hereby assessed **\$0.038892** per square foot of area for fiscal year 2010 .

3. **ASSESSMENT DISTRICT TWO (2).** Each lot or parcel within the balance of the City, being District Two (2), is hereby assessed **\$0.006393** per square foot of area for fiscal year 2010.

4. **MAXIMUM ANNUAL CHARGE.** The maximum annual charge for any tract, parcel or lot which is undeveloped and unimproved shall be Nine Hundred Seventy Four Dollars (\$974.00).

5. **LOTS AND PARCELS ASSESSED.** A list which describes each lot or parcel of land assessed within the respective district, with the name of the owner thereof, and the amount levied thereon set is available as a printed document in the office of Public Works at the Billings Depot, 2224 Montana Avenue, Billings, Montana.

6. **EXCLUDED PROPERTIES.** All properties, currently within the 12-year assessment term, 1988 through 1999, originally assessed for previous sidewalk, curb and gutter improvements, shall be

excluded from the curb and gutter repair portion of this additional Street Maintenance District assessment during this 12-year term. The curb and gutter repair portion of the new additional Street Maintenance Districts assessment is \$0.000625 per square foot of area. The exemption will include properties within a current assessment term who have previously paid their assessment off. Any party who would have been included in one of these City programs but elected to have their repairs done privately may make special application for an exclusion to the City Engineer's Office.

7. **EXEMPTION.** Street Maintenance District assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund or MET Transit Fund

8. **COLLECTION OF ASSESSMENTS.** Said special assessments shall be placed upon the assessment rolls and collected in the same manner as other taxes.

(NOTE: THE FOLLOWING PARAGRAPH WAS ADDED PER COUNCIL REQUEST.)

9. **CURB AND GUTTER POLICY.** The portions of the City Council's Proposed Curb, Gutter and Sidewalk Policy that applies to curb and gutter replacement/repair ONLY are incorporated herein:

"All curb and gutter repair and replacement is paid by the city curb and gutter program. Improvements to existing streets including the widening of those streets and the installation of curbs and gutters would have a cap placed on property owner assessments. The cap on assessments is based on the appraised value of the property (as follows:) (1) if the assessment is less than 5% of the property value, then the homeowner is responsible for the entire assessment; (2) if the assessment is more than 5% of the property value but less than 10%, the city curb and gutter program pays one-half of the assessment amount in excess of 5%; and (3) if the assessment is more than 10% of the property value, then the curb and gutter program pays one-half of the amount of the assessment between 5 and 10% and all of the assessment in excess of 10%."

"Home/property owners currently paying assessments will be exempt from paying fees to the annual curb and gutter program, until they have paid their assessment. Upon full payment of their assessment, they will be entered into the city-wide assessment program. Those owners who elected to pay assessments in full or contract to perform repairs without involvement in the city program, will need to submit proof of payment to the City Finance Office and will receive the same exemption."

10. **NOTICE OF HEARING.** On Monday, **June 8th, 2009**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings,

Montana, the City Council will hear objections to the final adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

11. EFFECTIVE DATE. This resolution shall be effective upon final adoption.

The foregoing Resolution No. _____ was ADOPTED by the City Council and APPROVED this
8th day of June, 2009.

CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

ATTEST:

BY: _____

Cari Martin, CITY CLERK

Attachment E

RESOLUTION 09 _____

**A RESOLUTION LEVYING AND ASSESSING STORM SEWER FEES
FOR PROPERTIES WITHIN THE CITY OF BILLINGS, PROVIDING FOR
NOTICE, HEARING AND FINAL ADOPTION**

WHEREAS, the Billings, Montana City Code did establish the rate table for Storm Sewer assessments; and

WHEREAS, extension of these charges have been made on individual properties to be assessed annually.

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

1. ANNUAL STORM SEWER FEE FOR FISCAL YEAR 2010. That for the purpose of defraying the cost of upgrading, repairing and maintaining the City Storm Sewer System an annual storm sewer fee is imposed for the fiscal year 2010, upon all lots or portions of lots as identified in the city's property tax record files. Rates are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. EXEMPTION. Storm Sewer Fee assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund, or MET Transit Fund.

3. DISPOSITIONS OF COLLECTIONS. Monies collected from assessments shall be paid into the Storm Sewer Fund, of Billings, Montana.

4. NOTICE OF HEARING. On Monday, **June 8, 2009**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **8th day of June, 2009**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

Storm Sewer Fee			
	ZONE	RATE	
	VACANT	977.00	Cap
	AT RATE	0.00124	
	P	0.00210	
	R-96	0.00367	
	R-80	0.00399	
	R-70	0.00421	
	R-70R	0.00421	
	RMH	0.00472	
	R-50	0.00506	
	PD	0.00578	
	R-60	0.00631	
	R-60R	0.00631	
	RP	0.00684	
	RMF-R	0.00714	
	RMF	0.00739	
	NC	0.00814	
	ELC	0.00814	
	MCPZD	0.00840	
	CC	0.00869	
	EGC	0.00892	
	PZD	0.00882	
	HC	0.00892	
	CI	0.00949	
	HI	0.01056	
	CBD	0.01264	
	ELI	0.00892	
	EMU	0.00869	

Attachment F

RESOLUTION 09 - _____

A RESOLUTION LEVYING AND ASSESSING ARTERIAL CONSTRUCTION FEES FOR PROPERTIES WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND FINAL ADOPTION

WHEREAS, the Billings, Montana City Code did establish the rate table for Arterial Construction Fee assessments; and

WHEREAS, extension of these charges have been made on individual properties to be assessed annually.

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

1. ANNUAL ARTERIAL CONSTRUCTION FEE FOR FISCAL YEAR 2010. That for the purpose of paying the cost of construction and/or reconstruction of arterial roadways and depreciation and replacement of arterial roadways to provide safe facilities on which citizens and visitors may travel, including the principal and interest on all revenue bonds to be issued for that purpose, as authorized by MCA Title 7 Chapter 7 Part 44 or Title 7 Chapter 13 Part 43, as amended, an annual arterial construction fee assessment is imposed for the fiscal year 2010, upon all lots or portions of lots as identified in the city's property tax record files. Rates are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. EXEMPTION. Arterial Construction Fee assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund, or MET Transit Fund.

3. DISPOSITIONS OF COLLECTIONS. Monies collected from taxes shall be paid into the Municipal Arterial Construction System Fund, of Billings, Montana.

4. NOTICE OF HEARING. On Monday, June 8, 2009, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **8th** day of **June, 2009**

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

Arterial Construction Fee

ZONE	RATE	
VACANT	1087.00	Cap
AT RATE	0.00138	
P	0.00233	
R-96	0.00408	
R-80	0.00444	
R-70	0.00468	
R-70R	0.00468	
RMH	0.00525	
R-50	0.00563	
PD	0.00644	
R-60	0.00702	
R-60R	0.00702	
RP	0.00761	
RMF-R	0.00793	
RMF	0.00823	
NC	0.00906	
ELC	0.00906	
MCPZD	0.00935	
CC	0.00967	
EGC	0.00992	
PZD	0.00981	
HC	0.00992	
CI	0.01056	
HI	0.01175	
CBD	0.01407	
ELI	0.00992	
EMU	0.00967	

Attachment G

RESOLUTION 08 _____

A RESOLUTION LEVYING AND ASSESSING PROPERTIES FOR THE PURPOSE OF PROVIDING AND MAINTAINING THE COMMON AREA IMPROVEMENTS MADE IN DOWNTOWN, CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for public improvements and maintenance, including but not limited to public sidewalk sweeping, security, public sidewalk snow removal, litter control, graffiti removal, and abatement of other services that are requested by the downtown property owners.

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. SERVICE CHARGE FOR FISCAL YEAR 2010. The Business Improvement District assessment for the fiscal year 2010 is hereby fixed, levied and assessed against each and every parcel of real property within the B.I. D. Each parcel shall pay to the City that portion of the total Business Improvement District assessment imposed annually. The assessment is a calculation based on square footage, taxable market value, and building square footage. See Exhibit A

2. NOTICE OF HEARING. On Monday, **June 8, 2009**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

3. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **8th day of June, 2009**.

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

Exhibit A

2009 Tax Code	Total Assessment
A00258	\$612.96
A00260	\$405.88
A00261	\$1,635.84
A00262	\$2,002.52
A00263	\$874.64
A00264	\$5,069.47
A00269	\$909.24
A00270	\$171.84
A00271	\$10,326.26
A00351	\$1,958.32
A00352	\$3,571.09
A00360	\$3,717.90
A00362	\$266.81
A00363	\$501.40
A00364	\$1,651.40
A00365	\$1,166.23
A00366	\$3,317.26
A00367	\$1,036.14
A00367A	\$245.60
A00367B	\$235.96
A00367C	\$481.56
A00368	\$3,315.72
A00372	\$1,872.68
A00373	\$531.95
A00374	\$529.39
A00375	\$2,605.49
A00376	\$1,011.06
A00383	\$2,240.09
A00611	\$863.00
A00612	\$406.23
A00613	\$406.23
A00614	\$406.23
A00615	\$406.23
A00616	\$363.51
A00617	\$206.19
A00618	\$477.66
A00620	\$6,950.12

A00624	\$8,537.63
A00630	\$2,626.64
A00630A	\$406.23
A00631	\$234.35
A00632	\$206.19
A00633	\$408.91
A00634	\$556.81
A00635	\$649.20
A00636	\$716.44
A00636A	\$1,283.55
A00637	\$1,269.35
A00638	\$531.95
A00639	\$547.69
A00640A	\$160.47
A00640B	\$73.44
A00640C	\$106.02
A00640D	\$152.68
A00640E	\$81.84
A00640F	\$678.86
A00640H	\$199.33
A00640I	\$193.06
A00640J	\$173.75
A00640K	\$240.02
A00640L	\$114.08
A00640N	\$165.08
A00640O	\$170.81
A00640P	\$143.64
A00640Q	\$133.28
A00640R	\$121.02
A00640S	\$151.14
A00640T	\$120.64
A00640U	\$98.02
A00640V	\$147.44
A00641	\$649.58
A00642	\$1,775.17
A00643	\$975.18
A00644	\$788.84
A00645	\$1,219.23
A00647	\$990.79
A00648	\$412.72
A00648A	\$409.83
A00649	\$498.72
A00650	\$616.85
A00651	\$1,217.82

A00762	\$676.21
A00763	\$305.83
A00765	\$461.93
A00766	\$554.61
A00768	\$220.49
A00769	\$200.62
A00770	\$365.53
A00774	\$860.32
A00775	\$482.79
A00776	\$717.51
A00777	\$343.75
A00778	\$777.39
A00780	\$391.14
A00781	\$795.95
A00782	\$379.90
A00783	\$1,119.09
A00786	\$539.17
A00787	\$4,623.83
A00788	\$409.87
A00789	\$1,686.93
A00792	\$515.01
A00794	\$2,416.03
A00795	\$4,940.12
A00796A	\$934.20
A00796B	\$821.65
A00796C	\$143.90
A00796D	\$258.03
A00796E	\$145.71
A00796F	\$239.14
A00796G	\$165.90
A00796H	\$74.54
A00796I	\$72.21
A00796J	\$75.06
A00796K	\$48.91
A00796L	\$67.55
A00796N	\$65.99
A00796O	\$74.54
A00796P	\$72.21
A00796Q	\$75.06
A00796R	\$48.91
A00796S	\$67.55
A00796T	\$65.99
A00801A	\$162.77
A00804	\$14,465.76

A00806	\$883.90
A00807	\$246.98
A00808	\$284.09
A00809	\$251.06
A00810	\$1,005.22
A00811	\$380.08
A00812	\$292.83
A00813	\$498.42
A00814	\$713.60
A00815	\$717.88
A00816	\$1,489.23
A00817	\$918.60
A00818	\$297.24
A00819	\$304.64
A00819A	\$395.03
A00820	\$393.00
A00821	\$287.74
A00822	\$331.01
A00823	\$451.24
A00824	\$698.94
A00825	\$348.87
A00826	\$1,167.37
A00827	\$265.08
A00828	\$568.00
A00830	\$374.78
A00831	\$292.32
A00832	\$720.51
A00832A	\$406.27
A00833	\$955.36
A00834	\$693.33
A00835	\$1,236.67
A00836	\$1,147.32
A00838	\$832.72
A00839	\$3,109.50
A00840	\$1,231.91
A07366	\$962.27
A07367	\$475.43
A29916	\$1,672.47
A29917	\$1,964.89
A33292	\$821.45
I00064	\$47.74
I00078B	\$102.72
I00140	\$83.50
I00140A	\$10.80

I00153	\$184.08
I00154	\$848.18
I00648	\$153.76
I00649	\$135.61
I00650	\$182.83
I00651	\$62.17
I00797	\$6,258.13

RESOLUTION 09 _____

A RESOLUTION LEVYING AND ASSESSING PROPERTIES FOR THE PURPOSE OF PROMOTING TOURISM, CONVENTION, TRADE SHOWS AND TRAVEL TO THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for promoting tourism, convention, trade shows, and travel to the City of Billings.

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. SERVICE CHARGE FOR FISCAL YEAR 2010. The Tourism Business Improvement District assessment for the fiscal year 2010 is hereby fixed, levied and assessed against each and every parcel of real property within the T.B.I. D. Each parcel shall pay to the City that portion of the total Tourism Business Improvement District assessment imposed annually. The assessment is (1.00) per occupied Hotel/Motel room night.

2. NOTICE OF HEARING. On Monday, **June 8, 2009**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Billings Times.

3. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the 8th day of June, 2009

CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 8, 2009

SUBJECT: Public Hearing and Approval of the Resolution Approving and Adopting the Budget for FY 2010

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This resolution provides for the formal adoption of the budget. The proposed budget has been available for review since May 4, 2009. Five (5) public presentations have been made regarding the proposed budget. Section 2 of this resolution allows the City Administrator to amend this budget for Debt Service Funds, Federal and State Grants Special Assessment and donations accepted and approved by the City Council. The City Council authorizes issuing debt and acceptance of grants and donations, other than donations which are handled per administrative order. Approving budget amendments to allow these expenditures is therefore redundant. This delegation of authority is allowed by State Statutes.

RECOMMENDATION

Staff recommends that City Council conducts a public hearing and approve the resolution approving and adopting the Budget for the City of Billings for fiscal year 2009-2010.

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

ATTACHMENTS:

A-Resolution Approving & Adopting the Budget for the City of Billings, Montana, for FY 2009-2010

Includes Exhibit A-City of Billings Expenditure Budget for Fiscal Year 2009-2010

Attachment A

RESOLUTION NO. _____

**A RESOLUTION APPROVING AND ADOPTING THE BUDGET FOR
THE CITY OF BILLINGS, MONTANA FOR FISCAL YEAR 2009-2010**

WHEREAS, the City Administrator of the City of Billings has regularly and lawfully submitted to the City Council of the City of Billings, Montana, the budget for Fiscal Year 2009-2010; and

WHEREAS, the proper notice was published stating that said City Council has completed the PRELIMINARY MUNICIPAL BUDGET for said Fiscal Year, and that said budget has been placed on file and is open to inspection in the office of the City Clerk; and that said City Council would meet for the purpose of annually determining, approving and adopting the budget, and any taxpayer might appear and be heard.

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

Section 1: That the Revenue Budget for Fiscal year 2009-2010, as detailed in the Budget Report, and as amended by the City Council, and the Expenditure Budget for Fiscal year 2009-2010 as detailed in the budget report and as amended by the City Council and further detailed on EXHIBIT "A", be, and the same is hereby finally determined, approved, and adopted.

Section 2: That the City Administrator is authorized to amend this budget for the expenditure of additional funds from the following: Debt Service Funds, Federal, State Grants, special assessments and donations accepted and approved by the City Council.

PASSED AND APPROVED by the City Council this 8th day of June, 2009.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

Exhibit A

<u>Fund/Department</u>	<u>Original Proposal</u>	<u>Additions 6/8/2009</u>	<u>Deletions 6/8/2009</u>	<u>Final Budget</u>
General Operating Fund:				
Mayor & City Council	449,865			449,865
City Administrator	617,782	4,000		621,782
Human Resources	642,761			642,761
City Attorney	1,190,612			1,190,612
Municipal Court	1,122,895			1,122,895
Finance	1,214,020		26,400	1,187,620
Code Enforcement	259,369			259,369
Parks, Recreation & Public Lands	3,709,143			3,709,143
Non-Departmental	19,418,759			19,418,759
Council Contingency	65,000			65,000
Total General Fund	28,690,206	4,000	26,400	28,667,806
Public Safety Fund:				
Police	18,034,171	15,000		18,049,171
Fire	14,593,416			14,593,416
Total Public Safety Fund	32,627,587	15,000	-	32,642,587
Special Revenue Fund:				
Tax Increment	21,565			21,565
Street Gas Tax	3,214,528			3,214,528
Building Inspection	1,574,653			1,574,653
Transportation Enhancement	2,412,939			2,412,939
Street & Traffic Operating	5,849,978			5,849,978
Fire Programs	46,819			46,819
EOC 911 Grant	682,133			682,133
City/County Planning	1,137,516			1,137,516
City Attorney Grants	231,516			231,516
Municipal Drug Court Grant	143,336			143,336
Police Programs	787,563			787,563
City County Library	3,388,202		143,295	3,244,907
Development Services Grants	2,050,272			2,050,272
Park Programs	61,385			61,385
Downtown Revolving Loan Program	1,900,000			1,900,000
Cemetery Improvement	10,000			10,000
Animal Shelter Donations	6,000			6,000
Street Maint. Districts	4,001,414			4,001,414
Fire Hydrant	1,750,079			1,750,079
Street Light Districts	2,130,063			2,130,063
Storm Sewer Operating	3,912,051			3,912,051
Park Maintenance District	673,257			673,257
Arterial Street Fees Operating	3,027,258			3,027,258
Amend Park	2,358			2,358
Ballfield Stadium Donations	5,000			5,000
Total Special Revenue Fund	39,019,885	-	143,295	38,876,590

Exhibit A cont.

<u>Fund/Department</u>	<u>Original Proposal</u>	<u>Additions 6/8/2009</u>	<u>Deletions 6/8/2009</u>	<u>Final Budget</u>
Debt Service Fund:				
Special Improvement Debt	3,079,200			3,079,200
Series 2000 Parks Debt	143,644			143,644
Series 2004A Street Debt	366,128			366,128
Storm Sewer Debt	993,000			993,000
Sidewalk, Curb & Gutter Debt	412,300			412,300
Series 2007A Baseball	823,304			823,304
Field/Stadium Debt				
Series 2007B Baseball	218,741			218,741
Field/Stadium Debt				
Total Debt Service Fund	6,036,317			6,036,317
Capital Projects Fund:				
Urban Renewal Land Development	90,128			90,128
Sidewalk Construction	761,421			761,421
Special Improvement Districts	409,144			409,144
2000 G.O. Bond Construction	532,704			532,704
Capital Replacement	1,145,887			1,145,887
Total Capital Project Fund	2,939,284			2,939,284
Enterprise Fund:				
Water	38,185,435			38,185,435
Wastewater	20,168,818			20,168,818
Parking	2,324,435			2,324,435
Solid Waste	10,752,435			10,752,435
Airport	22,852,120			22,852,120
Transit	6,324,232			6,324,232
Total Enterprise Fund	100,607,475			100,607,475
Internal Service Fund:				
Motor Pool	1,297,270			1,297,270
Central Services	101,887			101,887
Information Resources	1,895,431			1,895,431
Health/Life Insurance	9,707,769			9,707,769
Central Telephone	470,451			470,451
Radio Communications	262,896			262,896
Property Insurance	1,758,137			1,758,137
Facilities Management	1,467,154			1,467,154
Public Works Administration	850,548			850,548
Public Works Engineering	2,392,763			2,392,763
Total Internal Service Fund	20,204,306			20,204,306
Permanent Fund				
Cemetery Perpetual Care	6,802			6,802
Total Permanent Fund	6,802			6,802
Total All Funds	230,131,862	19,000	169,695	229,981,167